

***TOWN COUNCIL***

***MEETING***

***PACKET***

**May 4, 2020**



## **Town Council Agenda**

**Monday, May 4, 2020  
Remote Meeting  
7:00 PM**



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**MISSION STATEMENT**-*"The mission of the government of the Town of Johnstown is to provide leadership based upon trust and integrity, commitment directed toward responsive service delivery, and vision for enhancing the quality of life in our community."*

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*Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position.*

- 1) CALL TO ORDER**
  - A) Pledge of Allegiance
- 2) ROLL CALL**
- 3) AGENDA APPROVAL**
- 4) RECOGNITIONS AND PROCLAMATIONS**
- 5) PUBLIC COMMENT (three-minute limit per speaker)**

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*The "Consent Agenda" is a group of routine matters to be acted on with a single motion and vote. The Mayor will ask if any Council member wishes to have an item discussed or if there is public comment on those ordinances marked with an \*asterisk. The Council member may then move to have the subject item removed from the Consent Agenda for discussion separately.*

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- 6) CONSENT AGENDA**
  - A) Town Council Special Meeting Minutes – April 15, 2020
  - B) Town Council Regular Meeting Minutes – April 20, 2020
  - C) List of Bills
  - D) 2<sup>nd</sup> Reading Ordinance Number 2020-179, an Ordinance Amending Sections 4-36, 4-56(7), 4-57(1) and 4-72 of the Johnstown Municipal Code to Implement a Voter Approved Sales and Use Tax Increase in the Amount of .5% to Fund Street and Sidewalk Maintenance and Repairs and Transportation Related Projects
- 7) TOWN MANAGER REPORT**
- 8) TOWN ATTORNEY REPORT**
- 9) OLD BUSINESS**
- 10) NEW BUSINESS**
  - A) Intergovernmental Agreement with Colorado Department of Transportation – East Frontage Road waterline
  - B) Request for a Septic Tank Sewer Service
  - C) Reaffirm May 16, 2020 Declaration of Local Disaster Emergency
  - D) Discussion regarding the Small Business Micro-Grant Program
- 11) COUNCIL REPORTS AND COMMENTS**
- 12) MAYOR'S COMMENTS**
- 13) EXECUTIVE SESSION**
  - A) For the purpose of determining positions relative to matters that may be subject to negotiations under C.R.S. Section 24-6-402(4)(e) – Economic Development
  - B) For a conference with the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b) – Martin Marietta
- 14) ADJOURN**

## **AGENDA ITEM 6A-D**

### **CONSENT AGENDA**

- **Council Special Meeting Minutes – April 16, 2020**
- **Council Regular Meeting Minutes – April 20, 2020**
  - **List of Bills**
  - **2<sup>nd</sup> Reading – Ordinance No. 2020-179**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** May 4, 2020

**ITEM NUMBER:** 6A-D

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk, Town Manager

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**AGENDA ITEM DESCRIPTION:** The following items are included on the Consent Agenda, which may be approved by a single motion approving the Consent Agenda:

- A) Town Council Special Meeting Minutes – April 15, 2020
- B) Town Council Meeting Minutes – April 20, 2020
- C) List of Bills
- D) 2<sup>nd</sup> Reading Ordinance 2020-179, An Ordinance Amending Section 4-36, 4-56(7), 4-57(I) and 4-72 of the Johnstown Municipal Code to implement a voter approved sales and use tax increase in the amount of .5% to fund street and sidewalk maintenance and repairs and transportation related projects

*\*Ordinance 2020-179 amends Section 4-36, 4-56(7), 4-57(I) and 4-72 of the Johnstown Municipal Code to establish the 0.5% sales and use tax increase that was supported by Johnstown voters at the April 7, 2020 election. This ordinance will go into effect July 1, 2020 as proposed in the ballot issue language.*

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**LEGAL ADVICE:** The entire Consent Agenda may be approved by a motion of the Town Council approving the Consent Agenda, which automatically approves each and every item listed on the Consent Agenda. If a Council member wishes to have a specific discussion on an individual item included with the Consent Agenda, they may move to remove the item from the Consent Agenda for discussion.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve Consent Agenda

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the Consent Agenda.

**For Denial:**



**Council Minutes**  
**April 15, 2020 Special Meeting**

The Town Council of the Town of Johnstown met in a Special Meeting on Wednesday, April 15, 2020 at 7:00 p.m. in a virtual meeting for reasons related COVID19.

Mayor Lebsack led the Pledge of Allegiance.

Roll Call:

Those answering present were: Councilmembers Berg, Lemasters, Mellon, Molinar Jr. Tallent and Young

The following staff members were also present in the virtual meeting: Avi Rocklin, Town Attorney, Matt LeCerb, Town Manager, Mitzi McCoy, Finance Director and Jamie Desrosier, Communication Manager.

Agenda Approval

Councilmember Berg made a motion seconded by Councilmember Mellon to approve the Agenda. Motion carried with a roll call vote.

New Business

A. Discussion – COVID-19 Small Business Relief Program – Council was updated by staff on some of the current assistance the town has put into place: waivers on late fee payments, business licenses and dog licensing. Also established a payment plan program that would allow for businesses and residents to manage their utility bills if they are not able to pay the full amount of the payment.

The Town partnered with Upstate Colorado, one of its economic development partners in distributing a survey that asks businesses for the current impact they have experienced related to COVID-19. Some of those questions include layoffs and/or furloughs of employees, estimated revenue losses, and other issues businesses are experiencing during the pandemic. If Council decides to create an assistance relief program, staff believes the Town could offer up to \$1 million towards the program. Council was agreeable to moving forward with a small business grant program, and setting a check point at \$500,000, where the Town Manager shall report the status of Program to the Town Council, at which time the council will either authorize the remaining funds or terminate the funding. If a business is interested in receiving grant funds, they will need to complete an application and submit all required documentation.

Council also agreed to staff's recommendations to assist those downtown businesses who do not have a meter on their building and are paying a flat fee of \$41.20 for water. They will be charged the minimum of \$15.38 for water until 1 month after the emergency declaration is rescinded.

There being no further business to come before Council the meeting adjourned at 8:40 p.m.

Mayor

Town Clerk

**Council Minutes**  
**April 20, 2020 Regular Meeting**

The Town Council of the Town of Johnstown met on Monday, April 20, 2020 at 7:00 p.m. in a virtual meeting for reasons related to COVID19.

Mayor Lebsack led the Pledge of Allegiance.

#### Roll Call:

Those answering present were: Councilmembers Berg, Lemasters, Mellon, Molinar Jr. Tallent and Young

The following staff members were also present in the remote meeting: Avi Rocklin, Town Attorney, Matt LeCerf, Town Manager, Marco Carani, Public Works Director, Mitzi McCoy, Finance Director, Kim Meyer, Planning Director, Jamie Desrosier, Communication Manager and Brian Phillips, Police Chief.

#### Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Lemasters to approve the amended Agenda to add Resolution 2020-11, A Resolution Adopting Small Business Micro Grants. Motion carried with a roll call vote.

#### Consent Agenda

Councilmember Lemasters made a motion seconded by Councilmember Berg to approve the Consent Agenda with the following items included:

- April 6, 2020 Council Meeting Minutes
- March Financial Statements
- 2<sup>nd</sup> Reading Ordinance Number 2020-176
- 2<sup>nd</sup> Reading Ordinance Number 2020-177
- Resolution 2020-09, a Resolution Affirming April 7, 2020 Regular Municipal Election Results Approving Ballot Question 1B Concerning Amendments to Section 3.3, 4.2(B) and 4.7(A) of the Johnstown Home Rule Charter
- Resolution 2020-10, a Resolution Affirming April 7, 2020 Regular Municipal Election Results Approving Ballot Question 1C Concerning Restoration of the Town's Authority to Provide Advanced Services, Telecommunication Services and/or Cable Television Service, Directly or Indirectly, with Public or Private Sector Partners.

Motion carried with a roll call vote.

#### Old Business

I-25 and Highway 60 Interchange Concepts – BHA Design provided Council with a couple options to review and decide on the final design. Some minor changes were suggested. BHA will provide final designs to Council after the changes are made.

Councilmember Berg made a motion seconded by Councilmember Young to adjourn the meeting at 7:40 p.m. Motion carried with a roll call vote.

New Business

A. Administer Oath of Office - Recently elected Mayor Gary Lebsack and Councilmembers Damien Berg, Troy Mellon and Chad Young were sworn into office by the Town Clerk.

Mayor Lebsack called the meeting to order at 7:45 p.m.

B. Roll Call: Present were: Mayor Lebsack, Councilmembers Berg, Lemasters, Mellon, Molinar Jr. Tallent and Young.

C. Agenda Approval - Councilmember Berg made a motion seconded by Councilmember Young to approve the Agenda. Motion carried with a roll call vote.

D. Appointment of Mayor Pro Tem – Mayor Lebsack opened the floor to nominations for Mayor Pro Tem. The following individuals were nominated: Chad Young, Kevin Lemasters and Troy Mellon. Chad Young was voted in to serve as Mayor Pro Tem.

E. Appointment of Town Attorney – Councilmember Berg made a motion seconded by Councilmember Molinar Jr. to appoint Avi Rocklin Town Attorney. Motion carried with a roll call vote.

F. Appointment of Municipal Court Judge – Councilmember Young made a motion seconded by Councilmember Tallent to appoint Mr. Michael Lazar Municipal Court Judge. Motion carried with a roll call vote.

G. Public Hearing First Reading – Ordinance Number 2020-178, an Ordinance Repealing Article XV of Chapter 17 of the Johnstown Municipal Code Concerning Street Maintenance Fees – Based upon the recent voter approved Ballot Issue 1A to increase the sales and use tax by 0.5% to fund street and sidewalk maintenance and repairs and transportation related projects and repeal of the Street Maintenance Fee imposed by Article XV of Chapter 17, Ordinance 2020-178 repeals the Street Maintenance Fee. This ordinance is being proposed as an emergency ordinance which will make the repeal immediate and the fee will not be included in the April utility billing cycle.

Mayor Lebsack opened the public hearing at 8:05p.m. and having no public comments closed the hearing at 8:08 p.m. Councilmember Berg made a motion seconded by Councilmember Molinar Jr. to approve Ordinance 2020-178 as presented to repeal the street maintenance fee specifically Article XV of Chapter 17 of the Johnstown Municipal Code and declaring an emergency. Motion carried with a roll call vote.

H. Public Hearing – First Reading – Ordinance Number 2020-179 an Ordinance Amending Section 4-36, 4-56(7), 4-57(I) and 4-72 of the Johnstown Municipal Code to Implement a Voter Approved Sales and Use Tax Increase in the Amount of 0.5% to Fund Street and Sidewalk Maintenance and Repairs and Transportation Related Projects – This ordinance modifies the

Johnstown Municipal Code to reflect the sales and use tax increase. Effective date of the Ordinance is July 1, 2020.

Mayor Lebsack opened the public hearing at 8:10 p.m. and having no public comment closed the hearing at 8:12 p.m. Councilmember Lemasters made a motion seconded by Councilmember Young to approve Ordinance 2020-179 amending Sections 4-36, 4-56(7), 4-57(I), and 4-72 of the Johnstown Municipal Code to be effective July 1, 2020. Motion carried with a roll call vote.

I. Award Contract to Connell Resources – County Road 50 Improvements - Formal bids were advertised with four companies submitting bids. After review of the bids, staff is recommending Connell Resources be hired as the town's contractor on this job. Councilmember Mellon made a motion seconded by Councilmember Young to award Connell Resources, as the Contractor for the Weld County Road 50, Larimer County Road 14 Roadway project. Authorize the Town Manager to sign the contracts and to approve any changes above the contract price in the amount not to exceed \$2,194,640.75. Motion carried with a roll call vote.

J. Resolution 2020-11 – A Resolution adopting the Town of Johnstown Small Business Micro Grant Program - Based upon Council's direction staff created the Town of Johnstown Small Business Micro Grant Program. Resolution 2020-11 affirms Council's authorization and appropriates \$1,000,000 from the General Fund to fund the Program. Councilmember Mellon made a motion seconded by Councilmember Berg to approve Resolution 2020-11. Motion carried with a roll call vote.

There being no further business to come before Council the meeting adjourned at 9:03 p.m.

Mayor

Town Clerk

## **List of Bills**

**Town of Johnstown**  
**List of Bills - March 27, 2020 - April 24, 2020**

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
2534 Retail Phase 1, LLC	Tax reimbursement	ADM	69,239.22
4990 Ronald Reagan LLC	Police substation lease	PD	1,519.75
A & E Tire Inc	Tires	PW	463.00
Ace Hardware	Supplies	PW/PD	94.07
All American Distributing, Inc.	Trailer repair	PW	993.06
All Copy Products	Copier lease	ADM	713.50
All Traffic Solutions, Inc.	Radar traffic counter	PD	2,820.00
Anchor Auto Glass	Vehicle repair	PD	35.00
AP Mountain States, LLC	Recreation center	ADM	1,314,745.99
Avalis Wayfinding Solutions	New building sign	ADM	865.00
Bobcat of the Rockies	Equipment repair	PW	590.48
Brandon Copeland	Professional services	ADM	262.84
Browns Hill Engineering & Controls	Engineering services	PW	27,897.40
Buffalo Security	Security deposit - YMCA	PW	1,887.00
Card Services	Supplies	ALL	5,763.48
Caselle, Inc	Monthly support	ALL	1,552.00
Cathi Allred	Professional services	ADM	339.89
Central Weld County Water District	Water purchase	PW	586.00
CenturyLink	Telephone	PW	239.11
Cheryl Pepler	Professional services	ADM	19.28
Cintas	Supplies/Mat service	ALL	435.51
Cirsa	Insurance	ALL	60,048.02
Colorado Analytical Labs	Lab testing	PW	95.00
Community Center Refund	Refund of deposit	ADM	200.00
Consolidated Home Supply Ditch &	Professional services	PW	5,683.82
Core & Main	Supplies	PW	892.66
Debi Sauer	Professional services	ADM	372.66
DPC Industries Inc	Chemicals	PW	5,935.43
Election Systems & Software	Election services	ADM	946.13
Elements	Rec Center furniture & equipment	ADM	31,022.20
Empacs	Rec Center supplies	ADM	2,392.15
Ergomed	Employment screening	ADM	800.00
Faris Machinery Co.	Sweeper repair	PW	949.95
Felsburg Holt & Ullevig	Engineering Services	ADM	2,040.19
Ferguson Waterworks	Plug for lake	PW	750.80
First Class Security Systems	Fire system monitoring	PW	128.80
First National Bank	Banking services	ADM	270.59
Galloway & Company, Inc.	Professional services	PW	1,806.25
Glenn A. Jones Library	Library support	ADM	85,221.66
Gopher	Rec Center - YMCA Equipment	ADM	2,267.46
Grainger, Inc.	Supplies	PW	2,226.03
Greeley Lock and Key	Service call	PW	417.85
Ground Engineering Consultants	Engineering services	PW	6,677.50
Helton & Williamsen, P.C.	Engineering services	PW	3,063.75
Herbert Instrumentation Services	Wastewater supplies	PW	720.00
Home Depot Pro	Supplies	PW	223.70
IMEG Corp	Engineering services	PW	23,811.80
IMEG Corp	Billback services	ADM	10,559.63



InBody	Rec Center - YMCA Equipment	ADM	16,550.00
Infosend, Inc.	Utility bill printing	PW	2,696.50
Insight North America, LLC	Investment services	ADM	2,719.17
Interstar, Inc.	Media replacement project	PW	14,200.00
Interstate Battery of the Rockies	Supplies	PW	49.95
J&D Creations	Embroidery/town pins	ADM	6,272.24
J&S Contractors Supply Co.	Supplies - plow blades/signs	PW	2,074.46
J&T Consulting, Inc.	Aeration project	PW	18,705.85
Johnstown Breeze	Publications	ADM	5,221.44
Johnstown-Milliken	Chamber dues	ADM	5,000.00
J-U-B Engineers, Inc.	South water tank design	PW	11,248.17
Kelly Supply Co	Repairs	PW	100.72
Kendall Robinson	Professional services	ADM	318.04
Kinsco, LLC	Supplies	PD	793.28
Larimer Co Clerk & Recorder	Election services	ADM	25.00
Law Office of Avi Rocklin LLC	Legal services	PW/ADM	10,662.50
Law Office of Avi Rocklin LLC	Billback services	ADM	4,624.00
Lazar, Michael	Municipal Court Judge	ADM	910.00
Lesmills	Rec Center - YMCA Equipment	ADM	16,467.83
Lewan Technology	Rec Center - YMCA Equipment	ADM	1,098.00
Life Stories Child & Family Advocacy	Quarterly fees	PD	156.00
Local Businesses	Grants	ADM	28,000.00
Logan Simpson	Comprehensive plan	ADM	8,765.00
Lowe's	Supplies	PW	144.30
Mares Auto Inc.	Vehicle repairs	PW/PD	100.00
McCoy, Mitzi	Supplies - COVID supplies	PW	176.56
McDonald Farms Enterprises Inc	Sludge hauling	PW	2,460.00
Milliken Johnstown Electric	Building repairs	PW	1,389.52
Miracle Recreation Equipment	Warning tags for playground equipment	PW	115.59
Mountain States Pipe & Supply	Equipment	PW	21,469.25
Municipal Valve LLC	Equipment repair	PW	742.59
Napa Auto Parts, Inc	Vehicle supplies	PW	331.24
Newco Inc	Electric work	PD	152.63
Northern Safety Co Inc	Supplies	PW	34.81
Office Depot Business Credit	Office supplies	ALL	1,325.12
Perform Better	Rec Center - YMCA equipment	ADM	247.10
Perkins+Will, Inc.	Rec Center - Professional services	ADM	20,977.64
Pitney Bowes Global	Postage meter	ADM	296.81
Poudre Valley REA	Utilities	ALL	12,712.90
ProCode Inc.	Building inspection services	ADM	12,750.00
Ramey Environmental Compliance Inc.	Water & wastewater services	PW	15,190.36
Reflections Signs and Graphics	Rec Center - YMCA Signage	ADM	11,975.00
Reporter Herald	Subscription	ADM	104.00
Revenue Recovery Group, Inc.	Audit fees	ADM	425.00
Rhinehart Oil Co., Inc.	Fuel	ALL	7,808.93
Royal Blue, Inc	Rec Center equipment	ADM	2,457.52
Royal-T	Jet services	PW	318.00
RTC Manufacturing Inc	Crossing light repair	PW	1,440.00
S4 Water Sales and Service, LLC	Media replacement project	PW	4,458.90
Sam's Club MC/SYNCB	Supplies	ADM	93.07
Seachange	Election services - mail ballots	ADM	21,636.00

Security Central, Inc	Alarm monitoring	PW	219.00
Spradley Barr	Vehicles	PD	74,786.00
St. John Parish	Easement purchase	PW	750.00
State of Colorado	Tank inspection	PW	30.00
Step Fitness & Recreation, Inc.	Rec Center - YMCA equipment	ADM	7,775.00
Susan Wadas	Professional services	ADM	359.80
Tait & Associates, Inc.	Storm design downtown	PW	20,100.70
TDS	Telephones	ALL	1,647.83
Thompson Ranch Development	Tax reimbursement	ADM	21,419.48
UE Compression	Service	PW	1,667.00
USA Bluebook	Supplies	PW	749.30
Utility Notification Center	Locates	PW	1,238.19
Utility Refund	Refund of deposits	ADM	2,084.94
VCA Fort Collins Animal Hospital	K9 medical services	PD	389.80
Veris Environmental, LLC	Professional services	PW	2,376.32
Verizon Wireless	Cell phones	PD/PW	2,663.30
Waste Management	Trash services	PW	1,289.30
Waxie Sanitary Supply	Rec Center - YMCA Equipment	ADM	33,953.39
Weld County Dept of Public	Lab services	PW	1,016.00
WM Hamilton& Son	Sewer lab testing	PW	13.18
Xcel Energy	Utilities	ALL	57,296.86
YogaDirect	Rec Center - YMCA equipment	ADM	1,846.97
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			2,212,248.96

# **Ordinance 2020-179**

**TOWN OF JOHNSTOWN, COLORADO**

**ORDINANCE NO. 2020-179**

**AN ORDINANCE AMENDING SECTIONS 4-36, 4-56(7), 4-57(1) AND 4-72 OF THE JOHNSTOWN MUNICIPAL CODE TO IMPLEMENT A VOTER APPROVED SALES AND USE TAX INCREASE IN THE AMOUNT OF .5% TO FUND STREET AND SIDEWALK MAINTENANCE AND REPAIRS AND TRANSPORTATION RELATED PROJECTS.**

**WHEREAS**, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with the authority to administer the affairs of the Town; and

**WHEREAS**, by Resolution 2020-04, the Town Council referred Ballot Issue 1A to the registered electors of the Town at the regular municipal election held on Tuesday, April 7, 2020, concerning a proposed increase in the sales and use tax by 0.5% to fund street and sidewalk maintenance and repairs and transportation related projects; and

**WHEREAS**, at the regular municipal election held on April 7, 2020, the majority of the registered electors of the Town voted in favor of Ballot Issue 1A; and

**WHEREAS**, based on the election results, the Town Council desires to amend Sections 4-36, 4-56(7), 4-57(1) and 4-72 of the Johnstown Municipal Code to implement the voter approved ballot issue; and

**WHEREAS**, Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town, that it is promulgated for the preservation of the public health, welfare, peace, safety and property and that this Ordinance is in the best interests of the citizens of the Town.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

**Section 1.** Section 4-36 of the Johnstown Municipal Code shall be amended to read in full as follows:

**Sec. 4-36. Street and Alley Fund.**

(1) There is hereby created a special fund, to be known as the Street and Alley Fund.

(2) Revenue shall be provided to the Street and Alley Fund from:

- (a) Fees, vehicle taxes, motor and other vehicle use taxes, transportation associated grants;
- (b) One half percent (0.5%) of the sales and use taxes collected in the Town; and
- (c) All other revenues associated with transportation.

(3) Except as otherwise restricted, such funds shall be expended for the payment of expenditures associated with construction, maintenance and capital improvements of streets, alleys, bridges, sidewalks, curbs and gutters, street signs, street striping, street cleaning, snow removal, acquisition of property and equipment, and other activities involving transportation and related infrastructure as deemed appropriate by the Town.

**Section 2.** Subsection (7) of Section 4-56 of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 4-56. General application of tax and exemptions.**

(7) The tax imposed by this Article shall not apply to the sale of tangible personal property at retail or the furnishing of services if the transaction was previously subjected to a sales or use tax lawfully imposed upon the purchaser or user by another statutory or home rule municipality equal to or in excess of three and one half percent (3.5%). A credit shall be granted against the tax imposed by this Article with respect to such transaction equal in amount to the lawfully imposed local sales or use tax previously paid by the purchaser or user to the previous statutory or home rule municipality. The amount of the credit shall not exceed three percent and one half (3.5%).

**Section 3.** Subsection (1) of Section 4-57 of the Johnstown Municipal Code shall be amended to read as follows:

**Sec. 4-57. Schedule of sales tax.**

(1) There is hereby imposed on the sale of tangible personal property at retail or the furnishing of services where such personal property and services are taxable pursuant to Section 39-26-104, C.R.S., as amended, a tax equal to three and one half percent (3.5%) of the gross receipts.

**Section 4.** Section 4-72 of the Johnstown Municipal Code shall be amended to read in full as follows:

**Sec. 4-72. Imposed.**

There is imposed, and there shall be paid and collected, a use tax upon the privilege of using or consuming within the Town any construction and building materials, and motor and other vehicles on which registration is required, purchased at retail, or both, such use tax to be in the amount of three and one half percent (3.5%) of the retail cost thereof.

**Section 5. Repeal.** Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

**Section 6. Publication; Recording.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town's Home Rule Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication.

**Section 7. Effective Date.** This Ordinance shall be effective on July 1, 2020.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this 20th day of April, 2020.



**ATTEST:**

By: Diana Seele

Diana Seele, Town Clerk

**TOWN OF JOHNSTOWN, COLORADO**

By: Gary Lebsack

Gary Lebsack, Mayor

**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_

Diana Seele, Town Clerk

By: \_\_\_\_\_

Gary Lebsack, Mayor

**AGENDA ITEM 7**

**Town Manager Report**



# TOWN OF JOHNSTOWN

## MEMORANDUM

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TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: May 4, 2020

CC: Town Staff  
Local Media

SUBJECT: Town Manager's Report

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Upcoming Town Council Work Sessions – If there are topics that the Council would like staff to schedule for discussion, please let me know. The following topics are recommended for Council discussion (all meetings will be held in the Town Council Chambers unless otherwise indicated):

- 05/18/2020 – Regular Town Council Meeting
  - 06/01/2020 – Regular Town Council Meeting
  - 06/15/2020 – Regular Town Council Meeting
- 

### **Administration, Finance, & Planning**

- *Water Transfer* – We have received 17 applications which are completed or in review and 7 more that are in some form of the submittal process. From the 17, 8 applications have been approved for some sort of funding. Thanks to the committee for their work on reviewing the applications.
- *COVID-19 Impact* – A tentative plan to being reintroducing staff into the workplace and open our facilities to the public has been established. The plan is contingent upon positive direction and continual flattening of the curve of the pandemic. Town facilities will continue to be closed at this time to the public until May 18 and we will monitor progress and continue to update Council on if we expect any changes.
- *2019 Audit* – The 2019 Audit has been rescheduled due to the pandemic. The new rescheduled date for the audit to begin is June 15, 2020.
- *Caselle* – Staff is working on setting up the service order module to produce and track work orders for items such as water meter installations, rereads, etc. This is a valuable tool that will increase and improve communication between the front office personnel, and public works and help ensure that things don't get overlooked.

