

***TOWN COUNCIL***

***MEETING***

***PACKET***

**September 16, 2019**



## **Town Council**

**Agenda**  
**Monday, September 16, 2019**  
**Town Hall, Council Chambers**  
**450 So. Parish Avenue**  
**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. If you wish to speak at the Town Council meeting, please fill out a sign-up sheet and present it to the Town Clerk.*

**1) CALL TO ORDER**

- A) Pledge of Allegiance

**2) ROLL CALL**

**3) AGENDA APPROVAL**

**4) PRESENTATIONS**

- A) Ryan Schaefer, CEO, NAI Affinity Real Estate Partners Inc. – Update on economic development

**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 Meeting Minutes – September 4, 2019  
B) Payment of Bills  
C) August Financial Statements  
D) 2<sup>nd</sup> Reading Ordinance Number 2019-164 – Approving PUD Final Development Plan for Johnstown Village  
E) Amended Water and Sewer Service Agreement – Ridgeview Office Park  
F) Water and Sewer Service Agreement – Parkway Development, LLC  
G) Water and Sewer Service Agreement – VMJ Properties, LLC and Johnson-Taylor Family Properties, LLLP  
H) Resolution 2019-19 – Acknowledgement of Receipt of the FY 2020 Preliminary Budget

**7) TOWN MANAGER REPORT**

**8) TOWN ATTORNEY REPORT**

**9) OLD BUSINESS**

**10) NEW BUSINESS**

- A. **Public Hearing** – New Hotel and Restaurant License – Café Mexicali-Johnstown, LLC  
B. **Public Hearing** – New Beer and Wine License – B & M Nail Bar  
C. Third Amendment to Escrow Agreement by and among the Town of Johnstown, Johnstown Plaza, LLC Johnstown Plaza Metropolitan District and UMB Bank, N.A.

**11) EXECUTIVE SESSION**

**12) COUNCIL REPORTS AND COMMENTS**

**13) MAYOR’S COMMENTS**

**14) ADJOURN**

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**NOTICE OF ACCOMODATION**

If you need special assistance to participate in the meeting, please contact the Town Clerk at (970) 587-4664. Notification at least 72 hours prior to the meeting will enable the Town to make reasonable arrangements to ensure accessibility to the meeting.

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** September 16, 2019

**ITEM NUMBER:** 6A-H

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk

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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 Meeting Minutes – September 4, 2109
- B) Payment of Bills
- C) August Financial Statements
- D) 2<sup>nd</sup> Reading Ordinance Number 2019-164 – Approving PUD Final Development Plan for Johnstown Village
- E) \*Amended Water and Sewer Service Agreement – Ridgeview Office Park
- F) \*\*Water and Sewer Service Agreement – Parkway Development, LLC
- G) \*\*\*Water and Sewer Service Agreement VMJ Properties, LLC and Johnson-Taylor Family Properties, LLLP
- H) \*\*\*\*Resolution 2019-19 A Resolution of the Town of Johnstown, Acknowledging Receipt of FY 2020 Preliminary Budget

\*On May 21, 2007, Thompson Ranch Development Co. (“TRDC”) entered into a Water and Sewer Service Agreement with the Town for a seven building office park known as Ridgeview Office Park (“Ridgeview”), three of which have been constructed, wherein TRDC allocated 10.66 acre-feet of raw water for potable purposes from the 2534 Water Bank. The allocation was based upon the Town’s then-applicable unit requirement for office land use, a calculation that has since been replaced based on improved estimations of anticipated water demands. Based on the current standards, TRDC would have only been required to allocate 4.01 acre-feet of raw water for potable purposes. TRDC seeks a credit of 6.65 acre-feet and requests that such credit be deposited back into the potable water portion of the 2534 Water Bank for future use in the 2534 Development. The Town’s Water Engineer agrees with TRDC’s calculation. If agreeable to Town Council, the Town may execute the Amended Water and Sewer Service Agreement, providing a credit for potable water to the 2534 Water Bank without revising the available balance for non-potable water. The amended agreement supersedes and replaces the prior agreement with the Town’s most current form of water sewer service agreement.

\*\* In compliance with the Town’s water rights dedication ordinance, Parkway Development, LLC submitted to the Town a Water and Sewer Demand Analysis for their new office/commercial establishment. Based upon the analysis with the proposed construction and an updated analysis by the Town’s water engineer, the average in-building water demand is determined to be 0.87 acre feet per year. The landscaping (raw water) irrigation demand is determined to be 1.20 acre feet per year. The total water requirements for this project is 2.07 acre feet per year. Water credits for both water types have been purchased and will come from the Gerrard Family Limited Partnership LLLP and Thompson Ranch Development Company who previously dedicated water rights into a water bank under a prior agreement with the Town. The WSSA was drafted by the Town’s Water Attorney, Pete Ampe.

\*\*\* In compliance with the Town’s water rights dedication ordinance, VMJ Properties, LLC, and Johnson-Taylor Family Properties, LLLP are providing an updated WSSA. This is due to their desire to sell 5.75 shares to Platte Land & Water, LLC and to tie up some loose ends on water that was not properly dedicated in the past to the Candlelight Theater and Panilolo Property. The document also recognizes and reinforces other water dedications provided in the past to RV Boatel and Loveland Auto Auction (BS Holdings). VMJ Properties, LLC, and Johnson-Taylor Family Properties, LLLP originally started with 13 Home Supply Shares. Based on this agreement and after sales, dedication and reinforcement of previous dedications, they will have a balance of 34.04 AF of water remaining.

\*\*\*\*To be in compliance with CRS 29-1-105, the Town Council must receive a preliminary budget for the upcoming fiscal year not later than October 15 of each year. Resolution 2019-19 acknowledges the preliminary budget for 2020 was presented to the Town Council at a work session on September 9, 2020.

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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**

The Town Council of the Town of Johnstown met on Wednesday, September 4, 2019 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Lebsack led the Pledge of Allegiance.

#### Roll Call:

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

Also present: Avi Rocklin, Town Attorney, Matt LeCerf, Town Manager, Marco Carani, Public Works Director, Mitzi McCoy, Finance Director, Kim Meyers, Planning and Development Director and Brian Phillips, Police Chief

#### Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Lemasters to approve the Agenda as submitted. Motion carried with a unanimous vote.

#### Consent Agenda

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

- August 19, 2019 Council Meeting Minutes
- Assignment of Non-Residential Real Property Lease Agreement (Old Library Building)
- First Amendment to Non-Residential Real Property Lease Agreement (Old Library Building)

Motion carried with a unanimous vote.

#### Old Business

##### A. Continued Public Hearing – Final PUD Development Plan – Johnstown Village

Councilmember Berg made a motion seconded by Councilmember Mellon to re-open the Public Hearing concerning the Johnstown Village Final PUD Development Plan. Motion carried with a unanimous vote.

This item was continued from August 19, 2019, to provide additional time to Planning Staff to review a newly-submitted document. The outstanding conditions on the Final Development Plan, included the need to update portions of the plan, per Staff direction. Specific language related to design and architectural standards was reviewed and revised per Staff direction, minor housekeeping items have been addressed, and a sheet of architectural elevations has been added to better clarify the intent of the developer and home builder to provide high-quality housing to the Johnstown community. The Final Development Plan is substantially consistent with the Johnstown Comprehensive Plan, the approved Massey 141 outline development plan, and the approved Johnstown Village Preliminary Development Plan. The Final Development Plan has been reviewed by Town staff and have been found to be in substantial compliance and conformance with Town standards, specifications, and codes.

Having no public comment Mayor Lebsack closed the public hearing at 7:10 p.m. Councilmember Lemasters made a motion seconded by Councilmember Molinar Jr. to approve the Johnstown Village PUD Final Development Plan based upon evidence presented at the public hearing. Motion carried with a unanimous vote.

B. Public Hearing – First Reading – Ordinance Number 2019-164, Approving P.U.D. Final Development Plan for Johnstown Village Located in the Northwest Quarter of Section 7, Township 4 North, Range 67 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, Consisting of Approximately 139.36 Acres. This ordinance memorializes Council approval of the Johnstown Village PUD Final Development Plan.

Mayor Lebsack opened the Public Hearing at 7:11 p.m. and having no public comment closed the hearing at 7:14 p.m.

Councilmember Lemasters made a motion seconded by Councilmember Mellon to adopt Ordinance Number 2019-164 Approving P.U.D. Final Development Plan for Johnstown Village Located in the Northwest Quarter of Section 7, Township 4 North, Range 67 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, Consisting of Approximately 139.36 Acres. Motion carried with a unanimous vote.

#### New Business

##### A. Johnstown Village Final Plat – Filing #1

1) Resolution 2019-18 Approving the Final Plat for Johnstown Village Filing No. 1 – This resolution memorializes Town Council's approval. Councilmember Berg made a motion seconded by Councilmember Young to approve Resolution 2019-18, Approving the Final Plat for Johnstown Village Filing No. 1. Motion carried with a unanimous vote.

2) Subdivision Development and Improvement Agreement – This document outlines the obligations of the developer for planned public and private improvements within the subdivision. Councilmember Mellon made a motion seconded by Councilmember Molinar Jr. to approve the Subdivision Development and Improvement Agreement for Town of Johnstown (Johnstown Village Filing No. 1) subject to the Town receiving an approved Exhibit C, Schedule of Public Improvements.

3) Water and Sewer Service Agreement – This agreement dedicates water for Phase 1A. This agreement also voids Phase 1 B plat if water for this phase is not dedicated within a 3 year period. Also, no water for Tracts M, N, O & P have been dedicated for the project. Councilmember Berg made a motion seconded by Councilmember Young to approve the Water and Sewer Service Agreement for Johnstown Village Filing No. 1 for Phases 1A and 1B only. Motion carried with a unanimous vote.



B. First Amendment to Intergovernmental Agreement between the Town of Johnstown and the Town of Berthoud Concerning the Town of Johnstown's Growth Management Area – The Towns of Johnstown and Berthoud have a Growth Management Area, Intergovernmental Agreement in place. The purpose of this IGA is to identify and outline the future growth areas of the respective Towns. A condition of the IGA is that any changes of the GMA boundaries must be approved by the governing bodies of each municipality. The amendment provides for Berthoud to annex without approval by Johnstown, property to both the west and south. Similarly, Johnstown can annex without Berthoud's approval when annexing property to both the east and north. Councilmember Tallent made a motion seconded by Councilmember Berg to approve the First Amendment to the Intergovernmental Agreement by and between the Town of Johnstown and the Town of Berthoud concerning the Town of Johnstown and the Town of Berthoud concerning the Town of Johnstown's Growth Management Area. Motion carried with a unanimous vote.

C. Second Amendment to the Intergovernmental Agreement between the Town of Johnstown and the Town of Berthoud Concerning Wastewater Treatment Facility and Service Within Berthoud's 208 Service Plan – The IGA amendment provides for the inclusion of a piece of property that is approximately 400 acres located within ½ mile from Berthoud's Regional WWTP. The property owner is interested in annexing into Johnstown. The amendment will allow Johnstown to connect this property when it develops to the Berthoud Regional WWTP. Councilmember Berg made a motion seconded by Councilmember Lemasters to approve the Second Amendment to the Intergovernmental Agreement between the Town of Johnstown and Town of Berthoud Concerning Wastewater Treatment Facility and Service within Berthoud's 208 Service Plan. Motion carried with a unanimous vote.

#### Executive Session

Councilmember Mellon made a motion seconded by Councilmember Young to recess into Executive Session at 7:36 p.m. to receive legal advice from the Town attorney and special counsel pursuant to C.R.S. 24-6-402(4)(b) Regarding the Johnstown Plaza development.

Mayor Lebsack called the meeting back to order at 7:50 p.m.

There being no further business to come before Council the meeting adjourned at 8:04 p.m.

Mayor

Town Clerk

## **Payment of Bills**

Town of Johnstown  
List of Bills - August 12, 2019 to September 8, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
24 Hour Sign Language Services	Professional services	ADM	207.50
2534 Endeavor	Refund developers deposit	ADM	6,552.00
2534 Northwest Development Co.	Refund developers deposit	ADM	855.64
4990 Ronald Reagan LLC	Police Substation lease	PD	1,519.75
A & E Tire Inc	Tires for PD vehicle	PD	745.25
Ace Hardware	Parts & supplies	ALL	1,094.32
Ace of Blades	Lawn mowing	PW	104.00
Adair, Christina	Mileage reimbursement	PD	62.64
All Copy Products	Quarterly service	PD	403.59
Anchor Auto Glass	Repair	PD	35.00
AP Mountain States, LLC	Recreation Center	ADM	3,892,091.63
Aqua Backflow, Inc.	Mailings	PW	20.00
Arapahoe Rental	Paint	PW	75.48
Big Air Jumpers, Inc.	National Night Out	PD	903.50
Brandon Copeland	Professional services	ADM	282.84
Browns Hill Engineering & Cont, LLC	DAF upgrade & service work	PW	7,436.80
Business Services - Patient Accting	Lab Tests	PD	194.71
Canyon Systems	Parts	PW	1,068.59
Card Services	Training & supplies	ALL	6,072.83
Caselle, Inc	Software maintenance/support	ADM	1,502.00
CenturyLink	Telephone	ALL	347.89
CH Diagnostic & Consulting	Water testing	PW	420.00
Cirsa	Insurance deductible	ADM	1,413.70
Consolidated Home Supply Ditch	Trace Fees	ADM	300.00
DBC Irrigation Supply	Water supplies	PW	290.93
Don Gardner	Boot reimbursement	PW	50.00
DPC Industries Inc	Chemicals	PW	7,021.59
DXP Enterprises Inc	Supplies	PW	64.36
Facility Maintenance By Design	Repair	PW	380.00
Felsburg Holt & Ullevig	Billback - Engineering Services	ADM	5,774.55
First National Bank	Banking services	ADM	1,004.52
Gamez, Shirley Newsom	Mileage	ADM	65.00
Ground Engineering Consultants	Engineering services	ADM	2,502.50
Hach Company	Water supplies	PW	6,740.21
Home Depot Pro	Office supplies	ALL	238.07
Hulson Properties	Refund of Impact Fees	ADM	39,437.62
IMEG Corp	Engineering services	ADM	22,616.74
IMEG Corp	Billback - Engineering Services	ADM	8,852.72
Interstate Battery of the Rockies	Battery for PD	PD	125.95
J&D Creations	Embroidery	PW	59.70
J&S Contractors Supply Co.	Signs	PW	573.81
John Cutler & Associates	2019 Audit	ADM	2,500.00
John Deere Financial	Supplies	PW	174.98
Jones Excavating & Plumbing	Sewer repair	PW	700.00
Lazar, Michael	Municipal Court Judge	ADM	1,500.00
Lazy Dog, LLC	Refund of Developer Deposit	ADM	1,395.78

Town of Johnstown  
List of Bills - August 12, 2019 to September 8, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept</u>	<u>Amount</u>
Lee's Towing	Service	PD	131.00
Lennar Colorado LLC	Refund of surety	ADM	160,683.00
Life Stories Child & Family Advocacy	Professional services	PD	156.00
Linx	Repair	ADM	555.00
Loveland Barricade LLC	Pavement marking	PW	90,450.00
Milliken Johnstown Electric	Service & repair	PW	9,490.00
Mountain States Pipe & Supply	Supplies	PW	2,347.31
Municode	Annual codification	ADM	3,344.86
Napa Auto Parts, Inc	Supplies	ALL	283.23
National Night Out	Supplies	PD	503.00
Perkins+Will, Inc.	Professional services -Rec Ctr	ADM	9,446.07
Poudre Valley REA	Utilities	PW	13,175.62
ProCode Inc.	Inspection services	ADM	10,500.00
Purchase Power	Postage meter	ADM	150.00
Reif & Hunsaker PC	Billback - Legal services	ADM	147.00
Rhinehart Oil Co., Inc.	Fuel	ALL	7,316.90
RoadSafe Traffic Systems	Street paint	PW	583.75
Royal-T	Professional service	PW	578.00
Southwest Direct, Inc.	Utility bill printing & water report	ADM	4,989.92
Stanek Constructors	DAF improvements	PW	16,678.05
Strategic Behavioral Health North Denver	Refund of Developer Deposit	ADM	770.06
TDS	Internet	ALL	602.09
The Home Depot/GECF	Supplies	PW	177.96
Trugreen Chemlawn	Lawn service	PW	985.00
United Power	Street lights - electricity	PW	798.60
Various Police Officers	Per Diem - K9 Travel	PD	1,287.00
Various Residents	Community Center Deposit Refund	ADM	475.00
Various Residents	Utility Refund	ADM	1,195.00
Vector Disease Control	Mosquito spraying	PW	3,222.50
Veris Environmental, LLC	Supplies	PW	597.62
Verizon Wireless	Cell Phones	ALL	2,379.33
Waner Construction Company, Inc.	Hydrant Meter Deposit Refund	ADM	1,500.00
Weld County Dept of Public	Lab services	PW	2,525.00
Wesco	Repairs	PW	353.26
Windstream	Phone services	ALL	1,902.48
Xcel Energy	Utilities	PW	38,260.22
	Total		<u>4,414,318.52</u>

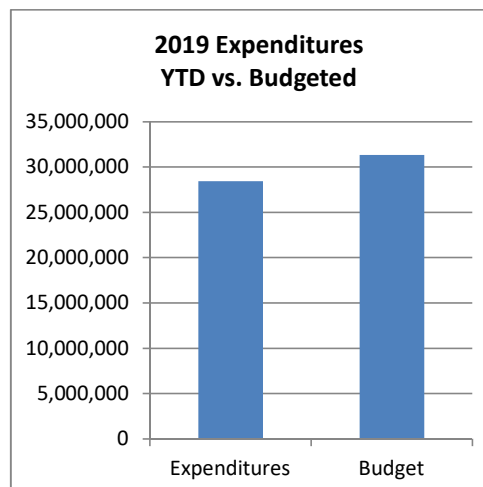
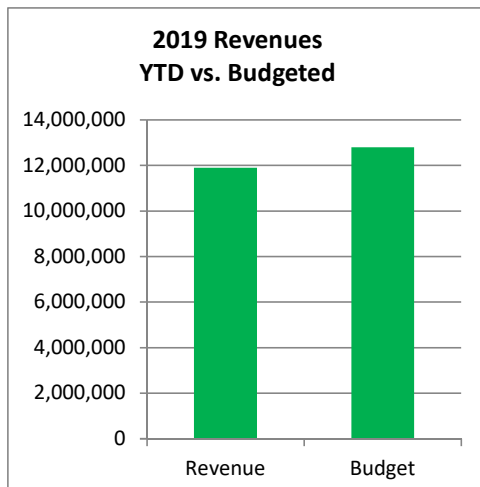
# **August Financial Statements**

Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - General Fund  
Period Ending August 31, 2019  
Unaudited

General Fund	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance	47,000,521	47,000,521	
<b><u>Revenues:</u></b>			
Taxes & Fees	9,805,919	10,722,500	91.5%
Licenses & Permits	379,599	499,500	76.0%
Charges for Services	515,928	681,600	75.7%
Fines & Forfeitures	152,119	143,600	105.9%
Intergovernmental	666,889	630,800	105.7%
Earnings on Investment	259,915	75,000	346.6%
Miscellaneous Revenue	122,604	53,000	231.3%
Total Operating Revenues	11,902,972	12,806,000	92.9%
<b><u>Expenditures:</u></b>			
Legislative	28,291	78,900	35.9%
Judicial	29,264	51,100	57.3%
Elections	15	19,300	0.1%
Administration	383,261	569,969	67.2%
Planning & Zoning	154,955	280,383	55.3%
Police	1,612,554	2,698,965	59.7%
Inspections	116,806	189,000	61.8%
Streets	1,021,581	1,577,032	64.8%
Cemetery	18,782	42,900	43.8%
Animal Control	22,809	93,400	24.4%
Senior Coordinator	49,907	76,400	65.3%
Parks	47,633	64,400	74.0%
Library	354,375	472,500	75.0%
Contingent	130,734	468,700	27.9%
Transfers Out	24,485,976	24,846,000	98.6%
Total Expenditures	28,456,942	31,528,949	90.3%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>(16,553,970)</b>	<b>(18,722,949)</b>	
<b>Ending Fund Balance*</b>	<b>30,446,551</b>	<b>28,277,572</b>	

