

Town of Marble
Regular Meeting of the Board of Trustees
September 1, 2022 7:00 P.M.
Marble Community Church, 121 W. State St. Marble, Colorado
Agenda

7:00 P.M.

- A. Call to order & roll call of the Regular Meeting of the Board of Trustees
- B. Mayor's comments
 - a. Welcome Dana Hlavac, Northwest Regional Manager, Colorado Dept. of Local Affairs
- C. Consent Agenda
 - a. Approve August 4th, 2022 regular meeting minutes
 - b. Approve Current Bills, August 4th, 2022
- D. Administrator Report
 - a. Consider approval of Marble Wetlands IGA with CDPHE
 - b. Consider approval of Marble Wetlands contract with Trout Unlimited
 - c. 2023 preliminary budget
- E. Committee Reports
- F. Land use issues
 - a. Consider approval of Lawrence Restrictive Covenant
 - b. Consider approval of Colorado State Plumbing Inspection Opt out request
- G. Old Business
 - a. [Planning discussion](#)
- H. New Business
 - a. Consider approval of Liquor License Renewal, Slow Groovin
 - b.
- I. Adjourn

Minutes of the Town of Marble
Regular Meeting of the Board of Trustees
August 4th, 2022

A. Call to order & roll call of the Regular Meeting of the Board of Trustees – Mayor Ryan Vinciguerra called the meeting to order at 7:05. Present: Emma Bielski, Amber McMahill, Tony Petrocco and Ryan Vinciguerra. Absent: Larry Good. Also present: Ron Leach, Town Administrator and Terry Langley, minutes.

B. Mayor's comments

a. In remembrance of Dave Jones, Tim Hunter - Tim reported that that Dave Jones had died and that Dave's grandson, Mike's son, Ryan Jones, died the same week. Ryan was working for the railroad when he had a massive heart attack. Tim said that Dave was one of the finest people he ever knew. He was a wonderful neighbor, a man of faith, a man of conviction and was kind to everyone. He began coming to Marble in 1954. Dave bought the general store in 1977. He then bought the property next to Tim's and built a house. He was fair and friendly to everyone. In 1979, he built the campground. Dave was very active in the community. He was one of the original members of the Water Company Board of Directors. He served in that capacity up until just a few years ago. He was active in the church and was one of the men who got the church donated as a non-denominational church. Tim spoke to what a wonderful, generous guy he was. Emma Bielski remembered that he used to give free ice cream on the Fourth of July. Linda Menard told that, if he heard someone coming down the road, he put on overalls, walked slowly across the road and forced them to stop.

b. Wetlands Ownership discussion with Pat Willits, Trust for Land Restoration (TLR), Ryan – Pat joined by phone. Also on the phone was Tanner Banks from Trout Unlimited (TU). Pat gave a summary of where the project is. They are still waiting on the draft of an intergovernmental agreement from the State of Colorado. He explained that, originally, Aspen Valley Land Trust (AVLT) was offered the 54-acre wetlands property by the previous owner. TLR was advising AVLT about dealing with the smelter site when AVLT backed out of the deal. TLR felt that this was an important property from another perspective so they accepted the donation and became owners of the property. Their #1 goal is to get the site cleaned up in a way that would work for the state, for TLR and for any future land owner. They also wanted to learn more about the property and make some decisions about the long-term ownership of the site. The clean-up plan is to be submitted to the state's Voluntary Clean Up Program (VCUP). Trout Unlimited has a program where they have staff that, for water quality reasons, will actually go the work. The State of Colorado asked TLR if it would be acceptable to get TU involved. Pat, Tanner and others have visited the site. Tanner took the lead in developing a clean up plan that will meet the states voluntary clean-up standards. Pat gave Ron the plan and Ron suggested some changes. Tanner got permission from the state for those changes. The State is willing to put up all of the money for the clean-up as long as it can be handled through a fiscal agent – a governmental entity. They are asking the town to enter into an intergovernmental agreement with the state to be that fiscal agent. The funds would be funneled from the state to the town. Tanner added ... Mark Rudolph from the State of Colorado contacted TU and they began working on the project. If the plan is approved, they will move into an RFP process. They would like to have the bid document sent out to contractors next week. The bid is going out to local contractors including one out of Ridgeway, one out of Wilma and one out of

