



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO
Monday, April 05, 2021 at 7:00 PM

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.”*

AGENDA

CALL TO ORDER

Pledge of Allegiance

ROLL CALL

AGENDA APPROVAL

SPECIAL PRESENTATIONS

1. Presentation by Cathy Hull and President Derek Child: COVID 19 Church Community Response Presentation/Video
- [2.](#) Presentation by Mr. Andrew Johnston, Manager of Financial Development of metroDPA
- [3.](#) Sewer Revenue Bond Presentation - Alan Matlosz, Managing Director - Stifel Public Finance
- [4.](#) Pioneer Ridge Disc Golf Course Presentation
Pioneer Ridge Teachers - Zach Boettcher & Bryant Walkinshaw

PUBLIC COMMENT

Members of the audience are invited to speak at the Council meeting. Public Comment 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.

CONSENT AGENDA

The Consent Agenda is a group of routine matters to be acted on with a single motion and vote. Council or staff may request an item be removed from the Consent Agenda and placed on the Regular Agenda for discussion.

- [5.](#) March 16, 2021 Minutes
- [6.](#) Second Reading - Ordinance No. 2021- 194, An Ordinance Repealing and Readopting Article V of Chapter 11 of the Johnstown Municipal Code Concerning Public Parks.
- [7.](#) Reimbursement Agreement - Town of Johnstown and Podtburg Dairy Limited Partnership, LLLP
- [8.](#) Consider Resolution 2021-09, Authorizing and Approving Johnstown's Participation in the Metro Mortgage Assistance Plus Program and Authorizing the Execution of the Delegation and Participation Agreement and Other Documents in Connection Therewith.

TOWN MANAGER REPORT

- [9.](#) Town Manager's Report

TOWN ATTORNEY REPORT

PUBLIC HEARING

- [10.](#) **Public Hearing** - New Fermented Malt Beverage Liquor License Application - TA Operating, LLC
- [11.](#) **Public Hearing First Reading:** Ordinance No. 2021-195, an Ordinance to Renew an Electric Utility Franchise Agreement Between the Town of Johnstown, Colorado and United Power Inc.

NEW BUSINESS

- [12.](#) Discussion - Dog Park Information
- [13.](#) Award Design Consultant for Charlotte Street Rehabilitation Project
- [14.](#) Award Equipment Purchase - Low Point Expansion Project
- [15.](#) Change Order for South Storage Water Tank

COUNCIL REPORTS AND COMMENTS

MAYOR'S COMMENTS

EXECUTIVE SESSION

- 16. For discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) to Discuss Town Manager Evaluation
- 17. An executive session to discuss matters subject to negotiations and to instruct negotiators pursuant to C.R.S. Section 24-6-402(4)(e) regarding an economic development project.
- 18. An executive session to discuss matters subject to negotiations and to instruct negotiators pursuant to C.R.S. Section 24-6-402(4)(e) regarding an economic development project.
- 19. An executive session to discuss the sale of real property pursuant to C.R.S. Section 24-6-402(4)(a).

INFORMATIONAL ITEMS

ADJOURN

AMERICANS WITH DISABILITIES ACT NOTICE

In accordance with the Americans with Disabilities Act, persons who need accommodation in order to attend or participate in this meeting should contact Town Hall at (970) 587-4664 within 48 hours prior to the meeting in order to request such assistance.

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Homeownership & Down Payment Assistance Program

metroDPA
down payment assistance

Department of Housing Stability

An Introduction

Metro Mortgage Assistance Plus Program (rebranded as metroDPA) is a homeownership program available in the Front Range.

- What does metroDPA do?
 - ✓ It provides a 30-year fixed rate mortgage loan (government or conventional)
 - ✓ And assistance (up to 6% of the loan amount) for a down payment or closing costs
- metroDPA is for **qualified** homebuyers who
 - ✓ Meet credit score requirements (min 640)
 - ✓ Are within income limits (\$150,000)
 - ✓ And are purchasing a home in an approved area

Current metroDPA Jurisdictions

Cities and Towns (within City limits)					Counties
Arvada	Commerce City	Firestone	Lochbuie	Strasburg	Adams County
Aurora	Dacono	Fort Collins	Lone Tree	Superior	Arapahoe County
Bennett	Deer Trail	Frederick	Longmont	Thornton	Boulder County
Berthoud	Denver	Golden	Loveland	Watkins	Broomfield County
Boulder	Edgewater	Greeley	Mead	Westminster	Denver County
Brighton	Englewood	Highlands Ranch	Northglenn	Wheat Ridge	Douglas County
Broomfield	Erie	Keenesburg	Parker		Jefferson County
Castle Rock	Evans	Lakewood	Platteville		Larimer County
Centennial	Federal Heights	Littleton	Sheridan		

Counties are for the unincorporated areas outside of City limits.

Approved Areas

Intergovernmental Agreements with Denver and Front Range communities including the Metro Mayor's Caucus, allow the program to grow.

metroDPA is continually self-supported as a result of the funds raised in the national capital markets.

metroDPA creates a road to homeownership without the use of taxpayer funds.

There is no cost and no administrative burden for your community to participate. All that is needed is approval to offer this opportunity to your residents.

Requested Action

Approve and execute the Delegation and Participation Agreement for the Metro Mortgage Assistance Plus Program (aka metroDPA)

- Supports realtors, lenders and builders in your community
- Provides needed options for homebuyers
- Helps address Housing Affordability for your residents

Borrowers using metroDPA are people who have jobs, can pay their bills and qualify for the loan, they simply need help with the down payment.
An average borrower has an income of \$78,300 (<80% of Denver Area Median Income)

Program Information

In existence since 2013, growing in popularity with real estate professionals due to low rates and beneficial assistance terms.

- 30 year fixed rate first mortgage (FHA/VA/Conventional) and
- 3-year forgivable second loan (0% interest, no monthly payments)
Beneficial to borrowers, helps build equity
Multiple assistance options
- Borrowers must meet guidelines and credit qualifications
- Not restricted to first-time homebuyers
- Provides lower Mortgage Insurance options
- Homebuyer education required
- More than 1,500 households helped

metroDPA Partnerships

metroDPA is brought to you by the City and County of Denver as Sponsor and its many partnerships including:

- Program Manager: Stifel
- Servicers: US Bank and Lakeview
- Agencies: FHA, VA, Freddie Mac and Fannie Mae
- Program Administrator: eHousing
- Bond Counsel: Kutak Rock, LLP
- City Housing Financial Advisor: CaineMitter
- Local Lenders: 100+ approved
- Participating Municipalities: 50 approved

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Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: Presentation – Sewer Revenue Bond – Alan Matlosz, Managing Director – Stifel Public Finance

ACTION PROPOSED: Presentation – Questions and Answers

ATTACHMENTS: Presentation

PRESENTED BY: Matt LeCerf, Town Manager

In preparation for the issuance of the sewer revenue bonds, Mr. Alan Matlosz will be providing a short presentation during the Council meeting to discuss matters regarding the planned Sewer Revenue Bond of \$55 million as proposed in the FY 2021 budget. Items that may be discussed for the Town Council's information include the following:

- Structure of the Bond
- Process and Schedule
- Participants
- Interest Rate Market
- Preliminary Numbers

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Johnstown
Colorado

Anticipated Wastewater Revenue Bonds, Series 2021

April 2021

- For significant capital projects with long useful lives, debt financing may be a good alternative to “pay-as-you-go”
- Most water/wastewater revenue bonds are secured by the net revenues of a system (i.e., revenues less operations and maintenance expenses)
 - Revenues principally consist of the income from revenue sources (i.e., rates and charges, connection fees, other income, etc.)
 - Most are additionally secured with a debt service reserve fund
- The Town’s Wastewater Bonds will have two main revenue requirements/considerations:
 - Maintain rates and charges to meet debt service
 - $(\text{total revenues} - \text{operating expenses}) / \text{annual bond payment} > \text{rate maintenance requirement}$
 - Must meet an additional bonds test for any new debt
 - $(\text{total revenues} - \text{operating expenses}) / \text{annual bond payment} + \text{new bond payment} > \text{additional bonds test}$
- Rates may be increased overtime, subject to Town Council approval, in order to generate enough revenue to support current or future needs

The financing team needs to be thoughtful about how this first bond issue is structured in anticipation of additional bond issues in the future.

Issuer

- Selects financing team
- Determines borrowing needs and key parameters of debt
- Authorizes issuance of bonds

Bond/Disclosure Counsel

- Drafts Authorizing Ordinance, Legal Opinion, offering document and closing documents
- Provides legal advice to issuer based on existing federal, State and local legislation and arbitrage/tax law

Underwriter

- Structures financing
- Prepares all rating agency materials
- Provides financing schedule
- Provides underwriting and markets bonds, sets prices, and sells bonds to investors

District Counsel

- Advises Issuer on legal issues and provides opinion

Paying Agent

- Commercial bank that maintains list of bondholders
- Pays principal and interest to bondholders

Underwriter's Counsel

- Reviews documents
- Manages Due Diligence call and prepares Bond Purchase Agreement
- Advises Underwriter on legal issues

Rating Agency

- Provides credit rating on Issuer's bonds and existing obligations

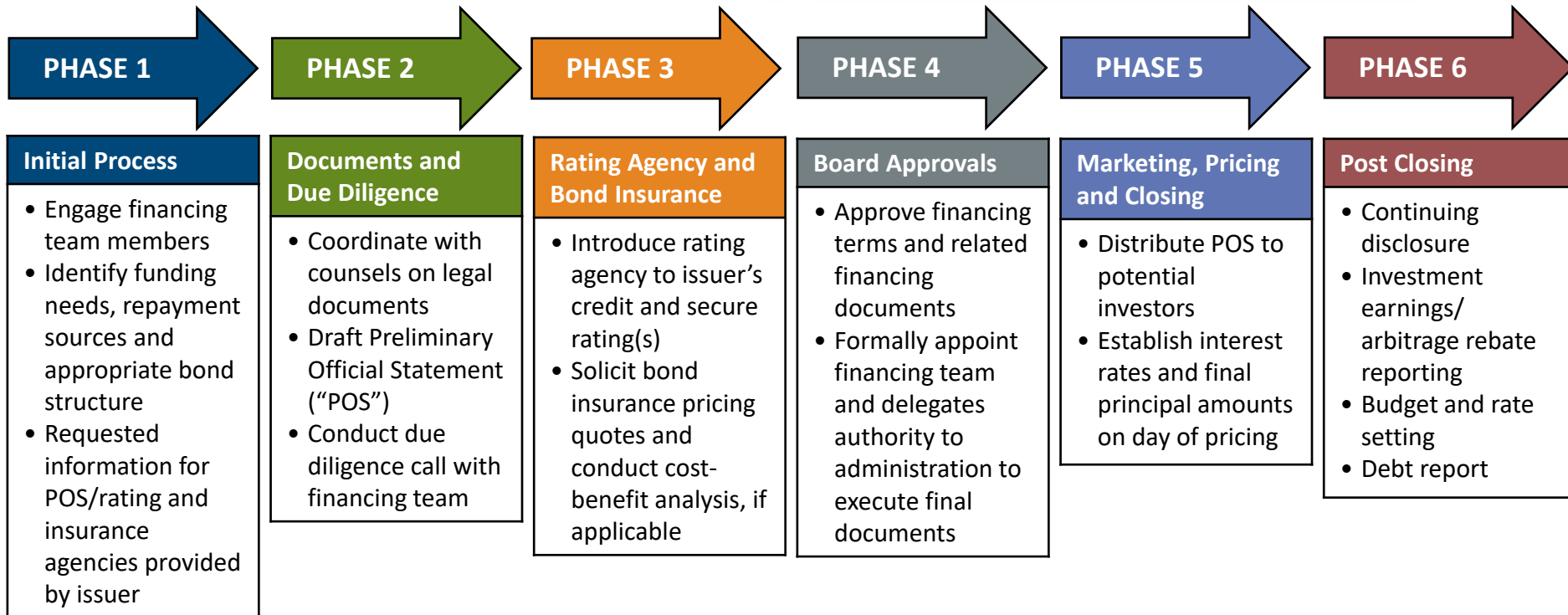
District Water Counsel

- Provides water information for the bond issue and advises the District on water matters

