

**TOWN OF SILT
ORDINANCE NO. 9
SERIES OF 2020**

AN ORDINANCE OF THE TOWN OF SILT (“TOWN”) APPROVING A LAND LEASE AGREEMENT BETWEEN THE TOWN AND HIGHWATER FARM, A COLORADO NONPROFIT CORPORATION (“HIGHWATER”) FOR A LEASE OF A PORTION OF THE SILT RIVER PRESERVE KNOWN AS PARCEL # 2179-094-00-733 AND THE APPURTENANT WATER RIGHTS, FOR THE PURPOSE OF ACTIVE AGRICULTURAL PRODUCTION, WITHIN THE TOWN OF SILT, GARFIELD COUNTY, STATE OF COLORADO

WHEREAS, the Town of Silt (“Town”) owns certain real property located in the Town of Silt and Garfield County, Colorado known as Garfield County Assessor’s Parcel Number 2179-094-00-733 (the “Subject Property”), or more commonly known as the Silt River Preserve, subject to a conservation easement; and

WHEREAS, the Town is a “public body” authorized to grant leases in real property it owns; and

WHEREAS, the Town desires to lease a portion of the Subject Property, as depicted and described in **Exhibit A** and hereinafter known as “Leased Property”, including all appurtenances, described water rights, easements, and improvements related to the Leased Property for the purpose of active agricultural production; and

WHEREAS, Highwater and the Town acknowledge that it is in the best interests of both parties to approve the agreement, as the Silt River Preserve conservation easement and management plan contemplate the cultivation of vegetative material on the Subject Property; and

WHEREAS, on or about March 9, 2020, the Board considered Resolution 17, Series of 2020, as written, and found that approval of this resolution and the Lease Agreement, attached as **Exhibit B**, is in the best interests of the Town of Silt and its citizens, for a period of one year beginning on the date of recordation of the one-year lease agreement;

WHEREAS, the Board may consider land leases for periods greater than one year, following a public hearing, noticed in accordance with the Silt Municipal Code; and

WHEREAS, on or about April 13, 2020 and April 27, 2020, in duly noticed public hearings, the Board considered the applicant’s request for a lease period of four additional years for the first term (five total years for the first term, inclusive of the initial one-year term approved by Resolution 17, Series of 2020), and five 5-year additional lease periods, as detailed in the attached Lease Agreement; and



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WHEREAS, the Board determined that approval of this ordinance is in the best interests of the citizens.

NOW, THEREFORE, BE IT RESOLVED, BY THE BOARD OF TRUSTEES OF THE TOWN OF SILT, COLORADO, THAT the Highwater Farm Lease Agreement is hereby approved.

INTRODUCED, READ, AND APPROVED ON FIRST READING, a public hearing, at a regular meeting of the Board of Trustees of the Town of Silt, Colorado held on the 13th day of April, 2020 at 7 p.m. in the Municipal Building of the Town of Silt, Colorado.

PASSED, APPROVED ON SECOND READING, following a continued public hearing, ADOPTED AND ORDERED PUBLISHED, this 27th day of April, 2020.

ATTEST:


Town Clerk Sheila M. McIntyre, CMC

TOWN OF SILT



Mayor Keith B. Richel





Exhibit A - Site Plan
Highwater Farm
at the Silt River Preserve

AGRICULTURAL LAND LEASE

This AGRICULTURAL LAND LEASE AND AGREEMENT (the "Agreement" "Lease Agreement" or "Lease") is entered into as of the last signature collected hereto, by and between the Town of Silt, a Colorado home-rule municipality whose legal address is 231 N. 7th Street, Silt, CO 81652 (hereinafter, "Town") and Highwater Farm, a Colorado nonprofit corporation whose legal address is 732 Minter Ave, Glenwood Springs CO 81601 (hereinafter "Highwater"). Town and Highwater may be referred to herein individually without specification as "Party", or collectively as "Parties".

