

RESOLUTION NO. 1417

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GOLDEN AUTHORIZING THE CITY TO ACQUIRE CERTAIN PROPERTIES AND ENTER INTO LAND EXCHANGES RELATED TO THE CONSTRUCTION AND USE OF THE GUANELLA RESERVOIR

WHEREAS, City Council has been advised by a memorandum dated June 25, 2003 from its water attorneys of the necessity of acquisition of property at the Guanella Reservoir site to accommodate the filling of the reservoir; and

WHEREAS, to accommodate such acquisition of property, known as the Lindstrom Ditch, the City will have to effect an exchange of properties, known as the Cub Creek Property and certain mining claims, with the United States Forest Service; and

WHEREAS, such exchange process will require authorizing legislation by the United States Congress; and

WHEREAS, the entity to accommodate such legislation is the Western Land Group, Inc. ("WLG"); and

WHEREAS, a contract between WLG and the City is necessary to provide the professional services to accommodate the enabling legislation for the property exchanges; and

WHEREAS, an Option Purchase Agreement with the owners of the Cub Creek Property is necessary to effect such exchange process; and

WHEREAS, surveys and site studies must be performed in relation to the land exchange process.

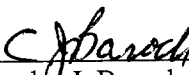
THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GOLDEN, COLORADO:

Section 1. The proposal with Western Land Group, Inc. is hereby approved essentially as submitted in the letter of July 3, 2002 from WLG; however, the total costs for such services shall not exceed \$35,000.00 without Council authorization.

Section 2. Council approves the Option Purchase Agreement for the Cub Creek Property with Leslie K. Distel and Andrew K. Todd, Co-Personal Representatives of the Estate of Nancy C. Todd, A/K/A Nancy Riddle Todd in essentially the same form as submitted to Council this date; provided however, the final purchase price to be paid by the City shall be subject to Council approval.

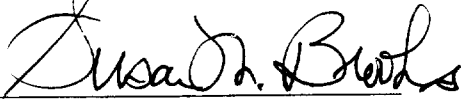
Section 3. The City is authorized to obtain necessary surveys and site studies/analyses related to the land exchanges not to exceed total costs of \$15,000.00 without Council approval.

Adopted the 10th day of July, 2003.

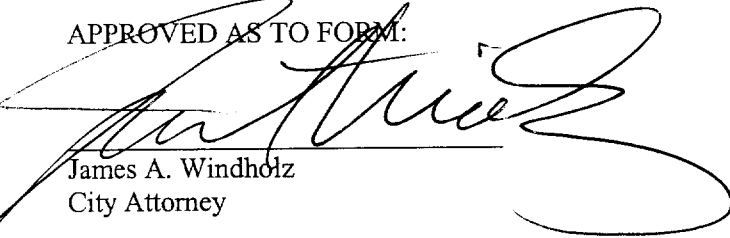


Charles J. Baroch
Mayor

ATTEST:

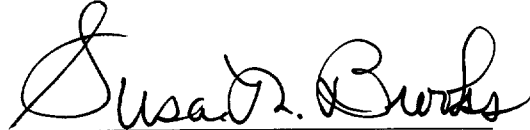

Susan M. Brooks, MMC
City Clerk

APPROVED AS TO FORM:


James A. Windholz
City Attorney

I, Susan M. Brooks, City Clerk of the City of Golden, Colorado, do hereby certify that the foregoing is a true copy of a certain Resolution adopted by the City Council of the City of Golden, Colorado at a regular meeting thereof held on the 10th day of July, A.D., 2003.

(SEAL)

ATTEST: 
Susan M. Brooks, City Clerk of the City of
Golden, Colorado



**WESTERN
LAND
GROUP, INC.**

507 S. Sherman St., Denver, CO 80209 • (303) 715-3570 • Fax (303) 715-3569 • www.westernlandgroup.com

July 3, 2003

Golden City Council
c/o Porzak, Browning & Bushong LLP
929 Pearl Street, Suite 300
Boulder, CO 80302

Re: City of Golden Water Project Legislation Services

Dear Council members,

On February 19, 2003, we entered into an employment agreement with Porzak, Browning & Bushong LLP in managing the City of Golden's pursuit of a Small Tracts Act land interchange for a water development project near the Town of Empire. In the process of investigating this transaction, we jointly determined that Congressional legislation was the best way to proceed with your proposed land exchange due to: 1) the slowness of the Forest Service administrative process; 2) Golden's desire to purchase the land in the event a land exchange effort proved unfeasible; 3) the need for a Forest boundary change in the Evergreen area; and 4) and Golden's desire to begin pipeline construction immediately upon the enactment of legislation. Because Western Land Group ("WLG") provides legislative services at a different hourly rate than our land exchange facilitation services, it is necessary to replace our existing employment agreement with the new Agreement set forth below:

SCOPE OF WORK

1. WLG will complete all tasks necessary for completion of the legislation. These tasks may include, but are not necessarily limited to the following: assembling background data and materials in support of the proposal; working with Golden and its attorneys to develop political support for legislation; drafting legislation; working with Members of Congress and their staff and Congressional Committees and staff to secure processing and enactment of legislation, and closing the transaction with the United States (Forest Service) after legislation is enacted.
2. Following passage of the legislation, WLG will supervise any contractors such as appraisers, cultural resource specialists, and/or environmental consultants as may be necessary in order to complete the exchange. You will be responsible for paying the fees and expenses of these contractors and shall contract directly with them for their services. In signing this Agreement, Golden hereby specifically acknowledges that

all lands to be exchanged in any land exchange with the U.S. Forest Service must be appraised in accordance with normal Federal appraisal standards (*The Uniform Appraisal Standards for Federal Land Acquisition, December 2000*) and that the final exchange values must be formally reviewed and approved by the Forest Service before a land exchange can be consummated.

3. WLG will conduct necessary negotiations and discussions with the USFS, other governmental entities and interested private parties throughout the process. WLG will not agree to any changes in the legislation or changes in the terms of the land exchange proposed in the legislation as introduced without the prior approval of the City of Golden or its attorneys, Porzak, Browning & Bushong, LLC.
4. WLG will work to identify suitable private lands for conveyance to the United States, if necessary. WLG may receive a brokerage commission from the seller of these private lands and would be acting as a transaction broker in any such negotiations.