Pitkin. They hope to have it done by mid-October. They have ordered plant stock to help with the overall esthetic and to have the site revegetated sooner. Emma Bielski commended TU on the work they do. Tanner said that materials would be delivered on flat bed trailers and asked about having a ¼ acre staging area near the Yule Creek bridge for off-loading material for 7-10 days. Amber asked where the money for the restoration is coming from. Pat explained that the State of Colorado has access for funds from the EPA. TLR understands that there is more than enough funds to cover the \$96,000.00. They expect the intergovernmental agreement to state this clearly. Tanner said there would be a line item in the bid that states that the project is contingent on the funding being received from the state. In the event that the funds were not received, it would probably result in the project being delayed. Amber asked how much of the slag pile would be buried. Tanner said that the plan is to leave the slag toe, or the prominent vertical uplift, and to recontour and revegetate where the land is flat. The plan is to only remove the loose material. The slag is dense and hard so it would be very laborious to dismantle it. Pat said they are planning to consolidate and remove the loose material while minimizing disturbance of the slag pile, then they plan to revegetate the top to improve drainage. There will be fencing and signage to prevent/discourage people climbing on the pile. Pat said the slag pile is not a major human or environmental hazard, but spending lots of time on it should be discouraged. Ryan said the town looks forward to getting the IG. Pat asked Tanner if the IG comes in and it is reviewed, can they begin bidding before approval at the Sept. 1 meeting. Tanner said they can go ahead with bidding before the IG is signed with a line that says it is contingent on the IG being signed.

c. Discussion with Vince Savage regarding 2022 business license, Ryan – Ryan asked if there had been any complaints between the last meeting and now. Ron said someone had complained about a bonfire but there was no fire restriction so it was moot. Vince said they had thrown the rope to the bell up over the roof to alleviate the bell ringing. Vince reported that he had put directional signs up this morning. He has been talking to the Google people and they suggested that instead of changing the legal and mailing address to add “public access to the Lodge is from 201 E. Hill Street”. In addition, he is adding a portable sign with instructions. He is adding a 201 E. Hill Street to the Jackelope building. Ryan said Google has a public platform where people can suggest changes. Ryan did that and when he last checked, the route had been changed. Regarding party noise, Vince said that when he tried to change it to 9 p.m. he had brides in tears as well as attorneys contacting him about the contract and threatening law suits. He has two contracts out that say 10 p.m. but he will run interference on those events if the town agrees to allow the 10 p.m. cut off. He thanked Ron for sending the minutes and agenda. He again asked that complaints be forwarded to him. Ryan Vinciguerra made a motion to grant the business license to Beaver Lake Retreat. Emma Bielski seconded and the motion passed unanimously.

d. Discussion with Glen Smith regarding status of stop work order 575 W. Park St. Ryan – Glenn said that they are close to getting the water in. They are working on the OWTS and Paul Rutledge said he would get a preliminary plan in. They are also working/waiting on the updated site survey. Patsy said they had put up yellow and green fencing around the hole. They are having the camper grey water pumped regularly. Ryan asked about the building permit application that is needed for the construction trailer permit and Ron reported that they don’t have one yet. Ryan asked if the board was willing to make an exception regarding the construction trailer. Tony asked the difference between the Alex Menard case and this one. Ryan explained that Alex had an incinerating toilet which is not allowed in

town so is a different scenario. Tony asked if the rules allowed a pump out for black water. Ryan said that he doesn't think a vault doesn't meet state requirements for a fully functional OWTS. Amber explained that Alex received a letter asking him to come to a meeting to address the OWTS concerns connected to his property but he chose not to do that. Tony explained that the master plan states that camping can only be allowed for two weeks and asked if the town was willing to violate that plan. Ron said the zoning code allows for an extension on the 14-day camping limit. Amber McMahon made a motion that the town extend the Smith's camping permit to Oct. 31. Emma Bielski seconded. Emma, Ryan and Amber voted yes. Tony did not vote due to the fact that he objected that it is not on the agenda so it needs to be put off until the Sept. 1 meeting. Ryan said they would review the requirements regarding discussions/motions. The motion passed. Patsy asked if the stop work order continued and was told it does. They should work with Ron.

e. Discussion with Carol Parker re: proposed lot line adjustment - Ron reported that they want to square up their lot. She wanted to inform the board on their plan before they hire a surveyor. The Parkers will be invited to come to the next meeting to explain the request.

C. Consent Agenda - Amber McMahon made a motion to approve the consent agenda. Tony Petrocco seconded and the motion passed unanimously.

- a. Approve July 7th, 2022 regular meeting minutes
- b. Approve Current Bills, August 4th, 2022

D. Administrator Report

a. Consider approval of 2021 Audit for submittal to State Auditor's office, Ron – Ron explained that he applied for a request for an extension of time to file the audit that goes to the State of Colorado. The audit was not filed by the deadline so Ron applied for an extension on-line and it needs a signature from Ryan. Amber made a motion that the audit extension be approved. Emma Bielski seconded and the motion passed unanimously.

b. Consider approval of up to \$1500 for portable toilets for MarbleFest, Ron – Emma made a motion to provide \$1500 for portable toilets for MarbleFest, Amber McMahon seconded and the motion passed unanimously.