This Agreement is made with reference to the following facts:

- A. The Town owns certain real property located in the Town of Silt and Garfield County, Colorado, commonly known as the Silt River Preserve, otherwise known as Parcel # 217909400733, 791 County Road 346, a one hundred and thirty two acre parcel located south of the Colorado River and north of County Road 346, hereinafter "Subject Property."
- B. The Town is a "public body" authorized to grant leases in real property it owns.
- C. The Town desires to lease a portion of the Subject Property, as depicted and described in **Exhibit A** and hereinafter known as "Leased Property," including all appurtenances, described water rights, easements, and improvements related to the Leased Property for the purpose of active agricultural production.

LEASE AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual agreements, promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties mutually undertake, promise, and agree for themselves, their respective representatives, successors and assigns, as follows:

1. Recitals: The foregoing recitals are hereby incorporated by this reference.
2. Purpose and Intent. Landlord and Tenant intend that the Leased Property, all appurtenances, water rights, easements and improvements as described herein be used for active agricultural production, fencing, irrigation, and related uses, including education and instruction. Agricultural production shall continue on the Leased Property during the entire term of the lease, consistent with accepted agricultural practices regarding soil and water, and as further determined by Town and Highwater, in order to avoid erosion and weed proliferation on the Leased Property.
3. Compensation for Land Usage. In recognition of the public benefits to be obtained from Highwater's agricultural use of the Leased Property, Highwater shall pay to the Town rent in the amount of ten dollars per year. The rent is due and payable on or before March 31 of each calendar year. .



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4. Water Rights/Water Usage. In consideration for the grant of the Lease, the Town agrees that Highwater may utilize the following water rights owned by the Town without additional compensation to the Town.

An amount not to exceed 120 gallons per minute from the following water rights:

Rising Sun Ditch Priority No. 16

Rising Sun Ditch 1st Enlargement Priority No. 64

Rising Sun Ditch 2nd Enlargement Priority No. 226

(collectively the “Water Rights”)

Highwater’s use of the Water Rights shall be exclusive to the Leased Property. Highwater shall install its own pump and pipe system to deliver water associated with the Water Rights from the Rising Sun Ditch to the Leased Property. The pump shall have a totalizing flow meter and Highwater shall log the meter readings on a monthly basis. Prior to installation of the pump and piping infrastructure, Highwater shall submit to the Town a plan depicting the location of the pump, a description of how electricity will be provided to the pump (certified by a licensed electrician), and the location of the proposed pipeline(s) to deliver the water to the Leased Property. The Town shall review and approve (or approve with conditions) the plan within thirty days. Highwater shall be independently responsible for obtaining any approvals required from the Rising Sun Ditch Company related to siting improvements within the ditch and ditch easement. Highwater shall be solely responsible for the costs of constructing, operating, and maintaining the infrastructure required to deliver water to the Leased Property. Nothing herein shall prevent the Town from entering into joint grant applications with Highwater for irrigation improvements that benefit the Leased Property.

In the event that Highwater uses power from the Town’s electric meter for the irrigation pump that takes water from the Rising Sun Ditch, Highwater shall reimburse the Town the cost of its electricity usage. The presumptive amount of Highwater’s electricity usage shall be one third of the amount charged at the Town’s meter. Either party may request to have the presumptive amount of electricity usage modified based upon the percentage of each party’s pump meter readings to the total water pumped from the Rising Sun Ditch using electricity from the Town’s meter. Highwater shall use electricity from the Town’s meter only for running the irrigation pump and Highwater’s cooler, or such other uses as the Town may permit.

Highwater shall contribute to any ditch Rising Sun Ditch assessments payable by the Town. Highwater shall contribute an amount equal to: total assessment amount * area irrigated by Highwater / area of the Silt River Preserve property irrigated by Town or its other lessee(s).

