

Agenda Item #: V-D
Meeting Date: July 27, 2020

Subject: Resolution 20-64, Approving an Intergovernmental Agreement with the Town of Frederick for a Joint Outfall System Plan.

Presenter: Jordan Eiche, Assistant City Manager

Background: Dacono and Frederick were recently awarded a Mineral and Energy Impact Assistance grant from the Colorado Department of Local Affairs (DOLA) for a joint Outfall Systems Plan (essentially a drainage basin study) in the amount \$384,550, covering 50% (the full amount requested) of the total projected project cost of \$769,100.

Staff recommends approving the IGA. It is formatted similarly to the IGA that was entered into by Dacono and Frederick for the 2017 joint I-25 off-ramp project, but with modifications where necessary (i.e. proportionate project costs by total area included in the study instead of an even split).

Recommended Action: Approval of Resolution 20-64.

RESOLUTION NO. 20-64

**A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH
THE TOWN OF FREDERICK FOR A JOINT OUTFALL SYSTEM PLAN**

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DACONO,
COLORADO:**

Section 1. The Intergovernmental Agreement by and between the City of Dacono and the Town of Frederick for a joint Outfall System Plan is hereby approved in essentially the same form as the copy of such Agreement accompanying this resolution. The City Council hereby authorizes the expenditure of the funds as necessary to meet the terms and obligations of the Agreement.

Section 2. The Mayor is hereby authorized to sign the Agreement and is further authorized to negotiate and approve on behalf of the City such revisions to the Agreement as the Mayor determines are necessary or desirable for the protection of the City, so long as the essential terms and conditions of the Agreement are not altered.

INTRODUCED, READ, and ADOPTED this 27TH day of July, 2020.

CITY OF DACONO, COLORADO

Joe Baker, Mayor

ATTEST:

Valerie Taylor, City Clerk

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE TOWN OF FREDERICK AND THE CITY OF THE DACONO**

THIS AGREEMENT (“Agreement”) is made and entered into this 27th day of July, 2020, by and between the Town of Frederick (“Frederick”), a municipal corporation in the State of Colorado, and the City of Dacono (“Dacono”), a municipal corporation in the State of Colorado. Frederick and Dacono, when referring to both, are also referred to herein as the “Parties” or “municipalities.” Either Party hereto may also be referred to as a “municipality” or “Party.”

WHEREAS, units of local government are authorized by Article 14, Section 18 of the Colorado Constitution and C.R.S. § 29-1-203 to enter into intergovernmental agreements among themselves; and

WHEREAS, Frederick and Dacono have jointly submitted for and received Department of Local Affairs (“DOLA”) Energy and Mineral Impact Assistance grant (“Grant”) for the preparation of a joint Outfall Systems Plan (the “Project”); and

WHEREAS, the Parties desire to enter into this Agreement to confirm their intent to undertake the Project; to identify the allocation of the costs for the Project and application of Grant funds; to establish the process by which such application and allocation will be accomplished; and, to set forth the role of the Frederick as the lead agency; and

WHEREAS, Frederick and Dacono have authorized the execution of this Agreement as an exercise of their intergovernmental cooperation authority under C.R.S. 29-20-105; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations contained herein and the recitals hereinabove set forth, the sufficiency of which are hereby acknowledged, it is hereby mutually agreed by and between Frederick and Dacono as follows:

Section 1. DOLA has approved a joint Grant application by Frederick and Dacono in the amount of \$\$384,550 for the preparation of a joint Outfall Systems Plan.

Section 2. DOLA has requested that the Grant be administered by a single entity and Frederick has agreed to be that entity and administer the Grant.

Section 3. The parties are collectively responsible for total Project cost (Grant plus any additional required funds) of \$769,100 and have agreed to share this cost as follows:

Frederick:	\$460,000
Dacono:	\$309,100

Section 4. Frederick will be responsible for advancing progress payments to the consultant for the Project costs and will invoice Dacono for its proportionate share.