c. Consider approval of up to \$2200 for tent – Ron has been working with a tent company for an 8x12 pop up tent with sides and the town logo. Tony Petrocco made a motion to approve \$2200 for a tent. Amber McMahon seconded and the motion passed unanimously. Possible uses were discussed and included the parking program at the park, the Lead King Loop, MarbleFest, and Potato Days.

d. Consider approval of \$3,780.76 for purchase of picnic table, Crystal Heritage Assoc. (CHA) donation – Ron explained that the Mill Site committee began accumulating funds and they formed the CHA. They have \$4,000.00 in a dormant account and they want to donate it for something in the mill site park. The parks department identified heavy duty, coated metal picnic tables as a need. Amber McMahon made a motion to approve \$3,780.76 for three picnic tables. Tony Petrocco seconded and the motion passed unanimously. Emma gave a shout out to Tom Williams for building the existing picnic benches in the park.

E. Committee Reports, Brent

a. MarbleFest committee – Ron reported that he and Allie had kept track of all incoming and outgoing funds and that report is included in the packet. They will have a final accounting after MarbleFest. It starts on Saturday with music from noon-10 p.m. on Sat. and noon-8 on Sun. He thanked the Marble Volunteer Fire Dept. for volunteering and staffing the first aid booth.

b. Parks & Rec committee – no report

c. AVL Children's Park report – They would like to install the water line asap but they are having trouble getting help. Sue Blue reported that she had received a skeletal review of what is involved and she sent some questions but has not heard back. Ron asked if she was interested in bidding on the project as well if she was interested in the wetlands cleanup. Ron will send contact information to her and to Piffer. Emma said that the irrigation project proposal came in over budget. They have also filed a request for an extension with GOCO on the jailhouse project. She expects significant progress in 2023.

d. Discussion with Marble Charter School re: closing LKL for the annual race, Karly Anderson - Karly said some safety concerns regarding ATVs on the loop during the race have been brought to the school's attention. They have requested that the Forest Service allow the LKL be closed from 6 a.m.-1 p.m. on the day of the race, excluding residents and tour companies and operations tied to Crystal. Safety and integrity of the race which is the school's biggest fundraiser are the concerns. They have not heard back but the school is asking for a letter of support from the town. There is also some question about what involvement the county would have concerning closing County Road 3 (Daniel's Hill). Gentry Houghton said the Forest Service had asked about community support for the closing. She asked the Redstone Community Association (RCA) for a letter of support. Because this is not the only access to the loop, Gentry suggest some education/information to go out to surrounding communities. This might include increased signage, volunteers at certain points like the aid stations and an automated road sign borrowed from the county. Ron suggested using the new kiosk at CR 3 and 133. Ryan asked Ron to develop of a letter of support. He suggests asking for a law enforcement presence that day.

e. Report on parking – Ron – Ron Leach reported that the kiosk is up thanks to Mike Yellico and Grateful Builders. All of the truck/trailer parking is directed to the round about area and accommodates 10-12 units. All parking on the other side of the road is reserved for cars and park visitors although an occasional truck/trailer "sneaks" in early. There are 8 fewer spots and that results in some confrontation. Emma asked about a safety plan. Ron said that there has been less law enforcement in town due to staffing issues. Some folks who are turned away are parking in town and some are currently parking along CR 3 but not much on Daniel's Hill. Ron expressed appreciation for Brad Kline's work and the outstanding job he has done. Chris Palmer commended the town including radio PSA announcements and ads. Ron thanked Allie for making that happen.

F. Land use issues - none

G. Old Business

a. Discussion of location of package shipping container, Richard – Richard could not attend so this issue was tabled.

b. Development of Capital projects fund – Amber explained that this came up during the budget session and would be a savings fund earmarked for capital projects. Amber suggests a work session to determine what these would include. Discussion of dates followed and the session was set for Aug. 25, 2002 at 6 p.m. at the church. Ryan asked if a list of projects exists, that Ron makes sure they get that.

H. New Business

a. Set work session with Marble Water Committee, September 15th, 2022 6:00 pm Redstone Inn
Ryan asked that Ron check to see if this could be changed to Sept. 8.

I. Adjourn - Ryan Vinciguerra made a motion to adjourn. Emma Bielski seconded and the motion passed unanimously. The meeting was adjourned at 8:57 p.m.

Respectfully submitted,

Terry Langley

Town of Marble
Water Board
Aug. 4, 2022

Ryan called to order 8:58 p.m. Tony Petrocco made a motion to approve Resolution 2022-1 to set water assessment fees for 2022 at \$130.00. Emma Bielski seconded. The motion passed unanimously.

Adjourn – Ryan Vinciguerra moved to adjourn. Amber McMahill seconded and the motion passed unanimously. The meeting of the Water Board was adjourned at 9:00 p.m.