5. Leased Property. Town, in consideration of the terms contained herein, leases to Highwater, the real property depicted and described in **Exhibit A** consisting of approximately five (5) acres. Highwater may choose not to lease all of the Leased Property at all times. On or before March 15 of each calendar year, Highwater shall give notice to the Town of that portion of the Leased Property that Highwater intends to lease and use during the upcoming season together with a depiction of the area on an aerial photograph and an estimate of the acreage to be leased. In the event that Highwater chooses not to lease all of the Leased Premises in any given year, Highwater shall remove fencing so that the area is accessible to the public.
6. Lease Term.
 - a. Town leases the Leased Premises to Highwater from the date of execution of this Lease until December 31, 2025 (“Primary Term”). This Lease shall automatically renew at the end of the Primary Term for five subsequent 5-year terms, ending December 31, 2055 (each subsequent period a “Subsequent Lease Term”) unless Highwater provides notice to Town of its intent to terminate the Lease at least 60 days prior to the end of the Primary Term or each Subsequent Lease Term.
 - b. In the event that Highwater fails to use the Leased Property to grow agricultural crops for a one-year period, this lease shall automatically terminate. If Highwater has not undertaken to use the Leased Property for agricultural purposes in a given year, the Town shall give Highwater notice thereof on or before June 30 of said year.
7. Operations Subject to AVLT Management Plan. The rights provided under this Agreement are subject and subordinate to the terms and provisions of the Silt River Preserve Management Plan and the Deed of Conservation Easement for the Silt River Preserve with the Aspen Valley Land Trust recorded in the public records of Garfield County at Reception No. 795360. Any violation of the Silt River Preserve Management Plan and the Deed of Conservation Easement by Highwater shall constitute a breach of this Agreement.

AGRICULTURAL PROVISIONS

8. Soil Testing. Highwater shall test the soil of the Leased Property no less than once per calendar year, following the agricultural season. The soil tested should adequately represent the entire Leased Property. Highwater shall use an acceptable soils testing laboratory either a public or private entity, and submit the professional results to the Town within thirty (30) days of such testing.
9. Weed Control. Highwater is responsible for the control and removal of noxious weeds from the Leased Property prior to seed dispersal as defined in the Colorado Noxious Weed Act. Prior to application of any herbicide, the Town and/or Aspen Valley Land Trust shall review and approve the type and use of such herbicide.

Town is responsible for control and removal of noxious weeds for the Silt River Preserve outside of the Leased Property.

10. Pest Control. Town shall maintain no less than a one hundred (100) foot buffer for herbicides/pesticides applied surrounding the Leased Property.
 - a. Highwater may engage in control and removal of any pests or predators only with the express written approval of the Town and/or Aspen Valley Land Trust.
 - b. Highwater will document all applications, detailing date and time, type(s) of herbicides or pesticides and application method(s) and submit documentation to the Town annually.
11. Fertilizers. Highwater's application of any and all fertilizer agents shall be based upon the results of the soil tests, with further recommendation of Colorado State University, if needed, and with approval of the Town and/or Aspen Valley Land Trust. Highwater will document all applications, detailing date and time, type(s) of fertilizers and application method(s) and submit documentation to the Town annually.
12. Livestock. The Town leases portions of the Silt River Preserve for livestock grazing, but such tenants are required to reasonably prevent such livestock from leaving the tenants' leased property and entering the area of the Highwater Leased Property. Notwithstanding the foregoing, Highwater acknowledges Colorado is a "fence out" state and may erect fencing sufficient to keep livestock out of the Leased Property at its discretion and at its sole expense. Likewise, Highwater may maintain livestock on the Leased Property in accordance with the Silt River Preserve Management Plan and as sanctioned by Aspen Valley Land Trust so long as Highwater reasonably prevents such livestock from leaving the Leased Property.
13. Vehicle and Machinery Storage. Highwater's storage of vehicles or machinery not actively used as part of the agricultural operation is prohibited. No unlicensed vehicle shall be stored on the Leased Property. Highwater's maintenance of vehicles and machinery used in agricultural operations may be conducted on Leased Property. Highwater shall collect and dispose of any and all spills or losses of fluid associated with vehicles or agricultural machinery on the Leased Property consistent with applicable law. Highwater shall be entitled to use of up to 4 parking spaces in the existing parking lot for day-to-day activities. Additionally, Highwater shall be entitled to utilize up to 15 additional spaces in the parking lot, together with overflow parking along the road shoulder up to 3 times per year for special events, upon at least 7 days' notice to the Town.
14. Existing Vegetation. Highwater shall not disturb existing hedgerows and brush areas unless they are part of or attached to the Leased Property.
15. Federally Prohibited Crops. Highwater shall not engage in the growing, maintenance, or distribution of federally prohibited crops on the Leased Property.