COMPENSATION

1. WLG will perform the tasks described above at the rate of \$250/hour, billed monthly.
2. In addition to the fees discussed above, you will reimburse WLG for direct out-of-pocket expense such as telephone calls, mileage at the rate of \$0.36 per mile, lodging, photocopying, facsimile, and other necessary and reasonable expenditures.
3. You shall have the right to unilaterally terminate this Agreement with WLG at any time by so notifying WLG in writing; Provided, however, that WLG shall be compensated for any time expended on the project through the date of termination.
4. Any amounts billed to you in accordance with this agreement which remain unpaid for 30 days after delivery of our statement will accrue a **FINANCE CHANGE** of 1.5% per month which is 18% **ANNUAL PERCENTAGE RATE**. In the event legal action is required to collect any amount due to us, and said amount is properly documented, you agree to pay any attorney fees, court costs and other incurred expenses.
5. In the event WLG acts as a transaction broker in order to acquire suitable offered lands, WLG will be entitled to retain all commissions collected from the seller or listing company.

I hope the above revised Agreement is acceptable to the City of Golden, please so indicate by signing it as provided for below and returning a signed copy for our files.

Sincerely,



Tim Wohlgenant

The above terms and conditions are acceptable:

City of Golden

By: C. J. Barock _____ Date _____

Its: _____



July 1, 2003

City of Golden
% Mr. Tim Wohlgenant
Western Land Group, Inc.
507 South Sherman Street
Denver, Colorado 80209

Dear Mr. Wohlgenant:

In accordance with your conversation with Dave, Jr., on June 24, 2003, I am submitting this proposal for appraisal services to be rendered by Peterson Appraisal Company for Forest Service land in Clear Creek County which we earlier appraised, on a preliminary basis, as of April 15, 2003.

The purpose of our report will be to estimate the market value of the unencumbered fee simple interest in the subject property. The function or intended use of the appraisal is to estimate a market value of the subject property for a possible Forest Service exchange.

We will complete a narrative appraisal report on this Forest Service Property within approximately 60 days of receipt by us of a copy of this agreement signed by you, authorizing us to proceed, along with a retainer fee as outlined below, and all requested property specific information, including Forest Service instructions. Please realize that this is our best estimate of the delivery date and may be subject to change because of conditions beyond our control. This estimated delivery date is also subject to change if the agreement and retainer fee are not received by us within the time period for acceptance outlined later in this proposal.

The Uniform Standards of Professional Appraisal Practice (USPAP) outline six combinations of appraisal development and reporting. Accordingly, this appraisal will be developed on a Complete basis and will be reported as a Self-contained Appraisal Report. The appraisal report will be prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation. The report will also comply with the Uniform Appraisal Standards For Federal Land Acquisitions as per the Interagency Land Acquisition Conference guidelines adopted in 2000).

The appraisal shall be a determination of the market value of this property as of the date of inspection. Neither an investigation of title nor a survey of the property will be made. Three copies of the report shall be supplied to you, and additional copies may be purchased from us for \$250.00 each if you so desire.

The fee for our appraisal services shall be \$3,000.00. A retainer fee of \$1,500.00 shall be payable with the execution of this agreement. The reports will be delivered upon payment of the balance due. If this agreement is canceled at any time prior to delivery of the appraisal report, you agree to pay a fee based on the time expended by the appraiser and his staff at the rate of \$85.00 per hour plus expenses incurred to that date. The appraisal fee and the estimated time for completing this project are subject to many factors. These quotations are only effective if accepted within three (3) days of the date of this letter. Scheduling of personnel and field work will be initiated only upon receipt of the signed contract and the retainer.

It is mutually agreed that our acceptance of this assignment is not contingent upon any predetermined conclusions of value, marketability, or feasibility.

In addition to the appraisal fees stated above, Peterson Appraisal Company is to be reimbursed for expenses incurred on your behalf. These expenses shall include travel expense at the rate of \$0.45 per mile, maps, photographs, photocopies (but not for actual appraisal copies), shipping costs, meals, lodging, and long distance phone calls. These expenses shall not exceed \$300.00.

In the event that fees and expenses are not paid when due, we shall charge interest at the rate of 18% per annum from the due date until paid, and in addition, receive from you any collection costs incurred, including attorney's fees and court costs.

The fee quoted herein is for preparation of the initial appraisal report only, and does not include court preparation or post-appraisal consultation. We shall not be required to prepare for, attend, or testify at any court or administrative hearing, deposition, or post-appraisal consultation in connection with this appraisal without additional compensation. Our fee for court preparation time, time spent in court or administrative hearings, and post-appraisal consultation is \$175.00 per hour.

As you are aware, due to the fact that a number of factors which may affect valuation cannot be readily or economically ascertained by the appraiser, certain contingent and limiting conditions are imposed upon this appraisal assignment. By acceptance of this contract, you agree with me to the applicability of those assumptions and limiting conditions, and agree to accept the appraisal report subject to the same. A copy of the Contingent and Limiting Conditions is attached hereto, and made a part hereof.

We appreciate the opportunity to be of service to you and will make every effort to complete this assignment as efficiently, and therefore, as economically as possible.

We look forward to working with you on this assignment. If you have any questions concerning the agreement please let me know.

Very truly yours,
PETERSON APPRAISAL COMPANY

By: David E. Peterson
David E. Peterson, AFM, ARA
President

DEP:dmp

ACCEPTED this 11 day of July, 2003.

By: C. J. Baroch

CONTINGENT AND LIMITING CONDITIONS

The appraiser assumes no responsibility for legal matters or consequential damages, his liability in any event being limited to the amount of the professional fee collected. It is assumed that the property conforms to all applicable codes, ordinances, statutes, and/or any other covenants or governmental regulations.

Unencumbered fee simple title is assumed to be held by the owner(s) of record, and the property is appraised as if without encroachments, typically financed, and under responsible ownership and competent management.