### **Police Department**

#### ***Training:***

- All training has been cancelled due to COVID-19.

## **The Community That Cares**



### ***Community Policing, Outreach & Miscellaneous Items:***

- *Community participation* – Officers are responding to requests from parents to have “Birthday Parades” for kids not able to have real birthday parties.
- *Partnerships* – JPD received care packages from Shield 616 and their donors. The packages included a cloth facemask, filters, hand sanitizer, and a treat to eat. JPD has also received handmade cloth masks from Johnstown Embroidery for every officer and support staff. Johnstown Embroidery donated labor for the masks.

### **Public Works Department**

#### ***Streets, Stormwater, & Parks***

- *Cemetery* – Aerating and fertilizing was completed. Regular maintenance including mowing and irrigation has started. Sod was purchased for some of the bare spots and all graves and damaged area have been addressed in the cemetery. Bids for the columbarium are set to open May 1, 2020
- *Streets* – Grading of all gravel roads was completed. The street sweeper continues cleaning roadways picking up winter debris and we swept the recreation center parking lot.
- *Parks* – Irrigation has been turned on in our parks. Crews are adjusting heads and fine tuning the system. All parks have been aerated and fertilized. Parks are still closed. Crews did wash and sanitize playground equipment again and will be doing it again prior to the opening in mid to late May.
- *Parking lots* – The Town Hall and public parking lot behind Ace Hardware were crack sealed. They will be sealed and re-stripped on May 2.

#### ***Water and Wastewater Plants***

- *Water plant* – The media project is now 50% finished. The north filter should be going on-line Monday, May 4. The south filter has started and we anticipate completion by mid-May. The vents for the two tanks at the water plant will be replaced within the next two weeks also. This is to be compliant with the water sanitary survey from December 2018. A request to extend the due date to replace media and vents was granted and extended to June 30, 2020. We are on schedule to meet that date. We have also been working on replacements of screens in the clear well and replacing a motor that was starting to fail on our DAF unit while the plant is down. The DAF influent channel has been cleaned and new screening was also installed.
- *Flood* – Staff and contractors have been working side by side, going through all the electric components, motors, and pumps checking for damage.
- *Low point* – The Low Point Plant is running well, especially with the addition of new chemicals which appear to be controlling our effluent levels. The first onsite visit with the AQUA Engineering is scheduled for May 19 to start the preliminary design of expansion.
- *Central Plant* – Plant is running fairly well. The aeration installed is doing what it needed to do for the treatment process. Odors are still a bit of an issue, but the new chemicals appear to be working. The automatic samplers were installed to add continued monitoring throughout the day. This should help with compliance issues.

**AGENDA ITEM 10A**

**IGA with Colorado Department  
Of Transportation**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** May 4, 2020

**ITEM NUMBER:** 10A

**SUBJECT:** Intergovernmental Agreement (IGA) with Colorado Department of Transportation

**ACTION PROPOSED:** Approve Resolution 2020-12 and the Intergovernmental Agreement with CDOT as Presented

**ATTACHMENTS:** 1. Resolution 2020-12  
2. IGA between CDOT and Town of Johnstown

**PRESENTED BY:** Matt LeCerf, Town Manager

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### **AGENDA ITEM DESCRIPTION:**

Enclosed is an IGA for your consideration between the Town and CDOT. The agreement compliments the IGA approved in January between the Little Thompson Water District (LTWD) and the Town which effectively provided that the Town would take over 4 water services previously operated by LTWD.

The IGA with CDOT will provide the Town with \$291,000 for the costs to design and construct a new waterline along the East Frontage Road and to provide a service line to the 7-11 on Highway 34. We expect that this project, which needs to be completed this year will be within the costs provided by CDOT. To complete the work, we will need to request a budget amendment, but this will simply be a net zero effect to the ending fund balance for FY 2020. CDOT would like for us to have this work completed by the end of July 2020 which we believe we can accomplish given the less restrictive requirements of the contract agreement. In my conversations with CDOT's Local Agency Coordinator, we can follow the Town's procurement and purchasing guidelines for both design and construction which are less restrictive than CDOT's. The resolution presented will allow for the Town Manager to execute this agreement to help keep the project moving along, both on-time and on budget.

### **LEGAL ADVICE:**

The agreement was reviewed and the resolution drafted by the Town Attorney.

### **FINANCIAL ADVICE:**

The Town will need a budget amendment, but it will be a \$0 change to the FY 2020 water fund end of year balance.

**RECOMMENDED ACTION:** Staff recommends approval of the agreement as presented.

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to approve Resolution 2020-12 authorizing the Town Manager to sign the Intergovernmental Agreement Between the Town of Johnstown and the Colorado Department of Transportation as presented.

**For Denial:**

I move to deny Resolution 2020-12 authorizing the Town Manager to sign the Intergovernmental Agreement Between the Town of Johnstown and the Colorado Department of Transportation as presented.

**Reviewed and Approved for Presentation:**

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Town Manager

**TOWN OF JOHNSTOWN, COLORADO  
RESOLUTION NO. 2020-12**

**AUTHORIZING THE TOWN OF JOHNSTOWN TO ENTER INTO A  
CONTRACT WITH THE STATE OF COLORADO, FOR THE USE  
AND BENEFIT OF THE COLORADO DEPARTMENT OF  
TRANSPORTATION, FOR STATE PROJECT IM 0253-255 (21506),  
CONCERNING WATER LINE IMPROVEMENTS**

**WHEREAS**, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with authority to administer the affairs of the Town; and

**WHEREAS**, the State of Colorado, by and through the Colorado Department of Transportation (“CDOT”), has budgeted and appropriated funds for water line improvements along Interstate 25 between State Highway 402 and State Highway 14, and designated the project as “Project IM 0253-255 (21506)” (“Project”); and

**WHEREAS**, CDOT has requested that the Town undertake construction of the Project with funding from the State of Colorado, and the Town desires to undertake such construction; and

**WHEREAS**, to effectuate the foregoing, the Town Council desires to authorize the execution of the Contract with the State of Colorado to complete the Project; and

**WHEREAS**, the Town Council finds that it is in the best interest of the Town to execute the Contract for completion of the Project.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

**Section 1:** The Town Council hereby approves and authorizes the execution of the Contract with the State of Colorado, for the use and benefit of the Colorado Department of Transportation, for Project IM 0253-255 (21506) (“Contract”).

**Section 2:** The Town Council hereby authorizes the Town, pursuant to the Contract and with funding from the State of Colorado, to complete construction of water line improvements along Interstate 25 between State Highway 402 and State Highway 14.

**Section 3.** The Town Council hereby authorizes and appropriates the expenditure of up to \$291,000.00 from the Water Fund to fund the water line improvements referenced in the Contract

on the condition that an equal amount of funding is provided by the State of Colorado to the Town as set forth in the Contract.

**Section 4:** The Town Council hereby authorizes the Town Manager to execute the Contract on behalf of the Town.

**Section 5:** This Resolution shall be effective as of the date of its adoption

PASSED, SIGNED, APPROVED, AND ADOPTED this \_\_\_\_ day of May, 2020.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

State \$LAWRK  
PROJECT: IM 0253-255 (21506)  
I-25 North between SH402 and SH14

REGION: 4  
JH

### CONTRACT

**THIS CONTRACT** made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation hereinafter referred to as the State and TOWN OF JOHNSTOWN hereinafter referred to as the "Contractor" or the "Local Agency."

### RECITALS

1. Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient uncommitted balance thereof remains available for payment of project and Local Agency costs in Fund Number 400, Function: 3301, GL Acct: 4511000010, WBS Element: 21506.20.10, (Contract Encumbrance Amount: \$291,000.00.)
2. Required approval, clearance and coordination have been accomplished from and with appropriate agencies.
3. Pursuant to 43-2-104.5 C.R.S. as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the state (or local agency) highway system.
4. Local Agency anticipates a project for of water line improvements on I-25 North between SH402 and SH14 and by the date of execution of this contract, the Local Agency and/or the State has completed and submitted a preliminary version of CDOT form #463 describing the general nature of the Work. The Local Agency understands that before the Work begins, the Local Agency must receive an official written "Notice to Proceed" prior to commencing any part of the Work. The Local Agency further understands, before the Work begins, the form #463 may be revised as a result of design changes made by CDOT, in coordination with the Local Agency, in its internal review process. The Local Agency desires to perform the Work described in form #463, as it may be revised.
5. The Local Agency has requested that State funds be made available for project IM 0253-255 (21506), I-25 North between SH402 and SH14 referred to as the "Project" or the "Work." Such Work will be performed in and near Johnstown, Colorado, specifically described in **Exhibit A**.
6. The State has funds available and desires to provide 100% of the funding for the work.
7. The Local Agency desires to comply with all state and other applicable requirements, including the State's general administration of the project through this contract, in order to obtain state funds for the project.
8. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
9. This contract is executed under the authority of §§ 29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-144, C.R.S. and **Exhibit B**.
10. The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily complete some or all of the Work.
11. The Local Agency can more advantageously perform the Work.

### **THE PARTIES NOW AGREE THAT:**

#### **Section 1. Scope of Work**

The Project or the Work under this contract shall consist of of water line improvements on I-25 North between SH402 and SH14, in and near Johnstown, Colorado, as more specifically described in **Exhibit A**.

#### **Section 2. Order of Precedence**

In the event of conflicts or inconsistencies between this contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in **Section 27** of this contract
2. This contract
3. **Exhibit A** (Scope of Work)

4. **Exhibit B** (Local Agency Resolution)
5. **Exhibit C** (Funding Provisions)
6. **Exhibit D** (Option Letter)

### Section 3. Term

This contract shall be effective upon approval of the State Controller or designee, and shall terminate on May 6, 2030, unless sooner terminated or unless performance is extended in accordance with this Contract.

### Section 4. Project Funding Provisions

- A. The Local Agency has estimated the total cost of the work and is prepared to accept the state funding for the work, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this contract and to complete the work under the project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.
- B. The parties hereto agree that this contract is contingent upon all funds designated for the project herein being made available from state sources, as applicable. Should these sources fail to provide necessary funds as agreed upon herein, the contract may be terminated by either party, provided that any party terminating its interest and obligations herein shall not be relieved of any obligations which existed prior to the effective date of such termination or which may occur as a result of such termination.
- C. Funding will be detailed in **Exhibit C** of the funding provisions.

### Section 5. Project Payment Provisions

- A. The State will reimburse the Local Agency for incurred costs relative to the project following the State's review and approval of such charges, subject to the terms and conditions of this Contract. Provided however, that charges incurred by the Local Agency prior to the date this contract is executed by the State Controller will not be charged by the Local Agency to the project, and will not be reimbursed by the State.
- B. The State will reimburse the Local Agency's reasonable, allocable, allowable costs of Performance of the Work, not exceeding the maximum total amount described in **Exhibit C**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the allowability and allocability of costs under this contract. The Local Agency shall comply with all such principles. To be eligible for reimbursement, costs by the Local Agency shall be:
  1. In accordance with the provisions of **Section 5** and with the terms and conditions of this contract;
  2. Necessary for the accomplishment of the Work;
  3. Reasonable in the amount for the goods and services provided;
  4. Actual net cost to the Local Agency (i.e. the price paid minus any refunds, rebates, or other items of value received by the Local Agency that have the effect of reducing the cost actually incurred);
  5. Incurred for Work performed after the effective date of this contract;
  6. Satisfactorily documented.
- C. The Local Agency shall establish and maintain a proper accounting system in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme) to assure that project funds are expended and costs accounted for in a manner consistent with this contract and project objectives.
  1. All allowable costs charged to the project, including any approved services contributed by the Local Agency or others, shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers evidencing in detail the nature of the charges.
  2. Any check or order drawn up by the Local Agency, including any item which is or will be chargeable against the project account shall be drawn up only in accordance with a properly signed voucher then on file in the office of the Local Agency, which will detail the purpose for which said check or order is drawn. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.
- D. If the Local Agency is to be billed for CDOT incurred costs, the billing procedure shall be as follows:
  1. Upon receipt of each bill from the State, the Local Agency will remit to the State the amount billed no later than 60 days after receipt of each bill. Should the Local Agency fail to pay moneys due the State within 60 days of demand or within such other period as may be agreed between the parties hereto, the Local Agency agrees that, at the request of the State, the State Treasurer may withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to



- the State. Interim funds, until the State is reimbursed, shall be payable from the State Highway Supplementary Fund (400).
2. If the Local Agency fails to make timely payment to the State as required by this section (within 60 days after the date of each bill), the Local Agency shall pay interest to the State at a rate of one percent per month on the amount of the payment which was not made in a timely manner, until the billing is paid in full. The interest shall accrue for the period from the required payment date to the date on which payment is made.
- E. The Local Agency will prepare and submit to the State, no more than monthly, charges for costs incurred relative to the project. The Local Agency's invoices shall include a description of the amounts of services performed, the dates of performance and the amounts and description of reimbursable expenses. The invoices will be prepared in accordance with the State's standard policies, procedures and standardized billing format to be supplied by the State.
- F. To be eligible for payment, billings must be received within 60 days after the period for which payment is being requested and final billings on this contract must be received by the State within 60 days after the end of the contract term.
1. Payments pursuant to this contract shall be made as earned, in whole or in part, from available funds, encumbered for the purchase of the described services. The liability of the State, at any time, for such payments shall be limited to the amount remaining of such encumbered funds.
  2. In the event this contract is terminated, final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit.
  3. Incorrect payments to the Local Agency due to omission, error, fraud or defalcation shall be recovered from the Local Agency by deduction from subsequent payment under this contract or other contracts between the State and Local Agency, or by the State as a debt due to the State.
  4. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or offset against current obligations due by the State to the Local Agency, at the State's election.

## Section 6. Option Letter Modification

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

- A. Option to begin a phase and/or increase or decrease the encumbrance amount  
The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to Exhibit C-1 shall be labeled C-2, C-3, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.
- B. Option to transfer funds from one phase to another phase  
The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.
- C. Option to do both Options A and B  
The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be

replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

## **Section 7. State and Local Agency Commitments**

The Scope of Work in **Exhibit A** describes the Work to be performed and assigns responsibility of that Work to either the Local Agency or the State. The “Responsible Party” referred to in this contract means the Responsible Party as identified in the Scope of Work in **Exhibit A**.

### **A. Design [if applicable]**

1. If the Work includes preliminary design or final design (the “Construction Plans”), or design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), the responsible party shall comply with the following requirements, as applicable:
  - a. perform or provide the Plans, to the extent required by the nature of the Work.
  - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by CDOT.
  - c. prepare special provisions and estimates in accord with the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by CDOT.
  - d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
  - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
  - f. provide final assembly of Plans and contract documents.
  - g. be responsible for the Plans being accurate and complete.
  - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the parties. The Plans shall be considered final when approved and accepted by the parties hereto, and when final they shall be deemed incorporated herein.
2. If the Local Agency is the responsible party:
  - a. The local agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
  - b. It shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with State requirements.
  - c. It may enter into a contract with a consultant to do all or any portion of the Plans and/or of construction administration. Provided, however, that if federal-aid funds are involved in the cost of such work to be done by a consultant, that consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 CFR Part 172 and with any procedures implementing those requirements as provided by the State. If the Local Agency does enter into a contract with a consultant for the Work:
    - (1) it shall submit a certification that procurement of any design consultant contract complied with the requirements of 23 CFR 172.5(1) prior to entering into contract. The State shall either approve or deny such procurement. If denied, the Local Agency may not enter into the contract.
    - (2) it shall ensure that all changes in the consultant contract have prior approval by the State. Such changes in the contract shall be by written supplement agreement. As soon as the contract with the consultant has been awarded by the Local Agency, one copy of the executed contract shall be submitted to the State. Any amendments to such contract shall also be submitted.
    - (3) it shall require that all consultant billings under that contract shall comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
    - (4) it (or its consultant) shall use the CDOT procedures described in **Exhibit A** to administer that design consultant subcontract, to comply with 23 CFR 172.5(b) .
    - (5) it may expedite any CDOT approval of its procurement process and/or consultant contract by submitting a letter to CDOT from the certifying Local Agency’s attorney/authorized representative certifying compliance with 23 CFR 172.5(b).

- (6) it shall ensure that its consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
  - (a) "The design work under this contract shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third party beneficiary of this contract for that purpose."
  - (b) "Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project."
  - (c) "The consultant shall review the construction contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work."
  - (d) The State, in its discretion, will review construction plans, special provisions and estimates and will cause the Local Agency to make changes therein that the State determines are necessary to assure compliance with State requirements.

B. Construction [if applicable]

1. If the Work includes construction, the responsible party shall perform the construction in accordance with the approved design plans and/or administer the construction all in accord with the The Scope of Work in **Exhibit A**. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements as described in the The Scope of Work in **Exhibit A**.
2. The State shall have the authority to suspend the Work, wholly or in part, by giving written notice thereof to the Local Agency, due to the failure of the Local Agency or its contractor to correct project conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
3. If the Local Agency is the responsible party:
  - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform that administration. The LAPE shall administer the project in accordance with this contract, the requirements of the construction contract and applicable State procedures.
  - b. if bids are to be let for the construction of the project, it shall advertise the call for bids upon approval by the State and award the construction contract(s) to the low responsible bidder(s) upon approval by the State.
    - (1) The Local Agency has the option to accept or reject the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare the acceptance or rejection within 3 working days after said bids are publicly opened.
    - (2) By indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this project if no additional federal-aid funds will be made available for the project. This paragraph also applies to projects advertised and awarded by the State.
  - c. If all or part of the construction work is to be accomplished by Local Agency personnel (i.e. by force account), rather than by a competitive bidding process, the Local Agency will ensure that all such force account work is accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635, Subpart B, Force Account Construction.
    - (1) Such work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency and the Stat in advance of the Work, as provided for in 23 CFR 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
    - (2) An alternative to the above is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 CFR Part 31.
    - (3) Rental rates for publicly owned equipment will be determined in accordance with the State's Standard Specifications for Road and Bridge Construction § 109.04.

- (4) All force account work shall have prior approval of the State and shall not be initiated until the State has issued a written notice to proceed.

**C. State's obligations**

1. The State will perform a final project inspection prior to project acceptance as a Quality Control/Assurance activity. When all Work has been satisfactorily completed, the State will sign a final acceptance form.
2. Notwithstanding any consents or approvals given by the State for the Plans, the State will not be liable or responsible in any manner for the structural design, details or construction of any major structures that are designed by or are the responsibility of the Local Agency as identified in the The Scope of Work in **Exhibit A**, within the Work of this contract.

**Section 8. ROW Acquisition and Relocation**

If the Project includes right of way, prior to this project being advertised for bids, the Responsible Party will certify in writing to the State that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required.

Any acquisition/relocation activities must comply with: all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR Part 24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and right of way incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in right of way acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at [http://www.dot.state.co.us/ROW\\_Manual/](http://www.dot.state.co.us/ROW_Manual/).

If right of way is purchased for a state highway, including areas of influence of the state highway, the local agency shall immediately convey title to such right of way to CDOT after the local agency obtains title.

**Section 9. Utilities**

If necessary, the Responsible Party will be responsible for obtaining the proper clearance or approval from any utility company, which may become involved in this Project. Prior to this Project being advertised for bids, the Responsible Party will certify in writing to the State that all such clearances have been obtained.

**Section 10. Railroads**

In the event the Project involves modification of a railroad company's facilities whereby the Work is to be accomplished by railroad company forces, the Responsible Party shall make timely application to the Public Utilities Commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Responsible Party shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 CFR 646, subpart B, concerning federal-aid projects involving railroad facilities, including:

- A. Executing an agreement setting out what work is to be accomplished and the location(s) thereof, and that the costs of the improvement shall be eligible for federal participation.
- B. Obtaining the railroad's detailed estimate of the cost of the Work.
- C. Establishing future maintenance responsibilities for the proposed installation.
- D. Proscribing future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- E. Establishing future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

**Section 11. Environmental Obligations**

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

**Section 12. Maintenance Obligations**

The Local Agency will maintain and operate the improvements constructed under this contract at its own cost and expense during their useful life, in a manner satisfactory to the State. The Local Agency will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations which define the Local Agency's obligations to maintain such improvements. The State will make periodic inspections of the project to verify that such improvements are being adequately maintained.

### **Section 13. Record Keeping**

The Local Agency shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this contract. The Local Agency shall maintain such records for a period of three (3) years after the date of termination of this contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The Local Agency shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the State to inspect the project and to inspect, review and audit the project records.

### **Section 14. Termination Provisions**

This contract may be terminated as follows:

- A. Termination for Convenience. The State may terminate this contract at any time the State determines that the purposes of the distribution of moneys under the contract would no longer be served by completion of the project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least twenty (20) days before the effective date of such termination.
- B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this contract, the State shall thereupon have the right to terminate this contract for cause by giving written notice to the Local Agency of its intent to terminate and at least ten (10) days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports or other material prepared by the Local Agency under this contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this contract.  
Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.  
If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the parties shall be the same as if the contract had been terminated for convenience, as described herein.
- C. Termination Due to Loss of Funding. The parties hereto expressly recognize that the Local Agency is to be paid, reimbursed, or otherwise compensated with federal and/or State funds which are available to the State for the purposes of contracting for the Project provided for herein, and therefore, the Local Agency expressly understands and agrees that all its rights, demands and claims to compensation arising under this contract are contingent upon availability of such funds to the State. In the event that such funds or any part thereof are not available to the State, the State may immediately terminate or amend this contract.

### **Section 15. Legal Authority**

The Local Agency warrants that it possesses the legal authority to enter into this contract and that it has taken all actions required by its procedures, by-laws, and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this contract and to bind the Local Agency to its terms. The person(s) executing this contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this contract.

### **Section 16. Representatives and Notice**

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also

may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

**If to State**

**If to the Local Agency**

CDOT Region: 4	Town of Johnstown
Jake Schuch	Matt LeCerf
Project Manager	Project Manager
10601 10th St	PO Box 609
Greeley, CO 80634	Johnstown, CO 80534
970-350-2205	970-587-4664

**Section 17. Successors**

Except as herein otherwise provided, this contract shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns.

**Section 18. Third Party Beneficiaries**

It is expressly understood and agreed that the enforcement of the terms and conditions of this contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this contract shall be deemed an incidental beneficiary only.

**Section 19. Governmental Immunity**

Notwithstanding any other provision of this contract to the contrary, no term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as now or hereafter amended. The parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials and employees is controlled and limited by the provisions of § 24-10-101, et seq., C.R.S., as now or hereafter amended and the risk management statutes, §§ 24-30-1501, et seq., C.R.S., as now or hereafter amended.

**Section 20. Severability**

To the extent that this contract may be executed and performance of the obligations of the parties may be accomplished within the intent of the contract, the terms of this contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

**Section 21. Waiver**

The waiver of any breach of a term, provision, or requirement of this contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

**Section 22. Entire Understanding**

This contract is intended as the complete integration of all understandings between the parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

**Section 23. Survival of Contract Terms**

Notwithstanding anything herein to the contrary, the parties understand and agree that all terms and conditions of this contract and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of the contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

**Section 24. Modification and Amendment**

This contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this contract shall be effective unless agreed to in writing by both parties in an amendment to this contract that is properly executed and approved in accordance with applicable law.

### **Section 25. Disputes**

Except as otherwise provided in this contract, any dispute concerning a question of fact arising under this contract which is not disposed of by agreement will be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of the Department of Transportation. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of the contract in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals will be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this contract, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

### **Section 26. Statewide Contract Management System**

If the maximum amount payable to Contractor under this Contract is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§Statewide Contract Management System** applies. Contractor agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state contracts and inclusion of contract performance information in a statewide contract management system.

Contractor's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Contract, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Contractor's performance shall be part of the normal contract administration process and Contractor's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Contractor's obligations under this Contract shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Contractor's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Contract term. Contractor shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Contractor demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Transportation and showing of good cause, may debar Contractor and prohibit Contractor from bidding on future contracts. Contractor may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Contractor, by the Executive Director, upon showing of good cause.