\* - Unaudited

67% of the fiscal year has elapsed

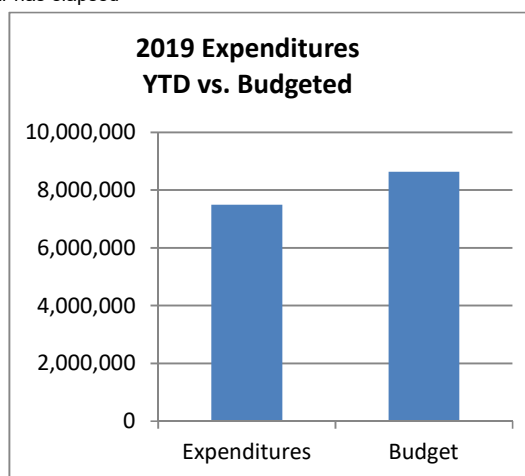
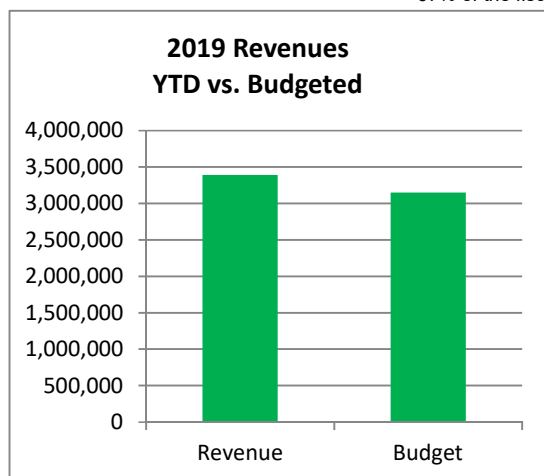


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Water Fund  
Period Ending August 31, 2019  
Unaudited

<b>Water Fund</b>	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Cash Balance	23,352,537	23,352,537	
<b><u>Revenues:</u></b>			
Charges for Services	1,900,658	2,745,000	69.2%
Total Operating Revenues	1,900,658	2,745,000	69.2%
<b><u>Expenses:</u></b>			
Administration	197,948	441,100	44.9%
Operations	1,215,642	2,343,800	51.9%
Capital Outlay	5,854,826	5,854,826	100.0%
Depreciation	225,872	-	
Transfers Out	-	-	
Total Operating Expenses	7,494,288	8,639,726	86.7%
Operating Income (Loss)	(5,593,630)	(5,894,726)	
<b><u>Non-Operating Revenues (Expenses)</u></b>			
Tap Fees	347,206	-	
Capital Investment Fees	432,495	-	
Misc. Revenues	452,693	305,000	148.4%
Interest Expense	257,016	100,000	257.0%
Total Non-Operating Revenues (Expenses)	1,489,410	405,000	367.8%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenses</b>	<b>(4,104,220)</b>	<b>(5,489,726)</b>	
<b>Ending Cash Balance*</b>	<b>19,248,316</b>	<b>17,862,811</b>	

\* - Unaudited

67% of the fiscal year has elapsed

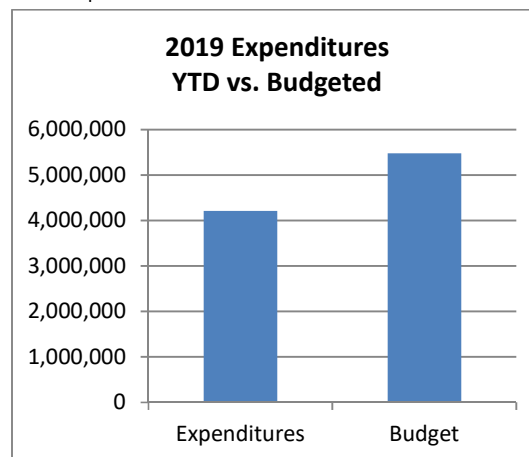
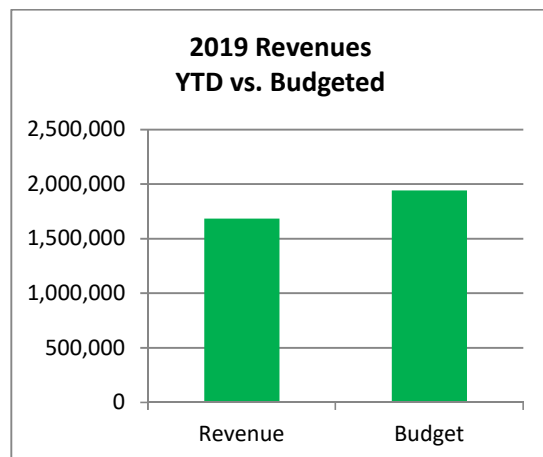


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Sewer Fund  
Period Ending August 31, 2019  
Unaudited

<b>Sewer Fund</b>	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Cash Balance	11,008,048	11,008,048	
<b><u>Revenues:</u></b>			
Charges for Services	1,344,298	1,880,000	71.5%
Miscellaneous Revenue	-	-	
Total Operating Revenues	1,344,298	1,880,000	71.5%
<b><u>Expenses:</u></b>			
Administration	295,320	291,000	101.5%
Operations	641,247	2,043,000	31.4%
Capital Outlay	3,145,174	3,145,174	100.0%
Depreciation	128,668	-	
Total Operating Expenses	4,210,409	5,479,174	76.8%
Operating Income (Loss)	(2,866,111)	(3,599,174)	
<b><u>Non-Operating Revenues (Expenses)</u></b>			
Capital Improvement Fees	279,350	-	
Misc. Revenues	13,591	12,500	108.7%
Interest Expense	46,128	50,000	92.3%
Total Non-Operating Revenues (Expenses)	339,069	62,500	542.5%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenses</b>	<b>(2,527,041)</b>	<b>(3,536,674)</b>	
<b>Ending Cash Balance*</b>	<b>8,481,006</b>	<b>7,471,374</b>	

\* - Unaudited

67% of the fiscal year has elapsed



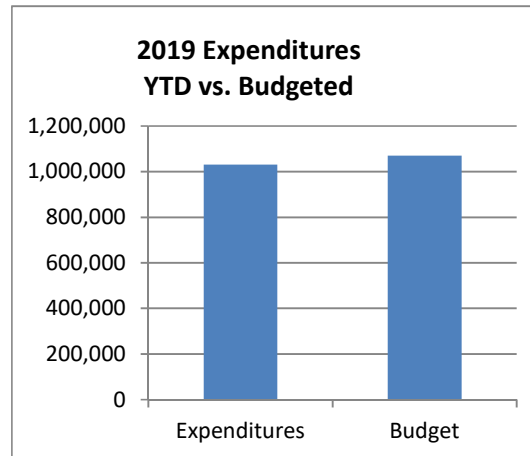
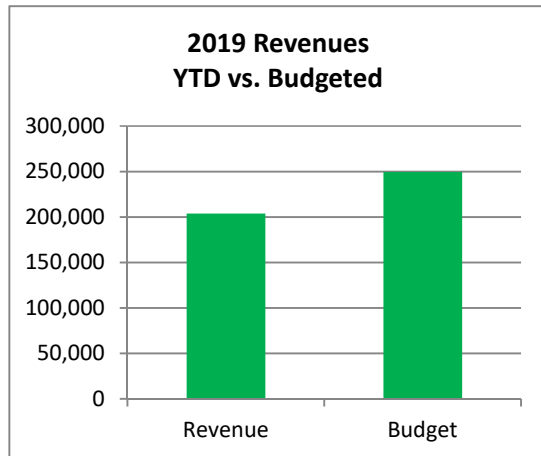


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Conservation Trust Fund  
Period Ending August 31, 2019  
Unaudited

	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
<b>Conservation Trust Fund</b>			
Beginning Fund Balance	2,652,161	2,652,161	
<b><u>Revenues:</u></b>			
Taxes & Fees	143,654	157,500	91.2%
Intergovernmental	51,650	72,000	71.7%
Earnings on Investment	8,105	15,000	54.0%
Miscellaneous	198	5,000	4.0%
Total Operating Revenues	203,607	249,500	81.6%
<b><u>Expenditures:</u></b>			
Operations	31,528	70,000	45.0%
Capital Outlay	1,000,000	1,000,000	100.0%
Total Expenditures	1,031,528	1,070,000	96.4%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>(827,922)</b>	<b>(820,500)</b>	
<b>Ending Fund Balance*</b>	<b>1,824,240</b>	<b>1,831,661</b>	

\* - Unaudited

67% of the fiscal year has elapsed

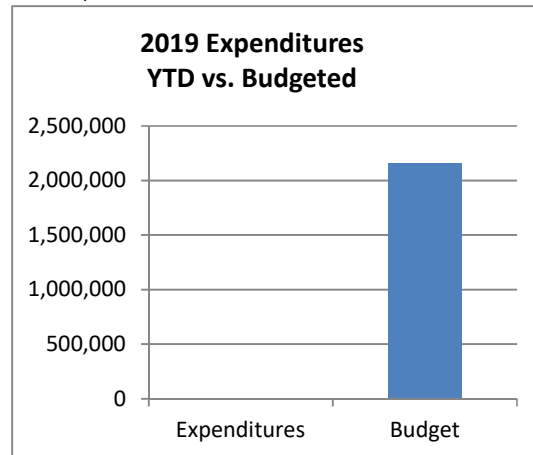
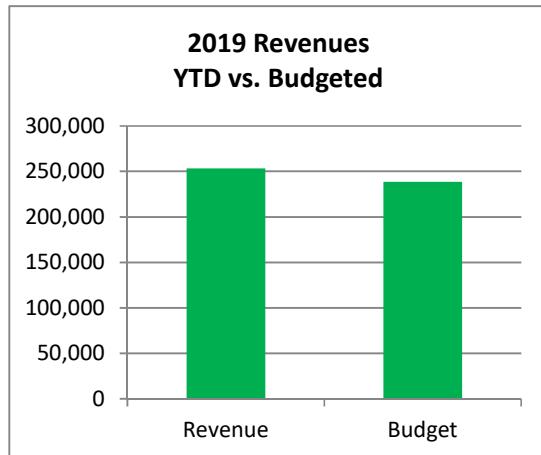


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Contingent Fund  
Period Ending August 31, 2019  
Unaudited

	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
<b>Contingent Fund</b>			
Beginning Fund Balance	1,964,383	1,964,383	
<b><u>Revenues:</u></b>			
Earnings on Investment	28,266	13,500	209.4%
Transfers In	225,000	225,000	100.0%
Total Operating Revenues	253,266	238,500	106.2%
<b><u>Expenditures:</u></b>			
Transfers Out	-	2,161,900	0.0%
Total Expenditures	-	2,161,900	0.0%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>253,266</b>	<b>(1,923,400)</b>	
<b>Ending Fund Balance*</b>	<b>2,217,649</b>	<b>40,983</b>	

\* - Unaudited

67% of the fiscal year has elapsed

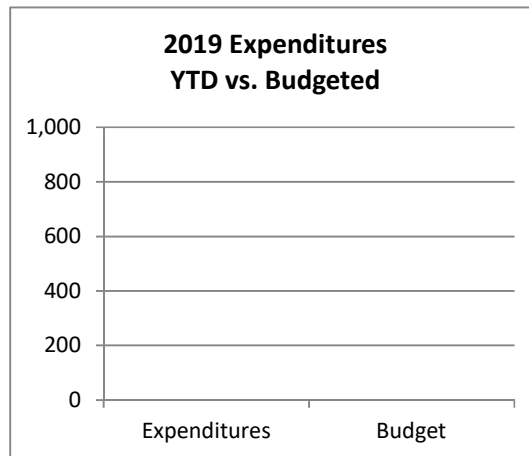
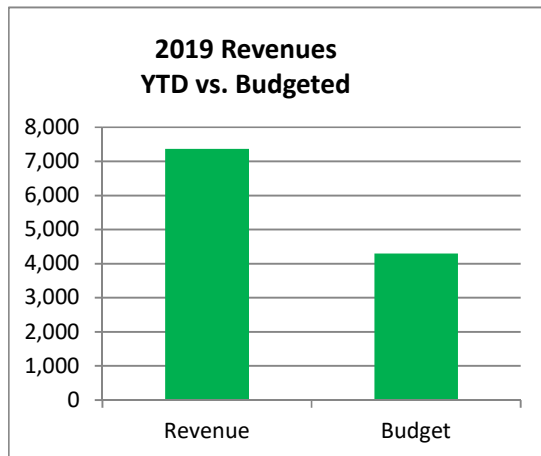


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Cemetery Fund  
Period Ending August 31, 2019  
Unaudited

Cemetery Fund	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance*	120,895	120,895	
<b><u>Revenues:</u></b>			
Miscellaneous Revenue	4,998	3,000	166.6%
Earnings on Investment	2,372	1,300	182.4%
Total Operating Revenues	7,369	4,300	171.4%
<b><u>Expenditures:</u></b>			
Operations & Maintenance	-	-	
Capital Outlay	-	-	
Transfers Out	-	-	
Total Expenditures	-	-	
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>7,369</b>	<b>4,300</b>	
<b>Ending Fund Balance*</b>	<b>128,264</b>	<b>125,195</b>	

\* - Unaudited

67% of the fiscal year has elapsed

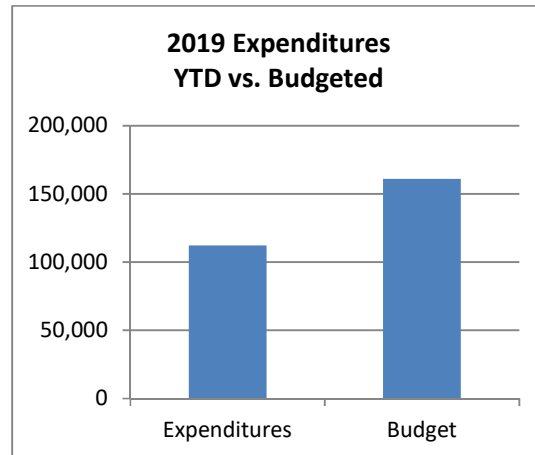
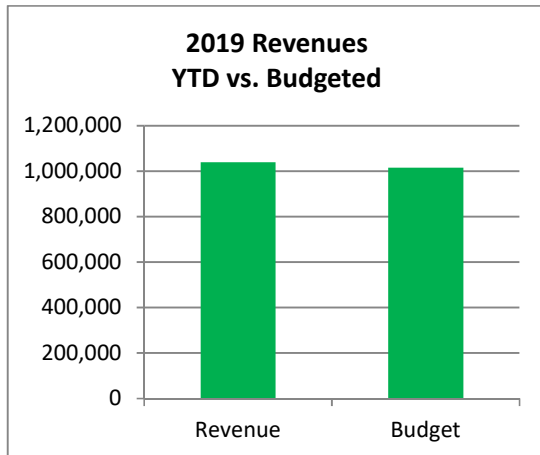


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Equipment Replacement Fund  
Period Ending August 31, 2019  
Unaudited

Equipment Replacement Fund	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance	3,554,886	3,554,886	
<b><u>Revenues:</u></b>			
Earnings on Investment	39,392	15,000	262.6%
Transfers In	1,000,000	1,000,000	100.0%
Total Operating Revenues	1,039,392	1,015,000	102.4%
<b><u>Expenditures:</u></b>			
Capital	112,248	161,000	69.7%
Total Expenditures	112,248	161,000	69.7%
<b>Excess (Deficiency) of Revenues Over Expenditures</b>	<b>927,144</b>	<b>854,000</b>	
<b>Ending Fund Balance*</b>	<b>4,482,031</b>	<b>4,408,886</b>	

\* - Unaudited

67% of the fiscal year has elapsed

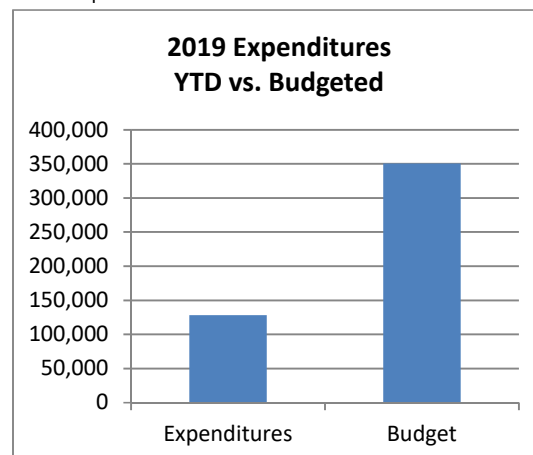
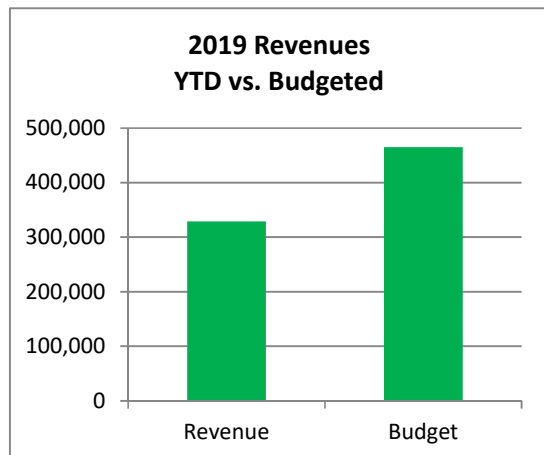


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Drainage Fund  
Period Ending August 31, 2019  
Unaudited

Drainage Fund	2019 Actuals Jan - Aug	2019 Adopted Budget	%
			Complete
Beginning Cash Balance	2,975,713	2,975,713	
<b><u>Revenues:</u></b>			
Charges for Services	294,357	430,000	68.5%
Total Operating Revenues	294,357	430,000	68.5%
<b><u>Expenses:</u></b>			
Administration	58,558	100,600	58.2%
Operations	69,819	249,900	27.9%
Capital Improvements	-	-	
Transfer Out	-	-	
Total Operating Expenses	128,377	350,500	36.6%
Operating Income (Loss)	165,979	79,500	
<b><u>Non-Operating Revenues (Expenses)</u></b>			
Capital Revenues	-	-	
Misc. Revenues	-	-	
Interest Expense	34,426	35,000	98.4%
Total Non-Operating Revenues (Expenses)	34,426	35,000	98.4%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenses</b>	<b>200,406</b>	<b>114,500</b>	
<b>Ending Cash Balance*</b>	<b>3,176,119</b>	<b>3,090,213</b>	

\* - Unaudited

67% of the fiscal year has elapsed

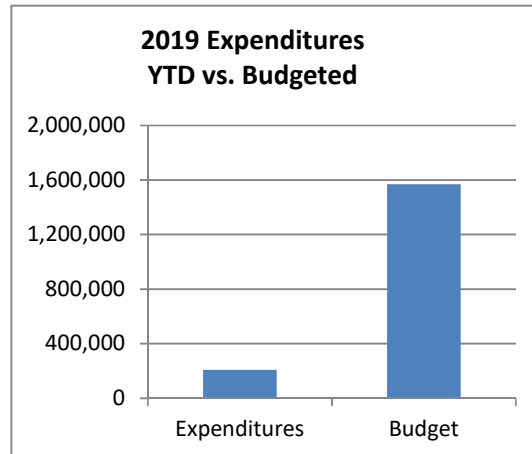
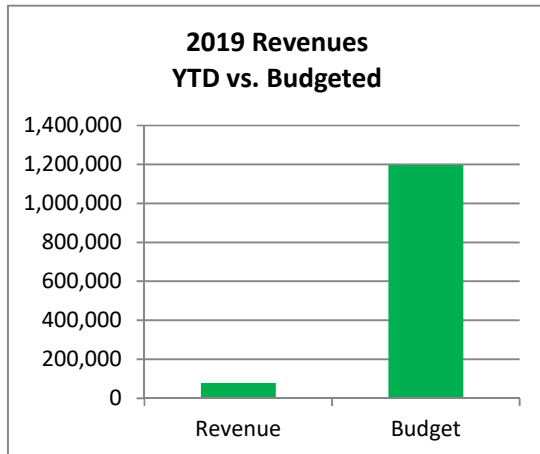