The appraiser, by rendering his appraisal report, is not offering legal advice or conclusions of law. The client is advised that legal matters concerning the property may have a direct bearing on the value of the property. If such legal matters are different than those assumed by the appraiser and set forth herein, the appraiser's value conclusion may be invalid. Client is advised to retain legal counsel to advise client regarding the effect, if any, of the assumptions, legal or otherwise, made by the appraiser, and set forth in these contingent and limiting conditions.

For the purposes of this appraisal, the appraiser has assumed that no governmental regulations, local or federal in nature, are being violated by the property. Further, it is assumed that the utilization of this report by the client will not violate any governmental regulations, local or federal, including, but not limited to, any securities regulations.

The analysis and statements contained in the appraisal are statements of opinion only, and not necessarily the only indication of value or analysis that might be obtained on the subject property. Appraisal opinions by qualified appraisers differ. No warranty or guarantee, express or implied, is made by the appraiser indicating that his opinion represents the only opinion of dollar value which might be obtained by the client on the date of valuation.

Only a visual surface inspection of the property appraised has been made by the appraiser, unless otherwise instructed by the client. The appraiser assumes no liability for damages or losses sustained by the client for latent or non-apparent defects existing on, below, or above the property which may not readily be ascertainable by a visual surface inspection. The appraiser assumes that there are no hidden or unapparent conditions of the property, sub-soil or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which might be required to discover such factors.

The use of this report is subject to the requirements of the American Society of Farm Managers and Rural Appraisers relating to review by its duly authorized representatives for compliance with their Code of Ethics and Standards of Professional Practice.

Included as an integral part of this appraisal report are maps and sketches of the appraised property prepared by the appraiser. Although they do not purport to represent survey accuracy, it is believed they are substantially correct and therefore, adequately serve as a visual reference to the property.

Nothing in this report should be deemed a certification or guaranty as to the structural and/or mechanical soundness of the building(s) and the mechanical systems that relate to the functions and operations of the subject property. Rather, this appraisal assumes functions and operations are satisfactory, consistent with the age and condition of the subject building(s) and associated mechanical systems, unless otherwise noted.

The appraiser does not have expertise in identifying hazardous materials including but not limited to: Friable and non-friable asbestos; soil or ground water contamination; polychlorinated biphenyl contamination; radon levels; or landfill composition. We recommend buyers, lenders or other parties investigate the possible presence of these and other hazardous materials. The appraiser reserves the right to revise or amend valuations, opinions, and conclusions if reports subsequent to the appraisal become known. The appraiser is not liable for such costs incurred in either obtaining the hazardous material reports or amending the appraisal report.

Data in this report were secured from sources considered reliable and have been verified insofar as possible; however, the appraiser can neither guarantee nor be responsible for the accuracy of information furnished by others.

Loss or removal of any part of this report invalidates the entire appraisal.

The appraiser shall not be required to testify or to attend court by reason of this appraisal unless subsequent written arrangements are made, including payment of an additional fee for such services.

Neither all nor any part of this report (especially any conclusions as to value, the identity of the appraiser, or the firm which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news sales, or other media without the prior written consent and approval of the appraiser. Client and any third party users agree that this appraisal consists of "trade secrets and commercial or financial information" which is privileged and confidential and exempt from disclosure under 5 U.S.C. 522(b)(4).

Acceptance of, and/or use of, this appraisal report constitutes acceptance of all of the contingent and limiting conditions.



July 1, 2003

City of Golden
% Mr. Tim Wohlgenant
Western Land Group, Inc.
507 South Sherman Street
Denver, Colorado 80209

Dear Mr. Wohlgenant:

In accordance with your conversation with Dave, Jr., on June 24, 2003, I am submitting this proposal for appraisal services to be rendered by Peterson Appraisal Company on property legally described as the NW $\frac{1}{4}$ SW $\frac{1}{4}$ and S $\frac{1}{2}$ SE $\frac{1}{4}$ NW $\frac{1}{4}$ of Section 1, and the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 2, all in Township 6 South, Range 72 West, Park County, Colorado.

The purpose of our report will be to provide a preliminary estimate the market value of the unencumbered fee simple interest in the subject property. The function or intended use of the appraisal is to estimate a market value of the subject property for a possible Forest Service exchange.

We will complete a summary appraisal report on this property within approximately 30 days of receipt by us of a copy of this agreement signed by you, authorizing us to proceed, along with a retainer fee as outlined below, and all requested property specific information. Please realize that this is our best estimate of the delivery date and may be subject to change because of conditions beyond our control. This estimated delivery date is also subject to change if the agreement and retainer fee are not received by us within the time period for acceptance outlined later in this proposal.

The Uniform Standards of Professional Appraisal Practice (USPAP) outline six combinations of appraisal development and reporting. Accordingly, this appraisal will be developed on a Complete basis and will be reported as a Preliminary Restricted Appraisal Report. The appraisal report will be prepared in conformance with the Uniform Standards of Professional Appraisal Practice (USPAP) adopted by the Appraisal Standards Board of the Appraisal Foundation.

The appraisal shall be a determination of the market value of this property as of the date of inspection. Neither an investigation of title nor a survey of the property will be made. Three copies of the report shall be supplied to you, and additional copies may be purchased from us for \$250.00 each if you so desire.

The fee for our appraisal services shall be \$2,500.00. A retainer fee of \$1,250.00 shall be payable with the execution of this agreement. The reports will be delivered upon payment of the balance due. If this agreement is canceled at any time prior to delivery of the appraisal report, you agree to pay a fee based on the time expended by the appraiser and his staff at the rate of \$85.00 per hour plus expenses incurred to that date. The appraisal fee and the estimated time for completing this project are subject to many factors. These quotations are only effective if accepted within three (3) days of the date of this letter. Scheduling of personnel and field work will be initiated only upon receipt of the signed contract and the retainer.

A verbal estimate of value will be provided to you within three (3) weeks of receipt of the signed copy of this agreement and retainer fee. The additional fee for completing the appraisal to Forest Service

standards will be \$2,500.00, plus expenses, with a retainer fee of \$1,250.00, if contracted for within five months of the date of value of the preliminary appraisal.