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16. Crops. Highwater shall be entitled to all crops if the termination of the Agreement is not a result of Highwater's breach of the Agreement, or the Silt River Preserve Management Plan / Deed of Conservation Easement, and shall retain harvest rights through the end of the growing season. If the Town terminates or cancels the Agreement as a result of Highwater's default and failure to cure in accordance with the terms of this Agreement, all agricultural products shall be harvested or otherwise gathered and sold, if possible and reasonably practical, with the proceeds of such sale going to the Town to cover its costs and the remainder shared between Town and Highwater based on the percentage of the growing season each was in possession of the Leased Property. The Town will not retain or possess a security interest in the crops.
17. Fences. Highwater shall be responsible for maintaining all fences and gates (that Highwater installs) in working condition for the Leased Property, at Highwater's sole cost. Highwater shall not erect any fence across a Silt River Preserve road or otherwise obstruct access to areas that are not part of the Leased Property. The Town will maintain all other fences on the Subject Property. Highwater's removal of fencing is permitted with Town's approval, but if Highwater removes fencing, it must be reinstalled upon termination of this Agreement.
18. Fixtures and Improvements. In the case that the Agreement is terminated for a reason other than Highwater's breach of this Lease Agreement, Highwater may remove its fixtures and improvements from the Property within sixty days. If such fixtures and improvements are not removed within sixty days of termination, they shall become the property of the Town.
19. Erosion. Highwater shall not engage in any activity on the Leased Property or the Silt River Preserve that results in the loss of soil or changes the topography or grade of any portion of the Silt River Preserve. Highwater shall cease irrigation activity or practices temporarily if any ditch, lateral, pipeline, or other irrigation infrastructure component becomes damaged or inoperable.
20. Inspections. The Town reserves the right for itself, its agents, and employees to enter the Leased Property at any reasonable time to inspect the Leased Property and to work and make improvements as the Town shall deem necessary. Except in exigent or emergency circumstances, the Town shall give Highwater forty-eight (48) hours' notice before entering Leased Property.
21. No Guarantee. The Town makes no guarantee of the productivity of the Leased Property or the availability of the Water Rights and assumes no liability of any condition, visible or not, which may affect agricultural productivity of the Leased Property.
22. No Toxic Substances. Highwater shall not place, use, or store on the Leased Property substances that are hazardous, toxic, dangerous, or harmful, or which are defined as hazardous substances by the Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 USC §9601. Highwater shall

indemnify, defend and hold the Town harmless for the release of any hazardous, toxic, dangerous or harmful substance caused by Highwater.

23. Structures. Highwater has permission to install infrastructure that is directly necessary to the farm operation and youth programs as approved through the Town's permitting process. Anticipated infrastructure includes: greenhouses, hoop houses, caterpillar tunnels, tool sheds, a wash station, a walk-in or portable cooler, shade structure, and an event space. Highwater may utilize the Town's porta-potty on the Silt River Preserve for so long as no more than 3 persons are working the site on a regular basis. When more than 3 persons are working the site on a regular basis, or at any time youth programming is occurring on the site, Highwater shall maintain one porta-potty on the Leased Property for use by Highwater, its guests and invitees.
24. Trash and Rubbish. Highwater shall dispose of trash, garbage, rubbish, or refuse off the Leased Property and off the Silt River Preserve, in a responsible manner, at its sole cost and obligation. Town shall maintain public waste receptacles appropriate for public use of Silt River Preserve open space. Highwater shall not deposit its commercial waste in the receptacles installed by the Town.
25. Commercial Activity. Highwater shall not permit any commercial activity on the Leased Property unless it directly relates to produce sales, planned events or youth programming. Prior to hosting any event on the Leased Property that will have more than thirty persons, Highwater shall obtain the written permission of the Town, including by email. Highwater shall not rent the Leased Property to any third party without the Town's written permission (e.g. weddings, concerts, camping events, etc).