### **Section 27. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3).**

These Special Provisions apply to all contracts except where noted in italics.

#### **A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.**

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

#### **B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.**

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

**C. GOVERNMENTAL IMMUNITY.**

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract 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.

**D. INDEPENDENT CONTRACTOR**

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

**E. COMPLIANCE WITH LAW.**

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

**F. CHOICE OF LAW, JURISDICTION, AND VENUE.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

**G. PROHIBITED TERMS.**

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

**H. SOFTWARE PIRACY PROHIBITION.**

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.



**J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.**

*[Not applicable to intergovernmental agreements]* Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

**K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.**

*[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services]* Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, 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 shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

**L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.**

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

**THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK**

**Section 29. SIGNATURE PAGE**

**THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT**

**\* Persons signing for the Local Agency hereby swear and affirm that they are authorized to act on the Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p><b>THE LOCAL AGENCY</b> <b>TOWN OF JOHNSTOWN</b></p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> <b>Jared S. Polis</b> <b>Department of Transportation</b></p> <p>By _____ Stephen Harelson, P.E., Chief Engineer (For) Shoshana M. Lew, Executive Director</p> <p>Date: _____</p>
<p><b>2nd Local Agency Signature if needed</b></p> <p>Name: _____ (print name)</p> <p>Title: _____ (print title)</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p><b>STATE OF COLORADO</b> <b>LEGAL REVIEW</b> <b>Philip J. Weiser, Attorney General</b></p> <p>By _____ Signature – Assistant Attorney General</p> <p>Date: _____</p>

**ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.**

<p><b>STATE OF COLORADO</b> <b>STATE CONTROLLER</b> <b>Robert Jaros, CPA, MBA, JD</b></p> <p>By: _____ Colorado Department of Transportation</p> <p>Date: _____</p>
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## **EXHIBIT A – SCOPE OF WORK**

### Interstate 25 Segments 7 & 8 Project

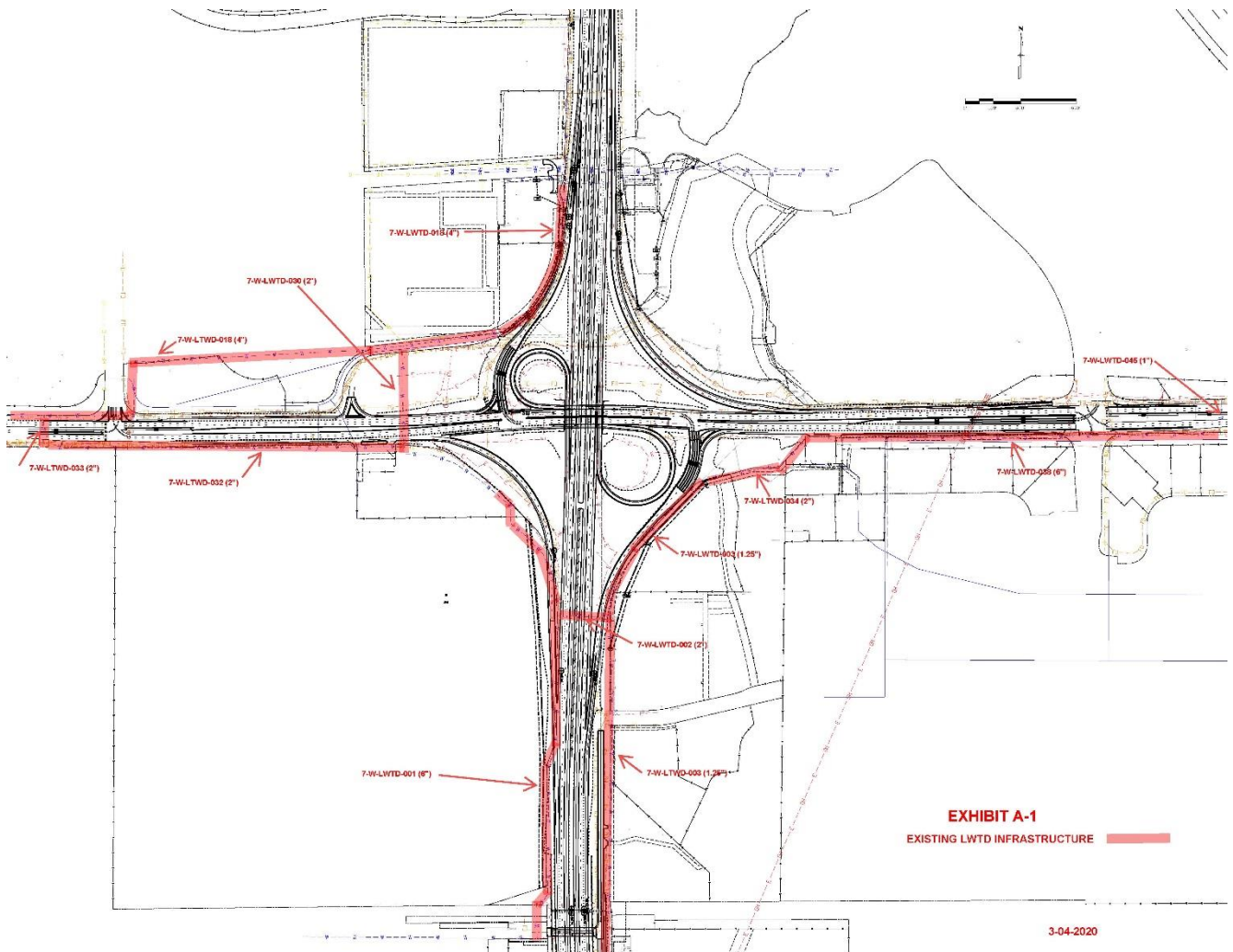
#### Scope of Work

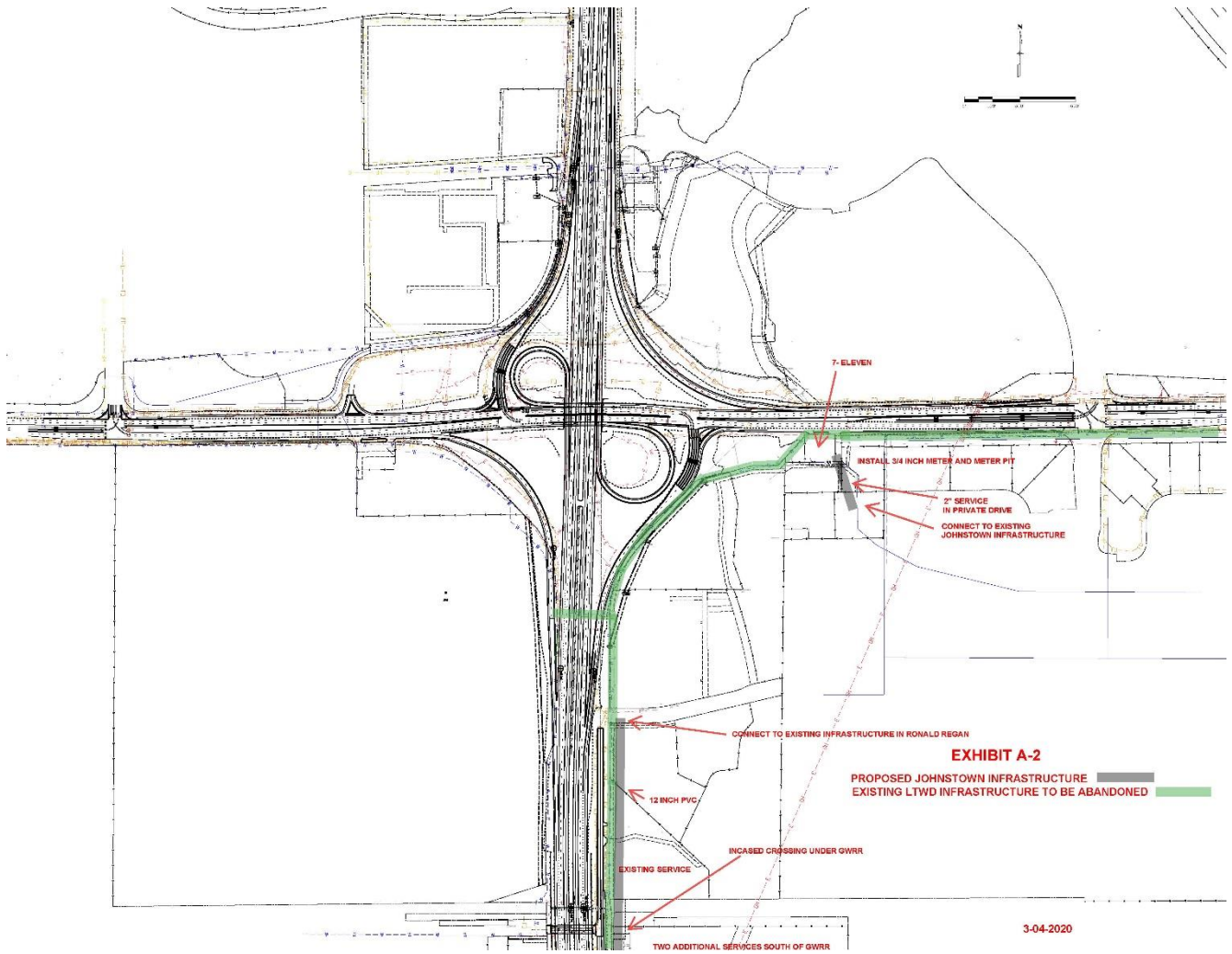
The Colorado Department of Transportation ("CDOT") will complete the Interstate 25 Segments 7 & 8 Project (Hereinafter referred to as "this work"). The project is located on I-25 between Johnstown and Fort Collins.

CDOT has partnered with the Town of Johnstown and the Little Thompson Water District to complete significant water line improvements on the project. This agreement allows the Little Thompson Water District to abandon the infrastructure depicted in exhibit A-1 and A-2. The Town of Johnstown and the Little Thompson Water District will install replacement infrastructure according to exhibit A-1 and A-2. The Town of Johnstown and Little Thompson Water District will perform all necessary communication with affected customers and all other necessary requirements for transfer. The Town of Johnstown will provide all inspection necessary to complete the work and will acquire a utility permit for work in CDOT ROW. CDOT will pay the Town of Johnstown \$291,000.00 for these improvements.

This work is expected to begin in the spring of 2020 and will shall be completed by July/2020.

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**EXHIBIT B – LOCAL AGENCY RESOLUTION**

LOCAL AGENCY  
ORDINANCE  
or  
RESOLUTION  
  
(if applicable)

**EXHIBIT C - FUNDING PROVISIONS****IM 0253-255 (21506)****A. Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be \$291,000.00, which is to be funded as follows:

<b>1. BUDGETED FUNDS</b>				
a.	State Funds (100.00% of Costs)			\$291,000.00
b.	Local Agency Matching Funds (0.00% of Costs)			\$0.00
<b>TOTAL BUDGETED FUNDS</b>				\$291,000.00
<b>2. ESTIMATED PAYMENT TO LOCAL AGENCY</b>				
a.	State Funds Budgeted			\$291,000.00
<b>TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY</b>				\$291,000.00
<b>3. FOR CDOT ENCUMBRANCE PURPOSES</b>				
a.	Total Encumbrance Amount			\$291,000.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109			\$0.00
	Net to be encumbered as follows:			\$291,000.00
	<i>Note: No funding is currently available. Funds will become available after execution of an Option Letter (Exhibit D) or formal Amendment.</i>			
	WBS Element 21506.20.10	<b>Performance Period End Date</b>		
		Not applicable	Const.	3301
				\$0.00

B. The matching ratio for the participating funds for this Work is 100.00% State funds to 0.00% Local Agency funds, it being understood that such ratio applies only to the \$291,000.00 total budgeted funds, it being further understood that all additional costs outside of the 100.00%/0.00% split are borne by the Local Agency at 100%. If the total cost of performance of the Work is less than \$291,000.00, then the amounts of Local Agency and State funds will be decreased in accordance with the funding ratio described herein.

C. The maximum amount payable to the Local Agency under this Contract shall be \$291,000.00 (for CDOT accounting purposes, the State funds of \$291,000.00 and the Local Agency matching funds of \$0.00 will be encumbered for a total encumbrance of \$291,000.00), unless such amount is increased by an appropriate written modification to this Contract executed before any increased cost is incurred. It is understood and agreed by the Parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the Parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the State funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 7.B. of this Contract.

## EXHIBIT D – OPTION LETTER

### SAMPLE OPTION LETTER

<b>State Agency</b> Department of Transportation		<b>Option Letter Number</b> ZOPTLETNUM
<b>Local Agency</b> ZVENDORNAME		<b>Agreement Routing Number</b> ZSMARTNO
<b>Agreement Maximum Amount</b>		
Initial term		
State Fiscal Year ZFYY_1	\$ ZFYA_1	
Extension terms		
State Fiscal Year ZFYY_2	\$ ZFYA_2	<b>Agreement Effective Date</b>
State Fiscal Year ZFYY_3	\$ ZFYA_3	The later of the effective date or ZSTARTDATEX
State Fiscal Year ZFYY_4	\$ ZFYA_4	
State Fiscal Year ZFYY_5	\$ ZFYA_5	
Total for all state fiscal years	\$ ZPERSVC_MAX_ AMOUNT	<b>Current Agreement Expiration Date</b> ZTERMDATEX

#### 1. OPTIONS:

A. Option to extend for an Extension Term

B. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads) and to update encumbrance amounts (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

C. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

D. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

#### 2. REQUIRED PROVISIONS:

##### Option A

In accordance with Section 2, C of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning on *(insert date)* and ending on the current contract expiration date shown above, under the same funding provisions stated in the Original Contract Exhibit C, as amended.

##### Option B

In accordance with Section 7, E of the Original Agreement referenced above, the State hereby exercises its option to authorize the Local Agency to begin a phase that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)* and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for *(Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)* is *(insert dollars here)*. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. *(The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.).*



### Option C

In accordance with Section 7, E of the Original Agreement referenced above, the State hereby exercises its option to authorize the Local Agency to transfer funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

### Option D

In accordance with Section 7, E of the Original Agreement referenced above, the State hereby exercises its option to authorize the Local Agency to begin a phase that will include *(describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from *(describe phase from which funds will be moved)* to *(describe phase to which funds will be moved)* based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

*(The following language must be included on ALL options):*

The Agreement Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

### 3. OPTION EFFECTIVE DATE:

The effective date of this option letter is upon approval of the State Controller or delegate.

### APPROVALS:

#### State of Colorado:

Jared S. Polis, Governor

By: \_\_\_\_\_ Date: \_\_\_\_\_

Executive Director, Colorado Department of Transportation

### **ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER**

**CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.**

**State Controller**

**Robert Jaros, CPA, MBA, JD**

By: \_\_\_\_\_

Date: \_\_\_\_\_

**AGENDA ITEM 10B**

**Request for a Septic Tank Sewer Service**

## **TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** May 4, 2020

**ITEM NUMBER:** 10B

**SUBJECT:** Request from Bill Massey, Property Owner of Home Located at 6086 Highway 60, for a Septic Tank Sewer Service.

**ACTION PROPOSED:** Consider the Applicants Request for the Property at 6086 Highway 60

**ATTACHMENTS:**

1. Letter from Bill Massey regarding Septic System
2. Weld County Septic Permit
3. Weld County Septic System Receipt
4. Septic System Invoice
5. Johnstown Village Cost Sharing Agreement
6. West Side Sewer Report
7. General Vicinity Map

**PRESENTED BY:** Matt LeCerf, Town Manager

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### **AGENDA ITEM DESCRIPTION:**

Enclosed you will find a number of documents regarding a request by Mr. Bill Massey to be permitted to install a new septic tank at his property located at 6086 Highway 60. The property is located within the Town limits and has been annexed since June, 2006.

The property has a single-family home on it and the septic system recently failed. Mr. Massey proceeded to engage with Weld County to acquire a new septic permit, and somewhere through the process Weld County, which had inadvertently issued the permit, noticed that this property is located in the incorporated limits of Johnstown, and not in unincorporated Weld County. Accordingly, Weld County placed a hold on the permit and required that authorization from the Town of Johnstown to be able to continue with the installation of the septic tank in accordance with the permit. When Mr. Massey made the request, I informed him that I would not provide this authorization based on the Johnstown Municipal Code, which requires the connection into the sanitary sewer system as described below:

### **§13-12 Use of Public Sewers Required**

*(d) The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Town and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer, are hereby required, at the owners' expense, to install suitable toilet facilities therein, and to promptly connect such facilities directly with the proper public sewer in accordance with the provisions of this Article, provided that the public sewer is within three hundred (300) feet of the property line.*

**§13-13. Private wastewater disposal.**

*(a) Where a public sanitary or combined sewer is not available under the provisions of Section 13-12(d), the building sewer shall be connected to a private wastewater disposal system complying with the provisions of this Section.*

*(e) At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in Section 13-12(d), a direct connection shall be made to the public sewer within thirty (30) days in compliance with this Article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.*

While I believe Mr. Massey understood my reasoning for denying the request, he did ask what options he had and I informed him, he could consider asking Town Council, Accordingly, this request is being presented to you per Mr. Massey's request.

**LEGAL ADVICE:**

Legal issues are reference in the body of TAC are from the Johnstown Municipal Code.

**FINANCIAL ADVICE:**

Not Applicable

**RECOMMENDED ACTION:** Staff recommends requiring connection into the sanitary sewer system, as required by the Johnstown Municipal Code.

---

**SUGGESTED MOTIONS:**

**For Approval (to Support Mr. Massey's Request):**

I move to provide the property located at 6086 Highway 60 with a variance from the Johnstown Municipal Code pertaining to the connection of structures to the public waste water system as may be required, and permit Mr. Bill Massey to install a new septic tank and bolt system.

**For Denial (Against Mr. Bill Massey's Request):**

I move to deny the property located at 6086 Highway 60 with a variance from the Johnstown Municipal Code pertaining to the connection of structures to the public waste water system as may be required, and not permit Mr. Bill Massey to install a new septic tank and bolt system.

**Reviewed and Approved for Presentation:**

---

Town Manager

To Town Council of Johnstown, Colorado

4/21/2020

**Request for consideration on repair of Septic System**

Good day,

We own a rental house on our property at 6086 Highway 60, that as we understand it is relatively very old (original building, has been added to and modified over the years)

The renters notified us the toilets were not draining when flushed. We call our plumber who came and out and found the line from the house to the septic field vault was plugged by the renters putting diaper wipes down the toilets. The line was cleared.

But in the original investigation by the plumber trying to find the problem, the septic field vault when exposed, was in the opinion of the plumber very old and on the verge of collapse, and needed to be replaced.

We were given a quote by the plumber to do the job, for \$13,875.00 (Document accompanies this e-mail)

Before work was started, we contacted Weld County Health Department and filed an application to replace the vault, paid the fee required and received a permit (Document attached)

When the vault it was replaced it was discovered the septic field itself was a very old design and needed to be replaced

We engaged an engineer to design a new septic field, do soils testing (\$5,000 paid) and applied for permit from Weld County to install a new field and paid the fee in advance \$500.

Weld County Health then and not before advised us that since the property was annexed into Johnstown, we had to get the Town's permission to install a new field. Note this question and requirement was not asked when we applied for the vault replacement.

E-mail from Weld County Health

Bill,

If you can email me back

1. Something from Johnstown giving permission to install a septic system vs. attach to Johnstown sewer.

Thank you,

*Katie Sall, REHS*

OWTS Program Coordinator

Weld County Department of Public Health and Environment

1555 North 17th Avenue, Greeley, CO 80631

(970)400-2216

[ksall@weldgov.com](mailto:ksall@weldgov.com)

In asking the Town Manager for this and was informed:

From Town Mgr.:

Sorry for the delayed response. Per our code, I cannot authorize the installation of a new septic tank. Our codes require the connection into the sanitary sewer system. Please see the guiding sections on this below:

### **Sec. 13-12. - Use of public sewers required.**

d. The owners of all houses, buildings or properties used for human occupancy, employment, recreation or other purposes situated within the Town and abutting on any street, alley or right-of-way in which there is now located or may in the future be located a public sanitary or combined sewer, are hereby required, at the owners' expense, to install suitable toilet facilities therein, and to promptly connect such facilities directly with the proper public sewer in accordance with the provisions of this Article, provided that the public sewer is within three hundred (300) feet of the property line.

and

### **Sec. 13-13. - Private wastewater disposal.**

e. At such time as a public sewer becomes available to a property served by a private wastewater disposal system, as provided in [Section 13-12\(d\)](#), a direct connection shall be made to the public sewer within thirty (30) days in compliance with this Article, and any septic tanks, cesspools and similar private wastewater disposal facilities shall be cleaned of sludge and filled with suitable material.

The request would need to be considered by the Council as I do not have authorization to forgo our requirements. It is my opinion, that the connection would be to the north and I know there is the ability to serve on this line.

Thanks,



**Matt LeCerf** | Town Manager

Town of Johnstown

p: (970) 587-4664 | f: (970) 587-0141

[mlecerf@townofjohnstown.com](mailto:mlecerf@townofjohnstown.com)

**In Summary, we have already spent Close to \$20,000 for work done on the vault, engineer study and permits and looking at the expense if ok'd by the Town of the new field**

**We have owned this property since 1969 and annexed into the Town in 2006, and during that process or in the following years we were never told by the Town that we had to tie into the Town Sewer system.**

**This property is annexed as commercial, we are in the process of doing a study on what will take to do so including already having a market study, in the process of having an engineering study on what water will be required, already have an legal agreement with Johnstown Villages who just bought the adjoining property for development, to have a cost sharing and reimbursement cost for eventual tie into Town utilities and at time of sale already had escrowed \$17,500 storm water fee from this property:**

**In summary**

**We have been told to connect to Town sewer right now would be very costly and give we have already spent almost \$20,000 and expect to spend quite a bit more to install the field, that Town give us permission to finish and solve this problem by installing a new field**

**Thank You**

**Bill Massey**

**Massey Farms**

**[bill@pvfco.com](mailto:bill@pvfco.com) 303-809-6326**





**WELD COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT**  
1555 North 17th Avenue, Greeley, CO 80631 www.weldhealth.org

## Septic Permit New

**Application Number:** SP-2000114  
**Owner Name:** MASSEY FARMS  
**Site Address:** 6086 STATE HWY 60  
JOHNSTOWN, CO 805634

**App Type:** Health\Residential\New OWTS\Vault

23570 E MORaine PLACE  
AURORA, CO 80016

**Parcel Number:** 105907214023-R8964830

**Legal Desc:** TRACT O JOHNSTOWN VILLAGE FG NO. 1

**Work Description:** HOUSE

**Application Status:**  
In Review

**Applied Date:**  
03/26/2020

**Intake Person:**  
JBEEBE

**Permit Expiration Date:**

### EHS SEPTIC GENERAL:

Application Date	03/26/2020
Number of Bedrooms	3
Number of Persons	4
Parcel Acres	21.07
Public Water Supply	Yes
Public Water Supply Utility	Johnstown

### EHS PERC TEST (SITE) :

### SEPTIC SIZING INFORMATION:

From the application information supplied and the on-site soil percolation data the following minimum installation specifications are required according to the Engineer's evaluation:

### Engineer's Specified Installation Recommendations:

Septic Tank Size 1000

### CONDITIONS:



Description: VAULT

Comment: Old septic tank must be properly abandoned. Septic tank must be at least 10 feet from any potable water line, unless water line is encased. Septic tank pump receipt for tank abandonment is required. Sewer line to septic tank must have at least 1/8inch/ft. fall. All Weld County regulations are applicable.

### **INSPECTION RESULT:**

### **NOTICE**

This permit is granted temporarily to allow construction to commence. This permit may be revoked or suspended by the Weld County Department of Public Health and Environment for reasons set forth in the Weld County Onsite Wastewater Treatment System Regulations including failure to meet any term or condition imposed thereon during temporary or final approval. The issuance of this permit does not constitute assumption by the department or its employees of liability for the failure or inadequacy of the sewage disposal system. This permit is non-transferable and non-refundable. Before issuing final approval of this permit the Weld County Department of Public Health and Environment reserves the right to impose additional terms and conditions required to meet our regulations on a continuing basis. Final permit approval is contingent upon the final inspection of the completed system by the Weld County Department of Public Health and Environment.