It is mutually agreed that our acceptance of this assignment is not contingent upon any predetermined conclusions of value, marketability, or feasibility.

In addition to the appraisal fees stated above, Peterson Appraisal Company is to be reimbursed for expenses incurred on your behalf. These expenses shall include travel expense at the rate of \$0.45 per mile, maps, photographs, photocopies (but not for actual appraisal copies), shipping costs, meals, lodging, and long distance phone calls. These expenses shall not exceed \$300.00.

In the event that fees and expenses are not paid when due, we shall charge interest at the rate of 18% per annum from the due date until paid, and in addition, receive from you any collection costs incurred, including attorney's fees and court costs.

The fee quoted herein is for preparation of the initial appraisal report only, and does not include court preparation or post-appraisal consultation. We shall not be required to prepare for, attend, or testify at any court or administrative hearing, deposition, or post-appraisal consultation in connection with this appraisal without additional compensation. Our fee for court preparation time, time spent in court or administrative hearings, and post-appraisal consultation is \$175.00 per hour.

As you are aware, due to the fact that a number of factors which may affect valuation cannot be readily or economically ascertained by the appraiser, certain contingent and limiting conditions are imposed upon this appraisal assignment. By acceptance of this contract, you agree with me to the applicability of those assumptions and limiting conditions, and agree to accept the appraisal report subject to the same. A copy of the Contingent and Limiting Conditions is attached hereto, and made a part hereof.

We appreciate the opportunity to be of service to you and will make every effort to complete this assignment as efficiently, and therefore, as economically as possible.

We look forward to working with you on this assignment. If you have any questions concerning the agreement please let me know.

Very truly yours,

PETERSON APPRAISAL COMPANY

By: David E. Peterson
David E. Peterson, AFM, ARA
President

DEP:dmp

ACCEPTED this 11 day of July, 2003.

By: C. J. Bauwch

CONTINGENT AND LIMITING CONDITIONS

The appraiser assumes no responsibility for legal matters or consequential damages, his liability in any event being limited to the amount of the professional fee collected. It is assumed that the property conforms to all applicable codes, ordinances, statutes, and/or any other covenants or governmental regulations.

Unencumbered fee simple title is assumed to be held by the owner(s) of record, and the property is appraised as if without encroachments, typically financed, and under responsible ownership and competent management.

The appraiser, by rendering his appraisal report, is not offering legal advice or conclusions of law. The client is advised that legal matters concerning the property may have a direct bearing on the value of the property. If such legal matters are different than those assumed by the appraiser and set forth herein, the appraiser's value conclusion may be invalid. Client is advised to retain legal counsel to advise client regarding the effect, if any, of the assumptions, legal or otherwise, made by the appraiser, and set forth in these contingent and limiting conditions.

For the purposes of this appraisal, the appraiser has assumed that no governmental regulations, local or federal in nature, are being violated by the property. Further, it is assumed that the utilization of this report by the client will not violate any governmental regulations, local or federal, including, but not limited to, any securities regulations.

The analysis and statements contained in the appraisal are statements of opinion only, and not necessarily the only indication of value or analysis that might be obtained on the subject property. Appraisal opinions by qualified appraisers differ. No warranty or guarantee, express or implied, is made by the appraiser indicating that his opinion represents the only opinion of dollar value which might be obtained by the client on the date of valuation.

Only a visual surface inspection of the property appraised has been made by the appraiser, unless otherwise instructed by the client. The appraiser assumes no liability for damages or losses sustained by the client for latent or non-apparent defects existing on, below, or above the property which may not readily be ascertainable by a visual surface inspection. The appraiser assumes that there are no hidden or unapparent conditions of the property, sub-soil or structures which would render it more or less valuable. No responsibility is assumed for such conditions or for engineering which might be required to discover such factors.

The use of this report is subject to the requirements of the American Society of Farm Managers and Rural Appraisers relating to review by its duly authorized representatives for compliance with their Code of Ethics and Standards of Professional Practice.

Included as an integral part of this appraisal report are maps and sketches of the appraised property prepared by the appraiser. Although they do not purport to represent survey accuracy, it is believed they are substantially correct and therefore, adequately serve as a visual reference to the property.

Nothing in this report should be deemed a certification or guaranty as to the structural and/or mechanical soundness of the building(s) and the mechanical systems that relate to the functions and operations of the subject property. Rather, this appraisal assumes functions and operations are satisfactory, consistent with the age and condition of the subject building(s) and associated mechanical systems, unless otherwise noted.

The appraiser does not have expertise in identifying hazardous materials including but not limited to: Friable and non-friable asbestos; soil or ground water contamination; polychlorinated biphenyl contamination; radon levels; or landfill composition. We recommend buyers, lenders or other parties investigate the possible presence of these and other hazardous materials. The appraiser reserves the right to revise or amend valuations, opinions, and conclusions if reports subsequent to the appraisal become known. The appraiser is not liable for such costs incurred in either obtaining the hazardous material reports or amending the appraisal report.

Data in this report were secured from sources considered reliable and have been verified insofar as possible; however, the appraiser can neither guarantee nor be responsible for the accuracy of information furnished by others.

Loss or removal of any part of this report invalidates the entire appraisal.

The appraiser shall not be required to testify or to attend court by reason of this appraisal unless subsequent written arrangements are made, including payment of an additional fee for such services.

Neither all nor any part of this report (especially any conclusions as to value, the identity of the appraiser, or the firm which the appraiser is connected) shall be disseminated to the public through advertising, public relations, news sales, or other media without the prior written consent and approval of the appraiser. Client and any third party users agree that this appraisal consists of "trade secrets and commercial or financial information" which is privileged and confidential and exempt from disclosure under 5 U.S.C. 522(b)(4).

Acceptance of, and/or use of, this appraisal report constitutes acceptance of all of the contingent and limiting conditions.

OPTION PURCHASE AGREEMENT

This Option Purchase Agreement (this "Agreement") is made and entered into on this ___ day of June, 2003 (the "Effective Date") by Leslie K. Distel and Andrew K. Todd, Co-Personal Representatives of the Estate of Nancy C. Todd, A/K/A Nancy Riddle Todd ("collectively, Seller"), and the City of Golden ("Purchaser").