Engineer/Other Consultants

- Provides water system and financial information to District and for bond issue

Overview of the Financing Process

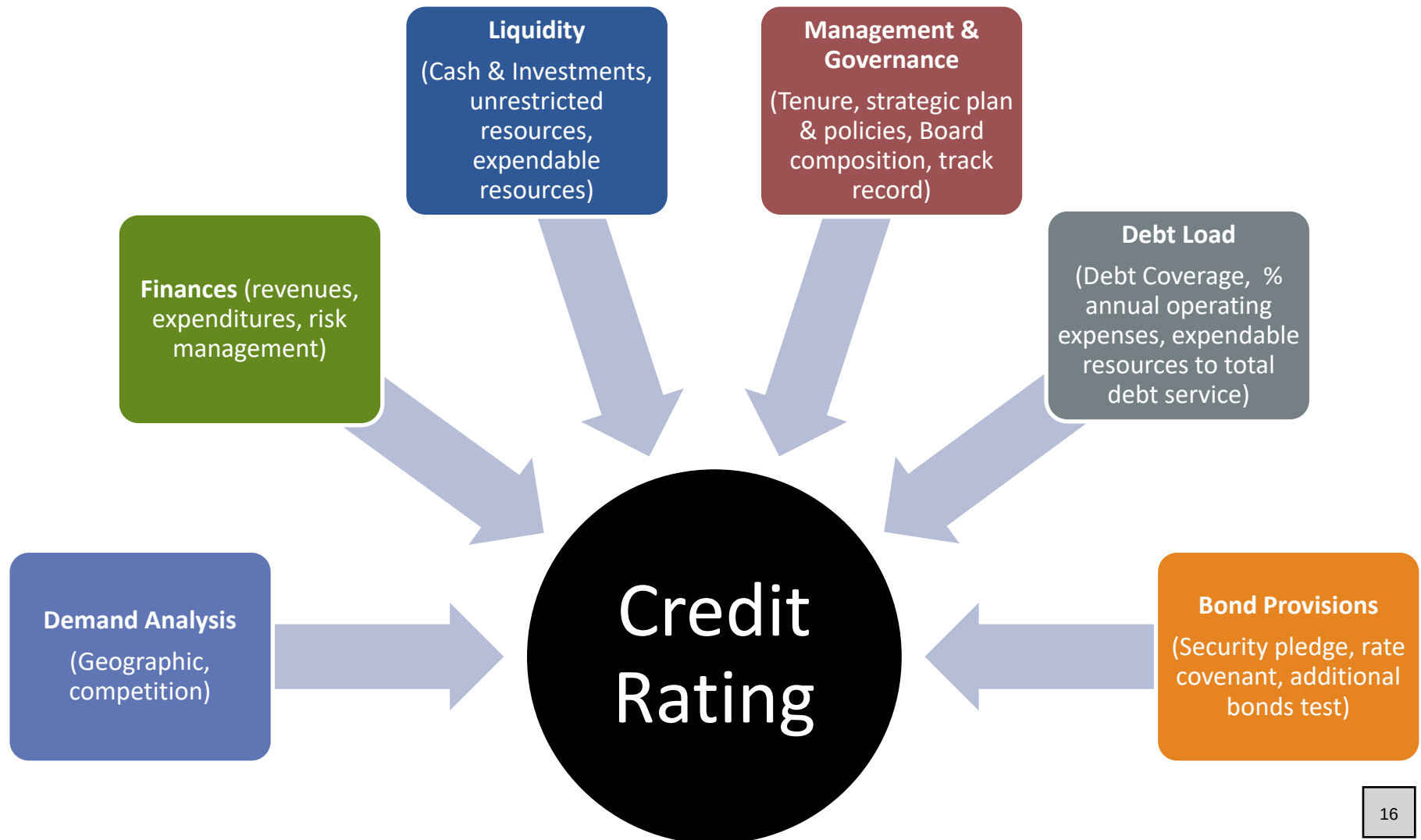


The actual timeline for conducting a bond sale depends upon Town objectives, the ability to coordinate other required efforts and market forces.

Tentative Financing Schedule

DATE	EVENT
April 5	Stifel provides overview of transaction to Town Council
April 14	First draft of POS and financing documents distributed
April 21	Document review call
April 28	Second draft of POS and financing documents distributed to working group, rating agency and insurance providers
May 3	First reading of Ordinance at Town Council Meeting
May 4	Rating prep call
May 5	Rating call
May 14	Receive Rating
May 17	Receive responses bank from insurance companies
May 17	Second reading of Ordinance at Town Council Meeting
May 18	Receive near final draft of financing documents
May 19	Due Diligence Call
May 21	Final comments due on POS
May 25	Post POS
June 8	Pricing
June 11	Official Statement is posted and distributed
June 22	Closing

- Vary based on security type – all rating agencies provide information on their Rating Criteria



- **Standard and Poor's (S&P) assigns ratings based on a framework that considers a enterprise risk profile and a financial risk profile:**

Enterprise Risk Profile	
Economic fundamentals (45%):	• The strength of the utility's service area economy, including the demographics, characteristics and trends about the customer base, and how crucial the utility's principal customers are to operating revenues
Industry risk (20%):	• Evaluates the external environment in which municipal utilities operate and its relevant characteristics including cyclical, competitive risk and growth environment
Market position (25%):	• Measures the relative affordability of utility rates given the income indicators and relative poverty of the service area, as well as comparability of rates with those peers in the region or state
Operational management (10%):	• Evaluates S&P's view of the effectiveness of utility management in ensuring that there is alignment of operational, environmental, strategic, and financial goals to support the system's success

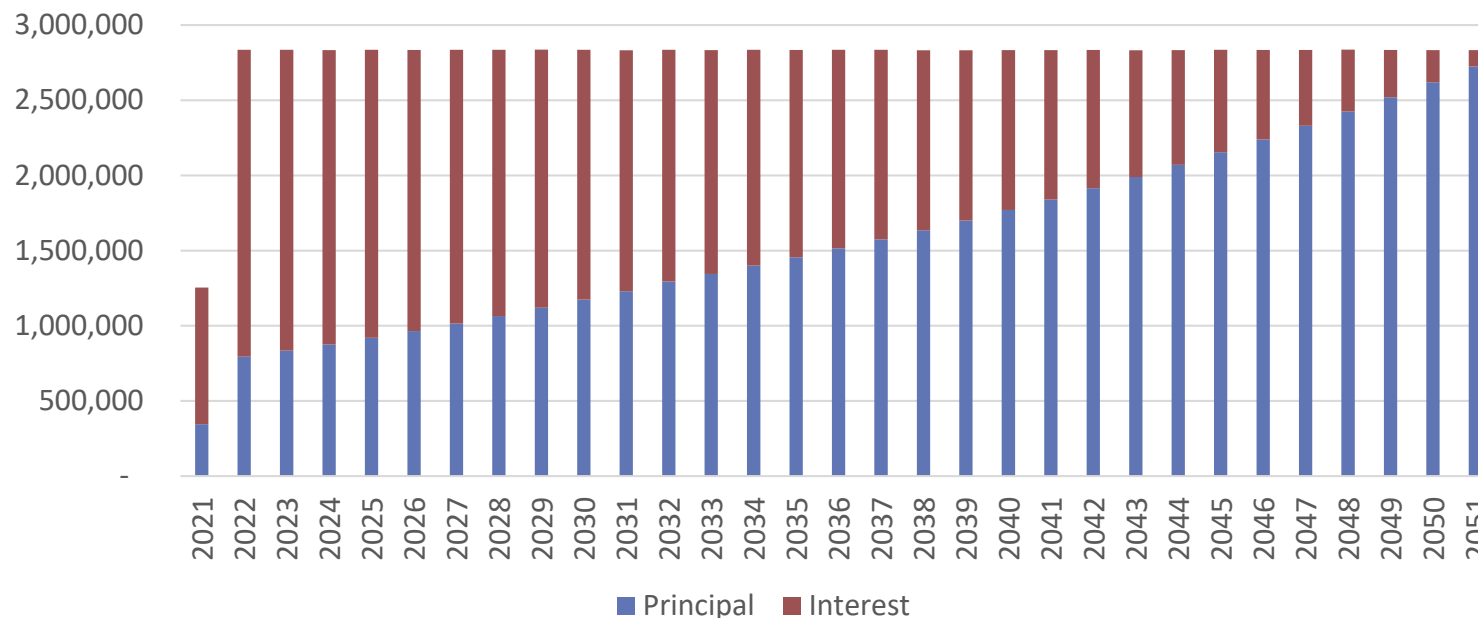
Financial Risk Profile	
All-in coverage (40%):	• Examination of historical results, the current financial condition of the utility, and projected scenarios for the next one to three fiscal years. The focus is on total financial capacity versus total revenue requirements.
Liquidity and reserves (40%):	• Incorporates all lawfully available cash reserves and external working capital or liquidity sources, including bank lines in force within the life of any short-term obligations.
Debt and liabilities (10%):	• This factor incorporates mainly quantitative, but also qualitative, analyses about not just the absolute measure of the utility's indebtedness but also the capacity to incur and support additional debt, especially in relation to maintaining any minimum financial metrics as covenanted to bondholders. Measurable liabilities such as pension and postemployment benefits can lead to adjustments to this initial factor.
Financial management assessment (10%):	• An evaluation of ongoing management practices and policies that can be supportive of financial performance and continuity, as well as internal controls and reporting.

Estimated Bond Statistics for \$55 Million of Project Funds

Bond Statistics* (Interest rates as of March 22, 2021)

Delivery Date	June 22, 2021
Net Proceeds (\$)	55,000,000
True Interest Cost (%)	3.07%
Final Maturity	December 1, 2051
Average Life (years)	18.828
Average Annual Debt Service	2,834,687
Total Debt Service	86,292,612

Estimated Debt Service



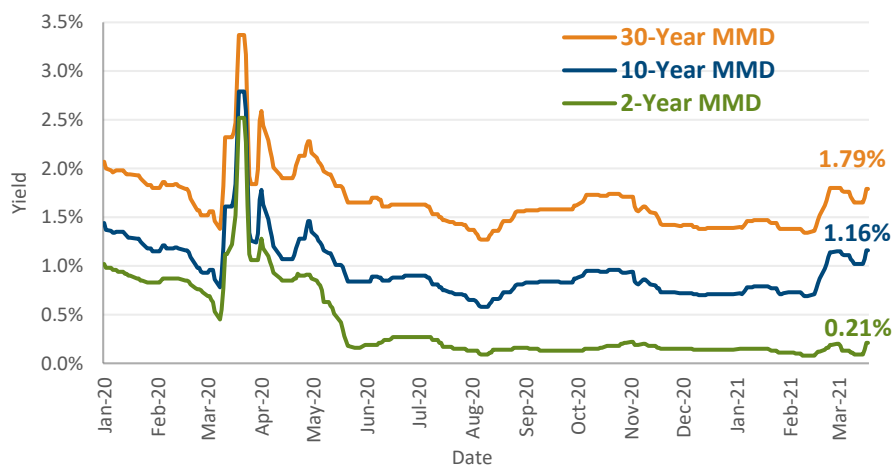
*Preliminary, for discussion purposes only, subject to change. Market rates as of March 22, 2021. Stifel has assumed an 'A' underlying rating and bond insurance. Actual results may differ, and Stifel makes no commitment to underwrite at these levels.