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Library Fund  
Period Ending August 31, 2019  
Unaudited

Library Fund	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance	2,477,604	2,477,604	
<b><u>Revenues:</u></b>			
Earnings on Investment	-	1,184,900	0.0%
Miscellaneous Revenue	77,843	9,000	864.9%
Transfers In	-	3,000	0.0%
Total Operating Revenues	77,843	1,196,900	6.5%
<b><u>Expenditures:</u></b>			
Operations	206,943	720,000	28.7%
Capital Outlay	-	850,000	0.0%
Total Expenditures	206,943	1,570,000	13.2%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>(129,100)</b>	<b>(373,100)</b>	
<b>Ending Fund Balance*</b>	<b>2,348,504</b>	<b>2,104,504</b>	

\* - Unaudited

67% of the fiscal year has elapsed

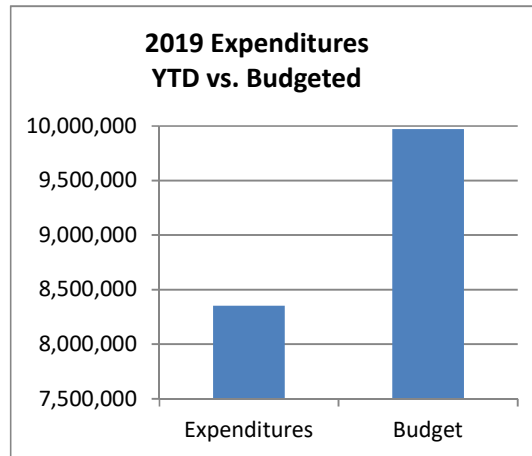
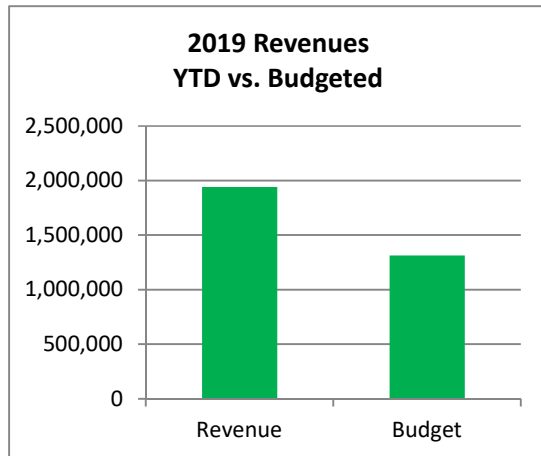


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Capital Projects Fund  
Period Ending August 31, 2019  
Unaudited

	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
<b>Capital Projects Fund</b>			
Beginning Fund Balance	19,280,857	19,280,857	
<b><u>Revenues:</u></b>			
Taxes and Fees	1,754,920	1,200,000	146.2%
Miscellaneous Revenue	-	15,000	0.0%
Interest	185,882	100,000	185.9%
<i>Transfers In</i>	-	-	
Total Operating Revenues	<u>1,940,802</u>	<u>1,315,000</u>	147.6%
<b><u>Expenditures:</u></b>			
Capital Outlay	352,660	1,973,500	0.0%
<i>Transfers Out</i>	<u>8,000,000</u>	<u>8,000,000</u>	0.0%
Total Expenditures	<u>8,352,660</u>	<u>9,973,500</u>	83.7%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u><b>(6,411,858)</b></u>	<u><b>(8,658,500)</b></u>	
<b>Ending Fund Balance*</b>	<u><b>12,868,999</b></u>	<u><b>10,622,357</b></u>	

\* - Unaudited

67% of the fiscal year has elapsed

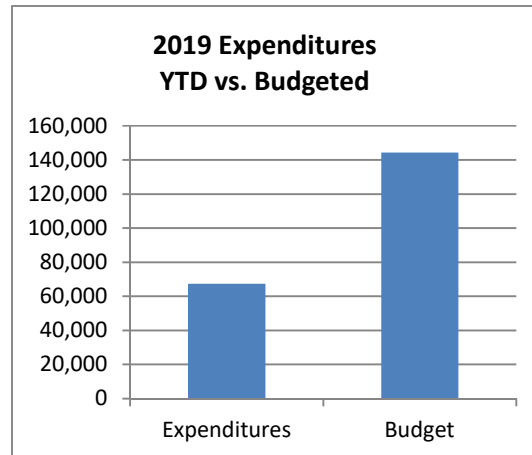
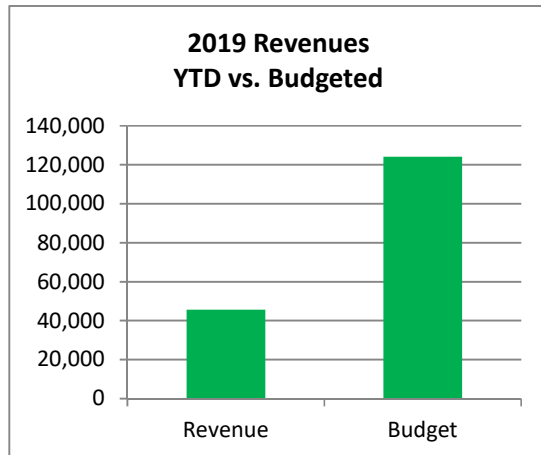


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Johnson's Corner Improvement Fund  
Period Ending August 31, 2019  
Unaudited

Johnson's Corner Improvement Fund	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance	25,755	25,755	
<b><u>Revenues:</u></b>			
Taxes & Fees	45,589	124,000	36.8%
Earnings on Investment	16	100	16.3%
Total Operating Revenues	<u>45,605</u>	<u>124,100</u>	36.7%
<b><u>Expenditures:</u></b>			
Capital Outlay	<u>67,396</u>	<u>144,300</u>	46.7%
Total Expenditures	<u>67,396</u>	<u>144,300</u>	46.7%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b><u>(21,791)</u></b>	<b><u>(20,200)</u></b>	
<b>Ending Fund Balance*</b>	<b><u>3,964</u></b>	<b><u>5,555</u></b>	

\* - Unaudited

67% of the fiscal year has elapsed



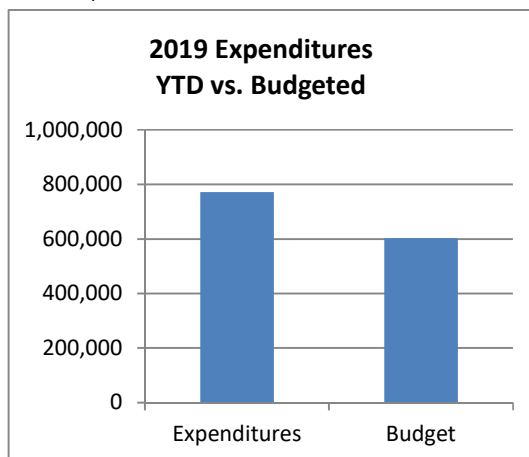
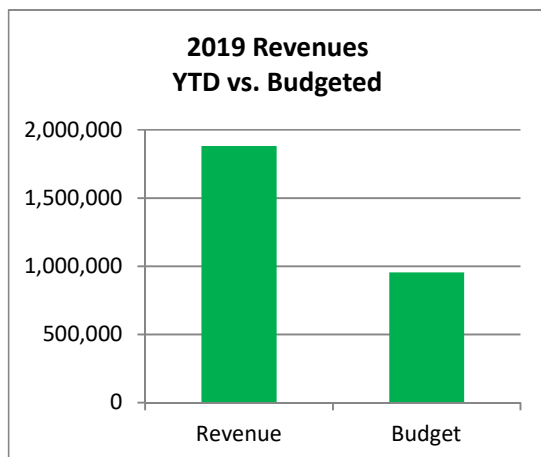


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Impact Fund  
Period Ending August 31, 2019  
Unaudited

<b>Impact Fund</b>	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance	18,367,324	18,367,324	
<b><u>Revenues:</u></b>			
Taxes & Fees	1,664,550	855,000	194.7%
Earnings on Investment	216,427	100,000	216.4%
Total Operating Revenues	1,880,977	955,000	197.0%
<b><u>Expenditures:</u></b>			
Capital Outlay	772,172	602,839	128.1%
Total Expenditures	772,172	602,839	128.1%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>1,108,805</b>	<b>352,161</b>	
<b>Ending Fund Balance*</b>	<b>19,476,129</b>	<b>18,719,485</b>	

\* - Unaudited

67% of the fiscal year has elapsed

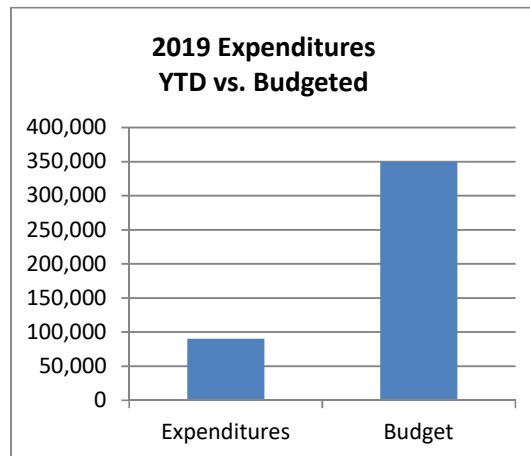
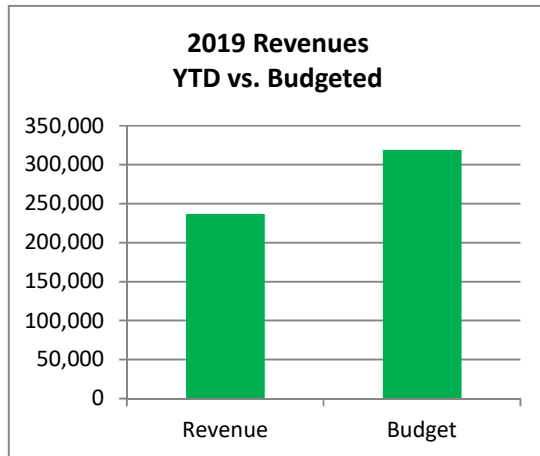


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Street Maintenance Fund  
Period Ending August 31, 2019  
Unaudited

	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
<b>Street Maintenance Fund</b>			
Beginning Fund Balance	300,224	300,224	
<b><u>Revenues:</u></b>			
Taxes & Fees	235,844	319,000	73.9%
Earnings on Investment	1,088	100	1088.3%
Total Operating Revenues	<u>236,933</u>	<u>319,100</u>	74.3%
<b><u>Expenditures:</u></b>			
Operations & Maintenance	<u>90,505</u>	<u>350,000</u>	25.9%
Total Expenditures	<u>90,505</u>	<u>350,000</u>	25.9%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u>146,428</u>	<u>(30,900)</u>	
<b>Ending Fund Balance*</b>	<u><u>446,652</u></u>	<u><u>269,324</u></u>	

\* - Unaudited

67% of the fiscal year has elapsed

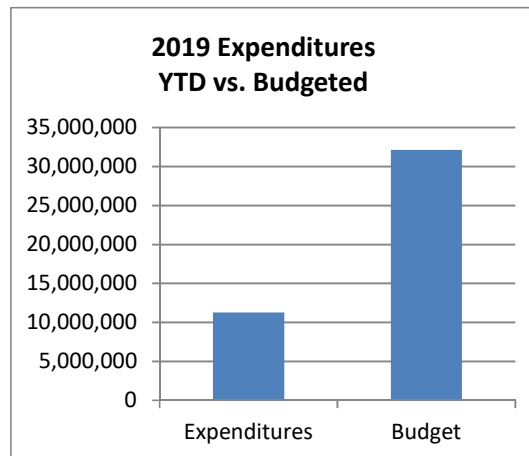
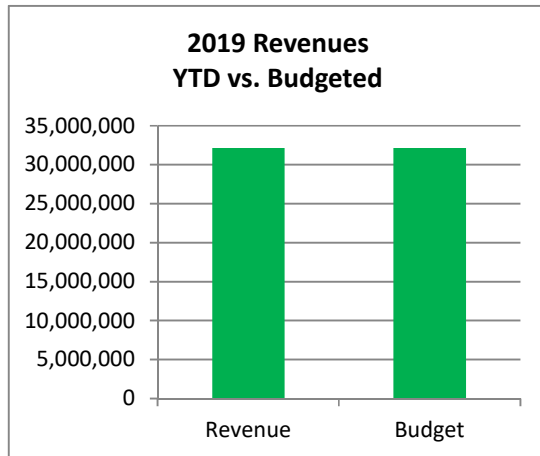


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Recreation Center Fund  
Period Ending August 31, 2019  
Unaudited

<b>Recreation Center Fund</b>	2019 Actuals Jan - Aug	2019 Adopted Budget	% Complete
Beginning Fund Balance*	0	0	
<b><u>Revenues:</u></b>			
Transfers In	32,150,000	32,150,000	100.0%
Earnings on Investment	-	-	
Total Operating Revenues	32,150,000	32,150,000	100.0%
<b><u>Expenditures:</u></b>			
Operations & Maintenance	11,292,066	32,000,000	35.3%
Total Expenditures	11,292,066	32,000,000	35.3%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>20,857,934</b>	<b>150,000</b>	
<b>Ending Fund Balance*</b>	<b>20,857,934</b>	<b>150,000</b>	

\* - Unaudited

67% of the fiscal year has elapsed



# **Ordinance 2019-164**

**TOWN OF JOHNSTOWN, COLORADO  
ORDINANCE NO. 2019-164**

**APPROVING P.U.D. FINAL DEVELOPMENT PLAN FOR  
JOHNSTOWN VILLAGE LOCATED IN THE NORTHWEST  
QUARTER OF SECTION 7, TOWNSHIP 4 NORTH, RANGE 67  
WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, TOWN OF  
JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO,  
CONSISTING OF APPROXIMATELY 139.36 ACRES.**

**WHEREAS**, the Town of Johnstown, Colorado (“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**, Johnstown Village, LLC, a Colorado limited liability company (“Applicant”), submitted an application to the Town of Johnstown (“Town”), on behalf of the owner of the property, Massey Farms, LLLP, a Colorado limited liability limited partnership, for approval of a P.U.D. Final Development Plan for Johnstown Village, located in the Northwest Quarter of Section 7, Township 4 North, Range 67 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 139.36 acres; and

**WHEREAS**, on September 18, 2018, the Planning and Zoning Commission held a public hearing and recommended approval of the P.U.D. Final Development Plan for Johnstown Village with conditions, certain of which have been satisfied; and

**WHEREAS**, on August 19, 2019, the Town Council held a public hearing concerning approval of the P.U.D. Final Development Plan for Johnstown Village, which public hearing was continued to September 4, 2019; and

**WHEREAS**, after considering the Planning and Zoning Commission’s recommendation, reviewing the file and conducting such public hearing, finds that:

1. The P.U.D. Final Development Plan for Johnstown Village satisfies the data requirements, design standards and required improvements contained in the Johnstown Municipal Code, including the subdivision regulations contained in Chapter 17; and
2. The P.U.D. Final Development Plan for Johnstown Village conforms substantially with the approved Preliminary Development Plan for Johnstown Village; and

**WHEREAS**, based on the foregoing, Town Council desires to approve the P.U.D. Final Development Plan for Johnstown Village.

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

**Section 1. P.U.D. Final Development Plan Approval.** The P.U.D. Final Development Plan for Johnstown Village, located in the Northwest Quarter of Section 7, Township 4 North, Range 67 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 139.36 acres, attached hereto as Exhibit A, is hereby approved.

**Section 2. Effective Date.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town 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. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this 4<sup>th</sup> day of September, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

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

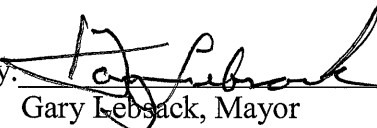
By: \_\_\_\_\_  
Gary Lebsack, Mayor

**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

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

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

# **Amended Water and Sewer Service Agreement**

**(Ridgeview Office Park)**

## AMENDED WATER AND SEWER SERVICE AGREEMENT

THIS AMENDED WATER AND SEWER SERVICE AGREEMENT ("Amended Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **THOMPSON RANCH DEVELOPMENT CO.**, a Colorado corporation ("Developer") and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation ("Town"), collectively sometimes referred to as the "Parties."

### RECITALS

WHEREAS, the Developer owns an interest in land known as 2534 Filing No. 5, being a re-plat of Block 1, 2534, located in the Northeast Quarter of Section 15, Township 5 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Larimer, State of Colorado, containing 8.56 acres ("Subject Property"); and

WHEREAS, in 2007, early in the development of the 2534 Development, the Subject Property was approved for use as a seven building office park known as the Ridgeview Office Park, as more particularly described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, since approval, three of the seven buildings in the Ridgeview Office Park have been constructed, with street addresses of 5245, 5255 and 5265 Ronald Reagan Boulevard; and

WHEREAS, on May 21, 2007, the Parties entered into a Water and Sewer Service Agreement, recorded in the real property records of the Larimer County Clerk and Recorder at Reception No. 20070049180, wherein, based on a prior dedication of raw water to the Town, the Developer allocated 10.66 acre-feet of raw water for potable purposes and 3.73 acre-feet of raw water for non-potable purposes for the Subject Property from what has since become known and referred to as the "2534 Water Bank" ("2007 WSSA"); and

WHEREAS, the allocation of the 10.66 acre-feet of raw water for potable purposes was based upon the Town's then-applicable unit requirement for office land use, a calculation that has since been replaced based on improved estimations of anticipated water demands; and

WHEREAS, using the current standards, rather than the prior calculation that resulted in an allocation of 10.66 acre-feet of water for potable purposes, the Developer would have only been required to allocate 4.01 acre-feet of potable water for the Subject Property; and

WHEREAS, the Developer seeks a credit of 6.65 acre-feet of potable water and requests that such credit be deposited back into the potable water portion of the 2534 Water Bank for future use in the 2534 Development; and

WHEREAS, the Town desires to provide the potable water credit to the Developer; and



WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Amended Agreement, which will supersede and replace the 2007 WSSA; and

WHEREAS, the Developer and the Town further desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** The Recitals are incorporated as if fully set forth in this Amended Agreement.

2. **Water and Sewer Demand Studies.** In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended ("Ordinance"), Developer submitted to the Town a preliminary Water and Sewer Demand Analysis for the Subject Property. Said analysis was reviewed and approved by the Town's Water Engineer, and is hereby accepted by the Town. Based on the analysis, the projected water and sewer demands for the Subject Property is as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	4.01	0.201
Landscape Irrigation (non-potable)	3.73	3.171
Total	7.74	3.372

3. **Water Rights Dedication.**

a. **Potable Supply.** Prior to the execution of this Amended Agreement, the Parties recognized and agreed that there was a surplus dedication credit in the 2534 Water Bank in the amount of approximately 28.70 acre-feet per year of potable water. To effectuate the purpose and intent of this Amended Agreement, the Parties agree to increase that prior surplus dedication credit by the prior allocation of the 10.66 acre-feet set forth in the 2007 WSSA, resulting in a current surplus dedication credit in the 2534 Water Bank in the amount of approximately 39.36 acre-feet of potable water, of which 4.01 acre-feet may be allocated to the Subject Property. The Parties and the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company agree that 4.01 acre-feet of the 39.36 acre-feet credit shall be applied to meet the potable water demands of the Subject Property. Evidence of the agreement is attached as Exhibit B.

b. **Non-Potable Supply.** As a result of prior dedications associated with the 2534 Development, there is currently a surplus dedication credit with the Town of approximately 174.20 acre-feet per year of non-potable water in the 2534 Water Bank. Because there is no

change with respect to the allocation of non-potable water from the 2007 WSSA, the Parties and the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company agree that the prior allocation of 3.73 acre-feet of non-potable water from the 2534 Water Bank shall continue to be applied to meet the non-potable water demands of the Subject Property. Evidence of the agreement is attached as Exhibit B.

**4. Commitment to serve.** Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 4.01 acre-feet per year of potable water supply together with the corresponding sewer service and up to 3.73 acre-feet per year non-potable water supply for landscape irrigation.