Respectfully submitted,

Terry Langley

Town of Marble
Deposit Detail-General Fund
August 2022

Date	Name	Memo	Account	Amount
08/15/2022		Deposit	*General Fund -0240	3,778.52
		Deposit	Marble Fest	-2,078.52
		Deposit	Marble Fest	-200.00
		Deposit	Marble Fest	-100.00
		Deposit	Marble Fest	-250.00
		Deposit	Marble Fest	-50.00
		Deposit	Marble Fest	-100.00
		Deposit	Marble Fest	-500.00
		Deposit	Marble Fest	-500.00
TOTAL				-3,778.52
08/15/2022		Deposit	*General Fund -0240	5,161.41
	Marble Hub	Camping Permit	Other Licenses & Permits	-60.00
		Deposit	Business Licenses	-50.00
		Deposit	Marble Fest	-250.00
		Deposit	Business Licenses	-50.00
		Donation	Lead King Loop Project	-20.00
	Colorado Stone Quarry CSQ	Deposit	CSQ Maintenance Payments	-300.00
	Colorado Stone Quarry CSQ	Deposit	CSQ Lease Agreement	-2,329.23
	Law of the Rockies	Deposit	Legal - General	-206.50
		Lumen Technologies	Ask- Ron	-135.00
	Gunnison County Finance	Deposit	Taxes	-1,310.74
	Holy Cross Electric	Deposit	Holy Cross Electric Rebates	-149.94
	Colorado Stone Quarry CSQ	Deposit	CSQ Maintenance Payments	-300.00
TOTAL				-5,161.41

Town of Marble
Deposit Detail-Water Fund
August 2022

<u>Date</u>	<u>Memo</u>	<u>Account</u>	<u>Amount</u>
08/15/2022	Deposit	Water Fees -0873	3,772.00
	Deposit	Water - Fees For Service	-3,772.00
TOTAL			-3,772.00

Town of Marble
Check Register
 August 4 through September 1, 2022

Num	Date	Amount
Alexandra Wettstein 11478	08/31/2022	-562.55
Aspen Maintenance Supply LLC 11486	08/31/2022	-328.00
Aspen Tree Service 11494	08/31/2022	-300.00
Brent Compton 11481	08/31/2022	-931.49
Century Link 11489	08/31/2022	-246.01
Connor Bailey 11477	08/22/2022	-360.00
Copy Copy 11492	08/31/2022	-310.00
Cristina Siemon 11479	08/31/2022	-343.02
Kirby Built 11485	08/31/2022	-3,774.48
Law of the Rockies 11487	08/31/2022	-846.00
Marble Community Church 11482	08/31/2022	-756.00
Marble Water Company 11490	08/31/2022	-310.00
Mountain Pest Control, Inc. 11491	08/31/2022	-86.00
Ragged Enterprises, LLC 11495	08/31/2022	-506.25
Redi Services LLC 11488	08/31/2022	-825.00
Redstone GIS Consulting 11493	08/31/2022	-360.00
Ron Leach 11480	08/31/2022	-417.00
Sopris Engineering LLC 11483	08/31/2022	-200.00
United States Treasury 11499	08/31/2022	-4,321.90
Valley Garbage Solution, LLC 11484	08/31/2022	-1,291.00

Town of Marble
Payroll Report
August 24 - 31, 2022

<u>Date</u>	<u>Num</u>	<u>Name</u>	<u>Type</u>	<u>Amount</u>
United States Treasury				
08/31/2022	11499	United States Treasury	Liability Check	-4,321.90
Total United States Treasury				-4,321.90
Charles R Manus				
08/31/2022	11496	Charles R Manus	Paycheck	-994.89
Total Charles R Manus				-994.89
Richard B Wells				
08/31/2022	11497	Richard B Wells	Paycheck	-2,613.59
Total Richard B Wells				-2,613.59
Ronald S Leach				
08/31/2022	11498	Ronald S Leach	Paycheck	-3,277.92
Total Ronald S Leach				-3,277.92
TOTAL				-11,208.30