WITNESSETH:

1. **The Agreement:** In consideration of the mutual covenants and promises and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller hereby grants to Purchaser the exclusive option and right to purchase the Property as defined in Paragraph 2 (Property) below (the "Option"), pursuant to and in accordance with the terms and conditions of this Agreement.

2. **Property:** The real property which is the subject matter of this Agreement is situated in Park County, Colorado containing all or a portion of 80 acres of land, more specifically described in Exhibit A attached hereto, and including any improvements thereon, and any rights, title, and interest of Seller, if any, in any grazing rights, water rights, mineral rights, permits, easements, and rights-of-way appurtenant or belonging thereto and any other water rights separately owned by Seller and used in connection therewith, if any (collectively, the "Property").

The parties hereto acknowledge that the Property is being purchased by Purchaser for the purpose of exchanging it to the United States Department of Agriculture, Forest Service (the "Forest Service") for other property (the "Exchange Property") now owned by the U.S.D.A. Forest Service (the "Exchange"). The Exchange Property is more specifically described in Exhibit B attached hereto. The Exchange Property was appraised by Peterson Appraisal Company, Lakewood Colorado, on April 15, 2003 for \$162,000.

In order to equalize the values of the Property and the Exchange Property, the parties agree that the Property shall be acquired from the western boundary toward the east in aliquot parts until the preliminary appraised value, as defined in Paragraph 4(A) (Preliminary Appraisal), of the Property is approximately equal to the value of the Exchange Property. The Property shall therefore be described by the closest aliquot part necessary to approximate the value of the Exchange Property. The final configuration of the Property to be acquired shall be mutually acceptable to the parties.

The Exchange is contemplated to be directed by the U.S. Congress through legislation ("Legislation"). The Legislation will also re-define the boundaries of the Arapaho-Roosevelt National Forest such that all of the privately-owned land located in Section 2 and in the west

half of Section 1, Township 6 South, Range 72 East, Sixth Principal Meridian, Park County, Colorado, will be located within the Arapaho-Roosevelt National Forest.

3. **The Option:**

A. *Duration:* The Option granted with regard to the Property shall commence upon the Effective Date and shall terminate on August 31, 2004 (the "Option Term").

B. *Exercise of Option:* Purchaser must exercise the Option, if at all, by providing Seller written notice of Purchaser's exercise thereof, which written notice must be actually received by Seller at least ten (10) calendar days prior to expiration of the Option Term. Time is of the essence and the manner of exercise of the Option shall be exclusive. Failure to exercise the Option in the time and manner specified and in strict performance with the foregoing, Seller and Purchaser each expressly agreeing that substantial performance is insufficient, shall automatically cause this Agreement to irrevocably terminate, in which event the parties will have no further obligations or liabilities, one to the other, except as otherwise expressly provided herein.

C. *Effect of Exercise of Option:* Upon exercise as set forth in Paragraph 3(B) (The Option: Exercise of Option) above, this Agreement shall become a contract of sale enforceable by each of the Seller and Purchaser against the other and subject to the terms and conditions hereof.

4. **Purchase Price:** The purchase price ("Purchase Price") for the Property shall be the appraised value as determined through a final, complete appraisal prepared by a qualified appraiser (the "Appraiser") in conformance with the Uniform Appraisal Standards for Federal Land Acquisitions and approved by the Purchaser, Seller and the Forest Service (the "Final Appraisal").

A. *Preliminary Appraisal.* Purchaser and Seller shall jointly order a preliminary appraisal (the "Preliminary Appraisal"), and Purchaser shall undertake any necessary coordination/management activities to ensure that the Preliminary Appraisal is completed in a timely manner. Seller shall pay the cost of the Preliminary Appraisal of the property by Peterson Appraisal Company ("Appraiser"). Such amounts shall be paid directly to the Appraiser upon completion of the Preliminary Appraisal or at such other time as required by the Appraiser. If Seller accepts the value conclusions of the Preliminary Appraisal, as set forth in Paragraph 4(B) (Purchase Price: Seller's Termination Right), Purchaser shall reimburse Seller for half of the total cost of the Preliminary Appraisal.

B. *Seller's Termination Right.* Upon completion, a copy of the Preliminary Appraisal shall be sent to Purchaser and Seller for review. If the appraised value determined in the Preliminary Appraisal is less than One Hundred Forty Thousand Dollars (\$140,000.00), then notwithstanding any provision to the

contrary set forth in this Agreement, Seller shall have the right to terminate this Agreement by providing written notice of such termination to Purchaser within seven (7) business days after Seller's receipt of the Preliminary Appraisal. In the event Seller terminates this Agreement pursuant to this Paragraph 4(B) (Purchase Price: Seller's Termination Right), Seller or Escrow Holder (defined below) shall promptly remit all Option Consideration (defined below) to Purchaser and Purchaser and Seller shall split any escrow cancellation costs. Seller's failure to terminate this Agreement pursuant to this Paragraph 4(B) (Purchase Price: Seller's Termination Right) shall be deemed Seller's acceptance of the Preliminary Appraised value as the Purchase Price until such time that a Final Appraisal can be completed and approved.

C. *Final Appraisal.* At least thirty (30) calendar days before Closing (defined below), Purchaser shall arrange for completion of the Final Appraisal. Purchaser shall endeavor to have the same appraiser who completed the Preliminary Appraisal also complete the Final Appraisal. Purchaser and Seller shall jointly pay for the Final Appraisal.