**5. Future review of water usage and dedication requirements.** In accordance with Section 13-68(h) of the Ordinance, the Town reserves the right to review actual water usage within the Subject Property, at a point in time after water usage has been established, to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.

**6. Payment of Water Court Transfer fees.** The Water Court transfer fee for both the potable water supply and non-potable water supply was previously paid to the Town as part of the 2534 Water Bank and/or the 2007 WSSA. However, in accordance with the Ordinance, additional fees may be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town's Ordinance.

**7. Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Amended Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

**TO DEVELOPER:**

Thompson Ranch Development Co.  
Attn: Todd Williams, VP  
5255 Ronald Reagan Blvd., Suite 220  
Johnstown, CO 80534

**TO THE TOWN:**

Town of Johnstown  
c/o Town Clerk  
450 S. Parish Ave.  
Johnstown, CO 80534

**WITH A COPY TO  
THE TOWN ATTORNEYS:**

Avi Rocklin, Esq.  
Johnstown Town Attorney  
1437 N. Denver Avenue, #330  
Loveland, CO 80538

Peter J. Ampe

Hill & Robbins, P.C.  
1660 Lincoln St., Suite 2720  
Denver, CO 80264

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

**8. Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation at a location, unless the Parties otherwise agree, not more than sixty (60) miles from the Subject Property, the costs of which shall be shared equally by both Parties. If mediation is not successful after ninety (90) days, either Party may then commence an action in a court of competent jurisdiction in Larimer County, Colorado, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**9. Successors and assigns.** The benefits and burdens of this Amended Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Amended Agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

**10. Amendment or modification.** No amendment or modification of this Amended Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Amended Agreement.

**11. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

**12. Waiver.** The waiver of any breach of any of the provisions of this Amended Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Amended Agreement.

**13. Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Amended Agreement.

**14. Non severability.** Each paragraph of this Amended Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

**15. Choice of laws.** This Amended Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

**16. Entire Agreement and Authorization.** This Amended Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Amended Agreement. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Amended Agreement on behalf of that entity.

**17. Recordation.** This Amended Agreement shall be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and, effective as of the date of such recordation, this Amended Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall constitute notice of this Amended Agreement to all persons or entities not parties hereto.

**18. Supersede and Replace.** Except as the terms of the 2007 WSSA are referenced herein to effectuate the intent and purpose of this Amended Agreement, this Amended Agreement shall supersede and replace the 2007 WSSA in its entirety.

\*IN WITNESS WHEREOF, the Parties have executed this Amended Agreement the day and year first above written.

*Signatures follow on separate pages*

THOMPSON RANCH DEVELOPMENT CO.

By: Todd Williams  
Todd Williams, Vice President

STATE OF COLORADO )  
 ) ss  
COUNTY OF Larimer )

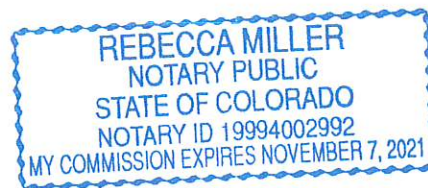
SUBSCRIBED AND SWORN to before me this 3 day of Sept, 2019 by  
Todd Williams as Vice President of Thompson Ranch Development Co.

Witness my hand and official seal.

Rebecca Miller  
Notary Public

My Commission Expires: 11/7/21

TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation



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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

**2534 FILING NO. 5**  
**BEING A REPLAT OF BLOCK 1, 2534,**  
**LOCATED IN THE NORTHEAST QUARTER OF SECTION 15,**  
**TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,**  
**TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO**

**DEDICATION STATEMENT**

KNOW ALL PERSONS BY THESE PRESENTS THAT THOMPSON RANCH DEVELOPMENT CO., A COLORADO CORPORATION, BEING THE OWNER OF THE FOLLOWING DESCRIBED PROPERTY, EXCEPT ANY EXISTING PUBLIC STREETS, ROADS OR HIGHWAYS, WHICH PROPERTY IS LOCATED IN THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH P.M. BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BLOCK 1, 2534, A SUBDIVISION OF THE TOWN OF JOHNSTOWN COUNTY OF LARIMER, STATE OF COLORADO.

SAID PARCEL CONTAINS 8.573 ACRES, MORE OR LESS, AND IS SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY ON RECORD OR EXISTING, AND DO HEREBY SUBDIVIDE THE SAME INTO LOTS, BLOCKS AND EASEMENTS, AS SHOWN ON THIS MAP, AND DO HEREBY DESIGNATE AND DEDICATE (1) ALL SUCH RIGHT-OF-WAYS AND EASEMENTS, OTHER THAN UTILITY EASEMENTS AND PRIVATE EASEMENTS, TO AND FOR PUBLIC USE, EXCEPT WHERE INDICATED OTHERWISE ON THIS MAP, AND (2) ALL SUCH UTILITY EASEMENTS TO AND FOR THE PUBLIC USE FOR THE INSTALLATION AND MAINTENANCE OF UTILITY, IRRIGATION AND DRAINAGE FACILITIES; AND DO HEREBY DESIGNATE THE SAME AS "2534 FILING NO. 5".

THOMPSON RANCH DEVELOPMENT CO.,  
A COLORADO CORPORATION

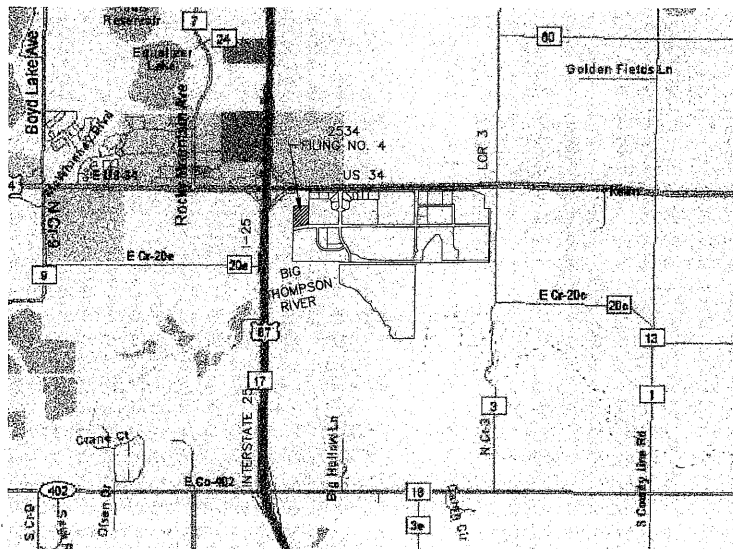
BY: Dale L. Bodner  
DALE L. BODNER, PRESIDENT

**ACKNOWLEDGMENTS:**

STATE OF Colorado  
COUNTY OF Larimer

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS 9th DAY OF March, 2006 BY DALE L. BODNER AS PRESIDENT OF THOMPSON RANCH DEVELOPMENT CO., A COLORADO CORPORATION.

WITNESS MY HAND AND OFFICIAL SEAL.



VICINITY MAP  
SCALE: 1" = 2000'

**GENERAL NOTES:**

1. BASIS OF BEARINGS: ASSUMED NORTH 89°31'41" EAST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 15, SAID LINE BEING MONUMENTED AT THE NORTHEAST CORNER BY A 2" ALUMINUM CAP, ILLEGIBLE AND AT THE NORTH QUARTER CORNER BY 3" ALUMINUM CAP, LS 30128 IN MONUMENT BOX.
2. FIRST AMERICAN HERITAGE TITLE COMPANY COMMITMENT NO. 812-V0138617-810-F70, DATED SEPTEMBER 25, 2006, WAS ENTIRELY RELIED UPON FOR INFORMATION REGARDING EASEMENTS AND ENCUMBRANCES OF RECORD.
3. OUTLOT A IS A BLANKET ACCESS EASEMENT OVER THE WALKS, DRIVES AND PARKING SPACES AS CONSTRUCTED.
4. PLEASE NOTE THAT BUILDINGS MUST BE CONSTRUCTED PRECISELY WITHIN LOTS 1-7. PLEASE REFER TO THE OFFICIAL CONSTRUCTION PLANS FOR SPECIFIC DETAILS.

**SURVEYOR'S CERTIFICATE:**

I, LAINE A. LANDAU, BEING A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE SURVEY OF 2534 FILING NO. 5 WAS MADE BY ME OR UNDER MY SUPERVISION.

DATED THIS 12th DAY OF Feb, 2006.

Laine A. Landau  
LAINE A. LANDAU  
P.L.S. 31159  
FOR AND ON BEHALF OF NOLTE ASSOCIATES, INC.

NOTICE:  
ACCORDING TO COLORADO LAW, YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU DISCOVER SAID DEFECT, IN NO EVENT MAY ANY LEGAL ACTION BASED ON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

**PLANNING APPROVAL**

APPROVED THIS 9th DAY OF March, 2006 BY

John Tumball  
TOWN PLANNER

**MAYOR'S CERTIFICATE**

THIS IS TO CERTIFY THAT A PLAT OF THE ABOVE DESCRIBED PROPERTY WAS APPROVED BY THE TOWN OF JOHNSTOWN AND THAT THE MAYOR OF THE TOWN OF JOHNSTOWN ACCEPTS ALL PUBLIC STREETS, EASEMENTS AND OTHER PLACES DESIGNATED OR DESCRIBED FOR PUBLIC USE FOR ALL PURPOSES INDICATED HEREON.

Steve Allen  
MAYOR  
DATE 3/24/07

**2534 FILING NO. 5**

**BLOCK 1, 2534**  
**JOHNSTOWN, COLORADO**

PREPARED FOR: THOMPSON RANCH DEVELOPMENT CO.

DATE SUBMITTED: 02/19/07

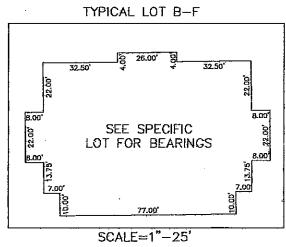
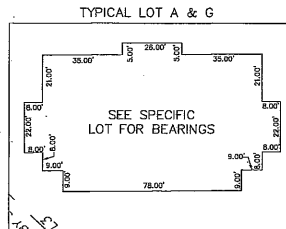
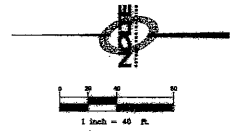
**NOLTE**  
BEYOND ENGINEERING  
901 SHAW FORT DRIVE, SUITE A  
FORT COLLINS, CO 80504  
970.224.6400 TEL. 970.224.6408 FAX

SHEET NUMBER  
**1**  
OF **2** SHEETS  
SCALE  
VERTICAL: 1"=100'  
HORIZONTAL: 1"=100'  
JOB NUMBER  
**FC00186**

RECEPTION#: 200702024250, 04/02/2007 at 03:37:35 PM, 2 OF 2, Scott Doyle,  
Larimer County, CO

# **2534 FILING NO. 5** **BEING A REPLAT OF BLOCK 1, 2534,** **LOCATED IN THE NORTHEAST QUARTER OF SECTION 15,** **TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,** **TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO**

- LEGEND**
- SET # 5 REBAR W/ RED PLASTIC CAP L.S. 31159
  - FOUND MONUMENT AS DESCRIBED
  - (2534) PER THE PLAT OF 2534
  - ⊙ POINT OF BEGINNING FOR LOTS



**THE TABLE**

POINT	BEARING	LENGTH
SW CORNER - A	S82°29'00"W	78.33'
SW CORNER - B	S82°29'00"W	78.33'
SW CORNER - C	S82°29'00"W	78.33'
SW CORNER - D	S82°29'00"W	78.33'
SW CORNER - E	S82°29'00"W	78.33'
SW CORNER - F	S82°29'00"W	78.33'
SW CORNER - G	S82°29'00"W	78.33'
SW CORNER - H	S82°29'00"W	78.33'
SW CORNER - I	S82°29'00"W	78.33'
SW CORNER - J	S82°29'00"W	78.33'

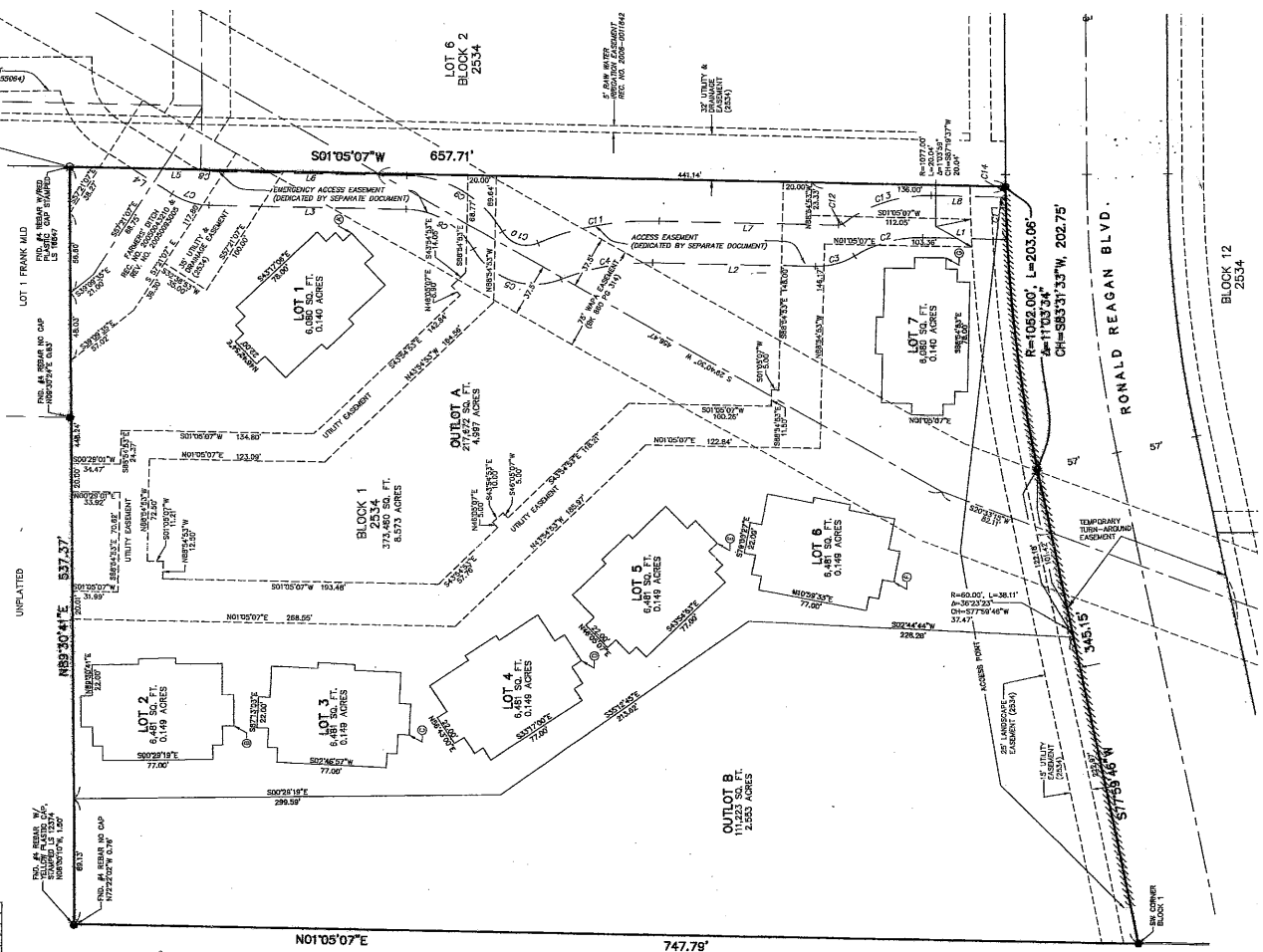
NOTES ARE FROM SW CORNER, BLOCK 1 TO LOT CORNER NOTED

**LINE TABLE**

LINE	BEARING	LENGTH
L1	N01°05'07"E	59.34'
L2	N01°05'07"E	114.48'
L3	N01°05'07"E	138.44'
L4	N01°05'07"E	33.63'
L5	S01°05'07"W	47.69'
L6	S01°05'07"W	138.44'
L7	S01°05'07"W	128.08'
L8	S01°05'07"W	52.22'

**CURVE TABLE**

CURVE	RADIUS	LENGTH	DELTA	CHORD	CH BEARING
C1	1052.00'	50.00'	1°39'12"	50.00'	S87°30'16"W
C2	82.00'	59.19'	3°03'06"	49.49'	N15°26'22"W
C3	50.00'	28.84'	3°03'06"	28.45'	N15°26'22"W
C4	168.00'	88.05'	2°47'23"	63.62'	N10°18'50"W
C5	50.00'	21.37'	81°48'42"	63.46'	N18°10'18"E
C6	50.00'	52.85'	58°38'45"	50.13'	N50°34'31"E
C7	50.00'	22.84'	31°33'46"	22.20'	N18°29'00"E
C8	28.00'	2.87'	1°38'32"	2.81'	S00°23'24"W
C9	80.00'	61.53'	58°31'02"	78.22'	S32°21'06"W
C10	20.00'	28.96'	6°25'50"	26.50'	S18°18'14"W
C11	186.00'	87.84'	2°33'46"	66.72'	S10°23'51"E
C12	5.00'	3.33'	37°23'17"	3.28'	S17°52'31"E
C13	100.00'	66.19'	37°53'17"	64.99'	S17°52'31"E
C14	1000.00'	7.34'	0°23'58"	7.34'	S88°31'21"W



**2534 FILING NO. 5**  
**BLOCK 1, 2534**  
**JOHNSTOWN, COLORADO**

**NOTE**  
 BEYOND ENGINEERING  
 WHI MAP POINT DATE: DATE A  
 10252400 TEL: 10252400 FAX: 10252400

SHEET NUMBER  
**2**  
 OF 2 SHEETS  
 SCALE  
 VERTICAL: 1"=50'  
 HORIZONTAL: 1"=40'

DATE SUBMITTED: 02/12/07  
 PREPARED FOR: THOMPSON RANCH DEVELOPMENT CO.

## Exhibit B

### RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Gerrard Family Limited Partnership, LLLP and Thompson Ranch Development Company raw water credit account held by the Town of Johnstown, known as the "2534 Water Bank," to provide water service to the development known as Ridgeview Office Park, and any successor occupant of the premises at the same location, pursuant to the Amended Water and Sewer Service Agreement between Thompson Ranch Development Co. and the Town of Johnstown dated \_\_\_\_\_, 20\_\_\_. The amount of such allocated raw water credit is calculated to be 4.01 acre-feet per year for In-Building Use and 3.73 acre-feet per year for Irrigation Use, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.

GERRARD FAMILY LIMITED PARTNERSHIP, LLLP



Dated: 8-27-19

Nathan Gerrard, Partner  
Gerrard Family Limited Partnership, LLLP

THOMPSON RANCH DEVELOPMENT COMPANY



Dated: 9/3/19

Todd Williams, Vice President  
Thompson Ranch Development Company



# **Water and Sewer Service Agreement**

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between **Parkway Development, LLC** (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties”.

### WITNESSETH:

WHEREAS, the Developer owns land within the Southeast  $\frac{1}{4}$ , Northwest  $\frac{1}{4}$  of Section 14, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., also known as Lot 8, Block 10, 2534 Filing No. 6 (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement dated December 17, 2000; and

WHEREAS, the Subject Property is being developed as office buildings and flex space (“Project”) the location of which is more particularly described in Exhibit A; and

WHEREAS, on February 23, 2005, the Town Council of the Town of Johnstown approved the Final Plat for 2534; and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

**1. Water and Sewer Demand Studies.** In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended, (“Ordinance”), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis (undated) a site plan (November 27, 2017) and water meter sizing recommendation (December 19, 2017). Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated April 27, 2018 and updated on August 3, 2019, is hereby accepted by the Town. The analysis provided by Developer addresses the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	0.87	0.044
Landscape Irrigation (non-potable)	1.20	1.020
Total	2.07	1.064

## **2. Water Rights Dedication.**

**a. Potable Supply.** As a result of prior dedications associated with the 2534 Development, there is currently a surplus dedication credit with the Town of approximately 21.51 acre-feet per year of potable water. The Parties and the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP have agreed that this credit shall be applied to meet the potable water demands of the Project. Evidence of the agreement is attached as Exhibit B.