Town of Marble
Budget vs. Actual
 January through August 2022

	Jan - Aug 22	Budget	\$ Over Budget	% of Budget
Income				
Intergovernmental				
Cigarette Tax	119.36	200.00	-80.64	59.7%
Colorado Trust Fund	456.83	1,500.00	-1,043.17	30.5%
General Sales Tax	71,792.31	140,000.00	-68,207.69	51.3%
Highway Use Tax (HUTF)	5,528.57	10,000.00	-4,471.43	55.3%
Mineral Lease Distribution	0.00	500.00	-500.00	0.0%
Other Permit & License Fees	0.00	0.00	0.00	0.0%
Severance Tax	0.00	100.00	-100.00	0.0%
Total Intergovernmental	77,897.07	152,300.00	-74,402.93	51.1%
Licenses & Permits				
Building Permits	3,468.24	4,000.00	-531.76	86.7%
Business Licenses	1,200.00	1,500.00	-300.00	80.0%
Driveway Access Permits	0.00	0.00	0.00	0.0%
Other Licenses & Permits	60.00	500.00	-440.00	12.0%
Septic Permits	1,023.00	3,000.00	-1,977.00	34.1%
Total Licenses & Permits	5,751.24	9,000.00	-3,248.76	63.9%
Other Revenue				
Campground/Store Revenues	22,819.47	40,000.00	-17,180.53	57.0%
CSQ Lease Agreement	16,354.61	30,000.00	-13,645.39	54.5%
CSQ Maintenance Payments	2,400.00	3,600.00	-1,200.00	66.7%
Donations	4,000.00	2,000.00	2,000.00	200.0%
Holy Cross Electric Rebates	470.95	500.00	-29.05	94.2%
Interest Income	4.57	500.00	-495.43	0.9%
Non-Specified	1,787.92	2,000.00	-212.08	89.4%
Parking Program Revenue	0.00	100.00	-100.00	0.0%
SGB Lease Agreement	2,731.82	2,700.00	31.82	101.2%
Transfers (In) Out	0.00	1,000.00	-1,000.00	0.0%
Tree Maintenance Program	0.00	0.00	0.00	0.0%
Total Other Revenue	50,569.34	82,400.00	-31,830.66	61.4%
Taxes				
Additional License Tax	0.00	500.00	-500.00	0.0%
Delinquent Property Tax	0.00	0.00	0.00	0.0%
General Property Tax	0.00	28,190.00	-28,190.00	0.0%
Property Tax Interest	0.00	100.00	-100.00	0.0%
Special Use & Sales Tax	0.00	0.00	0.00	0.0%

	<u>Jan - Aug 22</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Specific Ownership Tax	0.00	1,500.00	-1,500.00	0.0%
Taxes - Other	30,471.70			
Total Taxes	30,471.70	30,290.00	181.70	100.6%
Total Income	164,689.35	273,990.00	-109,300.65	60.1%
Gross Profit	164,689.35	273,990.00	-109,300.65	60.1%
Expense				
General Government				
Campground Expenses	9,585.71	25,000.00	-15,414.29	38.3%
Church Rent	0.00	600.00	-600.00	0.0%
Civic Engagement Fund	0.00	1,500.00	-1,500.00	0.0%
Dues & Subscriptions	0.00	500.00	-500.00	0.0%
Elections	1,200.00	4,000.00	-2,800.00	30.0%
Legal Publication	57.18	1,000.00	-942.82	5.7%
Marble Fest Expense	20,941.06	20,000.00	941.06	104.7%
Office Expenses	7,934.77	10,000.00	-2,065.23	79.3%
Parking Program Expenses	1,996.61	5,000.00	-3,003.39	39.9%
Recycle Program	2,184.00	3,000.00	-816.00	72.8%
Treasurers Fees	0.00	500.00	-500.00	0.0%
Tree Maintenance Program	0.00	0.00	0.00	0.0%
Unclassified	5,050.94	3,000.00	2,050.94	168.4%
Weed Mitigation Program	0.00	1,000.00	-1,000.00	0.0%
Workshop/Travel	0.00	2,000.00	-2,000.00	0.0%
Total General Government	48,950.27	77,100.00	-28,149.73	63.5%
Other Purchased Services				
Earth Day Expenses	3,555.00	4,000.00	-445.00	88.9%
Grant Writing	0.00	1,000.00	-1,000.00	0.0%
Liability & Worker Comp Insc	4,057.09	6,500.00	-2,442.91	62.4%
Park Improvements	1,500.00	0.00	1,500.00	100.0%
Utilities	1,955.05	4,500.00	-2,544.95	43.4%
Total Other Purchased Services	11,067.14	16,000.00	-4,932.86	69.2%
Purchased Professional Services				
Planning	3,840.00	0.00	3,840.00	100.0%
Audit	0.00	9,500.00	-9,500.00	0.0%
Engineering-Water Augmentation	0.00	500.00	-500.00	0.0%
Engineering Services & Insp.	872.50	3,000.00	-2,127.50	29.1%
Legal - General	12,379.83	25,000.00	-12,620.17	49.5%
Legal - Water Augmentation Plan	0.00	0.00	0.00	0.0%
Municipal Court	0.00	1,500.00	-1,500.00	0.0%
Total Purchased Professional Services	17,092.33	39,500.00	-22,407.67	43.3%

	<u>Jan - Aug 22</u>	<u>Budget</u>	<u>\$ Over Budget</u>	<u>% of Budget</u>
Roads				
Snow & Ice Removal	15,308.60	30,000.00	-14,691.40	51.0%
Street Maintenance	17,596.00	25,000.00	-7,404.00	70.4%
Total Roads	32,904.60	55,000.00	-22,095.40	59.8%
Wages & Benefits				
FICA/Medicare	5,292.80	8,000.00	-2,707.20	66.2%
Total Wages	66,497.73	100,000.00	-33,502.27	66.5%
Total Wages & Benefits	71,790.53	108,000.00	-36,209.47	66.5%
Total Expense	181,804.87	295,600.00	-113,795.13	61.5%
Net Income	-17,115.52	-21,610.00	4,494.48	79.2%