TERMINATION; NOTICE OF DEFAULT

26. Termination and Default.

- a. Condition of Leased Property Upon Termination. Upon termination at the end of the Lease term or for any other reason, Highwater must vacate the Leased Property and remove all personal possessions and improvements Lessee made to the Leased Premises. At landlord's discretion, the Leased Property may either be remediated into the same condition as at the commencement of this Lease, or better, normal wear and tear notwithstanding and improvement to soil conditions notwithstanding, or it may be left in its then-existing state.
- b. Default; Notice of Default. If either party shall default in the material performance of its obligations, covenants or agreements under this Lease and such default shall not be cured within ninety (90) days after written notice to the defaulting party, then the non-defaulting party may declare the Lease terminated. Notwithstanding the foregoing, if the default is such a nature that it cannot be cured within said ninety (90) day period, then the defaulting party will have complied with this requirement to the extent it proceeds with reasonable diligence thereafter to cure the alleged default.



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- c. The parties recognize that weather, “acts of God,” floods, or similar unforeseen events may, in extreme circumstances, interfere with the Lessee’s farming practices and could prevent Highwater’s timely compliance with the terms of the Lease. The Town shall take such circumstances into account before declaring an event of default.

GENERAL PROVISIONS

27. Insurance. Highwater shall procure and maintain for the term of the lease, insurance against claims for injury to persons or damage to property which may arise from or in connection with occupancy and use of the Leased Property or the Silt River Preserve.
 - a. Minimum Insurance. The insurance requirements herein are minimum requirements for this Agreement and in no way limit the indemnity covenants contained in this Agreement. Highwater’s insurance shall be primary and non-contributory with any insurance or self-insurance purchased by the Town. The insurance companies issuing the policy or policies hereunder shall have no recourse against the Town for payment of any premiums or for assessments under any form of policy. Highwater shall pay any and all deductibles or self-insured retentions in the above-described insurance policies at its sole cost and expense.
 - b. Acceptance of Risk: Highwater shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverages. Highwater is not relieved of any liability or other obligations assumed or pursuant to the lease by reason of its failure to obtain or maintain insurance in sufficient amounts, duration, or types.
 - c. Coverage and Limits of Insurance: Highwater shall provide coverage with limits of liability not less than those stated below. An umbrella or excess liability policy may be used to meet the minimum liability requirements provided that the coverage is written on a “following form” basis.
 1. Statutory Workers’ Compensation: Highwater shall abide by all laws related to worker’s compensation insurance, including statutory minimums required by the state of Colorado
 2. Exemption: Town shall not dispute Highwater’s potential exemption from Colorado Worker’s Compensation Act requirements, but in no way shall be responsible to workers, students, employees, owners, or agents of Highwater for such insurance.



3. Insurance Certificates: Highwater’s insurance certificates shall list the Town as an additional insured.

4. Limits: Minimum Limits:

Commercial General Liability – ISO 1CG 0001 form or equivalent
(With Town named additional insured)

General Aggregate	\$ 300,000
Products/Completed Operations Aggregate	\$ 300,000
Each Occurrence Limit	\$ 300,000
Personal/Advertising Injury	\$ 300,000
Fire Damage (Any One Fire)	\$ 100,000
Medical Payments (Any One Person)	\$ 5,000

5. Coverage to include:
 - Premises and Operations
 - Personal / Advertising Injury
 - Products / Completed Operations
 - Independent Contractors
 - Additional Insured—Owners, Lessees or Contractors Endorsement

28. Governmental Immunity: The Town and Highwater agree that use of the Leased Property is governed by the Colorado Recreational Use Statute, C.R.S. §33-41-101, *et seq.*, which limits liability for property owners granting leases of public property. Nothing in this Lease Agreement shall be construed as a waiver of the Colorado Governmental Immunity Act, C.R.S. §24-10-101, *et seq.*, as may be amended. Nothing herein shall be construed to create a partnership or other joint venture between the Town and Highwater.