Tax-Exempt Interest Rate Movement

AAA MMD Yields Observe Notable Volatility Across Most Maturities

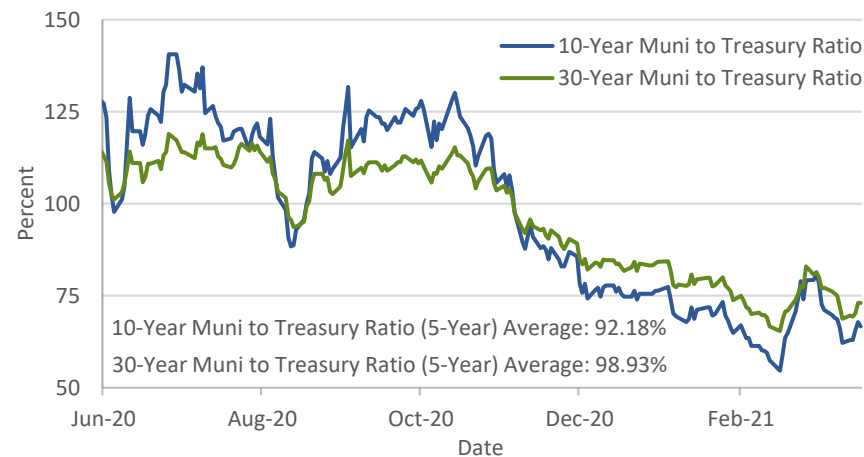
MMD Yields Increase, Continuing Recent Volatility

Comparing 2, 10 and 30-Year AAA MMD since January 1, 2020



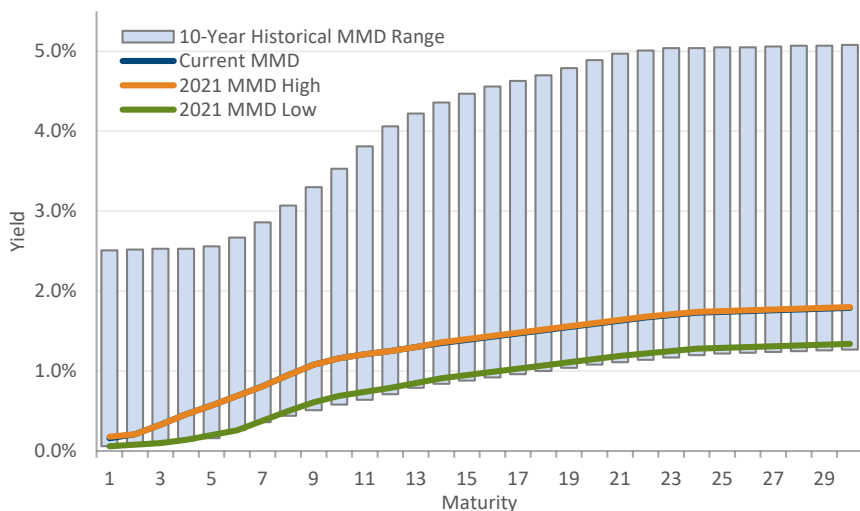
Last Week, Muni to Treasury Ratios Recorded Modest Increases

10-Year and 30-Year Ratios Since June 2020



Current MMD Yields Are Covered by 2021 UST High Yields in Most Maturities

10-Year Historical AAA MMD Range vs. Current AAA MMD



AAA MMD Summary Statistics

	5-Year	10-Year	30-Year
Current	0.57%	1.16%	1.79%

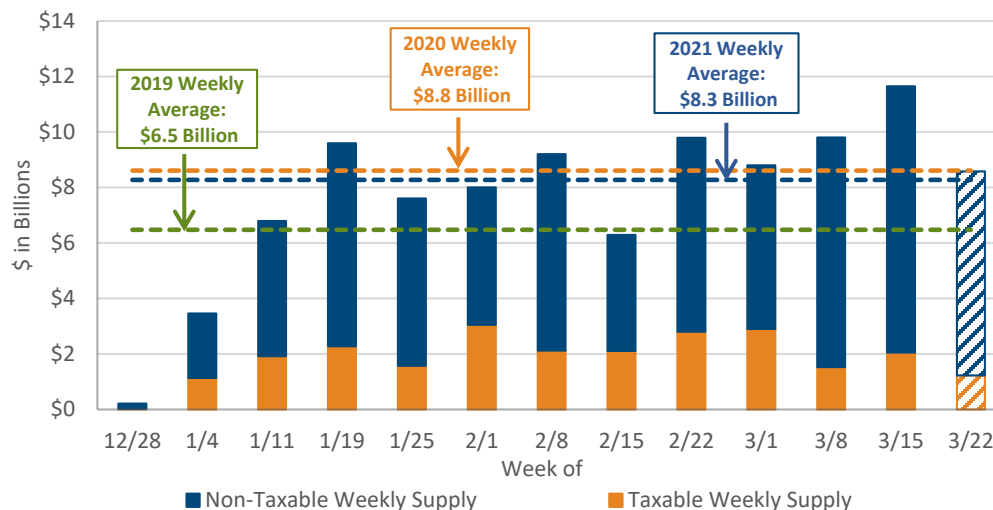
2021 Year-to-Date			
Weekly Change	+14 bps	+14 bps	+14 bps
YTD Change	+35 bps	+44 bps	+39 bps
High	0.57%	1.16%	1.80%
Low	0.20%	0.69%	1.34%
Average	0.34%	0.88%	1.53%
Year Ending 2020	0.22%	0.72%	1.40%

Since January 1, 2018			
High	2.56%	2.79%	3.46%
Low	0.16%	0.58%	1.27%
Average	1.26%	1.66%	2.33%

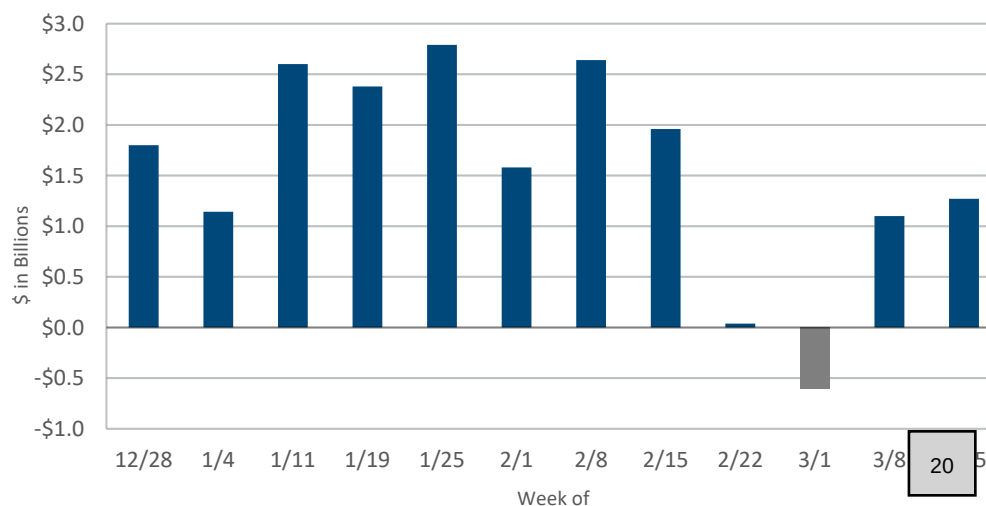
New Issue Supply and Demand

- **Supply Figures Mostly Remain Near the Historical Weekly Average, After 2020 Observed a Majority of Weeks Exceeding The Historical Average**
 - The week of March 15 recorded approximately \$11.7 billion of weekly municipal supply. Approximately \$2.1 billion, or 17.6%, of the transactions were taxable.
 - The week of March 22 is forecasted to observe a new issue supply of approximately \$8.6 billion. \$1.2 billion, or 14.3%, of the anticipated transactions are taxable.
 - With the most recent reporting week recording a supply notably greater than the historical average, the 2021 YTD weekly average jumped to \$8.3 billion.
- **Municipal Bond Funds Observe Weekly Net Inflows**
 - The week of March 15 observed \$1.3 billion of net inflows into municipal bond funds, following a weekly net inflow of \$1.1 billion during the week of March 8.
 - Despite the recent net outflow, during the week of March 1, 42 of the past 45 weeks have recorded net inflows into muni bond funds, and the four week average sits at \$451 million of net inflows.
 - The 2021 average weekly net inflow into muni bond funds currently sits at an impressive \$1.5 billion, compared to the 2019 and 2020 averages of \$1.2 and \$434 million, respectively.

Early 2021 Weekly Supply Remains Near Historic Average Levels
Previous 12 Weeks of New Issue Supply and Forecast of Current Week



Municipal Bond Funds Return to Historically Average Weekly Net Inflows
Recent Weekly Municipal Bond Fund Flows





Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: Presentation – Pioneer Ridge Teachers - Zach Boettcher & Bryant Walkinshaw

ACTION PROPOSED: Presentation – Disc Golf Course Request

ATTACHMENTS: Presentation

PRESENTED BY: Pioneer Ridge Teachers - Zach Boettcher & Bryant Walkinshaw
Matt LeCerf, Town Manager

Representatives from the Weld RE-5J School District would like to make a presentation for a request to install a golf disc course at the Town owned Pioneer Ridge Park adjacent to the Pioneer Ridge Elementary School. Funds for the disc course would be funded through the Weld County RE-5J Wellness Education Funding. A copy of the presentation is attached and representatives will be present to introduce the opportunity and gain feedback and request of support from Council.

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Item #4.

PIONEER RIDGE

DISC GOLF COURSE

Johnstown, Colorado

“Disc golf is played much like golf. Instead of a ball and clubs, though, players use a flying disc or Frisbee®. The sport was formalized in the 1970s and shares with golf the object of completing each hole in the fewest strokes (or, in the case of disc golf, fewest throws).”

-PDGA website



Why?

Item #4.

Disc golf is one of the fastest growing sports in the world. It has many benefits from health to community building.

Community Building:

1. Players meet new players and still practice social distancing.
2. Encourages families to play together.
3. New FREE amenity to the neighborhood.
4. Encourages additional youth programs.

Health Benefits:

1. Great exercise
2. Can be played leisurely or intensely. (running to discs instead of walking.)
3. Stress relief and reduced anxiety.
4. Soaking up some Vitamin D and enjoying the Great Outdoors!



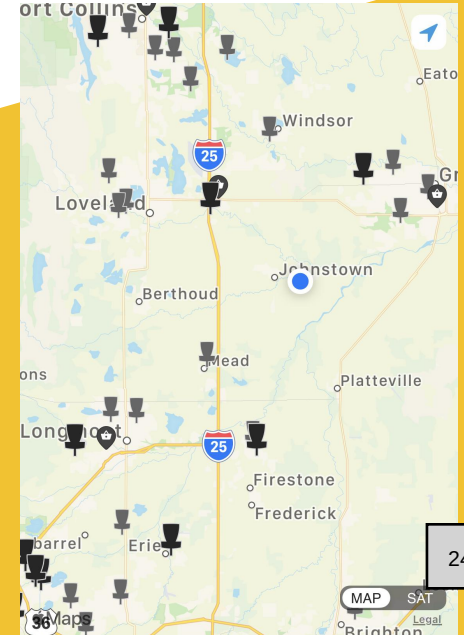
Where?

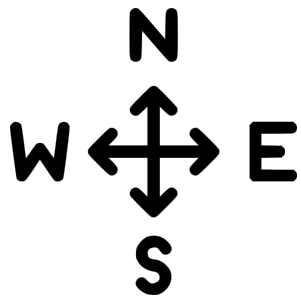
Item #4.

Pioneer Ridge Disc Golf Course will be located in the park area to the west of Pioneer Ridge Elementary School.