Section 5. Dacono agrees to reimburse Frederick within fifteen (15) business days of receiving an invoice.

Section 6. In the event there is a cost overrun on any portion of the Project cost, each jurisdiction will be responsible for that portion of the overrun that is directly related to basins within its respective municipal limits. Frederick will be responsible for advancing the cost overruns, will invoice Dacono for its proportionate share, and Dacono will pay the invoices within fifteen (15) business days. Prior written approval from both Frederick and Dacono will be required for any cost overruns beyond the originally proposed Project costs, on a per-jurisdiction basis.

Section 7. Responsibilities of Frederick.

(a) Frederick will oversee the agreement with DOLA, and shall be responsible for all contracting, supervisory and administrative matters related to completion of the Project; provided that, Frederick shall consider and reasonably incorporate Dacono's input on the Project.

(b) Frederick shall require all consultants or contractors performing work on the Project to defend, indemnify, and hold harmless Dacono and Frederick, to the fullest extent permitted by law, from and against all liability, claims, and demands, on account of any injury, loss, or damage, which arise out of or are connected with preparation of the Project. Frederick shall further require all contractors performing work on the Project to add Dacono and Frederick as additional insureds under such contractors' general liability and automobile liability insurance policies.

(c) Frederick and Dacono shall agree on the timeline for the Project, and Frederick shall provide Dacono (i) copies of all plans and other materials prepared by the consultant for the Project, (ii) a copy of the Frederick's agreement(s) with any consultant(s) or contractor(s) engaged to perform work on the Project, and (iii) updates of progress on the Project upon request.

Section 8. Cooperation and Project Representation. In the performance of this Agreement, the Parties each agree that they will act in good faith and will promptly provide any information, approval, or document necessary for implementation of this Agreement. Dacono designates Gary Odehnal and Jon Rabas as its managers for the Project. Frederick designates Kevin Ash and Sarah Watson as managers for the Project. Regular project update meetings will be held that will include Frederick and Dacono project managers as well as the selected consultant's project manager or designee.

Section 9. General. This Agreement is intended to describe rights and responsibilities only as between the named Parties hereto.

Section 10. Costs. Each Party is responsible for the cost and expenses incurred in administering this Agreement. Payments to Gary Odehnal for consulting services are not contemplated in this Agreement, and Dacono will pay Gary Odehnal separately for such services.

Section 11. No Third Party Beneficiaries. The Parties to this Agreement do not intend to benefit any person not a party to this Agreement. No person or entity, other than the Parties to this Agreement, shall have any right, legal or equitable, to enforce any provision of this Agreement.

Section 12. Authority. The Parties acknowledge that each Party's obligations are subject to applicable law and public policy. Dacono and Frederick will not and cannot adopt any regulation by resolution or ordinance that is in conflict with applicable agency, state or federal law, rule or regulation.

Section 13. Amendment. This Agreement may only be amended in writing, signed by both Parties. It is mutually agreed that neither Frederick nor Dacono shall either directly or indirectly seek any modification or rescission of this Agreement through court action, and that this Agreement shall remain in full force and effect until amended by a mutual written agreement approved by the respective corporate authorities of both Parties.

Section 14. Term and Termination. This Agreement shall be valid and binding and in full force and effect in perpetuity from the date first above written for a _____ () month term; except that, either Party upon thirty (30) days' prior written notice may terminate this Agreement with or without cause. It may be extended for successive six (6) month periods through mutual written agreement by the Parties.

Section 15. Severability. If any provision of this Agreement shall be declared invalid or unenforceable for any reason by a court of competent jurisdiction as to either Party or as to both Parties, such invalidation shall not affect any other provisions of this Agreement which can be given effect without the invalid provision (except that if a requirement or limitation in such provision is declared invalid as to one Party, any corresponding requirement or limitation shall be deemed invalid as to the other Party), and to this end the provisions of this Agreement are to be severable.