29. Indemnification. Highwater agrees to indemnify, defend and hold the Town harmless from any claim brought by any third-party arising out of Highwater’s use of the Leased Property (including any claim related to actions of Highwater’s employees, guests and invitees) or arising out of the failure of Highwater to conform or comply with this Agreement, any statute, ordinance, regulation, law or court decree.

30. Authority. Highwater has taken all necessary action to authorize the execution, delivery and performance of this Lease Agreement and has the power and authority to execute, deliver and perform this Lease Agreement. The person signing this Lease Agreement on behalf of Highwater warrants that she/he has full power and authority to bind Highwater.



31. Attorneys' Fees. In the event of a legal action or proceeding to enforce or interpret any of the terms of this Lease Agreement, the prevailing Party shall be responsible for payment of the other Party's attorney fees.
32. Waiver. The failure of a Party to insist in one or more cases upon the strict observation of any of the terms of this Lease Agreement is not a waiver or relinquishment of the right to so insist in any future case involving any of the terms of this Lease Agreement.
33. Assignment. This Lease Agreement is not assignable without the written consent of the Town.
34. Third-Party Rights. Nothing in this Lease Agreement, express or implied, is intended to confer any right or remedies whatsoever on any person or entity, other than the Parties hereto, and their respective heirs, successors, and assigns.
35. Headings. The headings of the various paragraphs of this Lease Agreement have been inserted for reference only and shall not have the effect of modifying, amending or changing the express terms and provisions of this Lease Agreement.
36. Severability. Invalidity or unenforceability of any provision of this Lease Agreement in whole or in part shall not affect the validity or enforceability of any other provision or any valid and enforceable part of a provision of the Lease Agreement.
37. Modification. The terms of this Lease Agreement may not be modified except in a writing executed by all of the Parties.
38. Governing Law. This Lease Agreement shall be governed by and construed under Colorado law.
39. Recordation. This Lease Agreement will not be recorded in the records of the Garfield County Clerk and Recorder, but instead will be kept in the records of the Town Clerk.
40. Entire Agreement. This Lease Agreement, together with its Exhibits, is the entire agreement of the Parties with respect to the subject matter hereof and supersedes any and all prior oral or written agreements or understandings between the Parties pertaining to the subject matter of this Lease Agreement.
41. Counterparts and Facsimile Signatures. This Lease Agreement may be executed in counterparts, each of which may be considered an original, and all of which together shall constitute one and the same document. Facsimile, or otherwise electronically generated copies of the signature pages shall be treated as original signature pages.



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- 42. Lien or Mortgage. Highwater shall not pledge a mortgage, security interest, or cause any lien to be recorded against the Leased Property during the term of this Lease Agreement.
- 43. Notices. Notices required under this Lease Agreement shall be sent to the addresses identified on page 1. In the event that a party's address changes, said party shall provide written notice to the other party. Notices shall be deemed received two business days after they are sent.

IN WITNESS WHEREOF, Town and Highwater have caused this Lease Agreement to be executed as to the date the last signature is obtained.

TOWN OF SILT

Keith B Richel
 By: _____ Date 4-28-2020
 Mayor Keith B. Richel

ATTEST:

Sheila McIntyre
 Town Clerk Sheila McIntyre, CMC Date 4-28-2020



Highwater Farm Project

Sara Tymczyn
 Sara Tymczyszyn, Director Date 3/5/2020



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Exhibit A - Site Plan
Highwater Farm
 at the Silt River Preserve