Closest courses from Pioneer Ridge neighborhood:

- Mead DGC (18 minutes)
- River Ranch DGC-Thompson River Ranch subdivision (20 minutes)
- Outback DGC-Greeley (22 minutes)





Homes

Homes



Item #4.



THE RIDGE
DISC GOLF COURSE

KEY

X Tee Pad

● Basket

OB



The goal of this course is to give everyone in the community an opportunity to learn this great sport and enjoy time with family and friends outdoors. We encourage families to play together and we will give many opportunities for our youth to learn through.

Who?

Item #4.

For safety purposes, the Disc Golf Course will be available to the public outside of Pioneer Ridge Elementary school hours. It is FREE to play.





Funding

Item #4.

Weld RE5J School District is providing the funding through grant dollars deemed for wellness education. This funding will go toward course and installation materials.



Safety

Item #4.

Safety is our #1 priority when planning this course. Here are some things we are considering:

1. Course will only be accessible to the public during non-school hours.
2. Holes that are close to homes on the west and north sides of the park are designed to go out and away from the homes on the initial drive. We have also made shots with trees and out-of-bounds areas to deter shots from drifting toward homes.
3. Baskets are designed to stay away from the main field, school, and playground areas.
4. Course rules will be posted near the first hole. We will also have a QR code that golfers can scan for rules during play.
5. Golfers are responsible for any damage caused by errant discs and must abide by no trespassing in residents' backyards.



When

Item #4.

Immediately

Upon town approval, we can order the supplies to install the course immediately. Typically it takes 2-4 weeks for all the baskets and installation materials to ship. During this time, we can call 8-1-1 to check all locations for possible underground hazards. With the correct machinery, it will take approximately 1-2 days to dig holes, pour cement, and set the installation kits. Then, we will have to wait at least 24 hours before we can put the baskets in the set installation sleeves.



Installation

Item #4.

Relatively Simple - Can be simpler with the right tools (auger and water tank for mixing cement.)

To install a basket, we need to dig 8" diameter holes up to 20" deep. We place the installation sleeve inside the hole, then then pour concrete into the hole around the sleeve. The sleeve needs to stay perfectly horizontal so the basket will have the perfect angle on it. After the installation sleeve is completely set inside the concrete, we can install the baskets, which piece together easily. There are locks on sleeve so the baskets cannot be stolen. This also means that the baskets can be moved to a different location if needed.

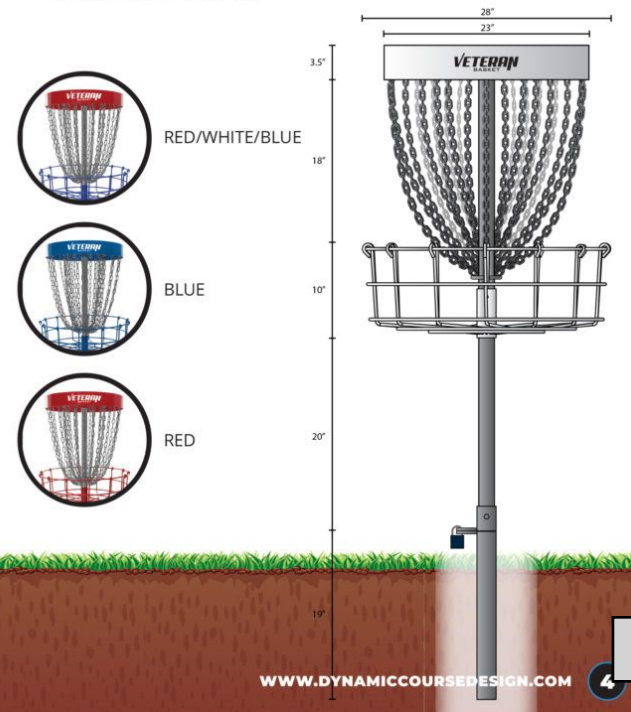


BASKET SPECS

VETERAN
BASKE

Item #4.

- Color: Four color options (custom colors available upon request)
- 14 inner and 14 outer chain sets made of 18-8 stainless steel
- Galvanized with a powder coated finish
- Tension screws are included for increased stability
- Approved at the Championship PDGA level
- 3.5" stainless steel deflector band
- Built-in wheel on the base (portable version)
- Ground sleeve, locking collar, and padlock included (permanent version)
- 19.25" ground sleeve
- Ground sleeve inner diameter: 49mm
- Pole outside diameter: 48mm
- Weight: 67lbs (permanent)





Things to Consider

Item #4.

Course maintenance: What will happen if a basket breaks? Where will funds come from to replace a broken basket?

Course signage? Rules sign. Does this need to be specific to Johnstown parks?

If an auger is available, it would make install much easier. Possible water source to help us mix concrete bags at pin locations?

Trash cans and porta-potty?

Johnstown BBQ Days has reached out to us to see if we can sponsor an event featuring disc golf. We would love to have this put in by June for that event.



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO
Tuesday, March 16, 2021 at 7:00 PM

MINUTES

CALL TO ORDER

Mayor Lebsack called the meeting to order at 7:00 p.m. and led the Pledge of Allegiance. Due to the blizzard and electricity being out on Monday, March 15,

ROLL CALL

PRESENT

Mayor Gary Lebsack
Councilmember Chad Young
Councilmember Amy Tallent
Councilmember Damien Berg
Councilmember Jesse Molinar
Councilmember Kevin Lemasters

ABSENT

Councilmember Troy Mellon

Staff present: Matt LeCerf, Town Manager, Avi Rocklin, Town Attorney, Marco Carani, Public Works Director, Kim Meyer, Planning Director, Brian Phillips, Police Chief and Jamie Desroiser, Communications Manager

AGENDA APPROVAL

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

SPECIAL PRESENTATIONS

A Proclamation Declaring March 20, 2021 as "Eat Meat Day" was read.

PUBLIC COMMENT

Mr. Dan Parish of 476 Grange Lane expressed concerns with the way the streets were plowed from the snow storm on March 13 and 14.

CONSENT AGENDA

Motion made by Councilmember Lemasters, seconded by Councilmember Tallent to approve the Consent Agenda. Motion carried with a roll call vote.

- March 1, 2021 Minutes
- List of Bills
- February Financial Statements
- Water and Sewer Service Agreement Atlas Storage

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PUBLIC HEARING

1. Public Hearing - Ordinance 2020-194, An Ordinance Repealing and Readopting Article V of Chapter 11 of the Johnstown Municipal Code Concerning Public Parks - Ordinance 2021-194, Implements rules and regulations governing the parks, it omits Town Council's involvement in issuing permits, provides the authority to operate and maintain the public parks to the Town Manager, which authority may be delegated to duly qualified employees and agents of the Town, and to replace the right to receive a 3.2% beer permit with a "fermented malt beverages" permit.

Mayor Lebsack opened the public hearing at 7:15 p.m. and having no public comment closed the hearing.

Motion made by Councilmember Berg, seconded by Councilmember Young to approve Ordinance No. 2021, an Ordinance Repealing and Readopting Article V of Chapter 11 of the Johnstown Municipal Code Concerning Parks. Motion carried with a roll call vote.

2. Public Hearing - Thompson River Ranch Filing No. 8 – This is a request from Clayton Properties Group, Inc. for approval of a final plat for Thompson River Ranch Filing No. 8. The proposed area consists of approximately 140.945 acres. Resolution 2021-08 approves the final plat and outlines the conditions the developer is responsible for completing.

Mayor Lebsack opened the public hearing at 7:25. Mr. Richard Rainford addressed the Council and stated he did not feel this subdivision fits with the overall feel of Johnstown, and had concerns with the development of County Road 3. Having no further comments, the hearing was closed.

Motion made by Councilmember Lemasters, seconded by Councilmember Molinar Jr. to approve Resolution 2021-08 Approving the Final Plat for Thompson River Ranch Filing No. 8 Located in Part of the Unplatted Southeast Quarter of Section 14 and Part of the Unplatted East Half of Section 23, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, Consisting of Approximately 140.945 acres with conditions. Motion carried with a roll call vote.

NEW BUSINESS

1. Subdivision Development and Improvement Agreement - Thompson River Ranch Filing #8, Clayton Properties Group II, Inc. – The Developer, Clayton Properties Group II, Inc. dba Oakwood Homes received approval of a final subdivision plat. The proposed agreement is based upon the Town's standard agreement and requires payment of required fees and taxes, and construction of all improvements in accordance with approved development plans and construction plans. Motion made by Councilmember Young, seconded by Councilmember Berg to approve the Subdivision Development and Improvement Agreement for Thompson River Ranch Filing No. 8. Motion carried with a roll call vote.

Page 3

2. Water and Sewer Service Agreement - Thompson River Ranch Filing No. 8 – The Water and Sewer Service Agreement is the Town's standard agreement. The agreement outlines the estimated amount of water required to be dedicated for the Project. Motion made by Councilmember Lemasters, seconded by Councilmember Young to approve the Water and Sewer Service Agreement for Thompson River Ranch Filing No. 8. Motion carried with a roll call vote.

ADJOURN

The meeting adjourned at 8:09 p.m.

Mayor

Town Clerk



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: **Second Reading** – Ordinance No. 2021-194, An Ordinance Repealing and Readopting Article V of Chapter 11 of the Johnstown Municipal Code Concerning Public Parks

ACTION PROPOSED: Consider Final Approval of Ordinance No. 2021-194

ATTACHMENTS: 1. Ordinance No. 2021-194
2. Park Rules and Regulations

PRESENTED BY: Diana Seele, Town Clerk

AGENDA ITEM DESCRIPTION: Article V of Chapter 11 of the Johnstown Municipal Code (“Code”) concerns public parks. With limited exception, the provisions contained therein were adopted as part of the prior Town Code. To adopt new policies and procedures, omit Town Council’s involvement in issuing permits and replace the right to receive a “3.2% beer permit” in Hays Park with the right to receive a “fermented malt beverages” permit, Town staff recommends that Article V of Chapter 11 of the Code be repealed and readopted.

The revised provisions provide that the Town Manager would have authority to operate and maintain the public parks, which authority may be delegated to duly qualified employees and agents of the Town, and implement rules and regulations governing the public parks that are not inconsistent with the Article. The revisions further provide that the parks would close at 10:00 p.m., rather than 11:00 p.m., and that fees for a beer permit in Hays Park and a fishing permit in Lake Park would be set forth in the Town Fee Schedule.

LEGAL ADVICE:

The Town Attorney prepared Ordinance No. 2021-194.

FINANCIAL ADVICE:

N/A

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

RECOMMENDED ACTION: Approve Ordinance No. 2021-194 as presented on second reading.

Reviewed and Approved for Presentation,



Town Manager

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2021-194

AN ORDINANCE REPEALING AND READOPTING ARTICLE V OF CHAPTER 11 OF THE JOHNSTOWN MUNICIPAL CODE CONCERNING PUBLIC PARKS

WHEREAS, the Town of Johnstown, Colorado is a municipal corporation duly organized and existing under its Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado; and

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

WHEREAS, Article V of Chapter 11 of the Johnstown Municipal Code (“Code”) concerns public parks; and

WHEREAS, the Town staff recommends that Article V of Chapter 11 of the Code be revised to reflect new policies and procedures and replace the right to receive a “3.2% beer permit” in Hays Park with the right to consume “fermented malt beverages” in Hays Park; and

WHEREAS, based on the recommendations of Town staff, Town Council desires to repeal and readopt Article V of Chapter 11 of the Code; and

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

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS:

Section 1. Repeal and Readoption of Article V of Chapter 11. Article V of Chapter 11 of the Johnstown Municipal Code is hereby be repealed in its entirety and readopted to read as follows in its entirety:

ARTICLE V – Public Parks

Sec. 11-81. – Public parks.