**b. Non-Potable Supply.** As a result of prior dedications associated with the 2534 Development, there is currently a surplus dedication credit with the Town of approximately 168.86 acre-feet per year of non-potable water under shares from the Farmers Canal. The Parties and the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP have agreed that this credit shall be applied to meet the non-potable water demands of the Project. Evidence of the agreement is attached as Exhibit B.

**3. Commitment to serve.** Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 0.87 acre-feet per year of potable water supply together with the corresponding sewer service and up to 1.20 acre-feet per year non-potable water supply for landscape irrigation.

**4. Future review of water usage and dedication requirements.** In accordance with Section 13-68(h) of the Ordinance, the Town reserves the right to review actual water usage within the Subject Property, at a point in time after water usage has been established, to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.

**5. Payment of Water Court Transfer fees.** The Water Court transfer fee for both the potable water supply and non-potable water supply was previously paid to the Town as part of the 2534 Water Bank. However, in accordance with the Ordinance, additional fees may be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town's Ordinance.

**6. Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

Owner  
Parkway Development, LLC  
Edwin Lockard  
1437 N. Denver Avenue  
Loveland, Colorado 80538

Project Manager  
Parkway Development, LLC  
Adam Lockard  
1437 N. Denver Avenue  
Loveland, Colorado 80538

TO THE TOWN:

Town of Johnstown  
c/o Town Clerk  
450 S. Parish Ave.  
Johnstown, CO 80534

WITH A COPY TO  
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.  
Johnstown Town Attorney  
1437 N. Denver Avenue, #330  
Loveland, CO 80538

Peter J. Ampe  
Hill & Robbins, P.C.  
1660 Lincoln St., Suite 2720  
Denver, CO 80264

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

**8. Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after a ninety-day period, either Party may then commence an action in a court of competent jurisdiction in Larimer County, Colorado, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**9. Successors and assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

**10. Amendment or modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

**11. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

**12. Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

**13. Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

**14. Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

**15. Choice of laws.** This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

**16. Entire agreement and Authorization.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

**17. Recordation.** This Agreement may be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and, effective as of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall constitute notice of this Agreement to all persons or entities not parties hereto.

\*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

*Signatures follow on separate pages*

EDWIN LOCKARD

By: 

Edwin Lockard

Title: Owner

STATE OF COLORADO     )  
  ) ss  
COUNTY OF \_\_\_\_\_ )

SUBSCRIBED AND SWORN to before me this 11 day of September, 2019 by Edwin Lockard

Witness my hand and official seal.

see attached

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
401 E Ocean Blvd  
Address

\_\_\_\_\_  
562-980-1215  
Telephone

My Commission Expires: 4-20-2022

**CALIFORNIA JURAT WITH AFFIANT STATEMENT**

GOVERNMENT CODE § 8202

- ☒ See Attached Document (Notary to cross out lines 1–6 below)  
☐ See Statement Below (Lines 1–6 to be completed only by document signer[s], not Notary)

1 \_\_\_\_\_  
 2 \_\_\_\_\_  
 3 \_\_\_\_\_  
 4 \_\_\_\_\_  
 5 \_\_\_\_\_  
 6 \_\_\_\_\_

\_\_\_\_\_  
 Signature of Document Signer No. 1

\_\_\_\_\_  
 Signature of Document Signer No. 2 (if any)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of Los Angeles



Place Notary Seal and/or Stamp Above

Subscribed and sworn to (or affirmed) before me

on this 11 day of September, 2019,  
 by \_\_\_\_\_  
 Date Month Year

(1) Edwin Lockard

(and (2) \_\_\_\_\_),  
 Name(s) of Signer(s)

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature \_\_\_\_\_  
 Signature of Notary Public

**OPTIONAL**

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Water and Sewer Service Agreement  
 Document Date: 9-11-2019 Number of Pages: \_\_\_\_\_  
 Signer(s) Other Than Named Above: \_\_\_\_\_

## RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Gerrard Family Limited Partnership, LLLP and Thompson Ranch Development Company raw water credit account held by the Town of Johnstown, known as the "2534 Water Bank," to provide water service to the development known as 4513 Endeavor Drive, and any successor occupant of the premises at the same location, pursuant to the Water and Sewer Service Agreement between Parkway Development LLC and the Town of Johnstown dated \_\_\_\_\_, 20\_\_\_\_. The amount of such allocated raw water credit is calculated to be 0.87 acre-feet per year for In-Building Use and 1.20 acre-feet per year for Irrigation Use, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.


GERRARD FAMILY LIMITED PARTNERSHIP, LLLP



Dated: 7/2/19

Nathan Gerrard, Partner  
Gerrard Family Limited Partnership, LLLP

THOMPSON RANCH DEVELOPMENT COMPANY



Dated: 8/13/19

Todd Williams, Vice President  
Thompson Ranch Development Company



# **Water and Sewer Service Agreement**

## **WATER SERVICE AGREEMENT**

(VMJ Properties, LLC and Johnson-Taylor Family Properties, LLLP)

THIS WATER SERVICE AGREEMENT ("Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between VMJ Properties, LLC, a Colorado limited liability company, and Johnson-Taylor Family Properties, LLLP, a Colorado limited liability limited partnership (collectively, "VMJ"), and the Town of Johnstown, a Colorado home-rule municipal corporation, ("Town"), collectively sometimes referred to as the "Parties."

### **RECITALS**

WHEREAS, on or about June 7, 1999, VMJ entered into an Annexation Agreement with the Town, recorded on November 9, 1999, in the Larimer County, Colorado real property records at Reception No. 0099096557, whereby VMJ annexed approximately 229.69 acres of land to the Town, located in the North half of Section 35, the SW/4 SW/4 of Section 26, the SW/4 SE/4 of Section 27 and NE/4 NE/4 of Section 34, in Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., County of Larimer, State of Colorado ("Subject Property"); and

WHEREAS, in conjunction with the annexation of the Subject Property, VMJ agreed to dedicate thirteen (13) shares of the Consolidated Home Supply Ditch and Reservoir Company ("Home Supply") to the Town, for use on or at the Subject Property; and

WHEREAS, on or about May 5, 2003, VMJ entered into a Second Amendment to Annexation Agreement with the Town, recorded on October 22, 2003, in the Larimer County, Colorado real property records at Reception No. 2003-0134585, whereby, based on VMJ's request, VMJ committed to substitute the thirteen (13) shares of Home Supply referenced in the Annexation Agreement, which shares were then included in Water Court Case No. 98CW410, with thirteen (13) un-adjudicated shares of Home Supply; and

WHEREAS, based on the foregoing, on July 27, 2004, VMJ transferred two (2) shares of Home Supply to the Town, evidenced by Water Stock Certificate Number 6397, and, on July 13, 2005, VMJ transferred eleven (11) shares of Home Supply to the Town, evidenced by Water Stock Certificate Number 6435 (collectively, "VMJ Water Stock"); and

WHEREAS, based on the provisions of the Town's water rights dedication ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code ("Ordinance"), then in effect, the Town provided VMJ with a credit of eight (8) acre-feet of raw water for each share of Home Supply; and

WHEREAS, on June 7, 2004, prior to the substitution of shares, VMJ Properties, LLC and the Town entered into a Water Service Agreement with RV Boatel, LLC, a Colorado limited liability company ("RV Boatel"), recorded on June 8, 2004, in the Larimer County, Colorado real property records at Reception No. 2004-0055469 ("RV Boatel WSSA"), whereby VMJ allocated one (1) share of Home Supply to RV Boatel; and

WHEREAS, on June 7, 2004, prior to the substitution of shares, VMJ and the Town entered into an Amended and Restated Water Service Agreement with BS Holdings, Inc., a Colorado corporation ("BS Holdings"), recorded on July 22, 2004, in the Larimer County, Colorado real property records at Reception No. 2004-0071863 ("BS Holdings WSSA"), whereby VMJ allocated one (1) share of Home Supply to BS Holdings;

WHEREAS, since the dedication of the VMJ Water Stock and the allocation of the two (2) Home Supply shares to RV Boatel and the BS Holdings, two commercial entities have commenced operating at the Subject Property on property known as the "Panilolo Property" and the "Candlelight Dinner Theater Property;" and

WHEREAS, the Panilolo Property is located at 4754 Marketplace Drive, Town of Johnstown, and legally described as Lots 1 and 3, Great Colorado Marketplace Subdivision and Replat Lot 1, Replat Lot 3, Town of Johnstown, County of Larimer, State of Colorado, , consisting of approximately 4 acres; and

WHEREAS, the Candlelight Dinner Theater Property is located at 4747 Marketplace Drive, Town of Johnstown, and legally described as Replat of Lot 1 of Replat "A" of Lot 2 of the Great Colorado Marketplace Subdivision, located in the Northeast Quarter of Section 34 and the Northwest Quarter of Section 35, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., Town of Johnstown, County of Larimer, State of Colorado, consisting of approximately 3.04 acres; and

WHEREAS, while the Panilolo Property and the Candlelight Dinner Theater Property have been using raw water from the VMJ Water Stock, the Town and VMJ have not executed a water agreement related to the use; and

WHEREAS, the Parties desire to set forth the raw water demand for the Panilolo Property and the Candlelight Dinner Theater Property in this Agreement; and

WHEREAS, in addition, VMJ desires to sell and allocate five and three-quarter (5.75) shares of Home Supply from the VMJ Water Stock to Platte Land & Water, LLC, a Delaware limited liability company ("Platte"), and requests that the Town remove the requirement that raw water be used on or at the Subject Property; and

WHEREAS, the Town desires to allow VMJ to sell and allocate five and three-quarter (5.75) shares of Home Supply from the VMJ Water Stock to Platte, on the condition that the raw water be used in the boundaries of the Town; and

WHEREAS, to effectuate the foregoing and set forth the proper allocation of raw water for the Subject Property and the surplus raw water credit available to VMJ, the Parties desire to enter into this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **Recitals.** The Recitals are incorporated as if fully set forth herein.
2. **Allocation of Water to Platte.** Based on request of VMJ, the Town hereby approves the allocation of 5.75 shares of Home Supply from the VMJ Water Stock to Platte ("Platte Water") and removes the requirement that the Platte Water be used on or at the Subject Property, on the condition that the Platte Water be used in the boundaries of the Town. Upon written notice from VMJ that it has sold the raw water credit to Platte, the Town shall create a water bank on behalf of Platte, allowing Platte to use the Platte Water in the boundaries of the Town.
3. **Water Demand.** In compliance with the Ordinance, the developers of the Panilolo property and the Candlelight Dinner Theater Property submitted preliminary water demand analyses to the Town. The Town's Water Engineer reviewed the analyses and found that:
  - a. Panilolo Property. An annual raw water demand of 3.04 acre-feet should be allocated to the Panilolo Property for the projected in-building and irrigation uses; and
  - b. Candlelight Dinner Theater Property. An annual raw water demand of 4.92 acre-feet should be allocated to the Candlelight Dinner Theater Property for the projected in-building and irrigation uses.
4. **Surplus Dedication Credit.** After transfer of the raw water credit to Platte, the VMJ Water Stock, originally consisting of thirteen (13) Home Supply shares, consists of seven and one-quarter (7.25) Home Supply shares. The seven and one-quarter (7.25) Home Supply shares constitutes a raw water credit of fifty-eight (58) acre-feet. Based on the allocation to RV Boatel in the RV Boatel WSSA and to BS Holdings in the BS Holdings WSSA and the preliminary projections of raw water demand for the Panilolo Property and the Candlelight Dinner Theater Property, VMJ has a surplus dedication credit with the Town in the amount of 34.04 acre-feet of raw water ("Surplus Credit"). The Surplus Credit is calculated as follows:

**Acre-Feet Per Year**

Original Credit	<u>58.00</u>
LESS: RV Boatel WSSA	8.00
BS Holdings WSSA	8.00
Panilolo Property	3.04
Candlelight Dinner Theater	<u>4.92</u>
<b>Surplus Credit:</b>	<b>34.04</b>

The Surplus Credit may be utilized to offset increased water demands in the Subject Property

**5. Commitment to Serve.** Subject to VMJ's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 58 acre-feet per year of raw water per year together with the corresponding sanitary sewer service.

**6. Future Review of Water Usage and Dedication Requirements.** In accordance with Section 13-68(h) of the Code, the Town reserves the right to subsequently review actual water usage of water in the Subject Property in the future and, if warranted, to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.

**7. Notices.** All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested, as follows:

**TO THE TOWN:**

Town of Johnstown  
Attn: Town Clerk  
450 S. Parish Ave.  
Johnstown, CO 80534

**WITH A COPY TO:**

Avi Rocklin, Esq.  
Johnstown Town Attorney  
1437 N. Denver Avenue, #330  
Loveland, CO 80538

Peter J. Ampe  
Hill & Robbins, P.C.  
1660 Lincoln St., Suite 2720  
Denver, CO 80264

**TO DEVELOPER:**

VMJ Properties, LLC  
Johnson-Taylor Family Properties, LLLP  
Attn: Chauncey Taylor  
2409 Lake Drive  
Loveland, CO 80538

The addresses for notices may be changed by written notice given to the other Party in the manner provided above, by hand delivery or by electronic mail ("e-mail") delivery on the condition that the party receiving the e-mail communication acknowledge receipt thereof.

**8. Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties, at a location not more than sixty (60) miles from the Town. If mediation is not successful after a ninety-day (90) period, either Party may then commence an action in a court of competent jurisdiction in Larimer or Weld County, Colorado, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

**9. Successors and Assigns.** The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Agreement shall not be assigned without the prior written consent of the other party, which shall not be unreasonably withheld.

**10. Amendment or Modification.** No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

**11. Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

**12. Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

**13. Choice of laws.** This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

**14. Non severability.** Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

**15. Entire agreement and Authorization.** This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

**16. No Presumption.** 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 of its own free and voluntary act and deed, without compulsion. 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. 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.

**17. Recordation.** This Agreement may be recorded by the Town at VMJ's expense in the office of the Clerk and Recorder of Larimer County, Colorado, and, effective as of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the VMJ and shall constitute notice of this Agreement to all persons or entities not parties hereto.

**18. Validity of Prior Water and Sewer Service Agreements.** The RV Boatel WSSA and the BS Holdings WSSA shall remain in full force and effect, and are not modified or amended by this Agreement.

**19. Headings for convenience only.** Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit or describe the scope or intent of any provision of this Agreement.

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

VMJ Properties, LLC

By: Chauncey Taylor  
Chauncey Taylor  
Title: Managing Member

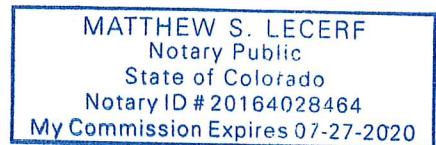
STATE OF COLORADO     )  
  ) ss  
COUNTY OF WELD     )

SUBSCRIBED AND SWORN to before me this 11 day of SEPTEMBER, 2019 by Chauncey Taylor, Managing Member of VMJ Properties, LLC.

Witness my hand and official seal.

Matthew S. Lecerf  
Notary Public

My Commission Expires: 7/27/2020



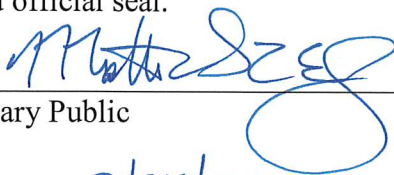
Johnson-Taylor Family Properties, LLLP

By: Chauncey Taylor  
Chauncey Taylor  
Title: Managing Partner

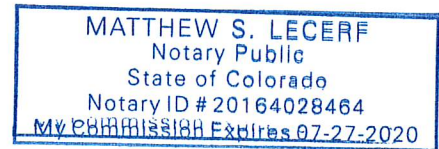
STATE OF COLORADO     )  
  ) ss  
COUNTY OF WELD     )

SUBSCRIBED AND SWORN to before me this 11 day of SEPTEMBER, 2019 by  
Chauncey Taylor, Managing Partner of Johnson-Taylor Family Properties, LLLP.

Witness my hand and official seal.

  
\_\_\_\_\_  
Notary Public

My Commission Expires: 7/27/2020



TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

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

ATTEST:

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



**Resolution  
No. 2019-19**

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO. 2019-19**

**A RESOLUTION OF THE TOWN OF JOHNSTOWN, COLORADO,  
ACKNOWLEDGING RECEIPT OF THE FY 2020 PRELIMINARY BUDGET**

**WHEREAS**, the preliminary budget for FY 2020 was presented to the Town Council on September 9, 2019 during a budget work session; and

**WHEREAS**, a second budget work session will be conducted on September 23, 2019 to continue reviewing the preliminary budget for FY 2020.

**NOW THEREFORE, BE IT RESOLVED** by the Town Council of the Town of Johnstown, Colorado that:

**Section 1.** The preliminary budget for 2020 was presented to the Town Council at a work session on September 9, 2020.

**Section 2.** A second budget work session will be conducted on September 23, 2019 to continue reviewing the preliminary budget for FY 2020.

**Section 3.** Effective Date. This resolution shall become effective immediately upon adoption.

**Section 4.** Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

**Section 5.** Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSES, AND ADOPTED THIS 16<sup>TH</sup> DAY OF SEPTEMBER, 2019.

**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: September 16, 2019

CC: Town Staff  
Local Media

SUBJECT: Departmental 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):

- 09/09/2019 – Work Session (Budget)
  - 09/16/2019 – Regular Town Council Meeting
  - 09/23/2019 – Work Session (Budget)
  - 09/30/2019 – Work Session (with Loveland)
- 

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

- *Planner II* – Darryll Wolnik is officially onboarded as our new Planner II and is helping review projects and return on-call emails and phone calls. He is an excellent addition to the Town staff.
- *Comprehensive Plan and Land Use Code Update* – An RFP was issued on September 9<sup>th</sup> to find an interdisciplinary team to assist the Town in updating both our Comprehensive Plan and moving directly into code updates needed to implement the updated vision for Johnstown.
- *Innovation Academy* – our Town Clerk and Planning & Development Director attended a 3 day training in Denver with one of the founders of the Peak Academy to gain knowledge and know-how to better streamline and innovate our day-to-day processes for better customer service and increased efficiencies.
- *GIS* – Our GIS consultant, InVision GIS, delivered the initial batch of mapping data, and help install and set up our ArcGIS/ArcMap system internally, to begin being able to edit and utilize this initial set of data.
- *Municipal Code Update* – The Municipal Code has been updated and is on the Town's Website. Ordinances through March 2019 have been included in this update.

**The Community That Cares**

- *2018 Audit* – The 2018 audit is complete and the Town has received the recommended audit adjusting entries as well as the adjusted trial balance. All journal entries have been recorded and the beginning balances for 2019 reflect those changes.
- *Utility Reading Software* – A phone conference is scheduled for late this week with Aclara, Caselle and Greystone to try and troubleshoot the importing process for our water reads. The new server installation has necessitated some revisions and additional integration with our utility reading software.
- *Sewer Project Process* – Staff and our consultants held an open house on the evening of Wednesday, September 11, 2019 to discuss with property owners along the preliminary route the intent of the project and the need for Right of Entry releases for the preliminary engineering work.
- *WCR 50/LCR 14 Road Project* – DOLA has provided us with the notice to proceed on the WCR 50/LCR 14 road project. We will be preparing the bid documents and coordinating with some of our partners including the LTWD regarding their line replacement over the next couple months. We anticipate bidding the project when contractors and their bids will be most advantageous for the Town from a cost perspective. We would anticipate the project starting in early Spring 2020.

## **Police Department**

### ***Training:***

- *Narcotics Investigations training* – Officer Wood attended Narcotics Investigation School in Denver. This training focused on identifying and investigating drug cases.
- *Defensive driving* – The entire department received defensive driving training through in-house instructors.
- *K9 Training* – Sergeant Timme and Officer Kehr attended K9 training in Loveland with the Loveland Police department. By attending, the officers received first-hand knowledge of how future K9 training will be conducted and what the expectations for success will look like.