**Environmental Health Specialist**

**Date**

Page 1 of 2

Health Administration  
Vital Records

Tele: 970-304-6410

Fax: 970-304-6412

Public Health &  
Clinical Services

Tele: 970-304-6420

Fax: 970-304-6416

Environmental Health  
Services

Tele: 970-304-6415

Fax: 970-304-6411

Communication,  
Education & Planning

Tele: 970-304-6470

Fax: 970-304-6452

Emergency Preparedness  
& Response

Tele: 970-304-6470

Fax: 970-304-6452



**Public Health**



WELD COUNTY DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
1555 North 17th Avenue, Greeley, CO 80631 [www.weldhealth.org](http://www.weldhealth.org)

## RECEIPT

March 26, 2020

**Application Number:** SP-2000114

**App Type:** Health\Residential\New OWTS\Vault

**Owner Name:** MASSEY FARMS

23570 E MORaine PLACE

AURORA, CO 80016

**Site Address:** 6086 STATE HWY 60

JOHNSTOWN, CO 805634

<u>Rcpt #</u>	<u>Pmt Type</u>	<u>Pmt Method</u>	<u>Ref #</u>	<u>Pmt Date</u>	<u>Amount</u>	<u>Cashier</u>	<u>Comments</u>
116465	Paid	Credit Card	9777	03/26/2020	\$350.00	JBEEBE	
<b>Total Payments:</b>					<b>\$350.00</b>		



# INVOICE

**Ken Millette**

**Sewer & Plumbing Services**

Full Service Drain Cleaning & Plumbing

216 Grand View Circle Mead, CO 80542

Phone: 720-641-5648

Fax: 970-805-7250

3/19/20

SOLD TO: <i>Bill Massey</i>		SHIPPED TO:	
STREET & NO. <i>6086 State Hwy 60</i>		STREET & NO. <i>303-809-6326</i>	
CITY <i>Johnstown CO</i>	STATE <i>CO</i> ZIP <i>80534</i>	CITY	STATE ZIP

OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	PPD. OR COLL.
---------------	----------------	----------	-------	---------------

QTY.	DESCRIPTION	PRICE	AMOUNT
3/17	Service work rodding and camera to replug sewer line and check condition of tank		589 <sup>00</sup>
3/19	Route price - install new 1,000 gal septic tank, pump out old and collapse old tank.		
	install 4" SCH 40 across drive way per plumbing code.		
	Total		13,875 <sup>00</sup>
	Deposit 11,464 <sup>00</sup>		14,464 <sup>00</sup>
			- 11,464 <sup>00</sup>
	Balance on completion		3,000 <sup>00</sup>
	Tank ordered ok'd by phone by Bill 3/19/20		

Always a Quality Job ... Always an Excellent Value



## COST SHARING AGREEMENT

This **COST SHARING AGREEMENT** is entered into and effective this \_\_\_\_ day of December, 2017 between **Massey Farms, LLLP**, a Colorado limited liability limited partnership ("**Massey**") and **Johnstown Village, LLC**, a Colorado limited liability company or its assignee ("**Johnstown**") (together, the "**Parties**").

### Recitals

A. Massey is the owner of certain real property identified in the attached **Exhibit A** located in the Town of Johnstown, Colorado (the "**Property**" – both the Johnstown Property and the Massey Property, as defined below); and

B. Johnstown is under contract to purchase a portion of the Property from Massey, as identified in Exhibit B (the "**Johnstown Property**"); and

C. Johnstown intends to develop or sell for development the Johnstown Property; and

D. Massey intends to continue using the portion of the Property not being sold to Johnstown (the "**Massey Property**", identified on Exhibit C) for agricultural/investment purposes, but may develop, or sell for development, the Massey Property at some time in the future; and

E. Johnstown intends to obtain approval from the Town of Johnstown (the "**Town**") of a final plat and development agreement for the Johnstown Property; and

F. It is anticipated that as part of the final plat and development agreement, the Town of Johnstown will require the design and construction of certain public improvements, including, but not limited to, streets, water, sewer, and storm water infrastructure; and

G. At the same time as the development of the Johnstown Property, it is anticipated that the Town will also require the design and construction of certain public improvements, including, but not limited to, streets, water, sewer and storm water infrastructure for the Massey Property; and

H. The Parties recognize that it will be more efficient and cost effective to coordinate the design and construction of the public infrastructure for the Johnstown Property and the Massey Property; and

I. The Parties desire to share in the costs of the construction of the public infrastructure needed for the Johnstown Property and the Massey Property subject to certain terms and conditions regarding the sharing of costs; and

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt of which is acknowledged, the parties agree as follows:

## Terms and Conditions

### 1. Costs of Commercial Improvements.

a. Commercial Improvements. Massey shall pay to Johnstown the following costs: engineering fees and costs (design, construction plans, and as-built plans), review and submittal costs to the Town of Johnstown or other governmental entities, project management costs, and construction costs (the “**Massey Costs**”) directly attributed to the public improvements identified on the attached **Exhibit D** (the “**Commercial Improvements**”). Massey is not responsible for any costs attributed to improvements other than the Commercial Improvements. Costs eligible for reimbursement do not include attorney fees and costs, accounting fee and costs, or other soft costs.

### 2. Design and Construction.

#### a. Design.

i. Johnstown has engaged Atwell Engineering, a qualified engineering firm, for the design of the Commercial Improvements in conjunction with the development of the Johnstown Property. Any subsequent engineering company must reasonably possess the same or better qualifications and experience as Atwell Engineering.

ii. The design parameters of the Commercial Improvements shall be performed to accommodate the development of the Johnstown Property and the anticipated development of the Massey Property. The Parties shall provide their anticipated development plans to each other.

iii. Final design and construction plans for the Commercial Improvements shall be approved by both Johnstown and Massey in writing before bidding or construction.

#### b. Construction.

i. Johnstown shall be responsible for the bidding of the construction contract for the Commercial Improvements. The accepted bids for the improvement costs shall be certified by Johnstown's engineer as reasonable and necessary.

ii. After award of the contract, all changes to the contract price affecting the Commercial Improvements, including but not limited to any change orders or changes in design must be submitted for review and approval by both Parties.

iii. At any time during the construction of the Commercial Improvements, either Party or their representatives may inspect and observe the construction.

iv. Upon completion of the construction of the Commercial Improvements, Johnstown shall provide hard and digital “as-builts” for the Commercial Improvements to Massey.

3. Final Costs. Following the completion of construction and confirmation from the Town that the Commercial Improvements meet Town standards, Johnstown shall provide to Massey for review a summary of the total Massey Costs. In the event the improvement costs are higher than the certified costs by Johnstown’s engineer, Massey shall have 15 days to review and approve or disapprove the Massey Costs, which such approval shall not be unreasonably withheld. In the event of disapproval of the Massey Costs, Massey shall provide a revised allocation of the total Massey Costs to Johnstown for review, which Johnstown shall have 15 days to review and approve or disapprove, which such approval shall not be unreasonably withheld. Costs of determining the Massey Costs shall be included in the Massey Costs. The date of approval of the total Massey Costs shall be the “**Acceptance Date.**”

4. Payment of Massey Costs.

a. Payment of all Massey Costs will initially be made by Johnstown.

b. Massey shall provide payment of the Massey Costs to Johnstown upon the occurrence of the sooner of the following:

i. Sale of the Massey Property to an independent third-party whose intent at the time of purchase is to develop the Massey Property; or

ii. If the Massey Property is developed by Massey or its affiliate, no later than 7 days after construction plans for the development of the property are approved by the Town of Johnstown and before the commencement of construction on the Massey Property.

iii. In all events Massey Costs will be reimbursed to Johnstown before any improvements or construction directly related to the development of the property and excluding any improvements related to agricultural use, commences on the Massey Property.

c. Interest on the Massey Costs. Interest on the Massey Costs shall bear simple interest at a rate of 5% annum from the Acceptance Date. Interest shall accrue until Johnstown receives payment for the Massey Costs from Massey or any third-party, including any governmental entity.

5. Ownership and Maintenance of Commercial Improvements. Massey will not own the Commercial Improvements. Massey will not be responsible for costs associated with the operation and maintenance of the Commercial Improvements unless and until the Massey Property uses the Commercial Improvements in conjunction with the use of the Massey Property for purposes other than agricultural use. This obligation is not triggered by the use of surface streets for access to the Massey Property or by run-off from the Massey Property being transferred through storm water infrastructure while the property is being used for agricultural purposes.

6. License for Access/Covenant Running with Land. On the Acceptance Date, Johnstown, its successors and assigns, grants to Massey, its successors and assigns, a license to use the Commercial Improvements in perpetuity and such use shall not be impaired in any way. This license shall touch and concern the Massey Property and the Johnstown Property, is intended to run with the land, and is binding on all successors and assigns of Johnstown and Massey, including any governmental entities who may own and/or operate all or some of the Commercial Improvements.

7. Expiration of Cost Sharing Agreement. This Cost Sharing Agreement shall expire no later than 15 years following its effective date. Any payment of Massey Costs owed at the time of expiration shall expire with no further obligation for payment.

8. Indemnification/Duty to Defend/Hold Harmless. Johnstown shall indemnify, defend and hold harmless Massey from and against all claims, demands, losses, liability, actions, lawsuits, and expenses (including reasonable attorney's fees and costs) related to the design, construction, installation, use and maintenance of the public improvements arising before the acceptance of the public improvement(s) for maintenance and repair by the Town of Johnstown. The provisions of this section shall survive the termination of the agreement.

9. No Third-Party Beneficiaries. No third-party beneficiaries are intended to be created by this agreement. No consultants, engineers, contractors or other persons or entities hired by Johnstown to design or construct the Shared Improvements or other public improvements shall have a right to payment from Massey.

10. Binding Agreement. This agreement shall inure to and be binding on the successors, and assigns of the Parties hereto.

11. Entire Agreement. This Cost Sharing Agreement, including all Exhibits, constitutes the entire agreement between the Parties as of the effective date of this agreement. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Cost Sharing Agreement are of no force and effect.

12. No Waiver. No waiver of any of the provisions of this agreement shall be deemed to constitute a waiver of any of the other provisions of this agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

13. Severability. If any part of this Cost Sharing Agreement is declared by a court of law to be void, voidable or unenforceable, such declaration shall not affect any other provisions contained herein, the intention being that such provisions are severable so long as the remainder of the Agreement can be given effect without the void, voidable or unenforceable part.

14. Assignment. This Cost Sharing Agreement may be assigned by either party upon written notice of assignment to the other party.

15. Amendment. This Cost Sharing Agreement may not be modified except in writing executed by the Parties.



16. Controlling Law/Venue. This Agreement shall be governed by and construed in accordance with the law of the State of Colorado and any dispute of its terms shall be heard by the District Court for Weld County, Colorado.

17. Attorney's Fees and Costs. In the event of any action to enforce this Cost Sharing Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney's fees and costs, incurred in connection with such action.

18. Notices. Any notices, demands, or other communications required or permitted to be given in writing hereunder shall be hand delivered, sent by facsimile, e-mail, or sent by First Class Mail, addressed to the parties at the addresses set forth below, or at such other address as either party may hereafter designate by written notice to the other party given in accordance herewith:

To Massey Farms, LLLP

Massey Farms, LLLP 23570 Moraine Place  
Aurora, CO 80016  
Attn: Bill Massey  
e-mail: bill@pvfco.com

To Johnstown Village, LLC

Johnstown Village, LLC  
17 Beacon Hill Lane  
Greenwood Village, CO 80111  
Attn: Michael Blumenthal  
e-mail: michaelbent@msn.com

*with a copy to:*

Robert Quinette  
10221 Prestwick Trail  
Lone Tree, CO 80124  
e-mail: rquinette@aol.com

19. Authority. Each party hereby represents and warrants to the other that it is a duly authorized, existing and qualified entity existing under the laws of the State of Colorado or the state of its incorporation and is authorized to do business in the State of Colorado, that it has full right and authority to execute and enter into this Agreement and perform its obligations hereunder, and that every person signing on behalf of the parties is authorized to do so.

20. Counterpart. This Agreement may be executed in counterparts, and the authorized signatures of any party affixed to a counterpart shall be deemed to constitute execution of the original Agreement.

21. Recording. This Agreement will be recorded in the real property records of Weld County, Colorado in connection with the sale of the Johnstown Property.

MASSEY FARMS, LLLP

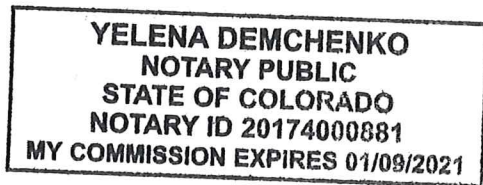
[Signature]  
Name: William Massey  
Title: Managing Partner

STATE OF COLORADO )  
COUNTY OF Denver ) ss.

The foregoing instrument was acknowledged before me this 19 day of December, 2017 by William K Massey as the Managing Partner of Massey Farms, LLLP.

WITNESS my hand and official seal.

My commission expires: 01/09/2021



[Signature]  
Notary Public

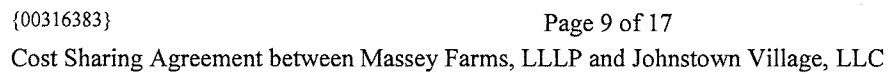
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Notary Public



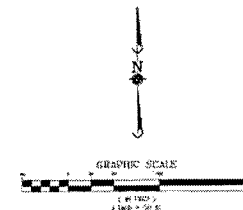
THE NORTHWEST ONE-QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN,  
TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO



THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN,  
TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO



- [illegible]



DOWN AND ON HISSELF IN  
MORNING CONSCIOUS



**Manhard**  
CONSULTING LTD.

MASSEY FARMS  
TOWN OF JOHNSTOWN, COUNTY OF WELD, COLORADO  
ALTAIRNSP'S LAND TITLE SURVEY

[illegible]

## EXHIBIT B

("Johnstown Property")

### PROPERTY DESCRIPTION

LOCATED IN THE NW OF SECTION 7, T4SN, R67W, 6TH P.M.  
COUNTY OF WELD, STATE OF COLORADO

#### PROPERTY DESCRIPTION - LOT AREA WITH TOWNHOME TRACT - PROPOSED JOHNSTOWN VILLAGE FLG. NO. 1

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE SOUTH LINE OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE CENTER QUARTER CORNER BY A FOUND 2-1/2" ALUMINUM CAP STAMPED "D.B. & CO. 2001 PLS 34995" AND AT THE WEST QUARTER CORNER BY A FOUND 2-1/2" ALUMINUM CAP STAMPED "WC 95.0 2014 LS 38175". SAID LINE BEARS NORTH 87°20'46" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

COMMENCING AT SAID CENTER QUARTER CORNER;

THENCE ALONG THE EAST LINE OF SAID NORTHWEST QUARTER NORTH 00°09'09" WEST A DISTANCE OF 30.04 FEET TO THE POINT OF BEGINNING;

THENCE ALONG A LINE 30.00 FEET NORTHERLY OF AND PARALLEL WITH SAID SOUTH LINE OF THE NORTHWEST QUARTER NORTH 87°20'46" WEST A DISTANCE OF 2362.80 FEET TO A POINT 30.00 FEET EAST, WHEN MEASURED AT RIGHT ANGLES, OF THE WEST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG A LINE 30.00 FEET OF AND PARALLEL WITH SAID WEST LINE NORTH 00°25'03" WEST A DISTANCE OF 1084.49 FEET;

THENCE DEPARTING SAID PARALLEL LINE SOUTH 89°51'37" EAST A DISTANCE OF 64.71 FEET TO A POINT OF NON-TANGENT CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 89°26'34", A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 46.83 FEET, A CHORD BEARING OF NORTH 45°08'20" EAST, AND A CHORD LENGTH OF 42.22 FEET TO A POINT 65.00 FEET EAST, WHEN MEASURED AT RIGHT ANGLES, OF THE WEST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG A LINE 65.00 FEET EAST OF AND PARALLEL WITH SAID WEST LINE NORTH 00°25'03" WEST A DISTANCE OF 619.95 FEET TO A POINT OF CURVE;

THENCE DEPARTING SAID PARALLEL LINE AND ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 90°35'20", A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 47.43 FEET, A CHORD BEARING OF NORTH 44°52'37" EAST, AND A CHORD LENGTH OF 42.64 FEET;

THENCE SOUTH 89°49'43" EAST A DISTANCE OF 894.37 FEET;

THENCE NORTH 00°10'17" EAST A DISTANCE OF 80.00 FEET;

THENCE SOUTH 89°49'43" EAST A DISTANCE OF 440.81 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 52°41'20", A RADIUS OF 435.00 FEET, AN ARC LENGTH OF 400.02 FEET, A CHORD BEARING OF NORTH 63°49'37" EAST, AND A CHORD LENGTH OF 386.08 FEET;

THENCE SOUTH 52°31'03" EAST A DISTANCE OF 80.00 FEET TO A POINT OF NON-TANGENT CURVE;

(CONTINUED ON SHEET 2)



PROPERTY DESCRIPTION		
NW 1/4 SEC. 7 T4N, R67W, 6TH P.M. WELD COUNTY, COLORADO	Date: 12/04/17 Drawn: TWK Checked: SDC Job No.: 17002082	Sheet 1 of 3



# PROPERTY DESCRIPTION

LOCATED IN THE NW OF SECTION 7, T4SN, R67W, 6TH P.M.  
COUNTY OF WELD, STATE OF COLORADO

## PROPERTY DESCRIPTION - LOT AREA WITH TOWNHOME TRACT - PROPOSED JOHNSTOWN VILLAGE FLG. NO. 1

(CONTINUED FROM SHEET 1)

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 84°38'15", A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 29.54 FEET, A CHORD BEARING OF SOUTH 04°50'10" EAST, AND A CHORD LENGTH OF 26.93 FEET;

THENCE SOUTH 47°09'17" EAST A DISTANCE OF 123.75 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 42°40'25", A RADIUS OF 270.00 FEET, AN ARC LENGTH OF 201.10 FEET, A CHORD BEARING OF SOUTH 68°29'30" EAST, AND A CHORD LENGTH OF 196.48 FEET;

THENCE SOUTH 89°49'43" EAST A DISTANCE OF 58.19 FEET TO A POINT OF CURVE;

THENCE ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 90°00'00", A RADIUS OF 15.00 FEET, AN ARC LENGTH OF 23.56 FEET, A CHORD BEARING OF NORTH 45°10'17" EAST, AND A CHORD LENGTH OF 21.21 FEET;

THENCE SOUTH 89°49'43" EAST A DISTANCE OF 60.00 FEET;

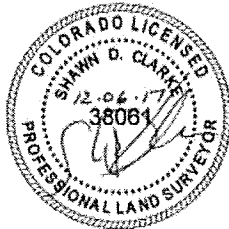
THENCE SOUTH 00°10'17" WEST A DISTANCE OF 15.00 FEET;

THENCE SOUTH 89°49'43" EAST A DISTANCE OF 148.41 FEET TO A POINT ON THE EAST LINE OF SAID NORTHWEST QUARTER;

THENCE ALONG SAID EAST LINE SOUTH 00°09'09" EAST A DISTANCE OF 1887.40 FEET TO THE POINT OF BEGINNING;

CONTAINING 4,390,223 SQUARE FEET, OR 100.79 ACRES, MORE OR LESS.

I, SHAWN D. CLARKE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PROPERTY DESCRIPTION WAS PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS TRUE AND ACCURATE, TO THE BEST OF MY KNOWLEDGE.



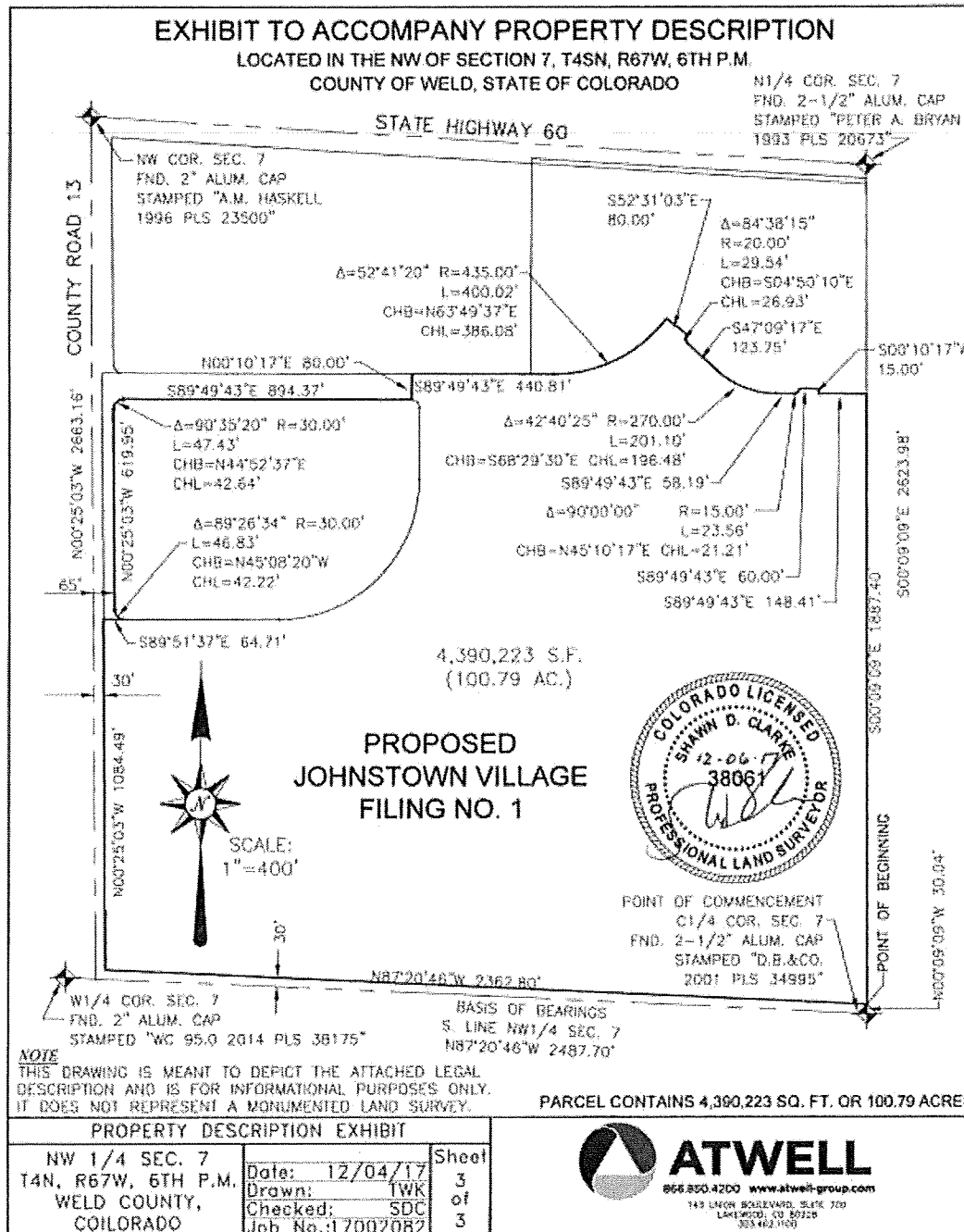
SHAWN D. CLARKE, PLS  
COLORADO REG. NO. 38061  
FOR AND ON BEHALF OF ATWELL, LLC

NOTICE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE (3) YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN (10) YEARS FROM THE DATE OF THE CERTIFICATE SHOWN HEREON.