For purposes of this Article, the term *public park* or *park* shall mean a park, playground, or any other area in the Town owned or used by the Town for active or passive public recreation.

Sec. 11-82. – Administration.

The Town Manager is hereby delegated the authority to operate and maintain the public parks, which authority may be delegated to duly qualified employees and agents of the Town, and to

implement rules and regulations governing the public parks that are not inconsistent with the provisions of this Article. Such rules and regulations shall be on file and available for public examination in the office of the Town Clerk. The failure to comply with any rule or regulation shall be deemed a violation of this Article.

Sec. 11-83. - Daily park hours.

Public parks shall be open daily to the public from 5:00 a.m. until 10:00 p.m. and no person not an employee of the Town on official Town business shall remain in the parks at any other time; provided, however, that the Town may, by permit, extend or limit the time herein specified.

Sec. 11-84. - Destruction of park property.

It shall be unlawful to cut, mark, remove, break or climb upon, or in any way injure, damage or deface the trees, shrubs, plants, turf or any of the park facilities, buildings, equipment, fences, bridges or other structures or property within or upon the public parks, or in any other way injure or impair the natural beauty or usefulness of any public park.

Sec. 11-85. - Erection of structures in park.

It shall be unlawful to build or place any tent, booth, stand or other structure in or upon any public park except pursuant to written authorization by the Town.

Sec. 11-86. - Alcohol.

- (1) Alcoholic beverages prohibited. Except as provided below or pursuant to a special event liquor permit, it shall be unlawful to serve, consume or have an open container of alcoholic beverages in the public parks.
- (2) Hays Park. Upon approval of the Town and execution of a park reservation agreement, the Town may issue a permit for the consumption of fermented malt beverages in Hays Park. The Town shall collect a fee for the permit in the amount set forth by resolution of the Town Council in the Town Fee Schedule. The permit shall not be transferrable and shall be in the permittee's possession while at the park.

Sec. 11-87. – Lake Park.

- (1) Persons may fish in Lake Park pursuant to a permit issued by the Town. The Town shall collect a fee for the permit in the amount set forth by resolution of the Town Council in the Town Fee Schedule. The permit issued shall not be transferable and shall be in the permittee's possession while fishing. The Town may, in its discretion, revoke the permit if the permittee fails to comply with the park rules and regulations.
- (2) It shall be unlawful to:
 - (a) Fish in Lake Park except pursuant to a permit;
 - (b) Swim, wade or enter the water at Lake Park;
 - (c) Use a boat or floatation device in Lake Park; and
 - (d) Except for law enforcement, possess firearms at Lake Park.

Sec. 11-88. – Violation.

Any person violating any provision of this Article shall be deemed guilty of such violation and, upon conviction thereof, shall be penalized as provided in Article IV of Chapter 1 of the Code.

Section 2. Severability. If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

Section 3. Code revisions. Minor changes such as the format and other changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content will be altered by such changes.

Section 4. Publication; Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town's Home Rule Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. 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 shall be 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 16th day of March, 2021.

TOWN OF JOHNSTOWN, COLORADO



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 _____, 2021.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____

Diana Seele, Town Clerk

By: _____

Gary Lebsack, Mayor

PARK RESERVATION AGREEMENT

Date Requested: _____ Time: _____ am/pm to _____ am/pm

Name or Organization _____

Address: _____

Phone/Cell # _____

Type of Function ("Event"): _____

Number of Participants _____ (100 or more Special Events Permit required)

Alcohol Requested (Hays Park ONLY) Yes / No _____
(Fermented Malt Beverage Only)

Inflatables Requested Yes / No

Contact person and phone #: _____

(office to complete section below)

Park _____ Fee: _____

Reserved _____

Deposit: _____

TOTAL DUE: _____

Deposit check will be cashed. Deposit, or a portion thereof, will be reimbursed subsequent to the Event on the condition that the applicant complied with the provisions contained herein. Charges may be made against deposit for loss, damage, cleaning and/or additional time (additional time charged at 150% of reservation amount).

Release of Liability and Agreement to Hold Harmless

The applicant agrees to use the Park according to the Town's Rules and Regulations, which are attached hereto as Exhibit A. Among other obligations, the applicant agrees to be legally responsible for the conduct and control of both patrons and participants at the Event, to be financially responsible for any damages or injuries incurred arising from the use of the park, and to pay for repair or replacement, at the Town's discretion, for damage to the park property, including but not limited to the landscaping, facilities and equipment.

The applicant hereby agrees to release, indemnify and hold harmless the Town of Johnstown, its officials, employees and agents, for damage or loss of property within the park. The applicant further agrees to release, indemnify and hold harmless the Town of Johnstown, its officials, employees and agents, from and against all liability, claims or demands due to bodily injury, personal injury, sickness, disease or death, including attorney's fees, arising from or in any manner connected with the use of the park.

THE UNDERSIGNED HAS CAREFULLY READ AND REVIEWED THIS AGREEMENT, UNDERSTANDS THIS AGREEMENT, IS AUTHORIZED TO EXECUTE THIS AGREEMENT AND AGREES TO THE ABOVE STATED CONDITIONS:

If an individual:

Signature: _____

Printed Name: _____

Date: _____

If an organization:

Name of Organization: _____

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT A

PARK RULES AND REGULATIONS

1. Reservations are available for attendance of 0 – 99 participants. If over 100 participants, a Special Events Permit must be applied for which may include requirements for port-a- potties and/or trash removal. Other events requiring a Special Events Permit include, but are not limited to, events which:
 - barricade or block any roadway
 - obstruct, delay or interfere with the normal flow of pedestrian or vehicular traffic
 - the public is invited or admission is charged
 - utilizes amplified sound due to its impact on the surrounding neighbors
 - alcohol is sold or served to the public
2. Deposits checks will be deposited into Town of Johnstown account.
3. Town sponsored or hosted functions are exempt from these fees.
4. The privilege to use the park in the future will be denied to persons and/or groups that fail to comply with the rules of this agreement.
5. During the time the park is being used by the Lessee, the Lessee is responsible for any and all accidents, injuries, damages or loss of property. The Town of Johnstown and its designated representatives shall be held harmless for any and all claims resulting from the use of the park.
6. Lessee shall provide proper supervision, ensuring the protection of persons and property in its care, enforcement of park rules and regulations and restriction of all participants to authorized areas only.
7. Lessee is responsible for proper cleaning of the park being used. This includes all decoration removal, clean up of the trash around the area and proper disposal of trash is required before vacating the premises. If additional cleaning is required, the Town reserves the right to forfeit the Lessee's damage deposit. Any additional charges incurred will be the responsibility of the Lessee.
8. Reservations are not considered complete until all fees or deposits have been paid.
9. Lessee's must be 18 years or older.
10. Lessee shall be held responsible if any person within their party breaks or climbs upon, damage or deface the trees, shrubs, plants, turf or any of the facilities, buildings, equipment or other structures or property within or upon park premises, or in any way injure or impair the natural beauty or usefulness of any park or recreation area.
11. Removal of any Town-owned property from any Town park is strictly prohibited; violators are subject to criminal prosecution.

PARK RULES

1. No vehicles are to be driven or parked on grass at any time without written permission from the Town.
2. No tents, booths, stands or other structures shall be placed in the parks without pursuant written authorization by the Town. If stakes are to be driven into the ground, please be aware of any irrigation lines present, Lessee will be held liable for any damaged line.
3. Reservations are allowed for areas of the park and/or park shelters. Tot lots and playgrounds cannot be reserved. Please be aware that the park is a public place and

there may be other residents using other areas of the park including the playgrounds and restrooms.

4. Pick up all trash and debris and deposit in a trash receptacle.
5. If plastic or a “dance floor” is laid on the grass, it must be removed in a timely manner to prevent the grass from dying.
6. Parks can be reserved from 5:00 a.m. to 10:00 p.m., 7 days a week.
7. Failure to obey park closing time or allowing unruliness by members of the group will warrant forfeiture of all deposits.
8. Park use permits must be available at the facility during the time of use by the Lessee.



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: Reimbursement Agreement Concerning Water Line Between Town of Johnstown and Podtburg Dairy Limited Partnership, LLLP.

ACTION PROPOSED: Consider Approval of the Reimbursement Agreement as Presented

ATTACHMENTS: Reimbursement Agreement

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is a reimbursement agreement between the Town of Johnstown and the Podtburg Dairy Limited Partnership, LLLP. This agreement is a result of the Town's waterline project which is currently under design and the Podtburg Dairy Farm which was recently annexed into the Town.

Both entities are working on projects in the general area of the recently annexed property. In order to ensure proper elevation of our booster pump station without impacting their civil design for grades and road elevations, the two parties coordinated work on a preliminary design to prevent impact upon either party. In order to address this issue, the parties agreed that the Town would take the lead on this preliminary design because the Town is currently moving quicker than the Podtburg development to establish our infrastructure they need for future development.

The Town engaged with the Podtburg engineering team to establish the 30% design for the proper elevations and the two parties have agreed that this work would generally be the responsibility of the developer. Consequently this agreement recognizes that when the Podtburg's begin their development by issuing a building permit, they will reimburse the Town for the costs incurred. The total cost amount in the agreement shall not exceed \$7,000 and currently the Town has a contract with Northern Engineering for \$5,750 to perform this preliminary design work. Staff is recommending approval of this agreement and the agreement has been agreed to between both parties in its current form.

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

LEGAL ADVICE:

The reimbursement agreement was drafted by the Town Attorney.

FINANCIAL ADVICE:

Funds are available for this work as they are incorporated into the Water Tower project.

RECOMMENDED ACTION: Approve the reimbursement agreement as presented.

SUGGESTED MOTIONS:

For Approval: I move to approve the reimbursement agreement concerning the water line alignment as presented between the Town of Johnstown and Podtburg Dairy Limited Partnership, LLLP.

For Denial: I move we deny the reimbursement agreement concerning the water line alignment as presented between the Town of Johnstown and Podtburg Dairy Limited Partnership, LLLP.

Reviewed and Approved for Presentation,



Town Manager

REIMBURSEMENT AGREEMENT CONCERNING WATERLINE ALIGNMENT

THIS REIMBURSEMENT AGREEMENT CONCERNING WATERLINE ALIGNMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the Town of Johnstown, a home-rule municipal corporation of the State of Colorado (“Town”), and Podtburg Dairy Limited Partnership, LLLP, a Colorado limited liability limited partnership (“Owner”) (collectively, the “Parties”).

RECITALS

WHEREAS, Owner owns 448.32 acres of real property generally located south, with a portion north, of Weld County Road 44 and east of Weld County Road 13 (“Colorado Boulevard”), in the Town of Johnstown, County of Weld, State of Colorado, more particularly described on Exhibit A attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, to, among other reasons, accommodate development of the Property, the Town is designing, financing and constructing a waterline and related improvements along Colorado Boulevard, including the portion of Colorado Boulevard that is adjacent to the Property (the “Waterline”); and

WHEREAS, Owner is not yet prepared to commence development of the Property; and

WHEREAS, the Parties recognize and agree that the Waterline would ideally be situated in a location along Colorado Boulevard that will be advantageous to Owner’s future development of the Property; and

WHEREAS, upon the terms and conditions set forth in this Agreement, the Town agrees to incur the additional design engineering costs to determine the best location to place the Waterline along Colorado Boulevard and to thereafter place the Waterline in such beneficial location; and

WHEREAS, Owner agrees to reimburse the Town for the Town’s reasonable additional design engineering costs related to the alignment of the Waterline as further discussed and limited below;

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above premises and the covenants as hereinafter set forth, it is agreed by and between the Parties as follows:

1. Incorporation of Recitals. The Parties confirm and incorporate the foregoing recitals into this Agreement.

2. Waterline Alignment. In connection with the design and construction of the Waterline, the Town agrees to engage an engineer to ascertain the most beneficial location for the alignment of the Waterline along the portion of the roadway that is adjacent to the Property to facilitate the subsequent development of the Property and to thereafter situate the Waterline in such location, and install in the Waterline Stub connection (the "Stub Connection") to the boundary of the Property in the location mutually agreed upon (collectively, "Roadway Alignment Work"). The Stub Connection shall thereafter remain available for Owner in connection with the development of the Property. Notwithstanding anything to the contrary contained herein, the Town covenants to complete the Roadway Alignment Work no later than the date that is September 1, 2022 following the date of this Agreement. The Town shall provide as-built survey of the Waterline showing and describing the Roadway Alignment Work within 30 days after the completion of the Roadway Alignment Work.