5. **Title Insurance:** Seller shall, at Seller's cost, obtain a current preliminary title report (and, if applicable, supplements or revisions thereto) (the "Title Report"), and documents and information pertaining to the exceptions to title listed in the Title Report from a title insurance company ("Title Company") and deliver the same to Purchaser within thirty (30) days of execution of this Option Agreement. Purchaser may advise Seller in writing and in reasonable detail, not later than thirty (30) days after Purchaser's receipt of the Title Report (the "Title Review Date"), what exceptions to title, if any, listed in the Title Report are not acceptable to Purchaser (the "Title Objections"). Prior to notifying Seller of any Title Objections, however, Purchaser shall endeavor in good faith to cause Title Company to modify and update the preliminary report to reflect requested corrections and revisions. Seller shall have ten (10) business days after receipt of Purchaser's Title Objections to give Purchaser notice that (a) Seller will remove any Title Objections from title (or, if acceptable to Purchaser, in its reasonable judgment, afford Title Company necessary information or certifications to permit it to insure over such exceptions); or (b) Seller elects not to cause such exceptions to be removed. Seller's failure to provide notice to Purchaser within such ten (10) day period as to any Title Objection shall be deemed an election by Seller not to remove the Title Objection. If Seller so notifies or is deemed to have notified Purchaser that Seller shall not remove any or all of the Title Objections, Purchaser shall have ten (10) days to determine whether (i) to proceed with the purchase and take the Property subject to such exceptions or (ii) to terminate this Agreement. Purchaser's failure to terminate this Agreement in writing within such ten (10) day period shall constitute Purchaser's conclusive agreement to accept the Property subject to the Permitted Exceptions. If Purchaser terminates this Agreement in writing within such ten (10) day period, the Option Consideration, as defined in paragraph 6, shall be returned to Purchaser. "Permitted Exceptions" shall include and refer to any and all exceptions to title, excepting solely Title Objections that have been timely identified by Purchaser and that Seller have notified Purchaser pursuant to this Section that Seller are willing to remove. Seller shall have no obligation to execute any affidavits or indemnifications in connection with the issuance of Purchaser's title insurance excepting

only customary affidavits as to authority, the rights of tenants in occupancy, and the status of mechanics' liens.

Seller hereby represents and warrants to Purchaser that, to Seller's actual knowledge, without investigation (i) there is no existing boundary dispute with respect to the Property; (ii) neither Seller nor any of its agents or contractors has placed any underground storage tanks of any kind on the Property, and to Seller's knowledge no such underground storage tanks otherwise have been placed on the Property; and (iii) Seller has not received any written notice of and has no knowledge of the existence or presence in or on the Property of any hazardous material(s) as defined under federal, state, and/or municipal laws, rules, regulations, or ordinances.

6. **Option Consideration:** Upon execution of this Agreement, Purchaser shall establish an escrow account with Security Title Guaranty Company, Bailey, Colorado ("Escrow Holder"). The escrow instructions for the Escrow Holder are attached as Exhibit C. Upon Purchaser's execution of this Agreement, Purchaser shall deposit with Escrow Holder Seven Thousand Five Hundred Dollars (\$7,500.00) payable to the order of Seller (the "Option Consideration").

The Option Consideration shall be retained in the escrow account on behalf of Seller except as otherwise provided herein. The Option Consideration, along with any accrued interest thereon shall be applied to the Purchase Price upon the Closing of the Property. Seller and Purchaser agree to evenly share all escrow fees and costs.

7. **Closing Provision:**

A. *Closing:* The closing of the Property (the "Closing") shall take place on or prior to August 31, 2004 (the "Closing Date"). If the closing of the Forest Service Exchange with respect to the Exchange Property can occur prior to the Closing Date then the parties agree to accelerate the Closing Date to correspond with the closing of the Forest Service Exchange. Purchaser, by providing Seller with prior written notice, may elect to proceed with the Closing of the subject Property regardless of the status of the closing of the Forest Service Exchange, whereupon the Closing Date shall occur within thirty (30) consecutive, calendar days following the date of said notice, provided in no event shall the Closing Date occur after August 31, 2004 unless extended by mutual agreement of Seller and Purchaser.

If the Final Appraisal is not available by August 31, 2004, then Seller and Purchaser may agree to extend the Closing Date until after the Final Appraisal is available. If the Closing Date is so extended by agreement, then Purchaser shall pay to Seller, as consideration for such extension, an amount equal to eight percent annual interest on the value of the Property determined by the Preliminary Appraisal, prorated according to the number of days between August 31, 2004 and the extended Closing Date. Such additional amount shall be paid at Closing and shall not apply to the Purchase Price. If the parties do not agree to extend the Closing Date beyond August 31, 2004, then (i) Seller may elect to terminate this Agreement in the same manner as

provided in Paragraph 4C and all Option Consideration shall be refunded to Buyer; or
(ii) Closing shall occur on August 31, 2004 in accordance with this Agreement.

B. *Seller's Closing Obligations:* Seller will deliver to Purchaser at Closing:

(i) A fully executed General Warranty Deed (the "Deed") conveying good and indefeasible title to the Property to Purchaser subject only to the Permitted Exceptions and other matters of record or apparent, together with all water and mineral rights, if any, Seller has in the Property; and

(ii) Possession of the Property.

(iii) Seller shall pay at Closing Seller's Closing costs, which include Seller's portion of the pro-rated taxes for the year in which Closing occurs based upon the most recent levy and assessment, one-half of the cost of any escrow fee, the portion of the premium for the Title Policy attributable to the issuance of a standard owner's policy of Title Insurance, but not any additional cost of extended coverage or other endorsements. Seller shall also pay all fees and expenses of Seller's legal counsel and other third party consultants engaged by or on behalf of Seller in connection with this transaction.

C. *Purchaser's Closing Obligations:* At Closing Purchaser shall deliver to Seller the applicable Purchase Price, in cash or other immediately available funds, less the Option Consideration. At Closing, Purchaser shall pay Purchaser's Closing costs, which include Purchaser's portion of the pro-rated taxes for the year in which Closing occurs based upon the most recent levy and assessment, the costs of recording the Deed and the cost of all escrow fees and costs not paid by Seller, any additional premium of the Title Policy in excess of that payable by Seller described in Paragraph 7(B)(iii) (Closing Provision: Seller's Closing Obligations) above, including extended coverage, and any endorsements. Purchaser shall also pay all fees and expenses of Purchaser's legal counsel and other third party consultants engaged by or on behalf of Purchaser in connection with this transaction