PROPERTY DESCRIPTION		
NW 1/4 SEC. 7 T4N, R67W, 6TH P.M. WELD COUNTY, COLORADO	Date: 12/04/17 Drawn: TWK Checked: SDC Job No.: 17002082	Sheet 2 of 3









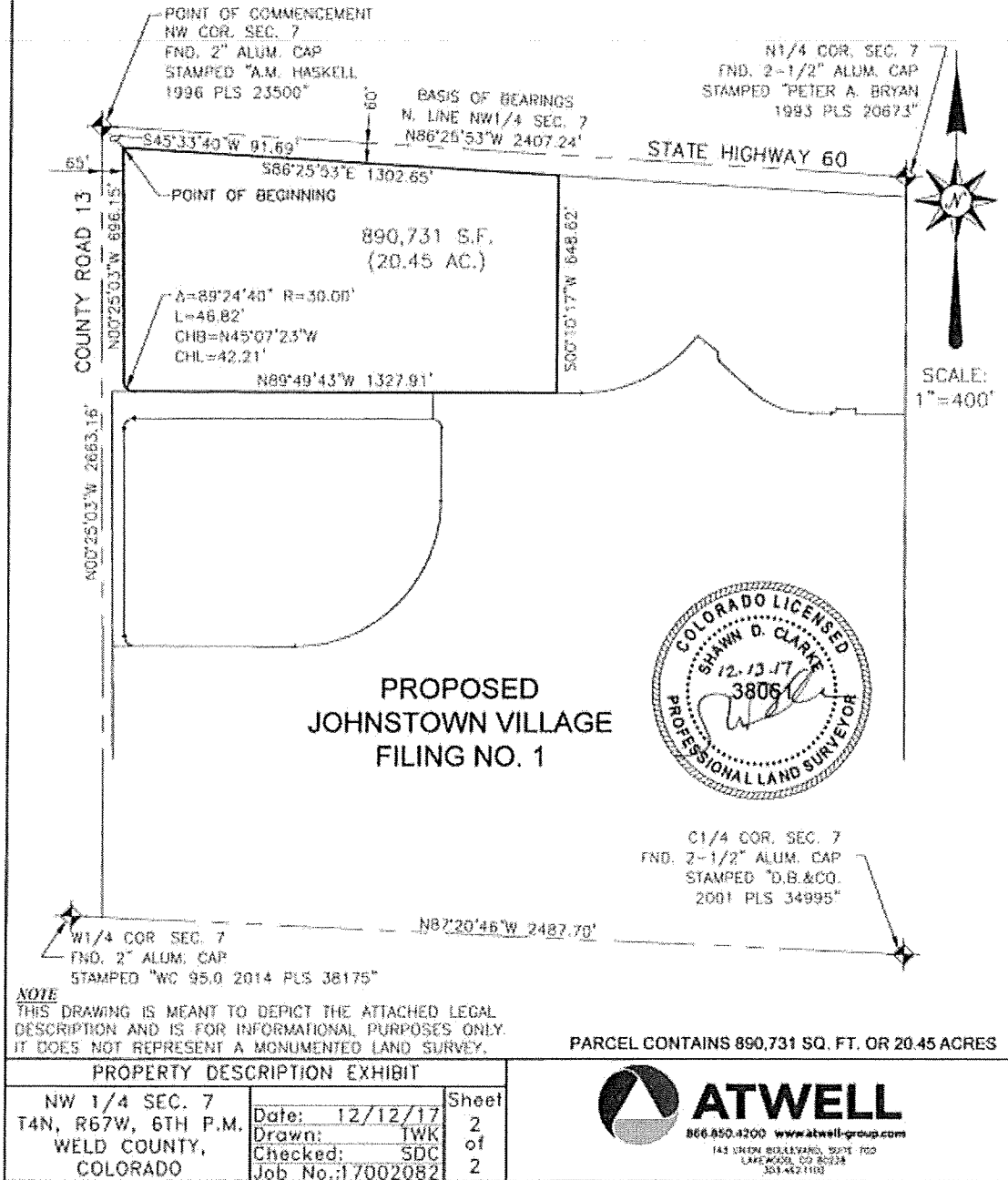
## EXHIBIT C

("Massey Property")

PROPERTY DESCRIPTION						
LOCATED IN THE NW OF SECTION 7, T4N, R67W, 6TH P.M. COUNTY OF WELD, STATE OF COLORADO						
<b>PROPERTY DESCRIPTION - COMMERCIAL TRACT - PROPOSED JOHNSTOWN VILLAGE FLG. NO. 1</b>						
THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:						
BASIS OF BEARINGS: BEARINGS ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE SIXTH PRINCIPAL MERIDIAN, BEING MONUMENTED AT THE NORTHWEST CORNER BY A FOUND 2" ALUMINUM CAP STAMPED "A.M. HASKELL 1996 PLS 23500" AND AT THE NORTH QUARTER CORNER BY A FOUND 2-1/2" ALUMINUM CAP STAMPED "PETER A. BRYAN 1993 PLS 20673". SAID LINE BEARS NORTH 86°25'53" WEST, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.						
COMMENCING AT SAID NORTHWEST CORNER;						
THENCE SOUTH 45°33'40" WEST A DISTANCE OF 91.69 FEET TO A POINT 60.00 FEET SOUTH, WHEN MEASURED AT RIGHT ANGLES, OF SAID NORTH LINE OF THE NORTHWEST QUARTER;						
THENCE ALONG A LINE 60.00 FEET SOUTHERLY OF AND PARALLEL WITH SAID NORTH LINE SOUTH 86°25'53" EAST A DISTANCE OF 1302.65 FEET;						
THENCE DEPARTING SAID PARALLEL LINE SOUTH 00°10'17" WEST A DISTANCE OF 648.62 FEET;						
THENCE NORTH 89°49'43" WEST A DISTANCE OF 1327.91 FEET TO A POINT OF CURVE;						
THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 89°24'40", A RADIUS OF 30.00 FEET, AN ARC LENGTH OF 46.82 FEET, A CHORD BEARING OF NORTH 45°07'23" WEST, AND A CHORD LENGTH OF 42.21 FEET TO A POINT 65.00 FEET EAST, WHEN MEASURED AT RIGHT ANGLES, OF THE WEST LINE OF SAID NORTHWEST QUARTER;						
THENCE ALONG A LINE 65.00 FEET EAST OF AND PARALLEL WITH SAID WEST LINE NORTH 00°25'03" WEST A DISTANCE OF 696.15 FEET TO THE POINT OF BEGINNING;						
CONTAINING 890,731 SQUARE FEET, OR 20.45 ACRES, MORE OR LESS.						
I, SHAWN D. CLARKE, A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PROPERTY DESCRIPTION WAS PERFORMED BY ME OR UNDER MY DIRECT SUPERVISION AND IS TRUE AND ACCURATE, TO THE BEST OF MY KNOWLEDGE.						
<div style="text-align: center;"></div>						
SHAWN D. CLARKE, PLS COLORADO REG. NO. 38061 FOR AND ON BEHALF OF ATWELL, LLC						
NOTICE: ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE (3) YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN (10) YEARS FROM THE DATE OF THE CERTIFICATE SHOWN HEREON.						
<table border="1"><thead><tr><th colspan="2">PROPERTY DESCRIPTION</th></tr></thead><tbody><tr><td>NW 1/4 SEC. 7 T4N, R67W, 6TH P.M. WELD COUNTY, COLORADO</td><td>Date: 12/12/17 Drawn: TWK Checked: SDC Job No.: 17002082</td></tr></tbody></table>			PROPERTY DESCRIPTION		NW 1/4 SEC. 7 T4N, R67W, 6TH P.M. WELD COUNTY, COLORADO	Date: 12/12/17 Drawn: TWK Checked: SDC Job No.: 17002082
PROPERTY DESCRIPTION						
NW 1/4 SEC. 7 T4N, R67W, 6TH P.M. WELD COUNTY, COLORADO	Date: 12/12/17 Drawn: TWK Checked: SDC Job No.: 17002082					
<div style="text-align: right;"><b>ATWELL</b> 866.850.4200 <a href="http://www.atwell-group.com">www.atwell-group.com</a> 143 UNION BOULEVARD, SUITE 700 LAKEWOOD, CO 80228 303.462.1100</div>						

# EXHIBIT TO ACCOMPANY PROPERTY DESCRIPTION

LOCATED IN THE NW OF SECTION 7, T4N, R67W, 6TH P.M.  
COUNTY OF WELD, STATE OF COLORADO



## EXHIBIT D

### ("Commercial Improvements")



#### Johnstown Village

#### 20 Acre Commercial Center Utilities Cost Estimate

Project:  
Prepared By:

Johnstown Village  
Atwell, LLC

Prepared For: Michael Blumenthal  
Date: November 27, 2017

Item	Quantity	Unit	Unit Cost	Cost Per Item	Comments
<b>GENERAL SITE ITEMS</b>					
Mobilization	1	LS	\$ 50,000.00	\$ 50,000.00	
Clear & Grub	141	AC	\$ 500.00	\$ 70,500.00	
Traffic Control	1	LS	\$ 15,000.00	\$ 15,000.00	
<b>Subtotal</b>				\$ 135,500.00	
	16.25% of Subtotal			\$ 22,018.75	
<b>EARTHWORK</b>					
Cut/Fill Rotation	100,000	CY	\$ 3.00	\$ 300,000.00	
Strip Stockpile and respread Topsoil	56,870	CY	\$ 1.50	\$ 85,305.00	
<b>Subtotal</b>				\$ 385,305.00	
	16.25% of Subtotal			\$ 62,612.06	
<b>SURFACE IMPROVEMENTS</b>					
Asphalt Roadway	8,254	SY	\$ 46.00	\$ 379,684.00	1/2 Sections of CR 13, HWY 60, and Carlson Blvd.
6" Vertical Curb and Gutter (2' pan)	3,049	LF	\$ 22.00	\$ 67,078.00	
5' Concrete Sidewalk	1,131	LF	\$ 23.00	\$ 26,013.00	
10' Concrete Sidewalk	1,803	LF	\$ 45.00	\$ 81,135.00	
Handicap Pedestrian Ramp	4	EA	\$ 1,800.00	\$ 7,200.00	
<b>Subtotal</b>				\$ 561,110.00	
<b>WATER IMPROVEMENTS:</b>					
8" PVC Water Main (includes fittings)	1,300	LF	\$ 48.00	\$ 62,400.00	
Connect to Existing Water Main	1	EA	\$ 1,000.00	\$ 1,000.00	
<b>Subtotal</b>				\$ 63,400.00	
	50% of Subtotal			\$ 31,700.00	
<b>SANITARY SEWER IMPROVEMENTS:</b>					
8" PVC Sanitary Sewer Main	397	LF	\$ 38.00	\$ 15,086.00	
4' Sanitary Sewer Manholes	1	EA	\$ 4,250.00	\$ 4,250.00	
<b>Subtotal</b>				\$ 19,336.00	
<b>DRAINAGE AND STORMWATER IMPROVEMENTS:</b>					
5-ft Type R Inlet	1	EA	\$ 4,800.00	\$ 4,800.00	
5' Storm Sewer Manhole	12	EA	\$ 4,250.00	\$ 51,000.00	
24-inch Storm Sewer	1,783	LF	\$ 99.00	\$ 176,517.00	
48-inch Storm Sewer	319	LF	\$ 220.00	\$ 70,180.00	
48" FES	1	EA	\$ 3,600.00	\$ 3,600.00	
Detention Pond	1	EA	\$ 120,000.00	\$ 120,000.00	
Type M Riprap	1,000	SY	\$ 45.00	\$ 45,000.00	
Fine Grade Pond for Certification	1	EA	\$ 9,000.00	\$ 9,000.00	
<b>Subtotal</b>				\$ 480,097.00	
	50% of Storm Sewer and 16.25% of Pond, Subtotal			\$ 181,323.50	
Additional Detention Pond Land Area	11.66	AC	\$ 14,500.00	\$ 24,070.00	
<b>ENGINEERING COSTS:</b>					
Submit/Design & As-Built Fee	1	LS	\$ 20,000.00	\$ 20,000.00	
Construction Management	1	LS	\$ 15,000.00	\$ 15,000.00	
<b>Subtotal</b>				\$ 5,687.50	
				\$ 907,857.81	
				\$ 90,785.78	
				\$ 998,643.59	



January 31, 2014



9737 Wadsworth Pkwy  
Westminster, Colorado 80021  
Telephone 720.898.0660

29 Bridlewood Road  
Charleston, West Virginia 25314  
Telephone 304.554.9048

Ten Post Office Square  
8<sup>th</sup> Floor – South  
Boston, Massachusetts 02109  
Telephone 617.428.0273  
Facsimile 617.428.0276

John Cotton  
TST Inc. of Denver  
9222 Teddy Lane  
Lone Tree, CO 80124  
(303) 792-0557  
[jcotton@tstdenver.com](mailto:jcotton@tstdenver.com)

Ref: Town of Johnstown  
West Side Sewer Flow Test Results  
Located at the Country Acres Subdivision

Dear John:

Per the request of the Town of Johnstown and TST Inc. of Denver, Massey Farms LLP procured flow tests of the West Side Interceptor Sewer to determine the existing flows at the smallest diameter and flattest section of pipe located at the southern limits of Country Acres subdivision.

Flow tests were provided by Velocity Plant Services of Denver, Colorado through a subcontract with the testing firm of Ted D. Miller Associates of Golden, Colorado. The flow tests were conducted for nine days from 11/4/2013 through 11/11/2013. The results are attached and listed as Exhibit A.

Flow tests were conducted at three locations to determine the flows through the West Side Sewer through the County Acres subdivision. Direct flow tests on the West Side Sewer through the County Acres subdivision and adjacent to the Hillsboro Ditch were not possible due to the access issues and buried manholes. Flow tests were conducted on manhole A30 at the intersection of Mountview Drive and Telep Avenue (CR15), manhole A16 located at the intersection of Aviara Street and Torrey Pines Lane and manhole F5 located at the southeast corner of the Clearview Subdivision on Colorado Boulevard (CR 13). The results of the flow tests and locations are shown on Exhibit B "West Side Sewer Flow Test Locations and Results 11-3-2013" attached.

The existing sewer capacities in the West Side Sewer Existing Conditions as modeled by TEC in the Wastewater Utility Plan for the Town of Johnstown dated September 2008 page 117 show the capacities of the sewer along the southern limits of Country Acres from manhole A-28 through A-19 to range between 0.50 MGD to 0.72 MGD. This is shown in Exhibit C attached. The existing flows from the flow tests show the flows in this stretch of sewer to be 0.84 MGD.

The flow tests confirm the Wastewater Utility Plan for the Town of Johnstown 2008 study that the West Side Interceptor Sewer located at the southern limits of the Country Acres subdivision and running east along the Hillsboro Ditch is over capacity. Several alternatives exist for relieving this capacity problem that we can share with you and the Town of Johnstown.

Please review the exhibits and if you have questions or if we can supply you with any additional information feel free to notify us.

Sincerely,



David E. Moore, PE  
Alliance Engineering Ltd.

CC: John Franklin  
Marty Jones  
Bill Massey  
Tim Hasler  
Greg Weeks  
Eric Jenkins

# Exhibit A - Flow Test Results



1330 South Cherokee Street  
Denver CO 80223  
(303) 984-7800

## Submittal

Submittal#: 8001

Submittal Date: 11/15/2013

**To:** Alliance Engineering, LTD  
9737 Wadsworth PKWY  
Westminster CO 80021

**Project:** 372013  
Johnstown Flow Reading  
9737 Wadsworth PKWY  
Westminster CO 80021

David Moore

---

**Prepared By:** Craig Dreesen

---

Item	Description	Action Required	Date Required
1	Flow Data w/ Graphs	for RECORD	
2	Flow Data in Excel	for RECORD	

### Notes

Please let us know if you have any questions  
Craig Dreesen  
303-984-7800 Ext 105

Please sign and date this form as proof that you are in receipt of the above listed items.  
Return form to Velocity Plant Services, LLC

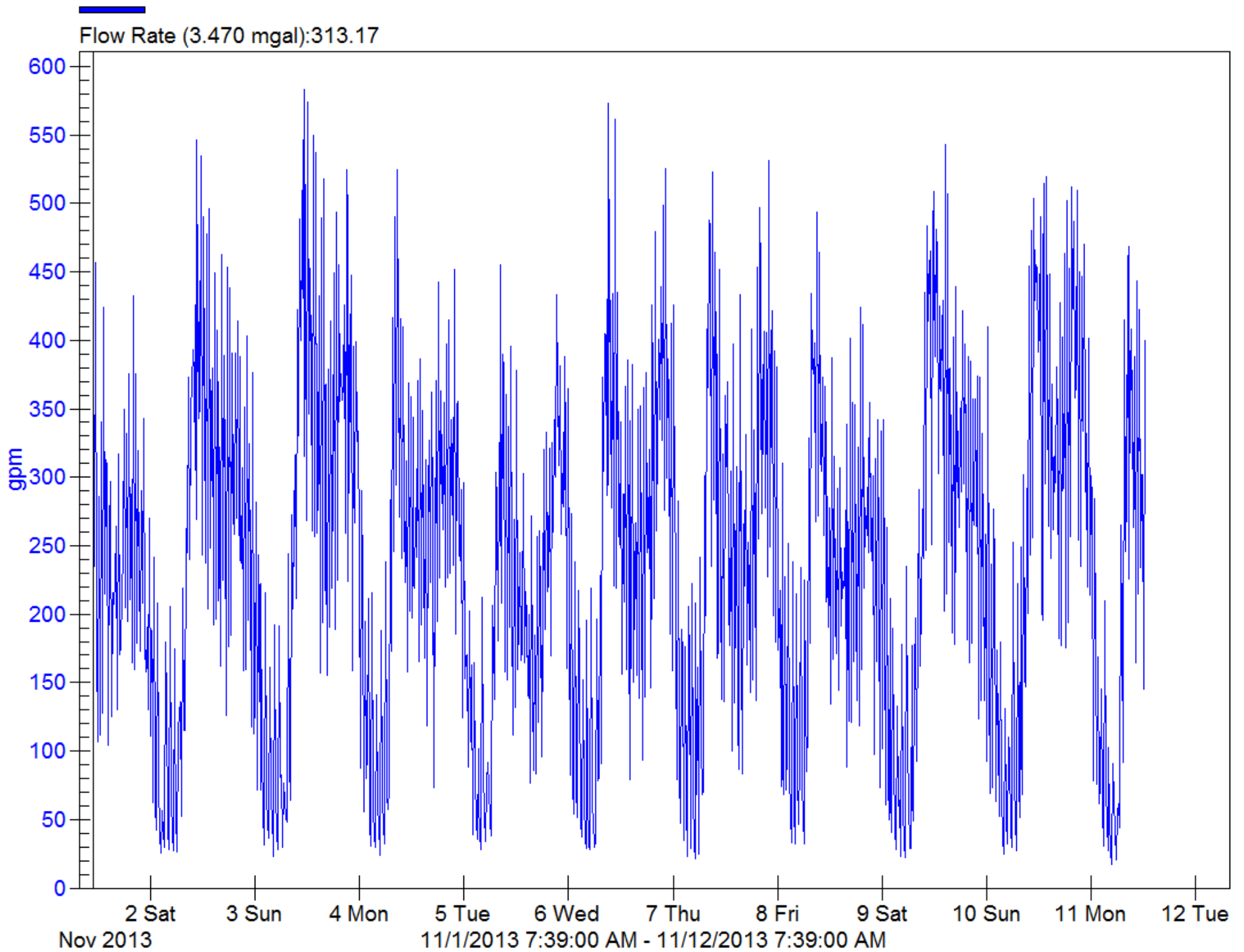
Signed: \_\_\_\_\_ Date: \_\_\_\_\_



Site Name	Aviara					
Label	Avg Flow Rate	Min Flow Rate	Min/Max	Max Flow Rate	Min/Max	Total Flow
Units	gpm	gpm	Date/Time	gpm	Date/Time	mgal
Resolution	0.1	0.1	N/A	0.1	N/A	0.1
11/2/2013 0:00	273.4	104.2	2:15:00 PM	457.2	11:30:00 AM	0.188
11/3/2013 0:00	241.0	25.2	2:30:00 AM	546.7	10:30:00 AM	0.347
11/4/2013 0:00	266.1	23.2	4:15:00 AM	583.0	11:30:00 AM	0.383
11/5/2013 0:00	234.7	23.7	4:45:00 AM	524.7	8:45:00 AM	0.338
11/6/2013 0:00	206.7	28.4	4:00:00 AM	455.5	8:30:00 AM	0.298
11/7/2013 0:00	245.3	28.3	5:00:00 AM	572.8	9:00:00 AM	0.353
11/8/2013 0:00	245.6	21.5	5:00:00 AM	531.6	10:00:00 PM	0.354
11/9/2013 0:00	224.3	32.1	6:00:00 AM	493.5	9:00:00 AM	0.323
11/10/2013 0:00	249.6	22.4	5:15:00 AM	543.4	2:30:00 PM	0.359
11/11/2013 0:00	268.8	24.4	4:00:00 AM	519.3	1:45:00 PM	0.387
11/11/2013 12:15	191.2	17.0	4:45:00 AM	468.1	8:45:00 AM	
			Time of Minimum Flow		Time of Maximum	
		Minimum	Rate	Maximum	Flow Rate	
	Average Flow	Flow Rate 17	11/11/2013	Flow Rate 583	11/3/2013	Average Total
	Rate 241 gpm	gpm	4:45 AM	gpm	11:30 AM	Flow 0.333 mgal
	Total Flow					
	3.676 mgal					Total 3.33 mgal

# Aviara

## Flowlink 5

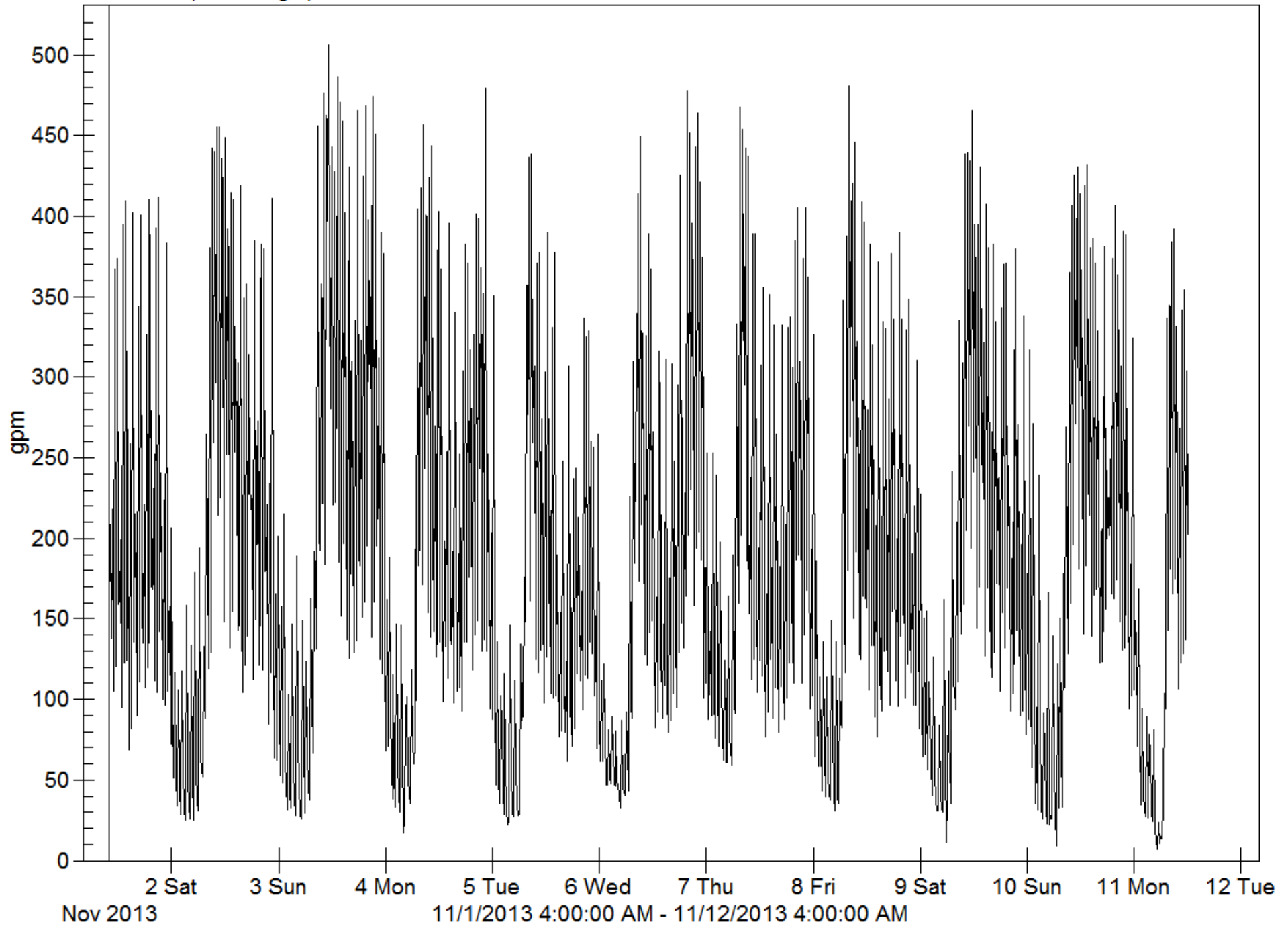


Site Name	Mountview						
Label	Avg Flow Rate	Min Flow Rate	Min/Max	Max Flow Rate	Min/Max	Total Flow	
Units	gpm	gpm	Date/Time	gpm	Date/Time	mgal	
Resolution	0.1	0.1	N/A	0.1	N/A	0.1	
11/2/2013 0:00	179.1	69.0	2:30:00 PM	411.9	9:00:00 PM	0.177	
11/3/2013 0:00	195.6	25.4	3:00:00 AM	455.7	10:45:00 AM	0.282	
11/4/2013 0:00	219.8	25.5	5:00:00 AM	506.6	11:15:00 AM	0.317	
11/5/2013 0:00	192.0	17.4	4:00:00 AM	479.3	10:30:00 PM	0.276	
11/6/2013 0:00	161.9	22.1	3:30:00 AM	438.6	8:45:00 AM	0.233	
11/7/2013 0:00	184.8	32.2	4:45:00 AM	478.2	7:45:00 PM	0.266	
11/8/2013 0:00	195.2	59.2	5:45:00 AM	467.9	7:30:00 AM	0.281	
11/9/2013 0:00	181.7	30.7	4:45:00 AM	481.1	8:00:00 AM	0.262	
11/10/2013 0:00	187.2	11.6	5:45:00 AM	465.7	11:45:00 AM	0.27	
11/11/2013 0:00	194.9	9.1	6:30:00 AM	432.1	1:30:00 PM	0.281	
11/11/2013 12:00	136.3	6.8	5:15:00 AM	392.2	9:00:00 AM		
			Time of		Time of		
			Minimum		Maximum		
		Minimum	Flow Rate		Flow Rate		
	Average Flow	Flow Rate 7	11/11/2013	Maximum Flow	11/3/2013	Average Total	
	Rate 184 gpm	gpm	5:15 AM	Rate 507 gpm	11:15 AM	Flow 0.264 mgal	
	Total Flow						
	2.823 mgal					Total 2.644 mgal	