3. Reimbursement of Town's Costs. Prior to issuance of the first building permit for the Property, or at a time prior thereto if requested by the Town, Owner shall reimburse the Town for the Roadway Alignment Work in a total amount not to exceed \$7,000. Subsequent to completion of the Roadway Alignment Work, the Town shall submit the final costs to Owner.

4. Remedy. Among all other remedies provided by law, if Owner does not reimburse the Town for the Roadway Alignment Work as provided herein, the Town shall be entitled to withhold the issuance of building permits for the Property.

5. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and all heirs, transferees, successors and assigns hereof, and shall constitute covenants running with the land. In addition to the foregoing and to the extent excluded therefrom, this Agreement shall be binding upon all developers of the Property or any part thereof.

6. Notices. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth. All notices by hand-delivery shall be effective upon receipt. All notices by mail shall be considered effective seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party, by notice to be given, may change the address to which future notices shall be sent.

Notice to Town:

Town of Johnstown
Attn: Town Manager
450 S. Parish Avenue
P. O. Box 609
Johnstown, CO 80534
Mlecerf@townofjohnstown.com

Notice to Owner:

Podtburg Dairy Limited Partnership, LLLP
37905 WCR 35
Eaton, CO 80615

Notwithstanding the foregoing, notice may be provided by electronic mail ("e-mail") on the condition that the receiving party (i) acknowledges receipt of the e-mail and (ii) does not promptly object to the form of notice.

7. Governing Law and Venue. The laws of the State of Colorado shall govern the validity, performance, and enforcement of this Agreement. Should either party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that the venue of such suit or action shall be in Weld County, Colorado.

8. Attorney's Fees and Costs. If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, 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.

9. Amendment. This Agreement may be amended only by mutual agreement of the Parties. Such amendments shall be in writing, shall be recorded with the County Clerk and Recorder of Weld County, Colorado, shall be covenants running with the land and shall be binding upon all persons or entities having an interest in the Property.

10. 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.

11. Entire Agreement. This Agreement embodies the entire agreement of the Parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement supersedes all previous communications, representations or agreements, either verbal or written, between the Parties.

12. Headings. The paragraph headings in this Agreement shall not be used in the construction or interpretation hereof as they have no substantive effect and are for convenience only.

[Signature pages attached]

ATTEST:

TOWN OF JOHNSTOWN, COLORADO,
A MUNICIPAL CORPORATION

By: _____ By: _____
 Diana Seele, Town Clerk Gary Lebsack, Mayor

OWNER:

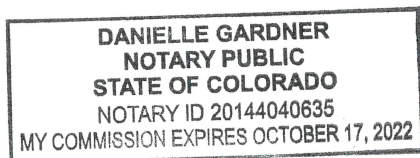
PODTBURG DAIRY LIMITED PARTNERSHIP, LLLP,
 a Colorado limited liability limited partnership

By: [Signature]
 Name: MARCUS Podtburg
 Its: Representative

STATE OF COLORADO)
) ss.
 COUNTY OF Weld)

The foregoing instrument was acknowledged before me this 31 day of March, 2021, by Marcus Podtburg, as Representative of Podtbutrg Dairy Limited Partnership, a Colorado limited liability limited partnership.

Witness my hand and official seal.



[Signature]
 Notary Public
 My Commission Expires: 10/17/2022

EXHIBIT A LEGAL DESCRIPTION

PROPERTY

A parcel of land being a portion of the West Half of Section Eighteen (18) and the Northwest Quarter of Section Nineteen (19), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of the East Half of Section Thirteen (13) and the North Half of Section Twenty-four (24), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South 00°02'15" East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South 00°02'15" East along the East line of the Northeast Quarter of said Section 13 a distance of 2647.90 feet to the East Quarter Corner of Section 13;

THENCE South 00°02'29" East along the East line of the Southeast Quarter of said Section 13 a distance of 1134.55 feet to the **POINT OF BEGINNING**.

THENCE North 00° 32' 02" East a distance of 3001.06 feet to the Easterly Right of Way line of Weld County Road 13;

The following Three (3) courses are along the Easterly Right of Way lines of Weld County Road 13.

THENCE South 00° 02' 15" East a distance of 1866.36 feet;

THENCE South 00° 02' 29" East a distance of 2648.03 feet;

THENCE South 00° 06' 39" West a distance of 1324.43 feet;

THENCE South 89° 43' 17" West a distance of 2680.42 feet to the Northeast Corner of Northmoor Acres Second Filing recorded March 20, 1972 as Reception No. 1585866;

The following Ten (10) courses are along the Easterly, Southerly, and Westerly lines of Tract D-1 of said Northmoor Acres Second Filing:

THENCE South 00° 06' 15" West a distance of 13.89 feet to the Southeast Corner of said Tract D-1

THENCE North 89° 44' 34" West a distance of 152.81 feet;

THENCE South 88° 54' 36" West a distance of 68.31 feet;

THENCE South 88° 58' 33" West a distance of 351.36 feet;

THENCE South 88° 41' 39" West a distance of 225.35 feet;

THENCE South 89° 11' 58" West a distance of 121.90 feet;

THENCE South 89° 47' 15" West a distance of 155.18 feet;

THENCE South 89° 38' 59" West a distance of 451.60 feet;

THENCE South 89° 26' 24" West a distance of 423.45 feet;

THENCE South 89° 05' 24" West a distance of 649.81 feet to an Easterly line of Wilson Ranch Annexation to the Town of Berthoud recorded April 23, 2004 as Reception No. 3173568;

The following Four (4) courses are along the Easterly lines of said Wilson Ranch Annexation:

THENCE North 00° 03' 04" East a distance of 43.07 feet;

THENCE South 89° 56' 54" West a distance of 20.00 feet;

THENCE North 00° 03' 04" East a distance of 1331.68 feet to the North line of the Northwest Quarter of Section 24;

THENCE North 00° 03' 04" East a distance of 30.00 feet to the Northerly Right of Way of Weld County Road 44;

THENCE North $89^{\circ} 55' 24''$ East along said Northerly Right of Way line of Weld County Road 44 a distance of 2620.33 feet to the West line of the Southeast Quarter of said Section 13;
 THENCE North $00^{\circ} 02' 05''$ West along said West line a distance of 857.85 feet to the Southwest corner of Lot B of Recorded Exemption No. 1061-13-4 RE-3863;

The following Seventeen (17) courses are along the Southerly lines of Lot B of Recorded Exemption No. 1061-13-4 RE-3863 recorded October 18, 2004 as Reception No. 3228383 of the Records of Weld County:

THENCE South $79^{\circ} 11' 49''$ East a distance of 251.09 feet to a Point of Curvature;
 THENCE along the arc of a curve concave to the Northwest a distance of 92.52 feet, said curve has a Radius of 115.39 feet, a Delta of $45^{\circ} 56' 32''$, and is subtended by a Chord bearing North $77^{\circ} 50' 10''$ East a distance of 90.07 feet to a Point of Tangency;
 THENCE North $54^{\circ} 51' 44''$ East a distance of 181.87 feet to a Point of Curvature;
 THENCE along the arc of a curve concave to the Southeast a distance of 144.05 feet, said curve has a Radius of 124.38 feet, a Delta of $66^{\circ} 21' 24''$, and is subtended by a Chord bearing North $88^{\circ} 02' 19''$ East a distance of 136.13 feet to a Point of Tangency;
 THENCE South $58^{\circ} 46' 59''$ East a distance of 133.41 feet to a Point of Curvature;
 THENCE along the arc of a curve concave to the Northeast a distance of 115.53 feet, said curve has a Radius of 193.24 feet, a Delta of $34^{\circ} 15' 17''$, and is subtended by a Chord bearing South $75^{\circ} 54' 49''$ East a distance of 113.82 feet to a Point of Return Curvature;
 THENCE along the arc of a curve concave to the Southwest a distance of 285.43 feet, said curve has a Radius of 753.31 feet, a Delta of $21^{\circ} 42' 34''$, and is subtended by a Chord bearing South $82^{\circ} 11' 10''$ East a distance of 283.73 feet to a Point of Return Curvature;
 THENCE along the arc of a curve concave to the Northeast a distance of 378.03 feet, said curve has a Radius of 800.39 feet, A Delta of $27^{\circ} 03' 40''$, and is subtended by a Chord bearing South $84^{\circ} 51' 55''$ East a distance of 374.53 feet to a Point of Return Curvature;
 THENCE along the arc of a curve concave to the Southwest a distance of 179.58 feet, said curve has a Radius of 171.12 feet, a Delta of $60^{\circ} 07' 42''$, and is subtended by a Chord bearing South $68^{\circ} 19' 54''$ East a distance of 171.45 feet to a Point of Tangency;
 THENCE South $38^{\circ} 16' 02''$ East a distance of 117.93 feet to a Point of Curvature;
 THENCE along the arc of a curve concave to the Northeast a distance of 58.61 feet, said curve has a Radius of 231.16 feet, a Delta of $14^{\circ} 31' 38''$, and is subtended by a Chord bearing South $45^{\circ} 31' 53''$ East a distance of 58.45 feet to a Point of Tangency;
 THENCE South $52^{\circ} 47' 41''$ East a distance of 176.69 feet to a Point of Curvature;
 THENCE along the arc of a curve concave to the Northeast a distance of 107.69 feet, said curve has a Radius of 183.32 feet, a Delta of $33^{\circ} 39' 29''$, and is subtended by a Chord bearing South $69^{\circ} 37' 20''$ East a distance of 106.15 feet to a Point of Tangency;
 THENCE South $86^{\circ} 27' 04''$ East a distance of 88.57 feet to a Point of Curvature;
 THENCE along the arc of a curve concave to the Northwest a distance of 131.99 feet, said curve has a Radius of 937.08 feet, a Delta of $08^{\circ} 04' 13''$, and is subtended by a Chord bearing North $89^{\circ} 30' 49''$ East a distance of 131.88 feet to a Point of Return Curvature;
 THENCE along the arc of a curve concave to the Southwest a distance of 359.49 feet, said curve has a Radius of 498.28 feet, a Delta of $41^{\circ} 20' 12''$, and is subtended by a Chord bearing South $73^{\circ} 51' 12''$ East a distance of 351.74 feet to a Point of Tangency;
 THENCE South $53^{\circ} 11' 05''$ East a distance of 63.29 feet to the Westerly Right of Way line of Weld County Road 13;
 THENCE North $00^{\circ} 02' 29''$ West along said Westerly Right of Way line a distance of 2333.22 feet;
 THENCE North $00^{\circ} 02' 15''$ West continuing along said Westerly Right of Way line a distance of 1867.83 feet;
 THENCE South $00^{\circ} 36' 41''$ East a distance of 3002.53 feet to the East line of the Southeast Quarter of said Section 13 and to the **POINT OF BEGINNING**.

TOTAL AREA for the Owner is 212.76 acres, more or less ($\pm$).