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

- *K9 selection* – Officer Kehr and representatives from the Loveland Police Department and Estes Park Police Department are in Orlando Florida to select the new JPD K9.
- *Trauma Kits* – JPD was notified by the State Attorney Generals Office that we will receive 24 Individual Trauma Aid Kits (ITAK) at no charge to the Town. Each kit contains the following: (1)C-A-T® G7 Tourniquet, (1) Safety Cutter, (1) Pair of Nitrile Gloves, (1) Flat Compressed Gauze, (1) Mini Compression Bandage, (1) NuStat Tactical 2" x 36" Hemostatic Gauze.

## **Public Works Department**

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

- *Parks* – Sprinkler repairs are on the rise. Town Lake and Pioneer Ridge Park have had a couple main line breaks and crew were able to repair and get back on line quickly. Crews have also been replacing heads in all of our parks - Pioneer Ridge has had the most issues as of late, with multiple zones not watering properly, heads broken or not turning which has caused some grass to brown/burn. Tree trimming in Pioneer Ridge Park has also been a priority. Multiple trees were in need of trimming and thinning, as well as weed control on planters on the walking trail.

- *Storm water* – The debris grates at Pioneer Ridge were noted as damaged and completely removed from the mounting brackets. These grates keep debris from entering the storm water pipe system to prevent obstructions. Crews were able to remount and remove any existing obstructions.
- *Road Grading* – 10 miles of road grading was completed. Road included: CR 20C (3 times), CR 3 (3 times), and CR 46 (2 times).
- *Senior center* – Weather stripping was installed on all the outside doors at the senior center.
- *Overlay project* – Yes it is true, the road overlays are completed. We do have a few issues that needs to be addressed. Staff met with the contractor to discuss and further discussion on repairs are in the process of being worked out.
- *Fleet* – Two police cruiser were serviced and brakes replaced.
- *Alleyways* – All alleys in old town were graded.

### ***Water & Wastewater***

- *Water plant* – Our daily water demand flows are still on the high side. We are averaging 4.6 MGD.
- *Power outages* – Excel Energy has been having issues due to high demand in their system. We had a couple power outages that really placed a strain on our water plant. Even though our backup generator worked and kept power on, certain triggers happened during the transfer of power that created a chain reaction of events. Our DAF unit went down and production of water stopped for a couple hours. We had to go to emergency interconnects with Little Thompson and Central Weld to keep up with our demand. Staff did reach out to Excel Energy and they have stated that they will be changing the amperage trip limits. This should resolve the tripping from its current circuit loading. They also plan to replace a switch gear that they feel contributed to the issue.
- *North Tank* – Electrical service has been installed and inspected for the telemetry system for the north tank. Browns Hill our SCADA contractor is hooking up the final components. We are very close to having tank on line.
- *Development* – Oakwood homes Filing 10 is under the testing process for the water and sewer system. All of the infrastructure has been installed and going through bacteriological testing and pressure testing.
- *Central wastewater plant.* – The airline replacement has been completed at the WWTP and air flow is back to normal. The line was replaced due to all the gaskets were leaking and loss of air was affecting the MBBR treatment process. Our average plant flows have been 0.71 MGD. Our engineers have been collecting depth so f the existing sewer main to the plant for the design of the new gravity interceptor line from the Johnstown farms lift station to the Central WWTP.
- *Low point Treatment Plant* – The sludge press working efficiently, averaging 25 hours per week and 16 tons per week of sludge removal. Our flows at Low point have been averaging 0.26 to 0.3 MGD.
- *Cemetery* – Cemetery is still looking good. Rick Babbs is working hard out at the location to maintain the grounds.
- *Follow up* – As requested by the board I have reached out to a couple local cemeteries asking about cost estimates for a columbarium. We will be looking to include this in the 2020 budget.

**AGENDA ITEM 10A**

**Hotel & Restaurant License  
Café Mexicali**

**(Public Hearing)**

\*NEW LIQUOR LICENSE PUBLIC HEARING PROCEDURE – Café Mexicali

1. Open public hearing.
2. Receive information from staff.
3. Receive information from applicant.
4. Receive information from “parties in interest.” Parties in interest may also cross-examine the applicant.

(Parties in interest include adult residents of the designated neighborhood, the owner or manager of any business located within the designated neighborhood and the representative of any school within 500 feet of the proposed license. The representative of any organized neighborhood group within the designated neighborhood may present evidence, but may not cross-examine witnesses.)

5. Discretionary: Receive information from “others.” *(Only if the testimony would aid Council in considering the application.)*
6. Additional questions from Council, if any.
6. Close the public hearing. *(No more questions from Council.)*
7. Discussion and deliberation among Council.
8. Make a decision and/or motion from Council.

SUGGESTED MOTIONS

For Approval: I move to approve the Application for a Hotel & Restaurant License for Café Mexicali-Johnstown, LLC

For Denial: I move to deny approval of the Application for a Hotel & Restaurant License for Café Mexicali-Johnstown, LLC



## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** September 16, 2019

**ITEM NUMBER:** 10A

**SUBJECT: \*Public Hearing** – Café Mexicali –Johnstown LLC - New Hotel and Restaurant License

**ACTION PROPOSED:** Consider Issuance of a New Hotel and Restaurant License

**PRESENTED BY:** Town Clerk, Town Attorney

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**AGENDA ITEM DESCRIPTION:** This item is a public hearing to receive comments regarding the proposed new Hotel and Restaurant License for Café Mexicali – Johnstown, LLC DBA Café Mexicali, located at 4853 Thompson Parkway, Johnstown. When approving or denying an application, the Council acts as the local licensing authority and must consider if the reasonable requirements of the defined neighborhood are not presently being met by existing establishments, the desires of the adult inhabitants, and the number, type and availability of other similar liquor establishments located in or near the petitioned neighborhood as well as the moral character of the applicants.

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**LEGAL ADVICE:** The Town Attorney has reviewed the documents submitted and will be available at the meeting to answer questions.

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**FINANCIAL ADVICE:** The applicant has paid all applicable fees for both the State and the Town.

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**RECOMMENDED ACTION:** Consider issuance of a new Hotel and Restaurant License for Café Mexicali.

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the issuance of a Hotel and Restaurant License for Café Mexicali.

**For Denial:** I move to deny the issuance of a new Hotel and Restaurant License for Café Mexicali.

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**Reviewed:**

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**Town Manager**

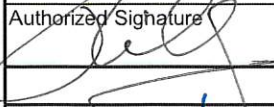
# **Liquor License Application**

## Colorado Liquor Retail License Application

<input checked="" type="checkbox"/> <b>New License</b> <input type="checkbox"/> <b>New-Concurrent</b> <input type="checkbox"/> <b>Transfer of Ownership</b> <input type="checkbox"/> <b>State Property Only</b>			
<b>• All answers must be printed in black ink or typewritten</b> <b>• Applicant must check the appropriate box(es)</b> <b>• Applicant should obtain a copy of the Colorado Liquor and Beer Code: <a href="http://www.colorado.gov/enforcement/liquor">www.colorado.gov/enforcement/liquor</a></b>			
1. Applicant is applying as a/an <input type="checkbox"/> Individual <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Association or Other <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership (Includes Limited Liability and Husband and Wife Partnerships)			
2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation <b>CAFE MEXICALI - Johnstain, LLC</b>			FEIN Number <b>92-5369109</b>
2a. Trade Name of Establishment (DBA) <b>CAFE MEXICALI</b>		State Sales Tax Number <b>35535455-0000</b>	Business Telephone <b>970-660-8611</b>
3. Address of Premises (specify exact location of premises, include suite/unit numbers) <b>4853 Thompson Pkwy</b>			
City <b>Johnstain</b>	County <b>LARIMER</b>	State <b>CO</b>	ZIP Code <b>80634</b>
4. Mailing Address (Number and Street) <b>1812 56th Ave</b>		City or Town <b>Greeley</b>	State <b>CO</b> ZIP Code <b>80634</b>
5. Email Address <b>Rick@CAFE MEXICALI.COM</b>			
6. If the premises currently has a liquor or beer license, you <b>must</b> answer the following questions			
Present Trade Name of Establishment (DBA)		Present State License Number	Present Class of License
Present Expiration Date			
<b>Section A                      Nonrefundable Application Fees</b>		<b>Section B (Cont.)                      Liquor License Fees</b>	
<input checked="" type="checkbox"/> Application Fee for New License .....\$550.00 <input type="checkbox"/> Application Fee for New License w/Concurrent Review .....\$650.00 <input type="checkbox"/> Application Fee for Transfer .....\$550.00		<input type="checkbox"/> Lodging & Entertainment - L&E (County) .....\$500.00 <input type="checkbox"/> Manager Registration - H & R .....\$75.00 <input type="checkbox"/> Manager Registration - Tavern .....\$75.00 <input type="checkbox"/> Manager Registration - Lodging & Entertainment .....\$75.00 <input type="checkbox"/> Manager Registration - Campus Liquor Complex .....\$75.00	
<b>Section B                      Liquor License Fees</b>			
<input type="checkbox"/> Add Optional Premises to H & R .....\$100.00 X _____ Total _____ <input type="checkbox"/> Add Related Facility to Resort Complex \$75.00 X _____ Total _____ <input type="checkbox"/> Add Sidewalk Service Area .....\$75.00 <input type="checkbox"/> Arts License (City) .....\$308.75 <input type="checkbox"/> Arts License (County) .....\$308.75 <input type="checkbox"/> Beer and Wine License (City) .....\$351.25 <input type="checkbox"/> Beer and Wine License (County) .....\$436.25 <input type="checkbox"/> Brew Pub License (City) .....\$750.00 <input type="checkbox"/> Brew Pub License (County) .....\$750.00 <input type="checkbox"/> Campus Liquor Complex (City) .....\$500.00 <input type="checkbox"/> Campus Liquor Complex (County) .....\$500.00 <input type="checkbox"/> Campus Liquor Complex (State) .....\$500.00 <input type="checkbox"/> Club License (City) .....\$308.75 <input type="checkbox"/> Club License (County) .....\$308.75 <input type="checkbox"/> Distillery Pub License (City) .....\$750.00 <input type="checkbox"/> Distillery Pub License (County) .....\$750.00 <input checked="" type="checkbox"/> Hotel and Restaurant License (City) .....\$500.00 <input type="checkbox"/> Hotel and Restaurant License (County) .....\$500.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City) .....\$600.00 <input type="checkbox"/> Hotel and Restaurant License w/one opt premises (County) .....\$600.00 <input type="checkbox"/> Liquor-Licensed Drugstore (City) .....\$227.50 <input type="checkbox"/> Liquor-Licensed Drugstore (County) .....\$312.50 <input type="checkbox"/> Lodging & Entertainment - L&E (City) .....\$500.00		<input type="checkbox"/> Master File Location Fee .....\$25.00 X _____ Total _____ <input type="checkbox"/> Master File Background .....\$250.00 X _____ Total _____ <input type="checkbox"/> Optional Premises License (City) .....\$500.00 <input type="checkbox"/> Optional Premises License (County) .....\$500.00 <input type="checkbox"/> Racetrack License (City) .....\$500.00 <input type="checkbox"/> Racetrack License (County) .....\$500.00 <input type="checkbox"/> Resort Complex License (City) .....\$500.00 <input type="checkbox"/> Resort Complex License (County) .....\$500.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (City) .....\$160.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (County) .....\$160.00 <input type="checkbox"/> Related Facility - Campus Liquor Complex (State) .....\$160.00 <input type="checkbox"/> Retail Gaming Tavern License (City) .....\$500.00 <input type="checkbox"/> Retail Gaming Tavern License (County) .....\$500.00 <input type="checkbox"/> Retail Liquor Store License-Additional (City) .....\$227.50 <input type="checkbox"/> Retail Liquor Store License-Additional (County) .....\$312.50 <input type="checkbox"/> Retail Liquor Store (City) .....\$227.50 <input type="checkbox"/> Retail Liquor Store (County) .....\$312.50 <input type="checkbox"/> Tavern License (City) .....\$500.00 <input type="checkbox"/> Tavern License (County) .....\$500.00 <input type="checkbox"/> Vintners Restaurant License (City) .....\$750.00 <input type="checkbox"/> Vintners Restaurant License (County) .....\$750.00	
<b>Questions? Visit: <a href="http://www.colorado.gov/enforcement/liquor">www.colorado.gov/enforcement/liquor</a> for more information</b>			
<b>Do not write in this space - For Department of Revenue use only</b>			
<b>Liability Information</b>			
License Account Number	Liability Date	License Issued Through (Expiration Date)	Total \$

Name <b>Cafe Mexicali</b>	Type of License <b>Hotel Restaurant</b>	Account Number		
7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years?		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):				
(a) Been denied an alcohol beverage license?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
(b) Had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
(c) Had interest in another entity that had an alcohol beverage license suspended or revoked?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
If you answered yes to 8a, b or c, explain in detail on a separate sheet.				
9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
Waiver by local ordinance? <input type="checkbox"/> Other: _____		<input type="checkbox"/> <input checked="" type="checkbox"/>		
11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/>		
12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		<input type="checkbox"/> <input type="checkbox"/>		
13a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?		<input type="checkbox"/> <input type="checkbox"/>		
13b. Are you a Colorado resident?		<input checked="" type="checkbox"/> <input type="checkbox"/>		
14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.		<input checked="" type="checkbox"/> <input type="checkbox"/>		
15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement?		<input checked="" type="checkbox"/> <input type="checkbox"/>		
<input type="checkbox"/> Ownership <input checked="" type="checkbox"/> Lease <input type="checkbox"/> Other (Explain in Detail) _____				
a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:				
Landlord <b>Johnston Plaza LLC</b>	Tenant <b>Cafe Mexicali - Johnston LLC</b>	Expires <b>Feb 2028</b>		
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".				
16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.				
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.				
17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:				
Has a local ordinance or resolution authorizing optional premises been adopted?		<input type="checkbox"/> <input checked="" type="checkbox"/>		
Number of additional Optional Premise areas requested. (See license fee chart) _____				
18. For the addition of a Sidewalk Service Area per Regulation 47-302(A)(4), include a diagram of the service area and documentation received from the local governing body authorizing use of the sidewalk. Documentation may include but is not limited to a statement of use, permit, easement, or other legal permissions.				
19. Liquor Licensed Drugstore (LLDS) applicants, answer the following:				
(a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? <input type="checkbox"/> <input type="checkbox"/>				
If "yes" a copy of license must be attached.				

Name <b>Cafe Mexicali</b>	Type of License <b>Hotel Restaurant</b>	Account Number		
<b>20. Club Liquor License applicants answer the following: Attach a copy of applicable documentation</b>				
(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?		<input type="checkbox"/> <input type="checkbox"/>		
(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?		<input type="checkbox"/> <input type="checkbox"/>		
(c) How long has the club been incorporated?		<input type="checkbox"/> <input type="checkbox"/>		
(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?		<input type="checkbox"/> <input type="checkbox"/>		
<b>21. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:</b>				
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)		<input type="checkbox"/> <input type="checkbox"/>		
<b>22. Campus Liquor Complex applicants answer the following:</b>				
(a) Is the applicant an Institution of higher education?		Yes No <input type="checkbox"/> <input type="checkbox"/>		
(b) Is the applicant a person who contracts with the institution of higher education to provide food services?		<input type="checkbox"/> <input type="checkbox"/>		
If "yes" please provide a copy of the contract with the institution of higher education to provide food services.				
<b>23. For all on-premises applicants.</b> a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details. b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.				
Last Name of Manager <b>KRAMMER</b>	First Name of Manager <b>RICHARD SETH</b>			
<b>24. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.</b>		<input type="checkbox"/> <input checked="" type="checkbox"/>		
<b>25. Related Facility - Campus Liquor Complex applicants answer the following:</b> a. Is the related facility located within the boundaries of the Campus Liquor Complex? If yes, please provide a map of the geographical location within the Campus Liquor Complex. If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex. b. Designated Manager for Related Facility- Campus Liquor Complex		Yes No <input type="checkbox"/> <input type="checkbox"/>		
Last Name of Manager	First Name of Manager			
<b>26. Tax Distraint Information. Does the applicant or any other person listed on this application including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?</b> If yes, provide an explanation and include copies of any payment agreements.		<input type="checkbox"/> <input checked="" type="checkbox"/>		
<b>27. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.</b>				
Name <b>Richard A. Kramer</b>	Home Address, City & State <b>231</b>	DOB <b>01/01/1950</b>	Position <b>Owner</b>	%Owned <b>50</b>
Name <b>DAVID D. HOFFMAN II</b>	Home Address, City & State <b>21</b>	DOB <b>01/01/1950</b>	Position <b>Owner</b>	%Owned <b>50</b>
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
** If applicant is owned 100% by a parent company, please list the designated principal officer on above. ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable) ** If total ownership percentage disclosed here does not total 100%, applicant must check this box: <input checked="" type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S.				

Name <b>Cafe Mexicali</b>	Type of License <b>Hotel &amp; Restaurant</b>	Account Number
<b>Oath Of Applicant</b>		
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.		
Authorized Signature 	Printed Name and Title <b>Richard A. Kramer Managing Member</b>	Date <b>8/1/19</b>
<b>Report and Approval of Local Licensing Authority (City/County)</b>		
Date application filed with local authority <b>8/1/2019</b>	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application)	
The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:		
<input type="checkbox"/> Fingerprinted <input type="checkbox"/> Subject to background investigation, including NCIC/CCIC check for outstanding warrants		
That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license		
(Check One)		
<input type="checkbox"/> Date of inspection or anticipated date _____ <input type="checkbox"/> Will conduct inspection upon approval of state licensing authority		
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?		Yes No <input type="checkbox"/> <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?		<input type="checkbox"/> <input type="checkbox"/>
<b>NOTE:</b> The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?		<input type="checkbox"/> <input type="checkbox"/>
The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. <b>Therefore, this application is approved.</b>		
Local Licensing Authority for		Telephone Number <input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title
Signature	Print	Title
		Date

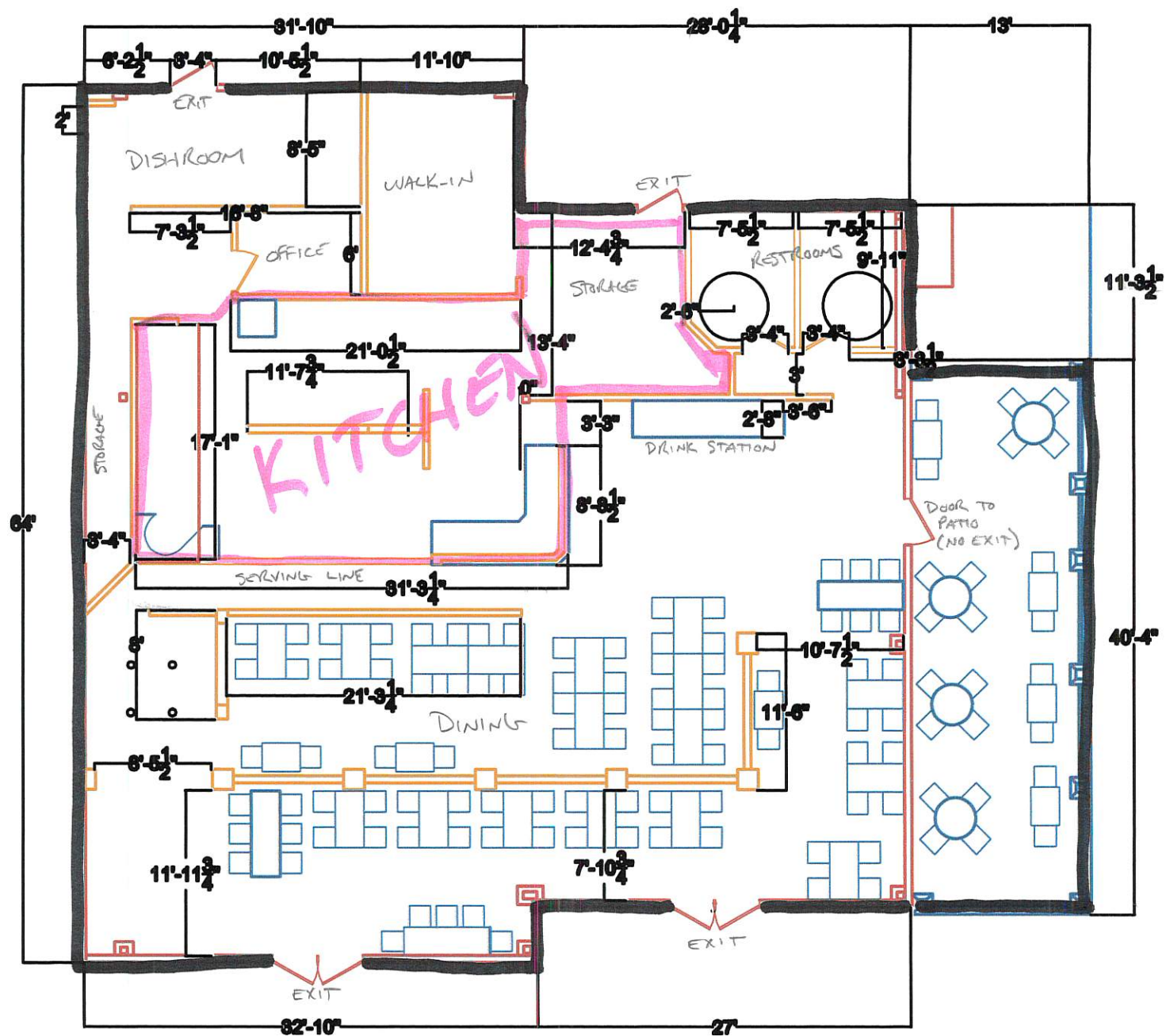
ATTACHED – CAFÉ MEXICALI-BOULDER, LLC LIQUOR LICENSE APPLICATION

14.