# Mountview

Flowlink 5

Flow Rate (2.740 mgal):138.48

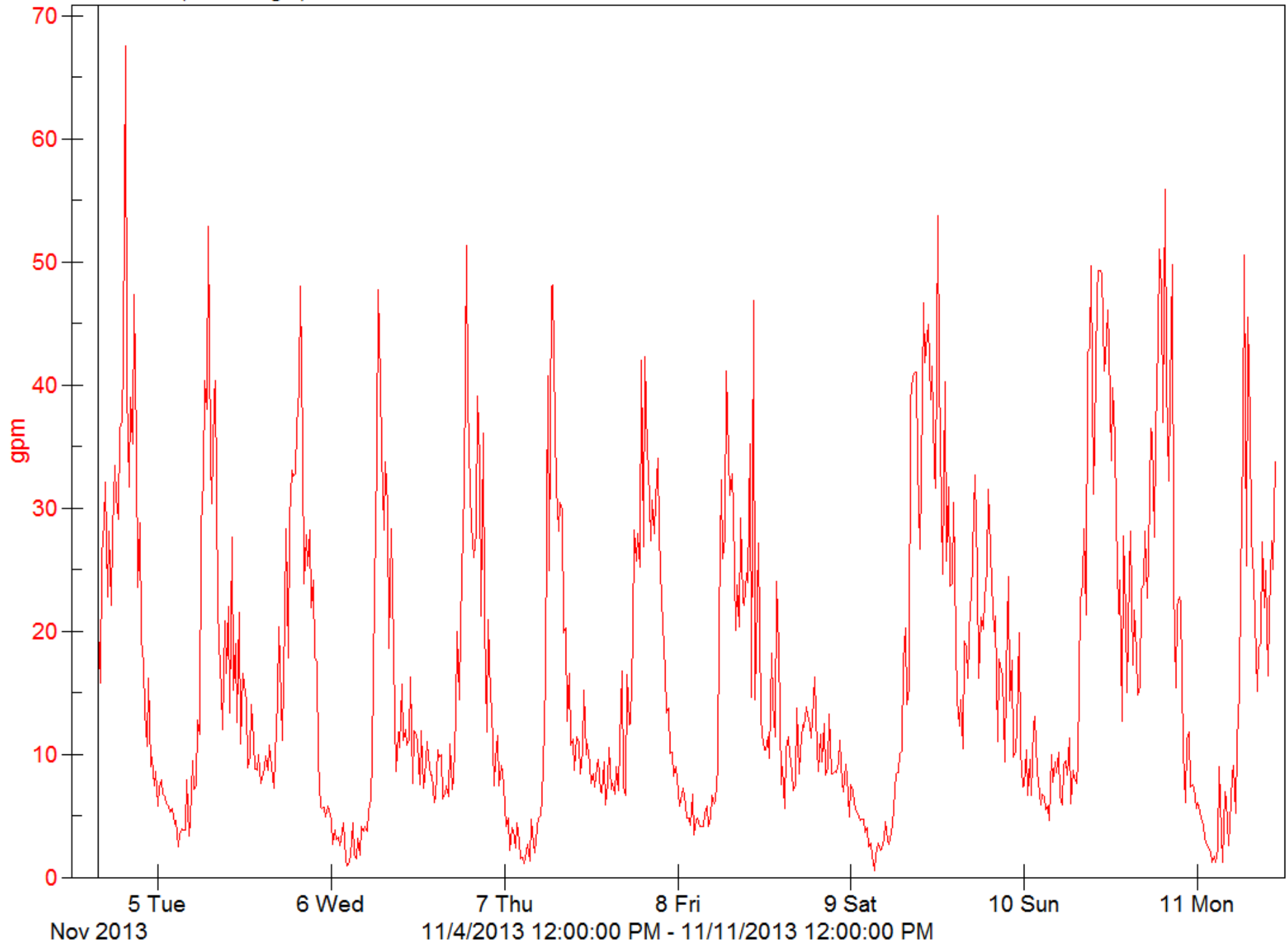


Site Name	Colorado Blvd	Colorado Blvd	Colorado Blvd	Colorado Blvd		
Label	Avg Flow Rate	Min Flow Rate	Min/Max	Max Flow Rate	Min/Max	Total Flow
Units	gpm	gpm	Date/Time	gpm	Date/Time	mgal
Resolution	0.1	0.1	N/A	0.1	N/A	0.1
Significant Digits	0	0	N/A	0	N/A	0
11/4/2013 0:00	20.3	20.3	12:00:00 AM	20.3	12:00:00 AM	
11/5/2013 0:00	22.5	5.8	12:00:00 AM	67.6	7:30:00 PM	0.013
11/6/2013 0:00	16.4	2.5	2:45:00 AM	52.9	7:00:00 AM	0.024
11/7/2013 0:00	14.1	0.9	2:15:00 AM	51.4	6:45:00 PM	0.02
11/8/2013 0:00	14.9	1.1	2:45:00 AM	48.2	6:45:00 AM	0.021
11/9/2013 0:00	13.5	3.4	2:15:00 AM	46.8	10:30:00 AM	0.019
11/10/2013 0:00	18.8	0.6	3:15:00 AM	53.7	12:00:00 PM	0.027
11/11/2013 0:00	22.4	4.6	3:30:00 AM	55.9	7:30:00 PM	0.032
11/11/2013 10:45	15.2	1.2	3:30:00 AM	50.5	6:30:00 AM	
			Time of Minimum		Time of Maximum	
		Minimum	Flow Rate	Maximum	Flow Rate	
	Average Flow	Flow Rate 0.6	11/9/2013	Flow Rate 68	11/4/2013	Average Total
	Rate 18 gpm	gpm	3:15 AM	gpm	7:30 PM	Flow 0.022 mgal
	Total Flow					
	0.215 mgal					Total 0.157 mgal

# Colorado Blvd

Flowlink 5

Flow Rate (0.167 mgal):20.29





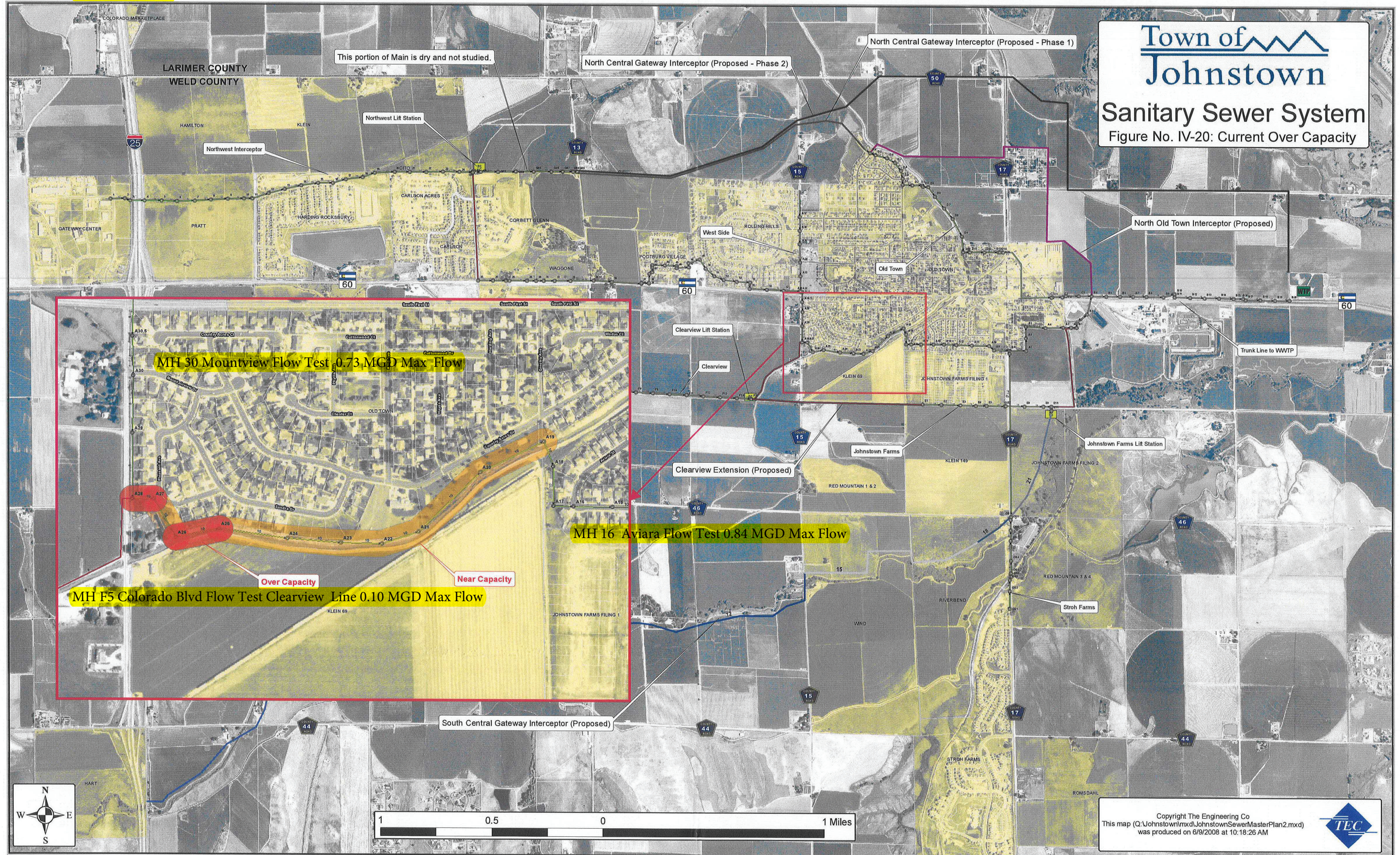




Exhibit C West Side Sewer Existing Capacity at Country Acres

Town of Johnstown - Sewer Capacity Analysis  
West Side Sewer - Existing Conditions



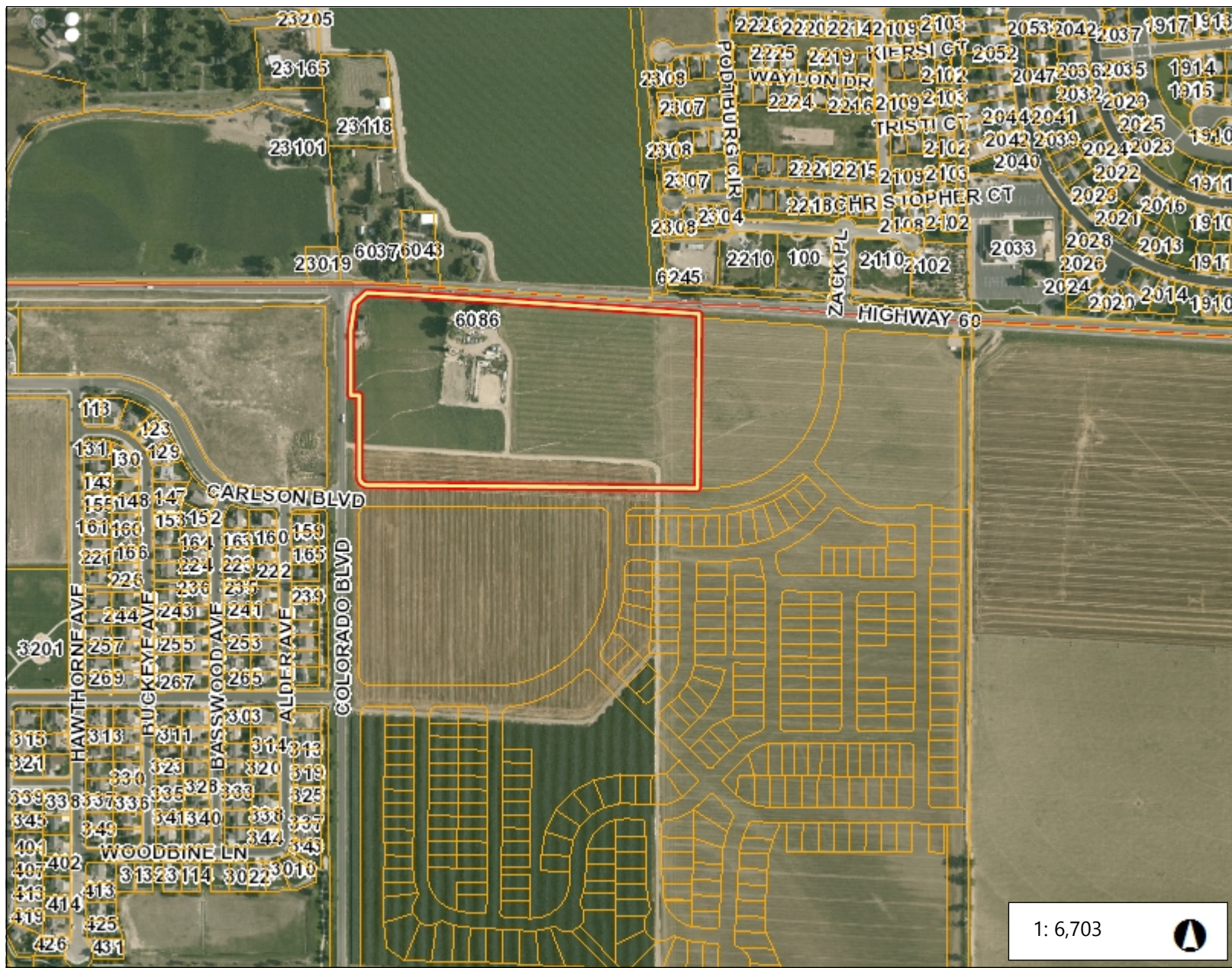
Global Parameters	
Manning Number (N)	0.013
Domestic Dry Weather Flow	75 (gpd per capita)
People per Tap	2.79
Domestic Peaking Factor	1.5
Comm./Industrial Flow	0 (gpd per acre)
Comm./Ind. Peaking Factor	1.5
Infiltration Allowance	1000 (gpd per inch-mile)
Inflow Peak Factor	2.0

Legend

- 3.5 = Input key for global parameters
- 200 = Automatically input from global parameters, unless manually entered
- 90 = Raw data input field

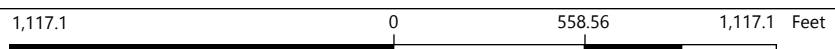
Trunk Line B	Manhole Number	Domestic Dry Weather				Commercial/Industrial			Infiltration		Inflow		Name	Branch Line					Cumulative Flows				Manhole Information		Line Information				Capacity Full (MGD)	Remaining Sewer Capacity				Depth Ratios for Various Flows				
		Number of Taps	Unit Flow (gpcd)	People per Tap	Avg. Flow (gpd)	Area (acres)	Unit Flow (gpcd)	Avg. Flow (gpd)	Upstream inch-miles	Unit Flow (gpd.in-mi)	Flow (gpd)	Inflow Base (gpd)		Inflow Factor	Dry Avg. (MGD)	Dry Peak (MGD)	Dry Avg. + Infil. (MGD)	Dry + Infil. (MGD)	Wet Peak (MGD)	Dry Avg. (MGD)	Dry Peak (MGD)	Dry Avg. + Infil. (MGD)	Dry Pk + Infil. (MGD)	Wet Peak (MGD)	Invert Elevations In	Invert Elevations Out	Length (ft.)	Dia. (in.)		Slope (%)	Mannings n	Dry Avg. (MGD)	Dry Peak (MGD)	Dry Pk + Infil. (MGD)	Wet Peak (MGD)	Dry Avg. (MGD)	Dry Peak (MGD)	Dry Pk + Infil. (MGD)
Upstream End to A19 s over existing 84 acity is MGD	A37	54	75	2.79	11,300	-	-	-	1,000	-	2.00	-	NW Interceptor	0.2434	0.3650	0.2828	0.4045	0.4045	0.0113	0.0169	0.0113	0.0169	0.0169	4878.05	4878.05	326.15	8	0.41%	0.013	0.50	0.49	0.50	0.48	0.50	0.13	0.07	0.16	0.07
	A36	15	75	2.79	3,139	-	-	-	1,000	494	2.00	-		0.0144	0.0047	0.0149	0.0222	0.0052	0.0144	0.0047	0.0149	0.0222	0.0052	4876.70	4876.60	326.15	8	0.41%	0.013	0.50	0.49	0.50	0.48	0.50	0.12	0.06	0.15	0.07
	A35	-	75	2.79	-	-	-	-	1,000	487	2.00	-		0.0144	0.0047	0.0154	0.0226	0.0057	0.0144	0.0047	0.0154	0.0226	0.0057	4875.00	4874.90	321.44	8	0.50%	0.013	0.55	0.54	0.55	0.53	0.55	0.13	0.07	0.17	0.08
	A34	-	75	2.79	-	-	-	-	1,000	661	2.00	-		0.0144	0.0047	0.0161	0.0233	0.0064	0.0144	0.0047	0.0161	0.0233	0.0064	4873.30	4873.20	436.49	8	0.37%	0.013	0.47	0.46	0.47	0.45	0.47	0.13	0.07	0.17	0.08
	A33	-	75	2.79	-	-	-	-	1,000	506	2.00	-		0.0144	0.0047	0.0166	0.0238	0.0069	0.0144	0.0047	0.0166	0.0238	0.0069	4869.20	4869.10	334.04	8	1.20%	0.013	0.86	0.84	0.85	0.83	0.85	0.09	0.05	0.12	0.06
	A32.5	-	75	2.79	-	-	-	-	1,000	547	2.00	-		0.0144	0.0047	0.0166	0.0238	0.0069	0.0144	0.0047	0.0166	0.0238	0.0069	4869.20	4869.10	334.04	8	1.20%	0.013	0.86	0.84	0.85	0.83	0.85	0.09	0.05	0.12	0.06
	A32	-	75	2.79	-	-	-	-	1,000	28	2.00	-		0.0144	0.0047	0.0166	0.0238	0.0069	0.0144	0.0047	0.0166	0.0238	0.0069	4869.20	4869.10	334.04	8	1.20%	0.013	0.86	0.84	0.85	0.83	0.85	0.09	0.05	0.12	0.06
	A31	-	75	2.79	-	-	-	-	1,000	547	2.00	-		0.0144	0.0047	0.0166	0.0238	0.0069	0.0144	0.0047	0.0166	0.0238	0.0069	4869.20	4869.10	334.04	8	1.20%	0.013	0.86	0.84	0.85	0.83	0.85	0.09	0.05	0.12	0.06
	A30.5	24	75	2.79	5,022	-	-	-	1,000	28	2.00	-		0.0144	0.0047	0.0166	0.0238	0.0069	0.0144	0.0047	0.0166	0.0238	0.0069	4869.20	4869.10	334.04	8	1.20%	0.013	0.86	0.84	0.85	0.83	0.85	0.09	0.05	0.12	0.06
	A30	10	75	2.79	2,093	-	-	-	1,000	28	2.00	-		0.0144	0.0047	0.0166	0.0238	0.0069	0.0144	0.0047	0.0166	0.0238	0.0069	4869.20	4869.10	334.04	8	1.20%	0.013	0.86	0.84	0.85	0.83	0.85	0.09	0.05	0.12	0.06
	A29	75	2.79	-	-	-	-	-	1,000	518	2.00	-	Clearview	0.0274	0.0411	0.0450	0.0587	0.0587	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	1.99%	0.013	1.11	0.85	0.74	0.68	0.69	0.39	0.47	0.51	0.50
	A28	75	2.79	-	-	-	-	-	1,000	594	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.79%	0.013	1.52	1.27	1.15	1.10	1.11	0.33	0.40	0.43	0.42					
	A27	13	75	2.79	2,720	-	-	-	1,000	372	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	1.61%	0.013	0.99	0.74	0.62	0.58	0.58	0.41	0.50	0.54	0.53					
	A26	75	2.79	-	-	-	-	-	1,000	358	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43					
	A25	75	2.79	-	-	-	-	-	1,000	372	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	1.61%	0.013	0.99	0.74	0.62	0.58	0.58	0.41	0.50	0.54	0.53					
	A24	75	2.79	-	-	-	-	-	1,000	358	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43					
	A23	28	75	2.79	5,859	-	-	-	1,000	372	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43					
	A22	75	2.79	-	-	-	-	-	1,000	518	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43					
	A21	75	2.79	-	-	-	-	-	1,000	594	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43					
	A20	75	2.79	-	-	-	-	-	1,000	372	2.00	-		0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43					
	A19	75	2.79	-	-	-	-	-	1,000	358	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A18	75	2.79	-	-	-	-	-	1,000	372	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A17	75	2.79	-	-	-	-	-	1,000	518	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A16	26	75	2.79	5,441	-	-	-	1,000	594	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A15	11	75	2.79	2,302	-	-	-	1,000	372	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A14	15	75	2.79	3,139	-	-	-	1,000	518	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A13	16	75	2.79	3,348	-	-	-	1,000	594	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A12	16	75	2.79	3,348	-	-	-	1,000	372	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A11	4	75	2.79	837	-	-	-	1,000	518	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A10	42	75	2.79	8,789	3.44	-	-	1,000	594	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A09	75	2.79	-	-	-	-	-	1,000	372	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A08	75	2.79	-	-	-	-	-	1,000	518	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A07	75	2.79	-	-	-	-	-	1,000	594	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A06	75	2.79	-	-	-	-	-	1,000	372	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A05	31	75	2.79	6,487	-	-	-	1,000	518	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08	0.33	0.40	0.44	0.43						
	A04	75	2.79	-	-	-	-	-	1,000	594	2.00	-	0.0258	0.3697	0.3001	0.4289	0.4119	4861.90	4861.80	361.24	8	3.69%	0.013	1.50	1.24	1.13	1.07	1.08										





- Legend
- Parcels
  - Highway
  - County Boundary

1: 6,703



Notes

**AGENDA ITEM 10C**

**Reaffirm the May 16, 2020  
Declaration of Local Disaster Emergency**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** May 4, 2020

**ITEM NUMBER:** 10C

**SUBJECT:** Reaffirm the May 16, 2020 Declaration of Local Disaster Emergency and Provide Direction on Safer-at-Home Provisions

**ACTION PROPOSED:** Consider Reaffirming the Declaration of Disaster and Safer-at-Home Provisions

**ATTACHMENTS:** 1. Resolution 2020-07  
2. Governor's Executive Order 2020-044

**PRESENTED BY:** Matt LeCerf, Town Manager

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### **AGENDA ITEM DESCRIPTION:**

On May 16, 2020, the Town Council adopted Resolution 2020-07 which is attached with this communication. The resolution declared a local disaster emergency. The declaration was in response to the COVID-19 pandemic that we continue to experience today. Indications are though that we are trending in a positive direction, and based on scientific data, that we have begun to flatten the curve.

As part of all of our efforts in the community and throughout the State the Governor has issued Executive Order 2020-044, changing our previous state of Stay-at-Home to now a Safer-at-Home provision. This order was followed by Public Health order 20-28 which establishes and creates rules, regulations and guidelines pertaining to the Safer-at-Home Order. While we continue to make positive progress, it is still important that we be cognizant of the potential to take steps backward if we don't follow good common-sense practices to prevent a spike or change in this positive direction.

Some of the provisions in the Safer-at-Home Order include social distancing, but are also allowing for the beginning of reopening of businesses provided they meet certain standards and safety precautions. We have received a number of inquiries about what guidelines businesses are to follow regarding reopening of their businesses. The purpose of this general agenda item is twofold which will help us in our communication efforts:

1. To reaffirm the 2020-07 resolution declaring a local disaster emergency, and;
2. To generally follow the guidelines outlined in the Executive Order 2020-044 and the subsequent Public Health Order 20-28 for our community.

These guidelines provide the best path for us to most quickly return to a normal and regular condition where we can begin further support of our business in the community and enjoy the company of our neighbors.

**LEGAL ADVICE:**

Not Applicable

**FINANCIAL ADVICE:**

Not Applicable

**RECOMMENDED ACTION:** Staff recommends to reaffirm resolution 2020-07 and support the guidelines of executive order 2020-044.

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to support reaffirming Resolution 2020-07 and the guidelines of Executive Order 2020-044.

**For Denial:**

I move to deny support reaffirming Resolution 2020-07 and guidelines of Executive Order 2020-044.