AND

A parcel of land being a portion of the West Half of Section Nineteen (19) and the Northwest Quarter of Section Thirty (30), Township Four North (T.4N.), Range Sixty-seven West (R.67W.) and a portion of Section Twenty-four (24) and the Northeast Quarter of Section Twenty-five (25), Township Four North (T.4N.), Range Sixty-eight West (R.68W.), Sixth Principal Meridian (6th P.M.), County of Weld, State of Colorado:

COMMENCING at the Northeast Corner of said Section 13 and assuming the East line of the Northeast Quarter of Section 13 as bearing South $00^{\circ}02'15''$ East a distance of 2647.90 feet with all other bearings contained herein relative thereto:

THENCE South $00^{\circ}02'15''$ East along the East line of the Northeast Quarter of said Section 13 a distance of 2647.90 feet to the East Quarter Corner of Section 13;

THENCE South $00^{\circ}02'29''$ East along the East line of the Southeast Quarter of said Section 13 a distance of 2647.99 feet to the Southeast Corner of said Section 13:

THENCE South $00^{\circ}06'39''$ West along the East line of the Northeast Quarter of the Northeast Quarter of Section 24 a distance of 1324.59 feet to the Southeast Corner of the Northeast Quarter of the Northeast Quarter of said Section 24 and to the **POINT OF BEGINNING**.

THENCE North $89^{\circ}43'17''$ East a distance of 30.00 feet to the Easterly Right of Way line of Weld County Road 13;

The following Three (3) courses are along the Easterly Right of Way line of said Weld County Road 13.

THENCE South $00^{\circ}06'39''$ West a distance of 1324.80 feet;

THENCE South $00^{\circ}06'37''$ West a distance of 2649.04 feet;

THENCE South $00^{\circ}06'37''$ West a distance of 29.74 feet to the Easterly prolongation of the Southerly Right of Way line of Weld County Road 42;

THENCE South $89^{\circ}36'32''$ West along said Easterly prolongation of the Southerly Right of Way line of Weld County Road 42 a distance of 29.74 feet;

THENCE South $89^{\circ}36'32''$ West continuing along the Southerly Right of Way line of said Weld County Road 42 a distance of 2650.03 feet;

THENCE North $00^{\circ}23'48''$ West a distance of 30.00 feet to the South Quarter Corner of said Section 24;

THENCE North $00^{\circ}06'15''$ East along the Easterly line of Northmoor Acres Second Filing recorded March 20, 1972 as Reception No. 1585866 of the Records of Weld County a distance of 3964.93 feet to the Southeast Corner of Tract D-1 of said Northmoor Acres Second Filing;

THENCE North $00^{\circ}06'15''$ East continuing along the Easterly line of said Northmoor Acres Second Filing a distance of 13.89 feet to the Center-North Sixteenth Corner of said Section 24;

THENCE North $89^{\circ}43'17''$ East along the South Line of the North Half of the Northeast Quarter of said Section 24 a distance of 2650.42 feet to the **POINT OF BEGINNING**.

TOTAL AREA for the Owner is 246.49 acres, more or less ($\pm$).



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: Resolution 2021-09 Authorizing and Approving Johnstown's Participation in the Mero Mortgage Assistance Plus Program and Authorizing the Execution of the Delegation and Participation Agreement and Other Documents In Connection Therewith

ACTION PROPOSED: Consider Resolution 2021-09

ATTACHMENTS:

1. Resolution 2021-09
2. Delegation and Participation Agreement

PRESENTED BY: Avi Rocklin, Town Attorney

AGENDA ITEM DESCRIPTION:

Earlier this evening a presentation on the Mero Mortgage Assistance Plus Program was shared with Council and staff. The Program helps to promote homeownership throughout the Front Range by offering 30-year fixed rates mortgages and down-payment assistance. It has been in existence 7 years and is currently operating in 8 counties and more than 35 cities in the Front Range.

By passing Resolution 2021-09, the Town Council authorizes and approves the Town's participation in the Program and authorizes the Mayor to execute the Delegation and Participation Agreement.

LEGAL ADVICE:

The Town Attorney reviewed the Resolution and Agreement as presented.

FINANCIAL ADVICE:

Not applicable at this time.

RECOMMENDED ACTION: Approve Resolution 2021-09.

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SUGGESTED MOTIONS:**For Approval**

I move to approve Resolution 2021-09, Authorizing and Approving Johnstown's Participation in the Metro Mortgage Assistance Plus Program and Authorizing the Execution of the Delegation and Participation Agreement and Other Documents in Connection Therewith, and authorize the Mayor to sign the Delegation and Participation Agreement

For Denial

I move we deny approval of Resolution 2021-09.

Reviewed and Approved for Presentation,



Town Manager

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2021-09**

**AUTHORIZING AND APPROVING JOHNSTOWN’S PARTICIPATION
IN THE METRO MORTGAGE ASSISTANCE PLUS PROGRAM AND
AUTHORIZING THE EXECUTION OF THE DELEGATION AND
PARTICIPATION AGREEMENT AND OTHER DOCUMENTS IN
CONNECTION THEREWITH**

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

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

WHEREAS, the State of Colorado (the “State”) Constitution Article XIV, Section 18(2)(a) provides that nothing in the Constitution shall prohibit any of the State’s political subdivisions from cooperating with one another to provide any service lawfully authorized to each of the cooperating units; and

WHEREAS, the City and County of Denver, Colorado (“Denver”) is authorized pursuant to its Home Rule Charter to promote the financing of mortgage loans for low- and moderate-income persons or families intended for use as the sole place of residence by the owners or intended occupants thereof; and

WHEREAS, Denver sponsors the Metro Mortgage Assistance Plus Program to provide competitive mortgage loans which will be coupled with down payment and closing cost assistance in connection with financing mortgage loans for low- and moderate- income persons or families intended for use as the sole place of residence by the owners or intended occupants thereof (the “Program”); and

WHEREAS, Denver has invited the Town to participate in the Program; and

WHEREAS, the Town has the legal authority to participate in the Program pursuant to its Home Rule Charter, the general powers granted to it in Title 29, Article 1, Section 203 of the Colorado Revised Statutes, as amended, and Title 31, Article 15, Section 101 *et seq.*, Colorado Revised Statutes, as amended (collectively, the “Act”); and

WHEREAS, the Town desires to delegate to Denver the authority of the Town to take action and exercise power under the Act on behalf of the Town with respect to the Program within the Town’s boundaries.

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

Section 1. In order to benefit the residents of the Town, the Town Council authorizes and approves its participation in the Program in connection with the financing of mortgage loans

for low–and moderate–income families or persons intended for use as the sole place of residence by the owners or intended occupants thereof, and the Town delegates to Denver the authority of the Town to take action and exercise power under the Act on behalf of the Town with respect to the Program.

Section 2. Gary Lebsack, Mayor of the Town, is hereby authorized and directed to execute the Delegation and Participation Agreement attached hereto and incorporated herein by reference as Appendix A and the Town Manager, is hereby authorized and directed to take such other actions as may be necessary or convenient to carry out and give effect to the Town’s participation in the Program.

Section 3. Nothing contained in this Resolution or the assignment shall constitute a debt, indebtedness or multiple-fiscal year direct or indirect debt or other financial obligation of the Town within the meaning of the Constitution or statutes of the State of Colorado or the home rule charter of any political subdivision thereof, nor give rise to a pecuniary liability of the Town or a charge against its general credit or taxing powers.

Section 4. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of any such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 5. This Resolution shall be in full force and effect upon its passage and approval.

PASSED, SIGNED, APPROVED, AND ADOPTED this ____ day of April, 2021.

TOWN OF JOHNSTOWN

Gary Lebsack, Mayor

ATTEST:

Diana Seele, Town Clerk

DELEGATION AND PARTICIPATION AGREEMENT

This DELEGATION AND PARTICIPATION AGREEMENT, dated as of March 15, 2021 (this “Delegation and Participation Agreement”), is by and between Johnstown, a home rule municipality and political subdivision duly organized and existing under the laws and Constitution of the State of Colorado (“Johnstown”) and the CITY AND COUNTY OF DENVER, COLORADO, a legally and regularly created, established, organized and existing home rule charter city and political subdivision under the Constitution and statutes of the State of Colorado (“Denver”);

R E C I T A L S:

WHEREAS, the State of Colorado (the “State”) Constitution Article XIV, Section 18(2)(a) provides that nothing in the Constitution shall prohibit any of the State’s political subdivisions from cooperating with one another to provide any service lawfully authorized to each of the cooperating units; and

WHEREAS, Denver is authorized pursuant to its Home Rule Charter to promote the financing of mortgage loans for low- and moderate- income persons or families intended for use as the sole place of residence by the owners or intended occupants and to promote the public health, welfare, safety, convenience and prosperity of the people of Denver; and

WHEREAS, Denver sponsors the Metro Mortgage Assistance Plus Program to provide competitive mortgage loans which will be coupled with down payment and closing cost assistance in connection with financing mortgage loans for low- and moderate- income persons or families intended for use as the sole place of residence by the owners or intended occupants thereof (the “Program”); and

WHEREAS, Denver has invited Johnstown to participate in the Program; and

WHEREAS, Johnstown has the full legal authority to participate in the Program pursuant to its Home Rule Charter, the general powers granted to it in Title 29, Article 1, Section 203 of the Colorado Revised Statutes, as amended; Title 31, Article 15, Section 101 *et seq.*, Colorado Revised Statutes, as amended, and the Resolution adopted by Johnstown Town Council authorizing Johnstown’s participation in the Program pursuant to this Delegation and Participation Agreement (collectively the “Act”); and

WHEREAS, Johnstown desires to delegate to Denver the authority of Johnstown to take action and exercise power under the Act on behalf of Johnstown with respect to the Program within Johnstown’s incorporated boundaries.

NOW THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, Johnstown and Denver hereby agree as follows:

Section 1. Johnstown hereby delegates to Denver the authority of Johnstown to take action and exercise power under the Act on behalf of Johnstown with respect to the Program within Johnstown’s boundaries.

Section 2. Denver hereby accepts the delegation of authority from Johnstown pursuant to Section 1 hereof and agrees to abide by each of the terms and conditions of this Delegation and Participation Agreement in connection with the use of such delegation. Denver agrees to make the Program available to Johnstown for the origination of home mortgages within Johnstown's incorporated boundaries.

Section 3. In the event that the Program is discontinued by Denver, this Delegation and Participation Agreement, and all duties, obligations and rights of Denver and Johnstown hereunder, shall terminate. If the Program is terminated, Johnstown agrees to hold Denver harmless for any costs or any other liabilities incurred by Johnstown with respect to the adoption and approval of this Delegation and Participation Agreement or any other Johnstown actions related thereto.

Section 4. Johnstown's participation in the Program pursuant to this Delegation and Participation Agreement shall not be construed as creating or constituting a general obligation or multiple fiscal year direct or indirect indebtedness or other financial obligation whatsoever of Johnstown nor a mandatory payment obligation of Johnstown in any fiscal year during which this Delegation and Participation Agreement shall be in effect.

[Signatures on the following pages]

IN WITNESS WHEREOF, Johnstown and Denver have caused this Delegation and Participation Agreement to be executed and be effective as of March 15, 2021.

Town of Johnstown

[SEAL]

By _____
Gary Lebsack, Mayor

Attest:

By _____
Diana Seele, Town Clerk

CITY AND COUNTY OF DENVER,
COLORADO

By _____
Chief Financial Officer

[Signature Page to Delegation and Participation Agreement]



Town of Johnstown

MEMORANDUM

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: April 5, 2021

CC: Town Staff
Local Media

SUBJECT: Town Manager's Report

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):

- 04/12/2021 – Work Session (6 p.m.)
 - 04/19/2021 – Regular Town Council Meeting
 - 05/03/2021 – Regular Town Council Meeting
-

Administration, Finance, & Planning

- *I-25 Improvements* – As part of the roadway improvements planned at I-25, Staff is exploring the opportunity to underground some of the electric utilities around the interchange with the use of our Xcel Undergrounding fund which is housed with Xcel. There is roughly \$700,000 in this fund, exclusively for conversation of overhead lines to underground.
- *Home Supply Share* – The Town purchased another Home Supply Share. The share was unchanged.
- *CBT Water* – The Town is in the process of completing its analysis with Northern Water related to how many CBT units it can own. We expect this analysis to be completed by the end of the week. Until this analysis is completed, Northern has informed us that we cannot acquire anymore shares formally. At this time, we have 31 shares under a verbal agreement to purchase and we are working on the contract agreement currently. We would anticipate this contract will be presented to Council at the April 19 meeting.