**David D Hoffman** own 50% of  
Café Mexicali LLC  
2925 South College Ave  
Fort Collins CO 80525  
970-266-9292

**Richard Krammer** owns 50%  
Café Mexicali LLC  
2925 South College Ave  
Fort Collins CO 80525  
970-266-9292







## **Map of area petitioned**



**Mexicali Café - Neighborhood**

# **Results of the Liquor Licensing Survey**

## SUMMARY

Dates of Petitioning July 16, 2019 through July ~~26~~<sup>30</sup>, 2019

Total Doorknocks:

39

Not at Home or Business Owners/Managers Not Available

5

Not Qualified to Sign

Preferred to Not Participate

1

Parties in Interest that Participated

33

Number of Signatures in Favor

33

Breakdown of Reasons of Signatures in Opposition:

- 1- No need
  - 2- Abhorrence of Alcohol
  - 3- Religious Objections
  - 4- Usage Objections
  - 5- Miscellaneous Reason
  - 6- No Reason Given
  - 7- Total Signatures
  - 8 - OWNER /MANAGER NOT AVAILABLE
-

## PETITION TO THE JOHNSTOWN LIQUOR AUTHORITY

**Applicant Name: Café-Mexicali-Johnstown, LLC**

**D/B/A: Café Mexicali**

**Site Location: 4851 Thompson Parkway**

**Type of License: Hotel & Restaurant License**

**Public Hearing: September 4, 2019**

**Defined Neighborhood: Only the area pertaining to the Town of Johnstown within a 1-mile radius surrounding the proposed license location  
(See Map)**

This petition/opinion poll is being conducted to determine the reasonable requirements, needs and desires of the adult inhabitants of the defined neighborhood per C.R.S. 12-46 and/or C.R.S. 12-47, The Colorado Beer and Liquor Codes, and per local licensing authority rules/procedures.

If you **FAVOR AND SUPPORT** this application for a Liquor License because it is your opinion the reasonable requirements of the adult inhabitants of the defined neighborhood (**see map**) are not now being adequately served by existing business that hold the same or similar type of license now doing business in the defined neighborhood, and it is your desire this Liquor License be issued, please sign and check **FAVOR** column to grant the requested license.

(1) You must be 21 years of age or older and a resident of the defined neighborhood (**see map**); 2) Or Must be the Owner of Manager of business located within the defined neighborhood and be 21 years of age or older; 3) Must sign in the presence of petition circulator and may only sign for this matter one time; and 4) Must sign own name (first name or first initial and last name). No individual may sign for another individual.

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## SUMMARY

Dates of Petitioning July 16, 2019 through <sup>August 1</sup>~~July 26~~, 2019

Total Doorknocks:

157

Not at Home or Business Owners/Managers Not Available

85

Not Qualified to Sign

2

Preferred to Not Participate

5

Parties in Interest that Participated

~~157~~ 65

Number of Signatures in Favor

64

Breakdown of Reasons of Signatures in Opposition:

- 1- No need
- 2- Abhorrence of Alcohol
- 3- Religious Objections
- 4- Usage Objections
- 5- Miscellaneous Reason
- 6- No Reason Given
- 7- Total Signatures

**PETITION TO THE JOHNSTOWN LIQUOR AUTHORITY**

**Applicant Name: Café-Mexicali-Johnstown, LLC**

**D/B/A: Café Mexicali**

**Site Location: 4851 Thompson Parkway**

**Type of License: Hotel & Restaurant License**

**Public Hearing: September 4, 2019**

**Defined Neighborhood: Only the area pertaining to the Town of Johnstown within a 1-mile radius surrounding the proposed license location  
(See Map)**

This petition/opinion poll is being conducted to determine the reasonable requirements, needs and desires of the adult inhabitants of the defined neighborhood per C.R.S. 12-46 and/or C.R.S. 12-47, The Colorado Beer and Liquor Codes, and per local licensing authority rules/procedures.

If you **FAVOR AND SUPPORT** this application for a Liquor License because it is your opinion the reasonable requirements of the adult inhabitants of the defined neighborhood (**see map**) are not now being adequately served by existing business that hold the same or similar type of license now doing business in the defined neighborhood, and it is your desire this Liquor License be issued, please sign and check **FAVOR** column to grant the requested license.

(1) You must be 21 years of age or older and a resident of the defined neighborhood (**see map**); 2) Or Must be the Owner or Manager of business located within the defined neighborhood and be 21 years of age or older; 3) Must sign in the presence of petition circulator and may only sign for this matter one time; and 4) Must sign own name (first name or first initial and last name). No individual may sign for another individual.

# **Police Report**



**TOWN OF JOHNSTOWN POLICE DEPARTMENT**

**Information 3.2% Beer or Liquor Application**

- Name and address of Applicant} Café Mexicali-Johnstown, LLC.  
1812 56<sup>th</sup> Avenue  
Greeley, CO 80634
1. Trade Name and Address} Café Mexicali  
4853 Thompson Parkway  
Johnstown, CO 80534
2. Date of Application: 08/01/2019
3. Type of Application: Hotel and Restaurant License
4. Documents Accompanying Application
- A. Local and State License Fees} Submitted with application
  - B. Evidence of Correct Zoning} CBD
  - C. Building Plans and or Sketch of Interior} N/A
  - D. Distance from School as per State} N/A
  - E. Deed or Lease or Assignment of Lease or Ownership} Lease
5. Evidence of Public Notice
- A. Posting of Premises} Posted September 4, 2019
6. Legal Publication } Johnstown Breeze September 5, 2019
7. Investigation: Police Department Case#}
- A. Applicant has made application for a new Hotel and Restaurant License.
  - B. Background Investigation: – CBI and FBI have processed the background investigation  
There is nothing in the background that would prohibit issuance of the liquor license
8. Findings of fact:
- A. The required fees were submitted.
  - B. It is my recommendation the Hotel and Restaurant License be approved.

  
\_\_\_\_\_  
CHIEF OF POLICE

  
\_\_\_\_\_  
DATE

**AGENDA ITEM 10B**

**Beer and Wine License  
BM Nail Bar**

**(Public Hearing)**

\*NEW LIQUOR LICENSE PUBLIC HEARING PROCEDURE – BM Nail Bar

1. Open public hearing.
2. Receive information from staff.
3. Receive information from applicant.
4. Receive information from “parties in interest.” Parties in interest may also cross-examine the applicant.

(Parties in interest include adult residents of the designated neighborhood, the owner or manager of any business located within the designated neighborhood and the representative of any school within 500 feet of the proposed license. The representative of any organized neighborhood group within the designated neighborhood may present evidence, but may not cross-examine witnesses.)

5. Discretionary: Receive information from “others.” *(Only if the testimony would aid Council in considering the application.)*
6. Additional questions from Council, if any.
6. Close the public hearing. *(No more questions from Council.)*
7. Discussion and deliberation among Council.
8. Make a decision and/or motion from Council.

SUGGESTED MOTIONS

For Approval: I move to approve the Application for a Beer and Wine License for BM Nail Bar, Inc.

For Denial: I move to deny approval of the Application for a Beer and Wine License for BM Nail Bar, Inc.

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** September 16, 2019

**ITEM NUMBER:** 10B

**SUBJECT: \*Public Hearing** – BM Nail Bar - New Beer and Wine License

**ACTION PROPOSED:** Consider Issuance of a New Beer and Wine License

**PRESENTED BY:** Town Clerk, Town Attorney

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**AGENDA ITEM DESCRIPTION:** This item is a public hearing to receive comments regarding the proposed new Beer and Wine License for BM Nail Bar, Inc. DBA BM Nail Bar, located at 4900 Larimer Parkway, Johnstown. When approving or denying an application, the Council acts as the local licensing authority and must consider if the reasonable requirements of the defined neighborhood are not presently being met by existing establishments, the desires of the adult inhabitants, and the number, type and availability of other similar liquor establishments located in or near the petitioned neighborhood as well as the moral character of the applicants.

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**LEGAL ADVICE:** The Town Attorney has reviewed the documents submitted and will be available at the meeting to answer questions.

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**FINANCIAL ADVICE:** The applicant has paid all applicable fees for both the State and the Town.

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**RECOMMENDED ACTION:** Consider issuance of a new Beer and Wine License for BM Nail Bar.

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the issuance of a new Beer and Wine License for BM Nail Bar.

**For Denial:** I move to deny the issuance of a new Beer and Wine License for BM Nail Bar.

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**Reviewed:**

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**Town Manager**

# **Liquor License Application**

1

*Beers & Wine*

Name <b>BM NAIL BAR INC</b>	Type of License <b>RETAIL LIQUOR</b>	Account Number <b>N/A</b>
--------------------------------	---	------------------------------

7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years? Yes ☐ No ☒

8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):

(a) Been denied an alcohol beverage license? ☐ ☒

(b) Had an alcohol beverage license suspended or revoked? ☐ ☒

(c) Had interest in another entity that had an alcohol beverage license suspended or revoked? ☐ ☒

If you answered yes to 8a, b or c, explain in detail on a separate sheet.

9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail. N/A ☐ ☒

10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary? ☐ ☒

or

Waiver by local ordinance? ☐ ☒

Other: N/A

11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. ☐ ☒

12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? **NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS. ☐ ☒

13a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016? ☐ ☒

13b. Are you a Colorado resident? ☒ ☐

14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee. ☐ ☒

15. Does the applicant, as listed on line 2 of this application, **have legal possession of the premises by ownership**, lease or other arrangement? ☒ ☐

☐ Ownership ☒ Lease ☐ Other (Explain in Detail) N/A

a. If leased, list name of landlord and tenant, and date of expiration, **exactly** as they appear on the lease:

Landlord <b>BELFIORE PROPERTIES WEST, LLC</b>	Tenant <b>BM NAIL BAR INC.</b>	Expires <b>2023</b>
--	-----------------------------------	------------------------

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16. ☐ ☒

c. Attach a diagram that designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.

Last Name <b>TRAN</b>	First Name <b>KENNY Q</b>	Date of Birth	FEIN or SSN	Interest/Percentage <b>0</b>
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage

**Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.**

17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:  
Has a local ordinance or resolution authorizing optional premises been adopted? ☐ ☒

Number of additional Optional Premise areas requested. (See license fee chart) **N/A**

18. Liquor Licensed Drugstore (LLDS) applicants, answer the following:  
(a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise? ☐ ☒  
**If "yes" a copy of license must be attached.**

19. Club Liquor License applicants answer the following: **Attach a copy of applicable documentation** **N/A**

(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain? ☐ ☒

(b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain? ☐ ☒

(c) How long has the club been incorporated? **N/A**

(d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above? ☐ ☒

20. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:  
(a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached) ☐ ☒

Name <b>BM NAIL BAR INC</b>		Type of License <del>RETAIL LIQUOR</del> <i>Beer &amp; Wine</i>	Account Number N/A	
<b>21. Campus Liquor Complex applicants answer the following:</b> (a) Is the applicant an institution of higher education? <span style="float:right">Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></span> (b) Is the applicant a person who contracts with the institution of higher education to provide food services? <span style="float:right">Yes <input type="checkbox"/> No <input checked="" type="checkbox"/></span> <b>If "yes" please provide a copy of the contract with the institution of higher education to provide food services.</b>				
<b>22. For all on-premises applicants.</b> <b>a. Hotel and Restaurant, Lodging and Entertainment, Tavern License and Campus Liquor Complex, the Registered Manager must also submit an Individual History Record</b> - DR 8404-I and fingerprint submitted to approved State Vendor through the Vendor's website. See application checklist, Section IV, for details. <b>b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit a Manager Permit Application</b> - DR 8000 and fingerprints.				
Last Name of Manager N/A		First Name of Manager N/A		
<b>23. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado? If yes, provide name, type of license and account number.</b> <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span>				
<b>24. Related Facility - Campus Liquor Complex applicants answer the following:</b> <b>a. Is the related facility located within the boundaries of the Campus Liquor Complex?</b> <span style="float:right">Yes <input type="checkbox"/> No <input type="checkbox"/></span> If yes, please provide a map of the geographical location within the Campus Liquor Complex. If no, this license type is not available for issues outside the geographical location of the Campus Liquor Complex. <b>b. Designated Manager for Related Facility- Campus Liquor Complex</b>				
Last Name of Manager N/A		First Name of Manager N/A		
<b>25. Tax Distant Information. Does the applicant or any other person listed on this application including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distant issued to them by the Colorado Department of Revenue?</b> <span style="float:right"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</span> If yes, provide an explanation and include copies of any payment agreements.				
<b>26. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and make an appointment with an approved State Vendor through their website. See application checklist, Section IV, for details.</b>				
Name <b>THUY S TRAN</b>	Home Address, City & State <b>469 TERRITORY LN</b>	DOB	Position <b>PRESIDENT</b>	%Owned <b>100</b>
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
<b>** If applicant is owned 100% by a parent company, please list the designated principal officer on above.</b> <b>** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (Include ownership percentage if applicable)</b> <b>** If total ownership percentage disclosed here does not total 100%, applicant must check this box:</b> <input checked="" type="checkbox"/> Applicant affirms that no individual other than these disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Article 3 or 5, C.R.S. <i>Beer &amp; Wine</i>				
Name <b>BM NAIL BAR INC</b>		Type of License <del>RETAIL LIQUOR</del>	Account Number N/A	
<b>Oath Of Applicant</b>				
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.				
Authorized Signature <i>[Signature]</i>		Printed Name and Title <b>THUY S. TRAN/PRESIDENT</b>		Date <b>7/1/19</b>
<b>Report and Approval of Local Licensing Authority (City/County)</b>				
Date application filed with local authority <b>4/12/19</b>		Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application) <b>9/16/2019</b>		



The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:

- ☐ Fingerprinted  
☐ Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license

(Check One)

- ☐ Date of inspection or anticipated date \_\_\_\_\_  
☒ Will conduct inspection upon approval of state licensing authority

☐ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?

Yes No  
☐ ☒

☐ Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?

☐ ☒

**NOTE:** The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.

☐ Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?

☐ ☐

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 44, Article 4 or 3, C.R.S., and Liquor Rules. **Therefore, this application is approved.**