CONSTRUCTION AGREEMENT
BETWEEN: Town of Marble and Trout Unlimited
REGARDING: Marble Wetlands Preserve

1. PARTIES.

This Agreement is entered into between the following parties: Trout Unlimited, LLC (Contractor), with an address of 1777 N. Kent St., Arlington, VA 22209, and the Town of Marble Board (Town), with an address of 322 West Park St., Marble, CO 81623, a political subdivision of the State of Colorado. The Contractor and the Town agree to the terms and conditions in this Agreement.

2. STATEMENT OF WORK.

a. The term "Contract Documents," means this Agreement and the following documents incorporated as though fully set forth herein:

i. Intergovernmental Agreement between State of Colorado Department of Public Health and Environment and Town of Marble (Original Contract Number 2023*2139), and all attachments thereto, including:

- (1) Exhibit A, Additional Provisions
- (2) Exhibit B, Statement of Work
- (3) Exhibit C, Budget
- (4) Exhibit D, Federal Provisions

(collectively, the "Prime Agreement");

ii. Marble Wetland Preserve VCUP.

b. The Contractor will adhere to the Bid Proposal Package dated August 12, 2022 (TU's Request for Proposal), but in the event of any conflict between the Contract Documents and the Request for Proposal, the Contract Documents will control.

c. The Contractor will commence and complete the proposed Marble Wetland Preserve Voluntary Clean Up (VCUP) to include those items listed in the Statement of Work approved by Colorado Department of Public Health and environment (CDPHE) Brownfields Response Program (Exhibit B to the Prime Agreement) and the associated VCUP (the "Project").

d. The Contractor, directly or through one or more qualified sub-contractors, will furnish all materials, labor, supervision, supplies and equipment to commence, diligently pursue, and complete the Project described herein as follows: (1) in a timely manner; (2) in accordance with all applicable federal, state and local laws and regulations affecting the Project, including but not limited to Contractor's requisite ownership, rights and licenses to perform its obligations; (3) in a manner that shall conform to the Contract Documents and applicable specifications; (4) in a manner that will be free from deficiencies and defects in materials, workmanship, design or performance, as applicable, performed by qualified personnel in a professional and workmanlike manner, and consistent with industry standards and generally accepted standards for the type of work being completed.

e. This agreement relies upon funding provided by CDPHE through the Prime Agreement, where the Town is designated as the contractor responsible for completing the Statement of

Work. The intention of the parties is for the Town to serve as the “fiscal agent” for the Project. Accordingly, the Town is entering into this sub-contract Agreement with Contractor to complete the entire Statement of Work.

f. Contractor acknowledges receiving copies of the Contract Documents. Contractor hereby assumes towards the Town all of the same obligations that the Town assumes towards the State under the Prime Agreement. Contractor acknowledges that the Prime Agreement imposes certain requirements on all subcontractors, which will include subcontractors of Contractor. Contractor shall provide relevant portions of the Prime Agreement to the subcontractors and ensure that all subcontractors comply with the applicable requirements of the Prime Agreement.

3. Effective Date. The effective date of this Agreement is the date on which this Agreement is approved and signed by both Parties. The Contractor will commence the work required by the Contract Documents as soon as feasible, and complete said work upon a mutually agreeable date to the parties.

4. Compensation.

a. The Contractor agrees to perform all of the Project described in the Statement of Work and comply with the terms of the Prime Agreement for the maximum sum of \$95,000.00. The Town shall have no liability to compensate Contractor for any work performed beyond the scope of this Agreement, and any additional payment obligations beyond the maximum price and/or the current fiscal year are further subject to the appropriation and availability of funds.

b. Payment –Contractor acknowledges that the Town is not entitled to compensation under the Prime Agreement until submittal and acceptance by the State of a final report upon completion of the Project (see Prime Agreement, Exhibit A Additional Provisions, ¶1). Contractor and the Town shall cooperate with one another to ensure that all materials required for payment by the State are submitted to the State in as timely of a manner as practicable upon completion of the Project. The Town shall pay Contractor within 21 days of receipt of payment from the State. In the event that the Town fails to make timely payment, Contractor may, at its sole option and discretion, pursue all rights and remedies it may have under this Agreement.

c. Lien Waivers—As a prerequisite for payment, Contractor shall provide, in a form satisfactory to the Town, lien waivers in the amount of the application for payment, from the Contractor and all of its subcontractors and suppliers for completed work. Such waivers may be conditional upon receipt of payment of the amount stated in the application for payment.