Section 16. Enforcement and Governing Law. Subject to Section 21 hereof, the provisions of this Agreement may be enforced by either Party against the other in any court of competent jurisdiction by means of either injunction or specific performance. This Agreement shall be construed in accordance with the laws of the State of Colorado. Jurisdiction and venue shall be proper and exclusive in the District Court for Weld County, Colorado.

Section 17. No Joint Venture or Partnership. Nothing contained in this Agreement is intended to create a partnership or joint venture between Frederick and Dacono with respect to construction of the project, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the parties of any activity, function or service, nor does it create a joint enterprise, nor does it authorize any party hereto to act as an agent of the other party hereto for any purpose whatsoever.

Section 18. Notices. Notices shall be provided to the respective Party by first-class mail, postage prepaid, as follows:

Town of Frederick
Attention: Town Manager
P.O. Box 435
Frederick, CO 80530

City of Dacono
Attention: City Manager
512 Cherry Ave.
Dacono, CO 80514

Section 19. Assignment. This Agreement shall not be assigned or delegated by either Party, and any assignment or delegation shall be void.

Section 20. Insurance. The Parties agree, at all times during the term of this Agreement, to maintain such liability insurance as is necessary to meet their liabilities under the Colorado Governmental Immunity Act, ("Act") C.R.S. § 24-10-101, et seq. as may be amended, and nothing herein shall be deemed a waiver of the protections, limitations and immunities afforded to the Parties under the Act.

Section 21. Default and Right to Cure. In the event that either Party shall be in default of this Agreement, the non-defaulting Party shall provide notice to the defaulting Party specifically describing the default. The Party allegedly in default shall have 30 days from the date of such notice to cure the default. If such default is not so cured then, at the election of the non-defaulting Party, the non-defaulting Party may pursue enforcement action pursuant to Section 16, hereof.

Section 22. Integration. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings.

Section 23. Execution in Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and each of which shall constitute the same instrument.

Section 24. Non-Appropriation. Nothing in this Agreement is intended or shall be deemed or construed as creating any multiple-fiscal year direct or indirect debt or financial obligation on the part of either Party within the meaning of Colorado Constitution Article X, Section 20 or any other constitutional or statutory provision. All financial obligations of the Parties under this Agreement beyond 2020 are subject to annual budgeting and appropriation by the Parties' respective governing bodies, in their sole discretion. Notwithstanding anything in this Agreement to the contrary, in the event of a non-appropriation by either Party's governing body, this Agreement shall terminate effective December 31 of the then-current fiscal year.

Section 25. Responsibility for Legal Proceedings. Each Party shall be responsible for defending itself, its officers, employees, agents, and contractors in any civil action brought against such Party, its officers, employees, agents, and contractors by any person claiming injury and damages as a result of the performance of this Agreement. Dacono its officers, and employees shall

not be deemed to assume any liability for intentional or negligent acts, errors, or omissions of Frederick, or any officer, employee, agent, or contractor thereof, arising out of the performance of this Agreement. Frederick, its officers, and employees shall not be deemed to assume any liability for intentional or negligent acts, errors, or omissions of Dacono, or any officer or employee thereof, arising out of the performance of this Agreement.

Section 26. Authority to Bind. Each of the persons signing below on behalf of either Party hereby represents and warrants that such person is signing with full and complete authority to bind the Party on whose behalf of whom such person is signing, to each and every term of this Agreement.

IN WITNESS WHEREOF, the above Parties hereto have caused this Agreement to be executed the day and year first above written.

CITY OF DACONO

Attest:

Joe Baker
Mayor, City of Dacono

Valerie Taylor, CMC
City Clerk, City of Dacono

TOWN OF FREDERICK

Attest:

Tracie Crites
Mayor, Town of Frederick

Meghan C. Martinez, CMC
Town Clerk, Town of Frederick