**Reviewed and Approved for Presentation:**

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Town Manager

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO. 2020-07**

**RESOLUTION DECLARING A LOCAL DISASTER EMERGENCY**

**WHEREAS**, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with the authority to administer the affairs of the Town; and

**WHEREAS**, the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, *et seq.* (the “Act”), and Article VIII of Chapter 2 of the Johnstown Municipal Code (“Code”) authorize the Mayor (or the Mayor acting in concert with the Town Council) to declare a local disaster emergency; and

**WHEREAS**, C.R.S. § 31-15-401(1)(b) authorizes the governing body of a municipality to do all acts and make all regulations necessary or expedient for the promotion of health or the suppression of disease; and

**WHEREAS**, on January 30, 2020, the World Health Organization declared the worldwide outbreak of COVID-19 a public health emergency of international concern, and, on January 31, 2020, the United States Department of Health and Human Services declared the virus a public health emergency; and

**WHEREAS**, on March 10, 2020, the Governor of Colorado declared a State of Emergency for the State of Colorado due to COVID-19; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic; and

**WHEREAS**, the cost and magnitude of responding to and recovery from the impact of COVID-19 may be far in excess of the Town’s available resources; and

**WHEREAS**, a declaration of a local disaster emergency will assist and permit access to local emergency funds and federal and state assistance and allow for adjustments to policies, procedures and ordinances; and

**WHEREAS**, Town Council finds that the declaration of a local disaster emergency is in the best interests of the Town of Johnstown and of the public peace, health, safety and welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

**Section 1. Declaration of Local Disaster Emergency.** Based on the recitals set forth above, the Town Council hereby declares a local disaster emergency in the Town of Johnstown, State of Colorado.

**Section 2. Effect.** The effect of the declaration of local disaster emergency shall be to activate the response and recovery aspects of any and all applicable local and inter-jurisdictional disaster emergency plans and to authorize the furnishing of aid and assistance under such plans, and for the Mayor, the Town Manager and other appropriate Town staff to exercise the functions and be vested with such authority as set forth in the Act and the Code.

**Section 3. Electronic Participation.** For the duration of the local disaster emergency, if a Town Council member reasonably determines that his or her personal attendance at a Town Council meeting would not be prudent, such Council member may listen by telephone, video conferencing or other electronic means to any Council meeting (“Electronic Participation”). Such Council member listening via telephone or other electronic means shall be deemed present for purposes of determining a quorum. The Town Council member shall not participate nor vote in a quasi-judicial public hearing; however, the Council member may maintain the electronic connection and monitor and listen to the hearing. The Town Council member shall participate and vote in legislative matters. Electronic Participation is also available to a Town Council member during an executive session. The Town Council may discontinue the use of Electronic Participation by one or more members during a meeting where the participation results in delays or interference in the meeting process; e.g., where the telephone connection or connection by other electronic means is repeatedly lost, the quality of the connection is unduly noisy or otherwise problematic to the conduct of the meeting or the listening member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance. Whenever a Town Council member is allowed to participate in a Town Council meeting by telephone or other electronic means pursuant to this Rule, the following additional rules shall be observed:

- a. All members of the Town Council must be able to hear one another or otherwise communicate with one another, and be able to hear all discussion and testimony in a manner designed to provide maximum notice and participation;
- b. Members of the public present at the meeting location must be able hear all discussion, testimony and votes;
- c. All votes held at the meeting shall be conducted by roll call; and
- d. To the extent possible, full and timely notice shall be given to the public advising that one or more members of the Town Council may participate in the meeting electronically

**Section 4. TABOR.** During the local disaster emergency, the Town Manager shall have access to the Town’s emergency funds mandated by the Taxpayer’s Bill of Rights (TABOR) as set forth in Article X, Section 20(5) of the Colorado Constitution. Funds utilized pursuant to this resolution shall be replenished no later than the conclusion of the fiscal year following the end of the local disaster emergency.

**Section 5. Notification.** The Town Manager or his designee shall forthwith:

- a. Publish and disseminate information to the public, including, but not necessarily limited to, on the Town's website; and
- b. File a copy of this Declaration of Local Disaster Emergency with the Colorado Division of Emergency Management.

**Section 6. Duration.** This declaration of local disaster emergency shall remain in effect until the Town Council or Town Manager declares in writing that the threat of danger has passed or that the disaster emergency conditions no longer exist.

PASSED, SIGNED, APPROVED, AND ADOPTED this \_\_\_\_ day of March, 2020.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor





## D 2020 044

### EXECUTIVE ORDER

#### Safer at Home

Pursuant to the authority vested in the Governor of the State of Colorado and, in particular, pursuant to Article IV, Section 2 of the Colorado Constitution and the relevant portions of the Colorado Disaster Emergency Act, C.R.S. § 24-33.5-701, *et seq.*, I, Jared Polis, Governor of the State of Colorado, hereby issue this Executive Order continuing stay at home requirements for vulnerable individuals and permitting the limited reopening of postsecondary institutions and certain business operations due to the presence of coronavirus disease 2019 (COVID-19) in Colorado.

#### **I. Background and Purpose**

On March 5, 2020, the Colorado Department of Public Health and Environment's (CDPHE) public health laboratory confirmed the first presumptive positive COVID-19 test result in Colorado. Since then, the number of confirmed cases has continued to climb, and there is community spread throughout the State. I verbally declared a disaster emergency on March 10, 2020, and on March 11, 2020, I issued the corresponding Executive Order D 2020 003, as amended by Executive Orders D 2020 018 and D 2020 032. On March 25, 2020, I requested that the President of the United States declare a Major Disaster for the State of Colorado, pursuant to the Stafford Act. The President approved that request on March 28, 2020.

My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources.

The virus that causes COVID-19 is spread primarily by close contact between people and through respiratory droplets when an infected person coughs or sneezes. It can also be spread through contact with contaminated surfaces. Public health experts recommend we practice social distancing, or maintaining a physical distance of six (6) feet or more from other people, as a way to slow the spread of COVID-19. Evidence shows that social distancing and the Stay at Home Executive Order D 2020 017, as amended, have helped to slow the increase of cases and rate of infection.

While we have seen indications that our efforts to "flatten the curve" are working, transmission of the virus continues to threaten Coloradans' way of life and livelihoods. As we take steps to return Coloradans to work, we must continue to practice social distancing at a high level and implement other measures, such as limiting our social interactions, taking extra precautions for Vulnerable Individuals and wearing non-medical masks while in public, to



facilitate a step towards reopening the economy while protecting public health. While this is a first step toward resuming our daily lives, the State is monitoring the spread of COVID-19 and additional precautions may be necessary in the future.

This Executive Order implements a number of measures that will allow many Coloradans to return to work while we maintain a sustainable level of social distancing. In particular, this Executive Order continues Social Distancing Requirements for all Coloradans and stay at home requirements for Vulnerable Individuals, permits the limited reopening of postsecondary institutions and certain business operations, and orders the Executive Director of CDPHE to amend or issue public health orders (PHO) consistent with the directives in this Executive Order.

## **II. Directives**

- A. Pursuant to Executive Order D 2020 041, normal in-person instruction at all P-12 schools in Colorado will be suspended until the scheduled end of the 2019-2020 regular school year. P-12 schools and school districts may use school buildings for providing services to students, educators, and families, including but not limited to: in-person small group instruction; staff professional development; food service; access to internet, devices, or instructional materials; special education services; or mental health supports. P-12 schools and school districts intending to provide these services must work in coordination with their local public health agency and must observe Social Distancing Requirements pursuant to applicable public health orders.
- B. I direct the Executive Director of the Colorado Department of Higher Education (CDHE) to work with CDPHE to identify those programs and courses at postsecondary institutions that cannot be taught remotely and require limited in-person instruction.
- C. All Vulnerable Individuals should Stay at Home, except when necessary to provide, support, perform, or operate Necessary Activities, Minimum Basic Operations, Critical Government Functions, Necessary Travel, or Critical Businesses, provided that Vulnerable Individuals cannot be compelled to perform in-person work for any business or government function, including a Critical Business or Critical Government Function.
- D. For purposes of this Executive Order, Vulnerable Individuals means:
  - 1. Individuals who are 65 years and older;
  - 2. Individuals with chronic lung disease or moderate to severe asthma;
  - 3. Individuals who have serious heart conditions;
  - 4. Individuals who are immunocompromised;

5. Pregnant women; and
  6. Individuals determined to be high risk by a licensed healthcare provider.
- E. I direct all individuals who are sick or who test positive for COVID-19 to Stay at Home except as necessary to care for themselves or seek medical care.
- F. I direct employers to accommodate workers with childcare responsibilities and workers who live in the same household as a Vulnerable Person to the greatest extent possible by promoting telecommuting or other remote work options, flexible schedules, or other means.
- G. I direct the Colorado Civil Rights Division within the Department of Regulatory Agencies and CDPHE to provide guidance to prevent discrimination in the workplace related to COVID-19. Employers must provide reasonable accommodation and are prohibited from discriminating against employees who are showing symptoms of COVID-19 or who have been in contact with a known positive case of COVID-19.
- H. I direct the Executive Director of CDPHE to issue a new or amended PHO consistent with the directives in this Executive Order. The new or amended PHO must:
1. Advise Coloradans to wear non-medical cloth face coverings that cover the nose and mouth whenever in public;
  2. Order Coloradans to limit:
    - i. Social interactions to the greatest extent possible except as required to conduct Necessary Activities; and
    - ii. Essential Travel to within their county of residence or employment as much as possible and recreational travel to no further than ten (10) miles from their residence.
  3. Prohibit public gatherings of ten (10) persons or more in both public spaces and private commercial venues.
  4. Strongly encourage all Critical Businesses, Critical Government Functions, Non-Critical Retail, and Non-Critical Commercial Businesses to allow workers to telecommute whenever possible.
  5. Require all Critical Businesses, Critical Government Functions, Non-Critical Retail, and Non-Critical Commercial Businesses to make work accommodations for Vulnerable Individuals, who remain subject to Stay at Home requirements. Employers must also be encouraged to make

accommodations for individuals living in the same household as a Vulnerable Individual, and for individuals with childcare responsibilities.

6. Permit all Critical Businesses and Critical Government Functions to continue to operate with mandatory Social Distancing Requirements and cleaning protocols.
  7. Permit Non-Critical Retail to operate and offer goods through delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery, and, beginning May 1, 2020, permit Non-Critical Retail to allow customers onto their premises in a manner allowing for strict compliance with mandatory Social Distancing Requirements similar to the requirements for Critical Retail.
  8. Permit Places of Public Accommodation to continue to offer food and beverage using delivery service, window service, walk-up service, drive-through service, drive-up service, curbside delivery or any manner set forth in an existing Executive Order or PHO and in accordance with mandatory Social Distancing Requirements.
  9. Issue appropriate guidelines for classes and programs identified in consultation with the Executive Director of CDHE pursuant to paragraph II.B., above.
  10. Beginning on May 4, 2020, permit Non-Critical Commercial Businesses to allow up to fifty percent (50%) of their employees to conduct in-person work that takes place outside a private residence in accordance with Mandatory Social Distancing Requirements and protocols.
  11. Ensure that Critical Businesses, Critical Government Functions, Non-Critical Commercial Businesses, and Non-Critical Retail with over fifty (50) employees in any one location follow protocols established by PHO, including but not limited to symptom screening and temperature check stations, closure of common areas, cleaning protocols, and Mandatory Social Distancing Requirements and protocols.
- I. Any new or amended PHO issued pursuant to this Executive Order must identify or develop:
1. Mandatory Social Distancing Requirements and protocols to be implemented by all employers, identifying any specific protocols for certain employers based on the nature of their work, including proper face and hand coverings to be used;

2. An amended definition of Vulnerable Individual consistent with this Executive Order; and
  3. Operations requirements for Non-Critical Retail and Critical Retail.
- J. I direct the Executive Director of the Colorado Department of Labor and Employment (CDLE) to promulgate and issue temporary emergency rules to amend the Colorado Health Emergency Leave with Pay Rules found in 7 CCR 1103-10 to cover individuals returning to work under this Executive Order and to extend paid sick leave coverage to up to two-thirds pay for fourteen (14) days if a worker has tested positive for COVID-19, has COVID-like symptoms, or has been directed to quarantine or isolation due to COVID-19 concerns.
- K. I direct the Executive Director of CDLE to promulgate and issue temporary emergency rules pursuant to C.R.S. § 8-73-108(4)(c) and guidance to ensure that workers, and particularly workers who are Vulnerable Individuals, are not in danger of losing unemployment insurance eligibility for refusal to return to COVID-19-related demonstrable, unsafe working conditions.
- L. Terms in this Executive Order, including Stay at Home, Necessary Activities, Minimum Basic Operations, Critical Government Functions, Necessary Travel, Critical Businesses, Places of Public Accommodation, Critical Retail, Social Distancing Requirements, and Vulnerable Individuals have the meaning as defined in PHO 20-24 and PHO 20-22, as amended, or any PHO issued pursuant to this Executive Order.
- M. Any county wishing to apply for a local variance from part or all of this Executive Order must submit a written application to CDPHE certifying that the county has low case counts of COVID-19 cases or can document fourteen (14) consecutive days of decline in COVID-19 cases reported in the county. The application must include a written COVID-19 suppression plan approved by the appropriate local public health authority, all hospitals within the county (unless no hospitals are located in the county), and a majority of the county commissioners, or, in the case of the City and County of Denver, the mayor of Denver, or, in the case of the City and County of Broomfield, the city council.
- N. CDPHE shall review and approve a county-specific COVID-19 suppression plan that meets CDPHE's public health standards. CDPHE shall not provide COVID-19 preparedness grant funding to any county that implements measures that are less restrictive than the standards contained in this Executive Order if the county did not first obtain approval from CDPHE to adopt such less restrictive standards.
- O. Nothing in this Executive Order prevents a county or municipality from adopting more protective standards than those contained in this Executive Order as

necessary, including but not limited to stay at home orders, mask wearing requirements in public, or additional protective measures. If adopted, such measures shall take effect in the county or municipality without the need for further approval by the State.

1. Except as modified by this Executive Order, all Executive Orders issued due to COVID-19 that are currently in effect shall remain in full force and effect as originally promulgated.

### **III. Duration**

This Executive Order shall expire thirty (30) days from April 27, 2020, unless extended further by Executive Order.



GIVEN under my hand and  
the Executive Seal of the  
State of Colorado, this  
twenty sixth day of April,  
2020

A handwritten signature in blue ink that reads "Jared Polis".

Jared Polis  
Governor

**AGENDA ITEM 10D**

**Discussion Regarding the  
Small Business Micro-Grant Program**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** May 4, 2020

**ITEM NUMBER:** 10D

**SUBJECT:** Discussion Regarding Small Business Micro-Grant Program

**ACTION PROPOSED:** Reaffirming the Micro-Grant Program Guidelines

**ATTACHMENTS:** 1. April 20, 2020 Micro Grant Establishment and Guidelines

**PRESENTED BY:** Matt LeCerf, Town Manager

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### **AGENDA ITEM DESCRIPTION:**

On April 20, 2020, Town Council established the Small Business Micro-Grant Program. The program was a response to the COVID-19 pandemic and overall has been received with sincere appreciation from the local businesses. Staff has been receiving applications from applicants that meet the guidelines and requirements that were established by the Town Council.

To date, we have received 17 completed applications and have an additional 7 which are in the submittal process, but have yet to complete a full application. One of the 17 applications received has been denied, due to the fact that it did not meet all of the grant eligibility requirements (no Town Business License). Some of the more basic, but key components of the grant program as adopted in the policy includes two specific eligibility requirements as shown below:

- Have an active Town Business License as of March 10, 2020; and
- Have at least one physical location within the Town, with no more than three total locations;

The grant program was released to the public after approval by Council, and in a few instances, what has resulted is a discussion and dialogue from businesses outside of the Town limits (in the County only). One specific entity believes there should be an entitlement and access to Town tax dollars for businesses that are outside of the Town limits. While the dialogue has been predominantly respectful, there has been a clear philosophical gap in the opinions.

Town Council members requested the opportunity to discuss this program and the requirements at this meeting to provide Staff with clarity. If Council provides changes in the micro-grant program, that expands its reach and applicability to outside of the Town, Council should be aware that, this may impact the ability of our businesses in Town to take advantage of this opportunity. Also, as we continue to move forward to a new sense of normalcy, Council may want to use these funds, if they are still available for future support of our businesses in Town. Allocating dollars for businesses outside of Town may again, impact the needs of our in-town businesses to receive funding. It would be the recommendation of the Town Manager that we keep the program in its current condition to eliminate any potential ambiguity and subjectivity in the review process; limiting the program to in-town businesses only.

**LEGAL ADVICE:**

The Town Attorney will be present to provide guidance if necessary, on the topic.

**FINANCIAL ADVICE:**

Changing the program's criteria would have an impact on funds available for the Town of Johnstown businesses.

**RECOMMENDED ACTION:**

Staff recommends that Grant Program remain constant with its original intent and should not be expanded outside the Town limits

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**SUGGESTED MOTIONS:****For Approval:**

I move to support the current guidelines and policy of the Town of Johnstown Small Business Micro-Grant Program.

**For Modification:**

I move to modify the guidelines and policy of the Town of Johnstown Small Business Micro-Grant Program, providing for [insert new conditions and parameters here].

**Reviewed and Approved for Presentation:**

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Town Manager



**Information from the  
April 20, 2020 Council Packet**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** April 20, 2020

**ITEM NUMBER:** 10J

**SUBJECT:** COVID-19 Small Business Micro Grant Program

**ACTION PROPOSED:** Consider Resolution 2020-11 Adopting the Town of Johnstown Small Business Micro Grant Program

**ATTACHMENTS:** 1. Resolution 2020-11

**PRESENTED BY:** Matt LeCerf, Town Manager

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### **AGENDA ITEM DESCRIPTION:**

On April 15, 2020, Council provided Staff with direction to completed documentation and a policy to establish the Small Business Micro Grant Program. The Program is in response to the COVID-19 pandemic and is focused on assisting our local small businesses during this event. The program will provide grants of up to \$10,000 provided the requirements are met and necessary document provides evidence that a grant is warranted.

An application similar to the examples provided to you on April 15, 2020 has been completed as well and will be part of the application review and evaluation process. Based on the resolution, \$500,000 will be made available immediately to mitigate the economic impact of the pandemic, with a top cap of funding set at \$1MM.

### **LEGAL ADVICE:**

The resolution was drafted and the policy reviewed by the Town Attorney.

### **FINANCIAL ADVICE:**

This may result in \$1,000,000 in additional expenditures based on the applications received.

**RECOMMENDED ACTION:** Approve the resolution to establish the program as presented.

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### **SUGGESTED MOTIONS: FOR THE SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT**

#### **For Approval:**

I move to approve Resolution 2020-11, Adopting the Town of Johnstown Small Business Micro Grant Program as presented.

#### **For Denial:**

I move that we deny Resolution 2020-11, Adopting the Town of Johnstown Small Business Micro Grant Program as presented.

**Reviewed and Approved for Presentation:**

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Town Manager

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO. 2020-11**

**RESOLUTION ADOPTING THE TOWN OF JOHNSTOWN  
SMALL BUSINESS MICRO GRANT PROGRAM**

**WHEREAS**, the Town of Johnstown, Colorado (the “Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with the authority to administer the affairs of the Town; and

**WHEREAS**, on January 30, 2020, the World Health Organization declared the worldwide outbreak of COVID-19 a public health emergency of international concern, and, on January 31, 2020, the United States Department of Health and Human Services declared the virus a public health emergency; and

**WHEREAS**, on March 10, 2020, Governor Polis declared a state of emergency for the State of Colorado due to COVID-19; and

**WHEREAS**, on March 11, 2020, the World Health Organization declared the outbreak of COVID-19 a pandemic; and

**WHEREAS**, on March 13, 2020, President Trump issued a proclamation that the COVID-19 outbreak in the United States constitutes a national emergency; and

**WHEREAS**, on March 16, 2020, by Resolution 2020-07, the Town Council declared a local disaster emergency; and

**WHEREAS**, on March 25, 2020, Governor Polis issued Executive Order D 2020-017 wherein, upon subsequent amendment, he ordered the majority of Coloradoans to stay at home due to the presence of COVID-19 until April 26, 2020; and

**WHEREAS**, consistent with the Governor’s order, on March 25, 2020, Jill Hunsaker Ryan, Executive Director of the Colorado Department of Public Health and Environment, issued Amended Public Health Order 20-24, providing that all individuals currently living with the State of Colorado must stay at home whenever possible, except for persons operating Critical Businesses or maintaining Critical Government Functions, as defined therein; and

**WHEREAS**, the Town’s small business community, or a good portion thereof, has been significantly impacted and financially disadvantaged by the orders to stay at home and the requirement to cease, or severely restrict, operations because, despite the cessation or limitation of business operations and the resultant complete loss or significant decrease in revenues, the small businesses continue to incur expenses; and

**WHEREAS**, the Town values and appreciates the small business community and recognizes that it is a core facet of the Town; and

**WHEREAS**, the Town's small business community provides substantial public benefits to the Town in the form of, among others, commerce, taxes, fees, employment and sustainability, contributing to the generation of municipal revenue and the ability to provide municipal services; and

**WHEREAS**, the retention, success and longevity of the small business community is vital to the Town's interests, the Town's economic vitality and the Town's prosperity; and

**WHEREAS**, during a special meeting conducted on April 15, 2020, after hearing from Town staff and reviewing financial data, the Town Council directed the creation of a program to assist small businesses; and

**WHEREAS**, based on Town Council's direction, Town staff created the Town of Johnstown Small Business Micro Grant Program ("Program"), a summary of which is attached to this resolution as Exhibit A; and

**WHEREAS**, the Town Council finds, determines and declares that: (i) adoption of the Program will promote the public interest and protect and preserve the economic vitality of the Town; (ii) the public benefits to be derived from the Program are significant and substantial and justify the expenditure of the public funds necessary to establish, fund and administer the Program; and (iii) the Town will receive adequate consideration for its financial contribution to the Program in the form of the preservation of the public benefits described herein; and

**WHEREAS**, the Town Council finds, determines, and declares that the Program will provide a public benefit and further a public purpose within the meaning of Article 11, Section 2 of the Colorado Constitution; and

**WHEREAS**, the Town Council finds, determines, and declares that it has the power to adopt the Program based on the authority granted to home rule municipalities by Article XX of the Colorado Constitution and the powers contained in the Johnstown Home Rule Charter; and

**WHEREAS**, the Town Council finds, determines and declares that adoption of the Program is in the best interests of the citizens of the Town and advances and preserves the public peace, health, safety and welfare.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

**Section 1.** Adoption of Program. Based on the reasons set forth in the recitals above, the Town Council hereby adopts the Town of Johnstown Small Business Micro Grant Program ("Program"), a summary of which is attached to this resolution as Exhibit A.

**Section 2.** Funding. The Town Council hereby authorizes and appropriates the expenditures of up to \$1,000,000.00 from the General Fund to fund the Program on the condition that, after the expenditure of \$500,000.00, the Town Manager shall report the status of the

Program to the Town Council, at which time the Town Council shall either authorize the expenditure of the remaining \$500,000.00, or any part thereof, or terminate funding.

**Section 3. Administration.** The Town Manager, or his designee, is hereby authorized to administer the Program and award grants based on factors that promote the public benefits and serve the municipal purposes set forth in this resolution.

**Section 4. Termination.** The Town Council or the Town Manager may terminate the Program at any time by publishing a notice of termination on the Town's website, [www.townofjohnstown.com](http://www.townofjohnstown.com).

**Section 5. Effective Date.** This resolution shall be effective upon the date of its adoption.

PASSED, SIGNED, APPROVED, AND ADOPTED this \_\_\_\_ day of April, 2020.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Gary Lebsack, Mayor

## **TOWN OF JOHNSTOWN SMALL BUSINESS MICRO GRANT PROGRAM**

### **Purpose:**

The Small Business Micro Grant Program (the “Program”) is designed to help small businesses in the Town of Johnstown (“Town”) during the COVID-19 pandemic.

### **Introduction:**

The Town recognizes and understands the value the small businesses bring to the community. To help support the small businesses, the Town created the Program to provide grants to help small businesses immediately offset some of the economic impacts arising from the pandemic.

The Program is open to small businesses physically located and operating within the Town’s boundaries, including locally-owned franchises. To be eligible for the Program, the business must have had 1-50 full-time employees on March 10, 2020, the date Governor Polis issued a statewide disaster declaration. Micro grants up to \$10,000 will be available for small businesses in the Town.

The Town will review applications submitted and funding will be received on a first-come, first-served basis. Grants will awarded in the sole discretion of the Town based on the submission of the required documentation, the responses provided in the application and any other factors the Town deems to be relevant. The Town may, but is not required to, provide a reason for the denial of an application or for the determination of the amount of the grant award. Submitting an application is not a guarantee of a grant award and the Town may terminate the Program at any time, for any reason, or when available funds are depleted.

### **Fund Availability:**

\$1,000,000 has been appropriated by the Town to fund the Program. After the expenditure of \$500,000, the Town Manager is required to report the status of the Program to the Town Council, at which time the Town Council may either authorize the expenditure of the remaining \$500,000, or any part thereof, or terminate funding. In the discretion of the Town, grants may be awarded in an amount up to, but not exceeding, \$10,000.