D. *Condition Precedent to Purchaser Obligations:* Purchaser's obligations hereunder shall be contingent upon (i) enactment of the Legislation, (ii) the Forest Service's performance of its material obligations under the Legislation, and (iii) the willingness of title company to issue, upon the sole condition of the payment of its regularly scheduled premium, its ALTA standard coverage Owner's Policy of Title Insurance (the "Title Policy"), insuring Purchaser, the United States or any permitted assignee in the amount of the Purchase Price that title to the Property at Closing, will be vested of record in Purchaser, the United States or any permitted assignee on the Closing Date subject only to the printed conditions and exceptions of such policy and the Permitted Exceptions. In the event any of the conditions set forth in this Paragraph

7(D) (Closing Provision: Condition Precedent to Purchaser Obligations) are not fulfilled or waived on or before the Closing Date, Purchaser may, by written notice to Seller, terminate this Agreement, whereupon all rights and obligations hereunder of each party shall be at an end (except as otherwise expressly provided herein). Either party may, at its election, at any time or times on or before the Closing Date specified for the satisfaction of the condition, waive in writing the benefit of any of the conditions set forth in this Paragraph 7D (Closing Provision: Condition Precedent to Purchaser Obligations).

8. **Assignment and Binding Effect.** Purchaser has the right to assign this Agreement upon written approval by Seller which shall not be unreasonably withheld, provided any proposed assignee has a financial capacity and credit history sufficient, in Seller's determination, to perform the obligations of Purchaser hereunder. Failure to obtain Seller's written permission shall cause this Agreement to terminate and the Option Consideration shall be immediately distributed to Seller. No assignment by Purchaser shall relieve Purchaser of its obligations under this Agreement. Subject to the limitations on assignment expressed in this Paragraph 8 (Assignment and Binding Effect), the terms and conditions of this Agreement shall bind and inure to the benefit of Seller and Purchaser and their respective heirs, personal representatives, successors and assigns.

9. **Brokerage.** The parties hereto acknowledge that Western Land Group, Inc. ("WLG") is acting as a transaction broker. WLG will assist the parties throughout the transaction with communications, interposition, advisement, negotiation, contract terms, and the Closing, however, WLG is not an agent or an advocate of either Purchaser or Seller but has a duty to treat both Purchaser and Seller honestly. Purchaser and Seller shall not be vicariously liable for the acts of WLG. Seller shall pay a commission to WLG which shall be equal to 7% of the gross Purchase Price upon the Closing of the transaction contemplated.

Other than this real estate commission, the parties hereby warrant and represent that no brokers, agents, finders fee or commissions are due or arising in connection with entering into this Agreement. Each party shall indemnify and save the other party wholly harmless against any loss, cost or other expenses, including reasonable attorney's fees, that may be incurred by such other party by reason of any breach of the foregoing warranty.

10. **Defaults.**

A. *Purchaser's Default:* If Purchaser fails or refuses to consummate the purchase of the Property pursuant to this Agreement after exercise of the Option, or fails to perform any of Purchaser's other obligations under this Agreement, either prior to or at Closing, for any reason other than termination of this Agreement by Purchaser pursuant to a right to terminate expressly set forth in this Agreement, Seller's failure to perform Seller's material obligations under this Agreement, or the Forest Service's failure to perform its material obligations under the Legislation, Seller shall have as Seller's exclusive remedy the right to retain the Option Consideration which shall constitute liquidated damages and not a penalty or forfeiture under this Agreement free of any claim by Purchaser or any other person

with respect thereof. Payment of the Option Consideration upon such breach shall then constitute full satisfaction of Purchaser's obligations under this Agreement except for any indemnity obligations of Purchaser under this Agreement.

B. *Seller's Default:* If Seller fails or refuses to consummate the sale of the Property pursuant to this Agreement or fails to perform any of Seller's other obligations under this Agreement for any reason other than a termination of this Agreement by Seller pursuant to a right to terminate expressly set forth in this Agreement, Purchaser's failure to perform Purchaser's material obligations under this Agreement or under the Legislation, or the Forest Service's failure to perform its material obligations under the Legislation, Purchaser shall have as Purchaser's exclusive remedies the right to (1) enforce specific performance of Seller's obligations under this Agreement, provided, Purchaser has performed or tendered performance of all of its obligations under this Agreement, or (2) to terminate this Agreement by giving written notice of the termination to Seller prior to or at the Closing whereupon neither party shall have any further rights or obligations under this Agreement (except as otherwise expressly provided herein) and all Option Consideration shall be delivered to Purchaser free and clear of any claims by Seller or any other person with respect thereto, or (3) to recover such damages as may be proper.

11. **Inspection:** Purchaser, and its agents, contractors, and engineers, as well as Forest Service and Bureau of Land Management personnel shall have the right, at Purchaser's sole costs and expense, any time during the Option Term and any extensions thereof, to enter upon the Property to inspect the Property and all the improvements thereon, and to drive test piles and make test borings, appraisals, topographical surveys, percolation tests, and other tests to determine the suitability and adaptability of the Property for Purchaser's intended use; Purchaser's exercise of the such rights of review and inspection shall be subject to the following limitations: (i) any entry onto the Property by Purchaser, and its agents, contractors, and engineers, as well as Forest Service and Bureau of Land Management personnel, shall be following reasonable prior notice to Seller, and, at Seller's discretion, accompanied by a representative of Seller and shall be at Purchaser's sole risk for any damage or injury to any person or property; (ii) Purchaser will at all times comply with all applicable laws and will defend, protect, indemnify, and hold Seller and the Property harmless from any and all loss, cost, expense, lien, injury, accident, fire or other casualty, claim, cost, expense, charge, damage, or other liability arising from or in any way related to Purchaser's or its agents', contractors', or employees' activities on or about the Property or any acts or omissions of Purchaser or its agents, contractors, or employees regarding the Property, including specifically, but without limitation, any mechanics' or other liens (and lawsuits or other proceedings filed in connection therewith) filed or asserted in connection therewith which affect the Property in any manner whatsoever; and (iii) Purchaser shall, in the event that this Agreement shall not close, restore the Property to substantially the same condition as existed prior to such activities and shall promptly deliver to Seller complete copies of all documents, studies, reports, analyses, surveys, relevant correspondence and any other pertinent written information with respect to the Property and the transactions contemplated hereby that are within Purchaser's possession or control. Purchaser's obligations and

indemnifications set forth above shall survive the expiration or earlier termination of this Agreement.