Local Licensing Authority for

Telephone Number

☒ Town, City

☐ County

Signature

Print

Title

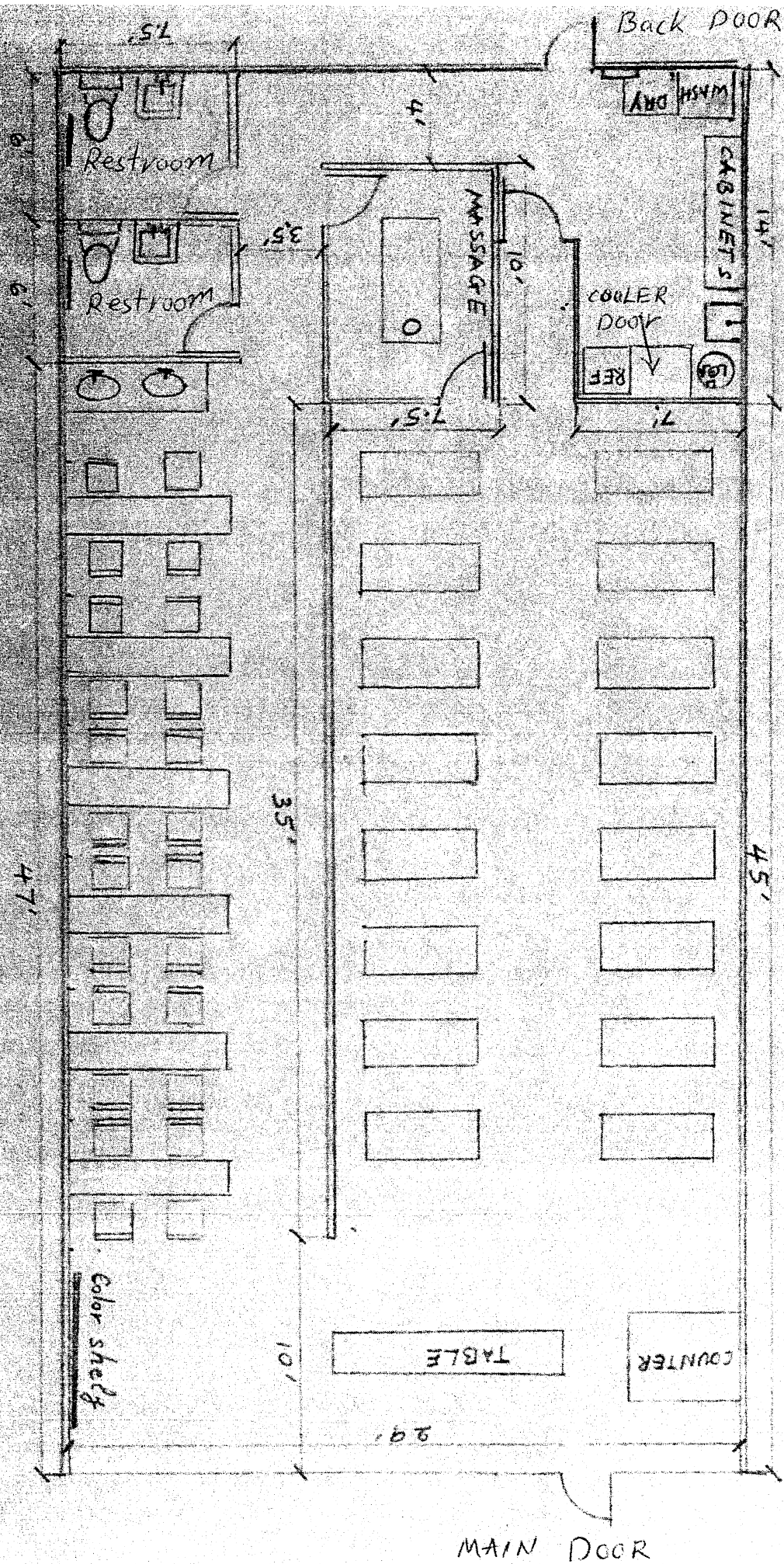
Date

Signature

Print

Title

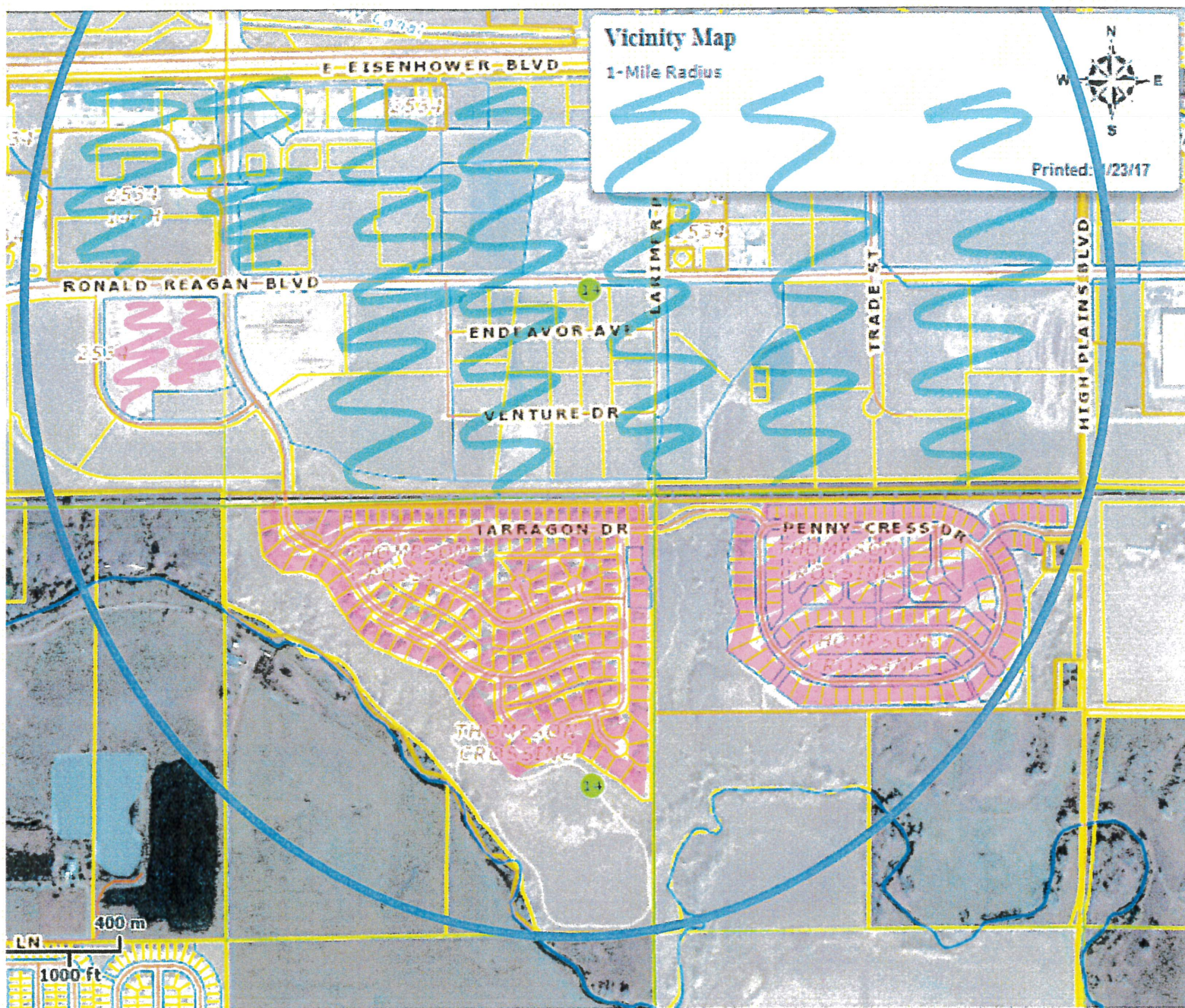
Date



MAIN DOOR

## **Map of area petitioned**





## ● - BUSINESSES    ○ - RESIDENCES

APPLICANT/TRADE NAME: BM NAIL BAR, INC., dba BM NAIL BAR  
 APPLICATION FOR: BEER & WINE LIQUOR LICENSE [To sell beer & wine, by the drink, to be consumed ON the licensed premises only]  
 ADDRESS: 4900 LARIMER PARKWAY, JOHNSTOWN, CO 80534  
 PUBLIC HEARING: MONDAY, 16 SEPTEMBER 2019, 7:00 P.M., JOHNSTOWN ADMINISTRATION OFFICES, 450 S. PARISH, JOHNSTOWN, CO  
 DEFINED NEIGHBORHOOD: AREA WITHIN BOUNDARIES DEFINED BY THE TOWN OF JOHNSTOWN



# **Results of the Liquor Licensing Survey**

*Oedipus, Inc.*<sup>TM</sup>  
*Empirical Data Services*

***BM***  
***Nail Bar***

4900 Larimer Parkway  
Johnstown, CO 80534

**Beer & Wine  
Liquor License**

# ***Oedipus, Inc.***

*Empirical Data Services*

16 September 2019

Local Licensing Authority  
Johnstown, Colorado

P.O. BOX 1012  
LAFAYETTE, CO 80026  
303 661 0638  
303 604 2862 FAX

Re: Petition/Opinion Poll to Determine Needs and Desires  
of the Defined Neighborhood in the Application of:

***BM Nail Bar, Inc., dba BM Nail Bar***  
**4900 Larimer Parkway, Johnstown, CO 80534**  
**Beer & Wine Liquor License**

- PETITION & TELEPHONE  
SURVEYS
  - Liquor & Beer License
  - Rezoning
  - Opinion Poll
  - Venue
  - Special Tax Districts
- LIQUOR LICENSE SITE &  
ECONOMIC ANALYSIS

## **PETITION/OPINION POLL PROCEDURE**

1. Under the direction and control of Oedipus, Inc. management, the Oedipus, Inc. employee was briefed on the application.
2. The employee carried a clipboard with the following:
  - A. A map of the area denoting the proposed location of the license and the boundaries of the defined neighborhood;
  - B. Petitions allowing individuals contacted to indicate their opinion with instructions and qualifications for signing;
  - C. A stat sheet to record the opinion of those not signing and not-at-homes.
3. Business and residential petitioning was conducted on 31 August 2019, and 1 and 3 September 2019 within the neighborhood defined by the Town Clerk's office of Johnstown (see map). The circulation packets have a cover map, and the areas in which each petition circulation/polling took place are outlined in highlighter. Included in this Report is a master circulation map outlining all areas where circulation/polling was conducted.
4. Individuals were contacted on a random sampling basis, were screened to identify them as parties in interest, and were asked their opinion after they had been informed of the applicant, site location, and type of license being applied for. Their opinion was either recorded on the petition format or on the stat sheet.
5. Two (2) petition packets (one packet representing businesses, one packet representing residences), together with a Summary Letter and this Report were prefiled on 6 September 2019 with the office of Ms. Diana Seele, CMC, Town Clerk, to comply with the prefiling deadline.

**PETITION/OPINION POLL RESULTS**

1.	<u>Total Doorknocks:</u>		
	Not-at-Homes and/or Business Owners/Managers Not Available		250
	Not Qualified to Sign		9
	Preferred to Not Participate		20
	Parties in Interest that Participated		164
	Deleted Signatures		<u>4</u>
	<b>Total Base Figure</b>		<b>447</b>

2. Qualified Contacts:

A. Signatures

Signatures Favoring Issuance		159
Businesses	36	
Residences	123	
Signatures Opposing Issuance		5
Businesses	1	
Residences	4	
<b>Total Contacts</b>		<b>164</b>

B. Breakdown of Reasons of Signatures in Opposition:

No Need	3
Abhorrence of Alcohol	0
Religious Objections	0
Usage Objections	1
Miscellaneous Reasons	0
No Reason Given	<u>1</u>
<b>Total Signatures</b>	<b>5</b>



C. Breakdown of Signatures Favoring and Opposing:

Favoring Issuance (Based on Needs/Desires)	159	=	96.95%
Opposing Issuance (Based on Needs/Desires)	3	=	1.83%
Abhorrence of Alcohol	0	=	0.00%
Religious Objections	0	=	0.00%
Usage Objections (Commercial, Traffic, Parking, Crime)	1	=	0.61%
Other Miscellaneous Reasons	0	=	0.00%
No Reason Given	<u>1</u>	=	<u>0.61%</u>
<b>Total Base Figure</b>	<b>164</b>	=	<b>100.00%</b>

3. Needs and Desires Signatures:

Signatures Favoring Issuance (Based on Needs/Desires)	159	=	98.15%
Signatures Opposing Issuance (Based on Needs/Desires)	<u>3</u>	=	<u>1.85%</u>
<b>Total Base Figure</b>	<b>162</b>	=	<b>100.00%</b>

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The petition packets are presented as follows: Cover map, petitions, and affidavit.

#1 & #2 / Mark Steffek / Businesses & Residences

## **CATEGORIES OF SIGNATURES IN OPPOSITION**

**NN NEEDS & DESIRES CRITERIA:**

Individuals opposed to the license application based on needs and desires criteria per the Colorado Liquor/Beer Codes (currently existing licensed establishments of a same or similar type of license now located within the defined neighborhood are meeting the reasonable requirements of the adult inhabitants of the defined neighborhood at this time).

**NON NON-USAGE OF ALCOHOL / ABHORRENCE OF ALCOHOL:**

Individuals opposed to the license application because they do not drink alcohol beverages, do not approve of alcohol consumption, and/or abhor alcohol.

**RO RELIGIOUS OBJECTIONS:**

Individuals opposed to the license application based on religious beliefs/reasons.

**OBJ USAGE OBJECTIONS:**

Individuals opposed to the license application because of their fear or concern for the potential of parking problems, traffic problems, crime, noise, littering, undesirable people drawn to the area, loss of property value; or individuals who opposed this type of business or applicant, any type of commercial usage in the neighborhood, any new growth in the neighborhood; or, individuals who think this type of business (if issued a liquor/beer license) should not be located near a residential neighborhood, church, or school, etc.; or, individuals who opposed because they are against any alcohol service at this type of facility, location, or atmosphere; or, individuals who favor the service of beer and wine but oppose the service of distilled spirits (on H&R applications).

**MS MISCELLANEOUS OBJECTIONS:**

Individuals opposed to the license application for other miscellaneous reasons to include: fear or concern for the possibility of drunk drivers in the area, fear or concern of resulting behavioral problems, individuals who would purchase alcohol beverages then drink and drive, sales to minors/underaged drinking, the location becoming a teen hang-out and the problems that can arise from this, and the effect it could have on family values or their family in general because they have young children or teens; or, individuals who opposed because competition is not desired or how said business may affect the livelihood of existing businesses; or, individuals who compared the “needs and desires” criteria to existing licensed outlets other than the type of license applied for.

**NR NO REASON GIVEN:**

Individuals who preferred to not state a reason for opposing.

# **Police Report**

**TOWN OF JOHNSTOWN POLICE DEPARTMENT**

**Information 3.2% Beer or Liquor Application**

- Name and address of Applicant} BM Nail Bar Inc.  
469 Territory Lane  
Johnstown, CO 80534
1. Trade Name and Address} BM Nail Bar  
4900 Larimer Parkway  
Johnstown, CO 80534
2. Date of Application: 04/12/2019
3. Type of Application: Beer and Wine License
4. Documents Accompanying Application
- A. Local and State License Fees} Submitted with application
  - B. Evidence of Correct Zoning} CBD
  - C. Building Plans and or Sketch of Interior} N/A
  - D. Distance from School as per State} N/A
  - E. Deed or Lease or Assignment of Lease or Ownership} Lease
5. Evidence of Public Notice
- A. Posting of Premises} Posted August 5, 2019
6. Legal Publication } Johnstown Breeze September 5, 2019
7. Investigation: Police Department Case#}
- A. Applicant has made application for a new Beer and Wine License.
  - B. Background Investigation: – CBI and FBI have processed the background investigation  
There is nothing in the background that would prohibit issuance of the liquor license
8. Findings of fact:
- A. The required fees were submitted.
  - B. It is my recommendation the Beer and Wine License be approved.

  
\_\_\_\_\_  
CHIEF OF POLICE

  
\_\_\_\_\_  
DATE

**AGENDA ITEM 10C**

**Third Amendment to Escrow  
Agreement**

**(Johnstown Plaza, LLC )**

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## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** September 16, 2019

**ITEM NUMBER:** 10C

**SUBJECT:** Consider Third Amendment to Escrow Agreement Regarding Transfer of Johnstown Plaza Metropolitan District Bond Funds to Developer Funds Account

**ACTION PROPOSED:** Approve Third Amendment to Escrow Agreement

**PRESENTED BY:** Town Attorney and Town Manager

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**AGENDA ITEM DESCRIPTION:** On or about July 6, 2016, the Town, Johnstown Plaza Metropolitan District (“District”), Johnstown Plaza, LLC (“Developer”) and UMB Bank, N.A. entered into an Escrow Agreement related to, among other matters, the disbursement of funds from the Johnstown 2016 Bond Proceeds Accounts (“Bond Accounts”) for payment of the verified eligible public improvements costs and for disbursement of funds from the developer funds account (“Developer Account”) for payment of private improvements costs. The Escrow Agreement provides that, if funds remain in the Bond Accounts three years after the execution of the agreement, then the Town and the District have sixty (60) days to agree upon how the remaining funds are to be spent or the funds are returned to the bondholders. The Bond Accounts terminate on September 30, 2019, and contain funds in the approximate amount of \$9,100,000.00. The Developer and the District request that the funds remaining in the Bond Accounts be transferred to the Developer Account and that they continue to be disbursed according to the cost structure set out in the Escrow Agreement. Because public improvements have not been completed, the Town may approve the transfer from the Bond Accounts to the Developer Account, but require that funds be set aside for completion of the outstanding public improvements.

The Third Amendment to Escrow Agreement allows for the transfer of the funds from the Bond Accounts to the Developer Account and maintains the current disbursement cost structure for private improvements, but sets aside \$500,000, the estimated original cost of the remaining public improvements with a slight escalation to account for increased construction costs, for completion of the public improvements. The amended agreement directs the escrow agent to open a new account, to be known as the Public Improvements Escrow Account, to hold the public improvement funds.

Except as set forth in the amendment, the provisions of the Escrow Agreement remain in full force and effect.

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**LEGAL ADVICE:** The Town Attorney prepared the Third Amendment to the Escrow Agreement.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve the Third Amendment to Escrow Agreement.

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the Third Amendment to the Escrow Agreement and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the Third Amendment to the Escrow Agreement.

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**Reviewed:**

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**Town Manager**

# **Amendment to Escrow Agreement**

### THIRD AMENDMENT TO ESCROW AGREEMENT

This **THIRD AMENDMENT TO ESCROW AGREEMENT** ("Third Amendment") is made and entered into as of the \_\_\_\_ day of September, 2019, by and among the TOWN OF JOHNSTOWN, COLORADO, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado ("**Town**"), JOHNSTOWN PLAZA, LLC, a Kansas Limited Liability Company ("**Developer**"), JOHNSTOWN PLAZA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado ("**District**") and UMB BANK, N.A., a national banking association as escrow agent ("**Escrow Agent**"). Town, Developer, District and Escrow Agent are sometimes individually referred to as a "Party" and collectively as the "Parties."

*Capitalized terms used herein that are not otherwise defined shall have the meaning set forth in the Escrow Agreement.*

### RECITALS

WHEREAS, on or about July 6, 2016, the Parties entered into an Escrow Agreement related to, among other matters, the disbursement of funds from the Johnstown 2016 Bond Proceeds Accounts for payment of the Verified Eligible Costs associated with construction of the Public Improvements and for disbursement of funds from the Developer Funds Account for payment of Private Improvements; and

WHEREAS, the Escrow Agreement provides that, if funds remain in the Johnstown 2016 Bond Proceeds Accounts three years after the execution of the agreement, then the Town and the District shall have sixty (60) days to agree upon how the remaining funds are to be spent or the funds are returned to the bondholders; and

WHEREAS, the Johnstown 2016 Bond Proceeds Accounts, containing funds in the amount of approximately \$9,100,000.00, terminate on September 30, 2019; and

WHEREAS, the District requests that the funds remaining in the Johnstown 2016 Bond Proceeds Accounts be transferred to the Developer Funds Account and that they continue to be disbursed according to the cost structure set out in Section 3.C.(ii) of the Escrow Agreement; and

WHEREAS, the Town agrees that the funds may be transferred to the Developer Funds Account, but requires that a portion of the funds remaining in the Johnstown 2016 Bond Proceeds Accounts be set aside for completion of the outstanding Public Improvements and be transferred to a new account, to be known as the Public Improvements Escrow Account; and

WHEREAS, to effectuate the foregoing, the Parties hereto desire to enter into this Third Amendment.

NOW THEREFORE, in consideration of the mutual covenants and promises expressed herein, the parties hereby agree as follows:



## COVENANTS AND AGREEMENTS

1. Recitals. The recitals are incorporated as if fully set forth herein.
2. Transfer to Developer Funds Account. Pursuant to Section 11.C.(i) and (ii) of the Escrow Agreement, except as provided below with respect to the transfer of funds to the Public Improvements Escrow Account, the Town and the District hereby agree that the Escrow Agent may transfer the funds remaining in the Johnstown 2016 Tax Exempt Bond Proceeds Account and the Johnstown 2016 Taxable Bond Proceeds Account to the Developer Funds Account and continue to disburse those funds upon receipt of an executed Disbursement Request as provided in Section 3.B. of the Escrow Agreement based on the cost structure set forth in 3.C.(ii) of the Escrow Agreement.
3. Public Improvements Escrow Account. Notwithstanding the foregoing, the Escrow Agent shall transfer Five Hundred Thousand Dollars (\$500,000.00) from the Johnstown 2016 Bond Proceeds Accounts into a new escrow account, to be known as the Public Improvements Escrow Account. The Escrow Agent may disburse funds from the Public Improvements Escrow Account upon receipt of an executed Disbursement Request as provided in Section 3.A. of the Escrow Agreement based upon, among other requirements, certification of Verified Eligible Costs pursuant to Section 3.A.(iv) of the Escrow Agreement. Upon written notice of completion of the Public Improvements from the Town Manager to the Escrow Agent, the Escrow Agent may disburse the funds remaining in the Public Improvements Escrow Account, if any, to the Developer Funds Account.
4. Validity of Escrow Agreement. Except as expressly modified herein, the Escrow Agreement, including all amendments executed prior to the date hereof, shall remain in full force and effect.

*[Remainder of page intentionally left blank. Signature pages follow].*

IN WITNESS WHEREOF, the parties have caused this Third Amendment to Escrow Agreement to be executed as of the date first written above.

JOHNSTOWN PLAZA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

Date: 9/11/19

By: [Signature]  
Its President

ATTEST:

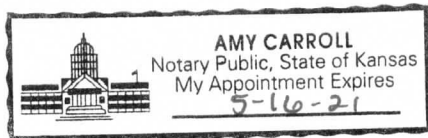
[Signature]  
Secretary

STATE OF ~~COLORADO~~ <sup>KANSAS</sup> )  
 ) ss.  
COUNTY OF JOHNSON )

The foregoing Third Amendment to Escrow Agreement for Johnstown Plaza, Johnstown, Colorado was acknowledged before me this 11<sup>th</sup> day of September 2019, by Allen Schlup as President and Amanda Schlup as Secretary of JOHNSTOWN PLAZA METROPOLITAN DISTRICT, a quasi-municipal corporation of the state of Colorado.

Witness my hand and official seal.

My commission expires: 5-16-21



[Signature]  
Notary Public

JOHNSTOWN PLAZA, LLC  
a Kansas limited liability company

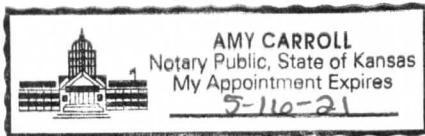
Date: 9/11/19

By: Alfred G. Kelly  
Its Manager

KANSAS  
STATE OF ~~COLORADO~~ )  
 ) ss.  
COUNTY OF JOHNSON )

Witness my hand and official seal.

My commission expires: 5-16-21



21 \_\_\_\_\_  
Notary Public

TOWN:

THE TOWN OF JOHNSTOWN  
a home-rule municipality of the State of Colorado

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

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

ATTEST:

\_\_\_\_\_  
Diana Seele, Town Clerk

ESCROW AGENT:

**UMB BANK, N.A.**, a national banking association,  
having an office and corporate trust offices in  
Denver, Colorado

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

STATE OF COLORADO                    )  
  ) ss.  
COUNTY OF \_\_\_\_\_            )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
2019, by \_\_\_\_\_, as the \_\_\_\_\_  
of UMB Bank, n.a., Escrow Agent.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

(S E A L)

\_\_\_\_\_  
Notary Public