### **How To Apply:**

To apply, an applicant shall submit an application. Upon receipt of the application, the Town will contact the applicant to verify information and provide instructions on how to upload sensitive information.

### **Required Documents:**

An applicant shall submit the following documentation with the application:

- Complete grant application;

## **The Community That Cares**

- 2019 Tax Return/K-1 (or, if not filed, 2018 returns);
- 2019 Financial Statements (if not complete, 2018 statements may be substituted for the incomplete portion and if available);
- Verification of cash flow needs;
- Itemized budget for fund request; and
- Other information and documentation as may be requested by the Town subsequent to submission of the application.

#### **Eligibility Guidelines:**

To be eligible, an applicant must:

- Have an active Town Business License as of March 10, 2020;
- Have at least one physical location within the Town, with no more than three total locations;
- Have had 1-50 employees on March 10, 2020;
- Not be, or not have been, engaged in any illegal activity;
- Show that historical profits would have been sufficient for the business to stay in operation and that COVID-19 outbreak has had a negative impact; and
- Be registered and in good standing with Colorado Secretary of State.

#### **Review Process:**

Applications will be reviewed first by Town staff for completeness and eligibility. Following a determination of eligibility, applications will be reviewed and scored by a Review Committee of up to three (3) individuals selected by the Town. The Review Committee will make recommendations regarding grant awards to the Town Manager, who will consider the Review Committee's recommendation and make the final determination to approve, defer or deny a Micro Grant award. The Town Manager may be a member of the Review Committee. The review period may take up to three (3) business days following submittal of a complete application. Incomplete applications will not be considered.

#### **Disclosure Information:**

The Town of Johnstown understands and supports the public's right to access public records. Information submitted through the Program is a public record and may be subject to disclosure under the Colorado Open Records Act, C.R.S. §§24-72-200.1, *et seq.*



***INFORMATIONAL***

**AGREEMENT CONCERNING  
WELD COUNTY ROAD 50 STREET IMPROVEMENTS  
BETWEEN TOWN OF JOHNSTOWN AND  
CONNELL RESOURCES, INC.**

This Agreement Concerning Weld County Road 50 Street Improvements ("Agreement") is by and between Town of Johnstown, a Colorado home rule municipal corporation ("Owner" or the "Town"), and Connell Resources, Inc., a Colorado Corporation ("Contractor"). Owner and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**PART 1      WORK**

- 1.1 The Work of this Contract pursuant to the Contract Documents consists of street improvements to Weld County Road 50 and Larimer County Road 14 from the Interstate 25 Frontage Road East to County Line Road as indicated on the drawings and as specified herein, and shall be known as the **WELD COUNTY ROAD 50 STREET IMPROVEMENTS PROJECT**. The Work may be referred to in the Contract Documents as the "project" or the "Project."

**PART 2      TERMS OF AGREEMENT**

- 2.1 Capitalized terms used herein, if not otherwise defined in this Agreement, shall have meaning set forth in the General Conditions.

**PART 3      ENGINEER**

- 3.1 The Town shall be the Engineer, and any reference to Engineer in the Contract Documents shall be deemed to mean the Town.

**PART 4      CONTRACT TIMES**

**4.1      TIME IS OF THE ESSENCE**

All time limits for Milestones, if any, Substantial Completion, and final completion of the Work are of the essence of the Contract.

**4.2      DATES FOR SUBSTANTIAL COMPLETION AND FINAL COMPLETION**

- A. The Contractor shall achieve Substantial Completion by September 30, 2020, and complete the Work by October 30, 2020.

#### 4.3 LIQUIDATED DAMAGES

- A. Contractor understands and agrees that time is an essential condition of the Contract. Contractor further understands and agrees that, if the Work is not substantially completed by the time specified in paragraph 4.2 above, plus any extensions allowed in accordance with the General Conditions, the delay will cause Owner to suffer substantial losses and damages which cannot be measured, including without limitation, additional engineering, legal, accounting and administrative costs, reduced public confidence, adverse public relations, additional administrative time, loss, or risk of loss, of grant funds, and other costs and expenses. Contractor recognizes that the delays, expense and complications involved in proving in a legal or mediation proceeding the actual loss suffered by Owner if the Work is not completed on time are significant. Accordingly, instead of requiring proof of such losses and damages, Owner and Contractor agree that, as liquidated damages for the delay, but not as a penalty, Contractor shall pay Owner One Thousand Dollars (\$1,000.00) for each day, or part thereof, that expires after the time specified in paragraph 4.2 for Substantial Completion, until the Work is substantially complete ("Liquidated Damages").
- B. After Substantial Completion, if Contractor shall neglect, refuse, or fail to complete the remaining Work by the time specified in paragraph 4.2 above, plus any extensions allowed in accordance with the General Conditions, Owner and Contractor agree that as Liquidated Damages for delay, but not as a penalty, Contractor shall pay Owner One Thousand dollars (\$1,000.00) for each day, or part thereof, that expires after the time specified in paragraph 4.2 of this Contract for final completion, until the Work is complete.
- C. Liquidated Damages owed by Contractor to Owner may, at Owner's election, be deducted from any amounts owed to Contractor. In the event no funds are due Contractor at a time when Contractor becomes liable to Owner for Liquidated Damages, then Contractor agrees to pay all accrued Liquidated Damages to Owner on the first day and on the fifteenth day of each month. Unless otherwise set forth in a written amendment to this Agreement, by permitting Contractor to continue and finish the Work, or any part thereof, after the deadline for completion of the Work, when Contractor is liable to Owner for Liquidated Damages, Owner shall not be deemed to be waiving, and shall be reserving, its right to recover Liquidated Damages.
- D. The aggregate liability of Contractor to pay Liquidated Damages shall not exceed an amount equal to fifty percent (50%) of the Contract Price. This Part 4 shall not be construed to limit Contractor's other obligations or liabilities arising under or in connection with this Contract.
- E. In the event that this Part 4 conflicts with any other provisions regarding Liquidated Damages within the Contract Documents, this Part 4 shall control.

#### PART 5 CONTRACT PRICE AND APPROPRIATION

- 5.1 Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amount of: Two Million Sixty-Five Thousand Six Hundred Ninety-Six Dollars and 00/100 Cents (\$2,065,696.00) ("Contract Price").
- 5.2 Pursuant to § 24-91-103.6, C.R.S., as may be amended from time to time, Owner has appropriated the money necessary to fund the Work. No Change Order or other form of directive shall be issued by Owner requiring additional compensable work to be

performed, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the original contract price, unless the Owner provides written assurance to Contractor that lawful appropriations have been made to cover the cost of the additional work or unless such additional work is covered under the remedy-granting provisions of this Agreement.

## PART 6 PAYMENT PROCEDURES

### 6.1 SUBMITTAL AND PROCESSING OF PAYMENTS

- A. Contractor shall submit Applications for Payment in accordance with Article 15 of the General Conditions. Applications for Payment will be processed by Owner as provided for in the General Conditions.

### 6.2 PROGRESS PAYMENT AND RETAINAGE

A. Owner shall make progress payments on account of the Contract Price on the basis of Contractor's Applications for Payment as provided in Paragraphs 6.2.A.1 and 6.2.A.2 below and as otherwise provided in the Contract Documents. The Applications for Payment shall be measured by and based upon the completion of the portions of the Work contained in the Bid tabs, which shall functionally constitute the Schedule of Values. The Applications for Payment shall be submitted on the fifteenth (15<sup>th</sup>) business day of a given month.

1. Progress payments will be made in an amount equal to ninety five percent (95%) of Work completed, with the balance being retainage, but, in each case, less the aggregate of payments previously made and less such amounts as Owner may determine to withhold, in accordance with the General Conditions.
2. Amounts withheld pursuant to this Paragraph 6.2 shall be held by Owner until final payment becomes due as described in this Agreement and in the General Conditions. Notwithstanding the foregoing, amounts withheld pursuant to a verified statement of claim filed in accordance with § 38-26-107, C.R.S., for which a release is not provided to Owner prior to the time on which final payment becomes due, shall be distributed thereafter as provided in §§ 24-91-101 *et seq.*, C.R.S., and § 38-26-107, C.R.S.
3. If Owner determines that satisfactory and substantial reasons exist to reduce the retainage after Substantial Completion, written approval from the surety shall be required before retainage is reduced below five percent (5%). Consent of the surety, signed by an agent, must be accompanied by a certified copy of such agent's authority to act for the surety.

### 6.3 FINAL PAYMENT

- A. Upon final completion and acceptance of the Work in accordance with Article 15 of the General Conditions, Owner shall pay the remainder of the Contract Price.
- B. Notwithstanding any other provision of the Contract Documents, the Owner may withhold funds if required to do so pursuant to the Colorado Public Works Act, §§38-26-101, *et seq.*, C.R.S.

## PART 7 INTEREST

7.1 All undisputed moneys not paid when due shall bear statutory interest rate.

## PART 8 CONTRACTOR'S REPRESENTATIONS

8.1 In order to induce Owner to enter into this Agreement, Contractor makes the following representations:

- A. Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Bidding Documents and has given Owner written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered and the written resolution thereof by Owner is acceptable to Contractor.
- B. Contractor has visited the Site and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work and is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, and performance of the Work.
- C. Contractor has carefully studied all: (1) reports of explorations and tests of subsurface conditions at or contiguous to the Site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site (except Underground Facilities) which have been identified in the Geotechnical Report; and (2) reports and drawings of a Hazardous Environmental Condition, if any, at the Site which has been identified in the Geotechnical Report.
- D. Contractor has obtained and carefully studied (or assumes responsibility for having done so) all additional or supplementary examinations, investigations, explorations, tests, studies, and data concerning conditions (surface, subsurface, and Underground Facilities) at or contiguous to the Site which may affect cost, progress, or performance of the Work or which relate to any aspect of the means, methods, techniques, sequences, and procedures of construction to be employed by Contractor, including applying the specific means, methods, techniques, sequences, phasing, and procedures of construction, if any, expressly required by the Contract Documents to be employed by Contractor, and safety precautions and programs incident thereto.
- E. Contractor agrees to perform all of the Work described in the Contract Documents and comply with the terms therein for the lump sum price given in the Bid.
- F. Contractor does not consider that any further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract Documents.
- G. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work.
- H. Contractor has correlated the information known to Contractor, information and observations obtained from visits to the Site, reports and drawings identified in the

Contract Documents, and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.

- I. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
- J. Contractor warrants and guarantees to Owner and Engineer that all Work will be in accordance with the Contract Documents and will not be defective within two (2) years of the issuance of the Certificate of Final Completion.

## PART 9 CONTRACT DOCUMENTS

### 9.1 CONTENTS

- A. The Contract Documents shall include the following:
  - 1. This Agreement;
  - 2. The General Conditions;
  - 3. The Performance Bond;
  - 4. The Payment Bond;
  - 5. The Certificates of Insurance
  - 6. The following documents to be executed as part of the closeout or the Work:
    - a. Notice of Final Payment;
    - b. Evidence of Payment and Waiver of Claims;
    - c. Certificate of Substantial Completion; and
    - d. Certificate of Final Completion;
  - 7. The Geotechnical Report prepared by Cesare, Inc. dated January 30, 2020;
  - 8. The Drawings, consisting of a cover sheet with sheets numbered 1 through 27, inclusive, with each sheet bearing the following general title: WCR 50 STREET IMPROVEMENTS, prepared by Galloway & Company dated March 3, 2020;
  - 9. The E-mails from Marco Carani dated March 18, 2020 and March 23, 2020;
  - 10. The Exhibits to this Agreement, which include:
    - a. The Contractor's Bid;
    - b. The Notice of Award;
    - c. The Notice to Proceed; and
    - d. The Contractor's Progress Schedule dated April 20, 2020;
  - 11. The following which may be delivered or issued on or after the Effective Date of the Agreement and are not attached hereto:
    - a. Written Amendments;
    - b. Work Change Directives; and
    - c. Change Orders.
- B. There are no Contract Documents other than those listed above in this Article 9.
- C. The Parties shall endeavor to read this Agreement and the General Conditions harmoniously. To the extent there is a conflict between this Agreement and the General Conditions, this Agreement shall control.
- D. The Contract Documents may only be amended, modified or supplemented as provided in Article 11 of the General Conditions.

## PART 10 BONDS AND INSURANCE

- 10.1 Bonds. Contractor shall furnish a performance bond and payment bond in an amount equal to the contract price as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents. These bonds shall remain in effect for a period of two years after Owner's issuance of the Certificate of Final Completion. All bonds shall be executed by such sureties as (i) are licensed to conduct business in the State of Colorado and (ii) are named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published in Circular 570, amended, by the Audit Staff, Bureau of Account, U.S. Treasury Department. All bonds signed by an agent must be accompanied by a certified copy of the authority to act. If the surety on any bond furnished by Contractor is declared bankrupt or becomes insolvent, or its right to do business in Colorado is terminated, or it ceases to meet the requirements of clauses (i) and (ii) of this section, Contractor shall, within five (5) days thereafter, substitute another bond and surety, both of which shall be acceptable to the Owner.
- 10.2 Insurance. Contractor shall not commence work under the Contract until it has obtained all insurance required by the Contract Documents and such insurance has been approved by Owner. Contractor shall not allow any subcontractor to commence work on this project until all similar insurance required of the subcontractor has been obtained and approved. For the duration of this Contract, Contractor must maintain the insurance coverage required in this Paragraph.

Contractor agrees to procure and maintain, at its own cost, the following policy or policies of insurance. Contractor shall procure and maintain, and shall cause each subcontractor of Contractor to procure and maintain (or shall insure the activity of Contractor's subcontractors in Contractor's own policy with respect to), the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the Owner. All coverages shall be continuously maintained from the date of commencement of the Work. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Contractor shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to the Contract Documents by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations, or types.

- A. Workers' Compensation insurance to cover obligations imposed by the Workers' Compensation Act of Colorado and any other applicable laws for any employee engaged in the performance of Work under this contract, and Employers' Liability insurance with minimum limits of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each accident, FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - policy limit, and FIVE HUNDRED THOUSAND DOLLARS (\$500,000) disease - each employee;
- B. Comprehensive General Liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and TWO MILLION

DOLLARS (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products, and completed operations. The policy shall include coverage for explosion, collapse, and underground hazards. The policy shall contain a severability of interests provision;

- C. Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000), with respect to each of Contractor's owned, hired and/or non-owned vehicles assigned to or used in performance of the services. The policy shall contain a severability of interests provision;
- D. Umbrella or Excess Liability Insurance with minimum limits of FIVE MILLION DOLLARS (\$5,000,000). This policy shall become primary (drop down) in the event the primary liability policy limits are impaired or exhausted. The policy shall be written on an occurrence form and shall be following form of the primary; and

The policies required above, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Owner, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, its officers, or its employees, shall be excess and not contributory insurance to that provided by Contractor. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. Contractor shall be solely responsible for any deductible losses under each of the policies required above.

Certificates of insurance shall be completed by Contractor's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Owner. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Owner. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

Failure on the part of Contractor to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Owner may immediately terminate the Contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by Contractor to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to Contractor from the Owner.



## 11.1 TAXES

- A. The Work is tax exempt and the Town will provide a tax exempt certificate in a timely manner to order materials.

## 11.2 SUCCESSORS AND ASSIGNS

- A. Owner and Contractor each binds itself, its partners, successors, assigns, and legal representatives to the other party hereto, its partners, successors, assigns, and legal representatives in respect to all covenants, agreements, and obligations contained in the Contract Documents.

## 11.3 SEVERABILITY

- A. Any provision or part of the Contract Documents held to be void or unenforceable under any Law or Regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

## 11.4 NOTICES

- A. For the purpose of giving notice as provided in the General Conditions, the following addresses shall be used:

To Owner:

Town of Johnstown  
Attn: Town Manager  
450 S. Parish Avenue  
Johnstown, CO 80534  
Email: [mlecerf@townofjohnstown.com](mailto:mlecerf@townofjohnstown.com)

To Contractor:

Connell Resources, Inc.  
Attn: John M Warren, President  
7785 Highland Meadows Parkway, Suite 100  
Fort Collins, CO 80528  
Email: [jwarren@connellresources.com](mailto:jwarren@connellresources.com)

## 11.5 GOVERNING LAW AND VENUE

- A. This Agreement and the Contract Documents shall be construed according to the laws of the State of Colorado. Venue for any action arising under the Agreement shall be in Weld County, Colorado.

## 11.6 ILLEGAL ALIENS

- A. Contractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services or enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services. Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the Department of Labor and Employment program. Contractor shall not use either the e-verify program or the Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to: (i) notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and (ii) terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph (i) of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to the authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes. If Contractor violates any of the aforementioned requirements, Owner may terminate the Agreement for breach of contract. If the Agreement is so terminated, Contractor shall be liable for actual and consequential damages to Owner.

#### 11.7 GOVERNMENTAL IMMUNITY ACT

The Parties agree that the Owner is relying on, and does not waive or intend to waive by any provision of the Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, 10 C.R.S., as from time to time amended, or otherwise available to the Owner, its officers, or its employees.

#### 11.9 EFFECTIVE DATE

This Agreement will be effective on 4-29 -, 2020.

Janessa Ekberg  
NOTARY PUBLIC  
STATE OF COLORADO  
NOTARY ID 20194017780  
MY COMMISSION EXPIRES May 09 2023

**INTERGOVERNMENTAL AGREEMENT BETWEEN TOWN OF JOHNSTOWN  
AND TOWN OF MEAD CONCERNING USE OF THE JOHNSTOWN  
POLICE DEPARTMENT FIREARM TRAINING RANGE**

**THIS INTERGOVERNMENTAL AGREEMENT** ("Agreement") is made and entered by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation ("Johnstown"), and the Town of Mead, Colorado, a Colorado municipal corporation ("Mead") (singularly, "Party" and, collectively, the "Parties").

**WHEREAS**, Johnstown owns and operates a firing range that is located adjacent to the Central Wastewater Treatment Plant and that is used by the Johnstown Police Department ("Johnstown PD") for training purposes, known as the Johnstown Police Department Firearm Training Range ("Firing Range"); and

**WHEREAS**, the Mead Police Department ("Mead PD") desires to use the Firing Range for its training purposes; and

**WHEREAS**, Johnstown desires to allow the Mead PD to use the Firing Range based on the terms and conditions set forth in this Agreement; and

**WHEREAS**, to effectuate the foregoing, Johnstown and Mead desire to enter into the Agreement to set forth the responsibilities, obligations, powers and rights of each with respect to the Mead PD's use of the Firing Range.

**NOW, THEREFORE**, in consideration of recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the Parties agree as follows:

1. Mead Police Department Use. The Mead PD shall hereby be entitled to use the Firing Range upon compliance with the terms and conditions of this Agreement. The Mead PD shall not, under any circumstance, allow any third parties to use the Firing Range and shall not allow persons who are not properly certified to perform law enforcement services to use the Firing Range.

2. Scheduling. The Mead PD may use the Firing Range at any time that it is available and not otherwise being used by Johnstown or by other previously authorized users. To use the Firing Range, the Mead PD shall contact the Johnstown PD at least forty-eight (48) hours in advance and may only thereafter use the Firing Range upon verification that the Firing Range is available.

3. Equipment and Supplies. The Mead PD shall bring its own equipment and supplies to the Firing Range and shall not use Johnstown's equipment and supplies. If the Mead PD desires to store equipment or supplies at the Firing Range, Mead shall obtain prior approval from Johnstown and shall only store the equipment or supplies in a location acceptable to Johnstown.

4. Term. The term of this Agreement shall be for one (1) year from the date of mutual

execution hereof by the Parties (the "Effective Date") and shall automatically renew for additional one (1) year terms unless otherwise terminated as provided herein.

5. Termination. This Agreement may be terminated by either Party, with or without cause, by providing ten (10) days' advance written notice to the other Party. Mead shall return any keys and other such items to Johnstown on or before the date of the termination. If the Mead PD is storing equipment or supplies at the Firing Range, such equipment and supplies shall be removed on or before the date of the termination.

6. Duty to Repair or Replace. Mead shall be solely responsible for all acts and omissions related to the Mead PD's use of the Firing Range. Mead shall promptly repair any and all damage caused to the Firing Range arising from its actions or omissions or, as appropriate, shall promptly replace all damaged items. Repairs and replacements shall be subject to Johnstown's approval. If Mead does not repair or replace items, or if Johnstown does not approve of the repairs or replacements, Johnstown may repair the damage or replace the items and provide an invoice to Mead for the cost of the repair or replacement, which invoice may contain an administrative fee of up to ten percent (10%) of the actual cost. Mead shall pay the invoice within thirty (30) days of receipt.

7. Legal Proceedings and Liability. Neither party shall be deemed to assume any responsibility or liability for the acts or omissions of the other Party, its officers, agents and employees. Each Party shall defend itself, its officers, agents and employees in any action, of any sort, brought by any person or entity against that Party, its officers, agents and employees, arising out of or related to the Party's use of the Firing Range and/or to performance of this Agreement, including, but not limited to, those involving a claim of injury or damages or both. To the extent permitted by law, Mead shall indemnify and hold harmless Johnstown, its officers, agents and employees against any and all liability, loss, damage, demands, causes of action or expenses of whatever nature (including court costs and attorney's fees) arising out of, related to or caused by the Mead PD's use of the Firing Range and/or the performance of this Agreement, except for those acts solely attributable to Johnstown's negligence.

8. Insurance. Mead shall maintain sufficient insurance coverage or have sufficient financial ability to satisfy liabilities, losses, damages, demands, causes of action or expenses that may arise hereunder. All insurance policies shall include Johnstown as an additional insured. Mead shall maintain workers compensation insurance coverage, in the amounts required by law, for all employees present, in any capacity, at the Firing Range.

9. Parties Relationship and Mead Employees. The Parties intend that the relationship between them with respect to this Agreement is that of independent entities working in mutual cooperation. Johnstown shall not be responsible for Mead's employees or for any matters involving the employment relationship between Mead and its employees.

10. Notices.

(a) All notices to Mead shall be sent certified or registered mail, return receipt requested, and first class mail, postage prepaid, to: Town of Mead, Attn: Town Manager, 441 Third Street,

Mead, CO 80542 and Mead Police Department, Attn: Police Chief, 537 Main Street, P.O. Box 31, Mead, CO 80542.

(b) All notices to Johnstown shall be sent certified or registered mail, return receipt requested, and first class mail, postage prepaid, to: Town of Johnstown, Attn: Town Manager, 450 S. Parish Avenue, Johnstown, CO 80534 and Johnstown Police Department, Attn: Police Chief, 430 S. Parish Avenue, Johnstown, CO 80534.

Notwithstanding the foregoing, either Party may provide electronic mail ("e-mail") notice on the condition that the other Party acknowledges receipt of the e-mail and does not object to the delivery of notice by e-mail.

11. Law and Venue. The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of Colorado, and venue shall be in Weld County, Colorado, for any litigation.

12. Dispute Resolution. In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action. The cost of the mediation shall be split equally between the Parties.

13. Severability. If any portion of this Agreement shall be or becomes illegal, invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any court of competent jurisdiction should deem any covenant herein to be invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

14. Waiver. No consent or waiver, express or implied, by a Party to or of any breach or default by the other Party in the performance by the other Party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the non-defaulting Party. Failure on the part of any Party to complain of any act or failure to act or to declare any other Party in default, irrespective of how long such failure continues, shall not constitute a waiver by such Party of its rights hereunder.

15. Appropriation. Nothing in this Agreement shall be construed to require either Party to provide funding for any purpose under this Agreement that has not previously been budgeted. This Agreement is subject to adequate appropriation in any given fiscal year. Should adequate funds not be appropriated in any fiscal year, this Agreement shall terminate.

16. Assignment and Binding Effect. Mead shall not transfer or assign its interest in this Agreement. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than Johnstown and Mead.

17. Colorado Governmental Immunity Act. The Parties hereto understand and agree that they are relying on, and do not waive or intend to waive, by any provision of this Agreement,

any rights, protections, or privileges provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.*, as it is from time to time amended, or otherwise available to the Parties, their officers, or employees.

18. No Presumption. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is its own free and voluntary act and deed, without compulsion. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

19. Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

20. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.

21. Headings. The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

22. Counterpart and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. This Agreement may be executed and delivered by electronic signature by either of the Parties and the Parties hereby consent to the use of electronic signatures.

[Remainder of page intentionally left blank.]



IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as set forth below.

**TOWN OF JOHNSTOWN, COLORADO**


ATTEST:

By: 

Diana Seele, Town Clerk

By: 

Matthew S. LeCerf, Town Manager

Date of execution:   
April 23, 2020

**TOWN OF MEAD, COLORADO**

ATTEST:

By: 

Mary Stratt, Town Clerk, MMC

By: 

Helen Migchelbrink, Town Manager

Date of execution: April 21, 2020