If Purchaser is not satisfied in any respect with the results of the inspection of the Property, Purchaser will have the absolute right to terminate this Agreement in writing on or before October 31, 2003. Purchaser's failure to deliver to Seller such written termination shall be deemed Purchaser's conclusive agreement to allow this Agreement to continue and in the event of Purchaser's exercise or deemed exercise of the Option pursuant to the provisions of Paragraph 3 (The Option) above, Purchaser's agreement to accept the Property "**AS IS,**" "**WHERE AS,**" and "**WITH ALL FAULTS.**"

If at any time prior to the Closing Date, the Forest Service determines that the United States cannot accept title to the Property due to the unacceptable presence of hazardous materials, Purchaser will have the absolute right to terminate this Agreement by giving written notice of the termination to Seller whereupon neither party shall have any further rights or obligations under this Agreement (except for indemnity obligations) and the Option Consideration and any Earnest Money deposits shall be delivered to Purchaser free and clear of any claims by Seller or any other person with respect thereto.

12. **Notice:** Any notice authorized, required or permitted to be given hereunder shall be deemed to have been given upon actual receipt, including telecopy or courier, or if later, five (5) calendar days following the depositing of such notice in the United States Postal Service, postage prepaid, certified mail or registered mail, return receipt requested and properly addressed to the party to be notified at the following addresses:

If to Seller: Leslie Distel
884 S. Stiles Drive
Evergreen, CO 80439
(303) 526-9585, FAX (303) 526-9585

If to Purchaser: P. Fritz Holleman
Michael Browning
Porzak, Browning & Bushong LLP
929 Pearl Street, Suite 300
Boulder, CO 80302
(303) 443-6800, FAX (303) 443-6864

With a copy to: Tim Wohlgenant
Western Land Group, Inc.
507 South Sherman Street
Denver, Colorado 80209
(303) 715-3570, FAX (303) 715-3569

It is provided, however, that the parties hereto may from time to time and at any time change their respective addresses upon giving of ten (10) calendar days written notice to the other party of such change of address in the manner as aforesaid.

13. **Counterparts:** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Signatures transmitted to another party by telecopier or facsimile will be binding on the signer when transmitted.

14. **Application Law, Place of Performance:** This Agreement has been executed in, and shall be construed in accordance with and governed by the laws of the State of Colorado. All of the obligations contained in this Agreement are performable in Park County, Colorado.

15. **Attorney's Fees:** In the event it becomes necessary for either party thereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

16. **Modification:** There are and were no verbal or written representations, warranties, understanding, stipulations, agreements or promises pertaining to the subject matter of this Agreement made by Seller or any agent, employee, or any other person representing or purporting to represent Seller, not incorporated in writing in this Agreement. This Agreement, when executed by both parties, constitutes the entire understanding of the parties with respect to the subject matter and may be amended only in writing by both parties.

17. **Seller's Representative:** Seller authorizes Leslie Distel to serve as the representative of Seller for the purposes of receipt and giving of notice, direction, decision or approval under this Agreement on behalf of Seller. Purchaser shall be entitled to rely on any such notice, direction, decision or approval given by such individual as binding upon Seller.

18. **Authority:** Purchaser has full power and lawful authority to enter into and carry out the terms and provisions of this Agreement and to execute and deliver all documents which are contemplated by this Agreement, and all actions of Purchaser necessary to confer such power and authority upon the persons executing this Agreement (and all documents which are contemplated by this Agreement) on behalf of Purchaser have been taken

19. **Confidentiality:** Purchaser and Seller hereby acknowledge and agree that the terms and conditions of this Agreement are to be kept strictly confidential. Accordingly, except as may be required by law or court order or as is absolutely necessary to complete the Legislation and consummate the Exchange, neither party shall, without the prior written consent of the other party, release, publish or otherwise distribute (and shall not authorize or permit any other person or entity to release, publish or otherwise distribute) any information concerning this Agreement or the transaction contemplated herein to any person or entity other than the disclosing party's prospective investors, legal and financial advisors or other consultants, each of whom shall agree to hold such information strictly confidential as if such persons were bound by the provisions of this Paragraph 19 (Confidentiality).

20. **Effective Date:** The "Effective Date" of this Agreement shall be the date, if ever, upon which both Purchaser and Seller execute an identical, original counterpart thereof.

21. **Notice of Acceptance:** This proposal shall expire unless accepted in writing by Purchaser and Seller, as evidenced by their signatures below, and the offering party receives notice of acceptance on or before June ___, 2003 at 4:00 p.m. MST.

22. **Time and Exact Performance:** Time and exact performance shall be deemed of the essence in the performance of all of the terms and conditions to be performed hereunder.

23. **Severability:** If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transaction contemplated hereby is not affected in any manner material and adverse to either party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement to effect the original intent of the parties as closely as possible in an acceptable manner so that the transaction contemplated hereby is fulfilled to the extent possible.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date indicated below.

SELLER

Leslie Distel, Co-Personal Representatives of
the Estate of Nancy C. Todd, A/K/A Nancy
Riddle Todd

Andrew Todd, Co-Personal Representatives of
the Estate of Nancy C. Todd, A/K/A Nancy
Riddle Todd

PURCHASER

City of Golden

By: C. J. Barock

Its: _____

Exhibit A

Legal Description of the Property

Township 6 South, Range 72 West, 6th P.M., Park County, Colorado

Section 1: NW1/4SW1/4.

Section 2: NE1/4SE1/4;

Totaling 80 acres, more or less.

Exhibit B

Legal Description of the Exchange Property

Township 3 South, Range 74 West, 6th P.M., Clear Creek County, Colorado

Beginning at the intersection of the Lindstrom Placer Claim, M.S. 1648, and the Marietta Placer Claim, M.S. 20522, to Corner No. 1 (Marietta Placer Claim), to Corner No. 2 (Marietta Placer Claim), to Corner No. 4 (Lindstrom Placer Claim), to Corner No. 5 (Lindstrom Placer Claim), and returning to point of beginning.

Totaling 9.84 acres, more or less.