5. Insurance. Contractor shall comply, and shall ensure all subcontractors comply, with the Prime Agreement requirements pertaining to insurance (see Prime Agreement ¶ 10).

6. Indemnification. To the fullest extent permitted by law, the Contractor shall defend, indemnify and hold harmless the Town and its trustees and agents from all claims, including but not limited to bodily injury and property damage, that may arise from the performance of, or failure to perform, the Project, to the extent caused by the negligent acts or omissions of, or breach of the terms of this Agreement by, the Contractor, the Contractor's subcontractors, or anyone employed directly or indirectly by any of them or by anyone for whose acts any of them may be liable, including reasonable attorneys' fees, costs, and expenses.

7. Independent Contractor Relationship – The parties agree that an Independent Contractor relationship is created by this Agreement. The Town is interested only in the results to be achieved, and the conduct and control of the work will lie solely with the Contractor. Contractor and its employees are not to be considered agents or employees of the Town for any purpose, and it is specifically understood

and agreed that the Contractor and its employees are not entitled to any of the benefits that Town provides for its employees. Therefore, it is agreed that none of the benefits provided by Town to its employees, including, but not limited to, any federal or state withholding taxes, FICA, insurance in any form, retirement plans, worker's compensation, or unemployment compensation, are available from Town to the Contractor under the terms of this Agreement.

8. Confidentiality – The Contractor shall comply with all state and federal laws and regulations, and all Prime Agreement contractual provisions, relating to confidentiality and privacy.

9. Audits and Availability of Records – Contractor shall comply with the record keeping requirements imposed by the Prime Agreement (reference ¶ 7).

10. Employment Requirements for Public Contracts – Pursuant to §§8-17.5-101, et seq., C.R.S., Contractor certifies, warrants, and agrees that it and its subcontractors that perform work under this Agreement do not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S. Contractor acknowledges and agrees to be bound by paragraph 19.K of the Prime Agreement.

11. Governmental Immunity – The Town retains governmental immunity to the maximum extent permissible under the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S., and other applicable law. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes and other applicable law.

12. Appropriations—The Town is prohibited from expending funds except in conformance with the Local Government Budget Law of Colorado. The Town is also prohibited from entering into fiscal obligations that extend beyond the current fiscal year. Payment to Contractor beyond the current fiscal year is contingent on the appropriation and continuing availability of the funds in any subsequent year. Because federal funds administered by the State of Colorado constitute the Town's funding source for this Agreement, the Town's obligation to pay Contractor shall be contingent upon such funding continuing to be made available for payment. If funds are not appropriated, or otherwise become unavailable to fund this Agreement, the Town may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability, except that the Town shall remain obligated to pay for services delivered and accepted and for which the Town receives reimbursement from the State.

13. Project Management – TU designates Tanner Banks as the Project Manager for the project. The Project Manager shall be the point of contact for all parties for questions regarding permits, landowner concerns, modification of this Agreement, or other items as they arise. The Project Manager shall be the administrator of this Agreement to complete the VCUP Statement of Work, funded by Colorado Department of Health and Environment (CDPHE) through the Prime Agreement. TU will ensure the project is implemented according to the design and specifications; will ensure the equipment utilized meets the requirements of the design and specifications; and will ensure that the project is implemented in a timely and efficient manner. Project collaborators can also be reached during course of reclamation work in the absence of the TU Project Manager. Specific contacts from each agency for reference to Contractor are as follows: Pat Willits – President, The Trust for Land Restoration at patrickwillits@gmail.com or Mark Rudolph – Superfund and Brownfields Program, CDPHE at mark.rudolph@state.co.us

14. Notices – Each notice, demand, request, or other communication required to be given or served by either party to the Agreement on the other, or which either party desires to give or serve on the

other shall be in writing and any statute, ordinance, or regulation to the contrary notwithstanding, shall not be effective for any purpose whatsoever unless given or served to the parties' addresses identified in Section 1 (PARTIES) of this Agreement. The parties may also agree to email delivery of any such notice, demand, request, or other communication, provided reasonable notice is given of such email delivery. The parties agree to the following general contact points (which) shall supersede any inconsistent provisions set forth in the Contract Documents:

TOWN OF MARBLE:

Ron Leach – Town of Marble, Designated Representative/Intergovernmental Agreement Manager, 970-963-1938, leach@townofmarble.com

CONTRACTOR:

Tanner Banks – Trout Unlimited, Mine Reclamation Project Manager

17 N Uncompahgre Ave. STE A, Montrose, CO 81401

970-390-9492, tanner.banks@tu.org

Warren Colyer – Trout Unlimited, Mine Reclamation Program Manager,

312 N Higgins Ave, Missoula, MT 59802

406-540-2185, warren.colyer@tu.org

15. Assignment – Except for subcontracts entered into in accordance with the requirements of the Prime Agreement, Contractor shall not assign any rights or obligations under this Agreement without the Town's prior written consent. Any assignment in violation of this paragraph is void.
16. Binding Effect – This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, assignees, and successors. However, the Contractor may not assign its rights or obligations under this Agreement without the written permission of the Town.
17. Construction Against Drafting Party Prohibited – The parties and their respective counsel have had the opportunity to review this Agreement, and this Agreement will not be construed against any party merely because any provisions of the Agreement were prepared by a particular party.
18. Severability – If any part, term, or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid.
19. Timing – The parties agree that in the performance of the terms, conditions, and requirements of this Agreement, time is of the essence.
20. Governing Law – This Agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance. In the event that either party to this Agreement brings an action to interpret the terms of this Agreement or to enforce its terms, both parties shall be responsible for their own costs and attorney's fees incurred in such action. The exclusive venue for any action arising with respect to this Agreement shall be the Seventh Judicial District, State of Colorado.
21. Waiver – No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.
22. Force Majeure – Neither party shall be liable to the other or be deemed to be in breach of this Agreement for any failure or delay in rendering performance arising out of causes beyond its reasonable control and without its fault or negligence. Such causes may include, but not limited to, acts of God or of

a public enemy, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or unusually severe weather. Dates or times of performance shall be extended to the extent of delays excused by this section, provided that the party whose performance is affected notifies the other promptly of the existence and nature of such delay.

23. Entire Agreement – This Agreement contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this Agreement shall be valid or binding. This Agreement may not be enlarged, modified, or altered except in writing signed by the parties. This Agreement supersedes prior negotiations, representations or agreements, either written or oral. To the extent of any material conflict between the terms of this Agreement itself and any incorporated Contract Documents regarding Contractor’s performance, the more stringent provisions shall govern.

24. Authority – By their signatures below, the parties acknowledge that they have the necessary authority and approvals to execute this Agreement and bind the respective entities.

25. Facsimile Signatures – For the convenience of the parties, signatures to this Agreement may be provided through facsimile or email transmission. The signature of a party to this Agreement supplied by facsimile or email transmission shall be as binding as an original.

26. SIGNATORIES

Ron Leach, Town of Marble, Colorado

Date: _____

Tanner Banks, Project Manager
Trout Unlimited

Date: _____

Warren Colyer, Western Water & Habitat Program Director
Trout Unlimited

Date: _____

RESTRICTIVE COVENANT

THIS RESTRICTIVE COVENANT (“Covenant”) is granted by **Eric A. Lawrence and Christine Lawrence** (together, the “Owner”), whose address is 7959 Hwy. 133 Carbondale, CO 81623, to the **Town of Marble**, Colorado (the “Town”), whose address is 322 W. Park St., Marble, CO 81623.

RECITALS:

- A. The Owner is the owner of the following described real property in the Town of Marble, Gunnison County, Colorado (“Property”): **Lots 1-3, Block C, Mason’s Addition to the Town of Marble**, as described in Survey Plat recorded in the real property records of Gunnison County, March 21, 1975, in Book 483 at Page 305.
- B. Section 9.M.2.c of the Town of Marble On-Site Wastewater Treatment System Regulations (“OWTS Regulations”) requires the applicant for a permit to repair or alter an existing legal OWTS on a non-conforming lot to record in the real property records of Gunnison County a covenant prohibiting certain actions on the subject property.
- C. The Owner has applied for an OWTS permit (the “Permit”) to replace an existing pit privy with a new OWTS (the “OWTS”) to serve the Property.
- D. The Property is non-conforming with respect to the minimum lot size requirement of the OWTS Regulations.
- E. The Owner has agreed to the recordation of this Restrictive Covenant as a condition of issuance of the Permit.

NOW, THEREFORE, the Owner covenants and agrees that:

- 1. The Owner, on behalf of themselves, their heirs, successors, personal representatives and assigns, hereby declares and acknowledges that all of the separate legal parcels included in the Property shall hereafter be clustered together for the purpose of the OWTS Regulations.
- 2. No portion of the Property constituting less than the entire Property shall be conveyed, mortgaged, or otherwise transferred or encumbered without the Town’s prior written consent. Any transfer or encumbrance of any portion of the Property in violation of this paragraph shall be voidable in the Town’s sole subjective discretion. This Covenant does not eliminate any existing legal lot lines. This Covenant does not independently change or amend any fee, assessment or charge regarding any service to the Property.
- 3. The Owner shall not expand the use of the OWTS, meaning that the Owner shall not alter the structure(s) served by the OWTS in a manner that increases the estimated daily wastewater flow as determined in accordance with Section 7 of the OWTS Regulations.

Accepted and approved by the Town:

Ron Leach, Town Clerk

After recording, please return to: Town of Marble, Attn: Town Clerk, 322 W. Park St., Marble, CO 81623.