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- *2020 Audit* – Preparation for the upcoming 2020 audit is well underway. The library has provided all of their records and we are reviewing and entering them into our system.
- *Sewer Bonds* – Staff is working to compile all of the data necessary to begin the process of issuing bonds for the sewer enterprise fund.
- *Economic Development* – Staff continues to roll out the Johnstown Cash Program with 41 businesses signed up as of 03/29/21. Staff is also presenting at the Northern Colorado Real Estate Summit during the Breaking Ground session on 03/30/21 to discuss recent and future commercial development in Johnstown. The completion of the Johnstown ED Profile will be delayed as further retail trade area data is needed to incorporate in the packet. Staff is working on gathering the data.
- *DOLA Energy Impact Grant* – The Planning Director met with our DOLA area representative to discuss the Town's recent grant application to assist with funding the Town's upcoming Land Use Code update. Additional information has been provided to DOLA in support of that application. Notification of determination will likely be forthcoming in early May.
- *Belated April Fool's* – In Town, we have determined how to move wastewater uphill and will no longer have the need for lift stations in the system. This will control future capital improvement costs with the elimination of our lift stations moving forward as gravity now works both up and downstream.
- *Rocky Mountain Rail* – Town Staff is coordinating with Rocky Mountain Rail on possible alignments for future passenger rail access, proposed to run N/S through the Johnstown GMA.

Police Department

Community Policing, Outreach & Miscellaneous Items:

- *New Hire Status* – The police department conducted an oral board, which is the first step in our extensive hiring process for our police officer position. We moved two of the candidates through to the background investigation phase.
- *K9 Recertification* – Officer Kehr and K9 Vasco finished their annual recertifications in both patrol and narcotics. They will be completing their tracking certification this Wednesday.
- *Charitable Event* – Eight officers participated in the Polar Plunge at Windsor Lake in an effort to raise money for the athletes of the Special Olympics.
- *Colorado Pilot Program* – The police department finished the pilot phase and has fully implemented the use and acceptance of the Colorado Digital ID program.

Public Works Department

Streets, Stormwater, & Parks

- *Streets* – The recent March snow event kept Staff busy plowing Town streets for four straight days. Crews were called in late Saturday afternoon on March 13 and worked around the clock, alternating on 12-hour shifts. The Town also received plowing assistance from Roberts Excavating and Kate Construction. After four days of

continuous plowing, Staff moved to flood control. Once all the snow started melting, controlling the snow melt was an ongoing task. The freeze and melting have caused issues on our roadways and crews have laid over half a ton of pothole patch following the storm. Sweepers are back out picking up debris from plowing. We anticipate this will continue for quite some time.

- *Trash RFP* – Staff will be sending out a Trash Service RFP within a week to solicit new trash service providers as the current contract with Waste Management expires in September.
- *Sewer* – Crews were called out for a sewer collapse under Hwy 60 around 3:00 p.m. Friday, March 26 and worked until 1:30 a.m. to get the line temporarily repaired. This line is an old clay line that was installed without manholes. The area that failed was a junction where three lines come together. Staff is working with CDOT to access their right of way on this repair. We had planned to install a manhole at this location, however CDOT will not allow us to close the road during winter months for this type of work. As part of an interim fix, we are installing cleanouts to be able to maintain the line and this work is anticipated to be completed over the next week. This temporary repair will be sufficient until we can budget to replace the entire line in either 2022 or 2023. Replacement will be approximately 1000 ft of new line and installation of manholes that are not currently in place.

Water & Wastewater Plants

- *CWWTP* – Staff continues to improve operations at the Central Plant. For the second month in a row Staff has met all levels of treatment. Sludge removal of pond #2 has been completed. Our contractor is cleaning up the south west corner of pond #1 to help with sludge pumping from the DAF unit at the plant. Review of engineering firms is underway and staff will be interviewing the top two firms that submitted proposals for the design of the new CWWTP. Interviews will take place in early May and we hope to bring a request to Council at the May 17 meeting.
- *Low Point* – A blower recently failed at the Low point plant. New belts were ordered and replaced. Review of bids for equipment purchase for expansion has been completed and Staff will present the purchase request to Council tonight.
- *Lift Station* – The Corbet Glenn lift station has had two issues in the last few weeks. Starter failure for the pumps caused the station to not kick on the pumps as needed which caused wastewater to overflow into the emergency overflow tank. We were able to contain the entire over flow inside tank and repairs were made to the starter. A second over flow happened due to the floats that trigger the pumps failing. This caused the emergency tank to spill about 100 gallons of wastewater into the neighboring field. Staff did place lime and soda ash to clean up the site. We contacted CDPHE to report the spill and our efforts to contain and clean the spill center.
- *Water Plant* – Tank roof repair is close to completion. During the draining of the two tanks for cleaning, more deterioration was found in both tanks. One manway had to be completely replaced and the other needed repairs. Holes in the floors of both tanks were found and needed to be patched. Lead paint was also found and abatement of the lead

needed to be done to continue with the repairs of the roof. Coating cost for the inside of the south tank came in higher than expected. Additional cost has occurred due to these issues. Staff will present all findings tonight.

- *16" Valve* – During the filling of the north tank at the water plant, the 16-inch isolation valve for the south tank was not sealing properly and caused water to flow back inside the south tank. These tanks operate in sequence, these valves are supposed to isolate one or the other as needed for maintenance and or repairs. The cost for a new valve with installation was \$16,000 or \$8,000 to replace the interior working components. Staff took the valve apart and found corrosion was the cause. Staff was able to scrape and clean the interior of valve, put it back together and valve appears to be working fine.



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: **Public Hearing** – New Fermented Malt Beverage
Liquor License Application

ACTION PROPOSED: Consider Fermented Malt Beverage License

ATTACHMENTS:

1. Fermented Malt Beverage Application
2. Results of the Liquor License Survey
3. Report from Police Department
4. Order Granting Fermented Malt Beverage License

PRESENTED BY: Diana Seele, Town Clerk

AGENDA ITEM DESCRIPTION: This item is a public hearing to receive comments regarding the proposed liquor (Fermented Malt Beverage) license for TA Operating, LLC, d/b/a Petro Stopping Centers, located at 28942 SE Frontage Road, Johnstown, CO. 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.

LEGAL ADVICE:

The Town Attorney has reviewed the documents submitted.

FINANCIAL ADVICE:

The applicant has paid all the applicable fees.

RECOMMENDED ACTION: Consider issuing a new Fermented Malt Beverage License to TA Operating, LLC.

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SUGGESTED MOTIONS:

For Approval: I move to approve the Fermented Malt Beverage License to TA Operating, LLC and authorize the Mayor to sign the Order Granting a Fermented Malt Beverage License.

For Denial: I move to deny approval of the Fermented Malt Beverage License to TA Operating, LLC.

Reviewed and Approved for Presentation,



Town Manager

DR 8403 (09/25/19)
COLORADO DEPARTMENT OF REVENUE
 Liquor Enforcement Division
 (303) 205-2300

Colorado Fermented Malt Beverage License Application

☒ New License ☐ New-Concurrent ☐ Transfer of Ownership			
• All answers must be printed in black ink or typewritten • Applicant must check the appropriate box(es) • Local license fee \$ _____ • Applicant should obtain a copy of the Colorado Liquor and Beer Code: www.colorado.gov/enforcement/liquor			
1. Applicant is applying as a/an ☐ Corporation ☐ Individual ☐ Partnership (includes Limited Liability and Husband and Wife Partnerships) ☒ Limited Liability Company ☐ Association or Other			
2. Applicant(s) If an LLC, name of LLC; if partnership, at least 2 partners' names; if corporation, name of corporation TA Operating LLC			FEIN 34-1747077
2a. Trade Name of Establishment (DBA) Petro Stopping Centers		State Sales Tax No. 0755401-0005	Business Telephone 303-460-9464
3. Address of Premises (specify exact location of premises) 2842 SE Frontage Road			
City Johnstown	County Larimer County	State CO	ZIP Code 80534
4. Mailing Address (Number and Street) Two Newton Pl, 255 Washington St., Suite 100		City or Town Newton	State MA
5. Email Address Dmichelson@ta-petro.com; adena.santiago@huschblackwell.com			
6. If the premises currently has a liquor or beer license, you MUST answer the following questions			
Present Trade Name of Establishment (DBA) N/A	Present State License No. N/A	Present Class of License N/A	Present Expiration Date N/A
Section A Nonrefundable Application Fees		Section B Fermented Malt Beverage Beer License Fees	
☐ Application Fee for New License \$1,550.00		☐ Retail Fermented Malt Beverage On-Premises (City) \$96.25	
☒ Application Fee for New License - w/Concurrent Review \$1,650.00		☐ Retail Fermented Malt Beverage On-Premises (County) \$117.50	
☐ Application Fee for Transfer \$1,550.00		☐ Retail Fermented Malt Beverage Off-Premises (City) \$96.25	
		☐ Retail Fermented Malt Beverage Off-Premises (County) \$117.50	
		☒ Retail Fermented Malt Beverage On/Off-Premises (City) \$96.25	
		☐ Retail Fermented Malt Beverage On/Off-Premises (County) \$117.50	
		☐ Master File Location Fee \$25.00 x _____ To _____	
		☐ Master File Background \$250.00 x _____ Total _____	
Questions? Visit www.colorado.gov/enforcement/liquor for more information Do Not Write In This Space - For Department Of Revenue Use Only			
Liability Information			
License Account Number	Liability Date:	License Issued Through: (Expiration Date)	Total \$

DR 8403 (09/25/19)

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 Fermented Malt Beverage license for the premises to be licensed been denied within the preceding one year? If "yes," explain in detail.	☐ ☒			
10. Is the proposed Retail Fermented Malt Beverage Off Premises license within 500 feet of any public or parochial school, the principal campus of any college, university, or seminary? NOTE: The distances are to be computed using the methods outlined under C.R.S. 44-3-313(1)(d)(II). Some limited exceptions apply under C.R.S. 44-3-313.	☐ ☒			
11. Is the proposed Retail Fermented Malt Beverage Off Premises license, or On/Off premises license, within 500 feet of a Retail Liquor Store licensed under section 44-3-409 C.R.S.? Distance should be determined using guidelines outlined in 44-3-301(12)(c) C.R.S.	☐ ☒			
12. 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 or former financial interest in said business including any loans to or from a licensee.	☒ ☐			
13. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by virtue of ownership, lease or other arrangement? ☒ Ownership ☐ Lease ☐ 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	Tenant	Expires		
b. Is a percentage of alcohol sales included as compensation to the landlord? If yes complete question 12.		☐ ☐		
c. Attach a diagram or designate 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".				
14. 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
N/A	N/A	N/A	N/A	N/A
Last Name	First Name	Date of Birth	FEIN or SSN	Interest
N/A	N/A	N/A	N/A	N/A
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.				
15. Name of Manager(s) for all on premises applicants.				
Last Name	First Name			Date of Birth
Bohanan	Tatiana			[REDACTED]
16. 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.				
☐ ☒				
17. Tax Information.				
a. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant, been found in final order of a tax agency to be delinquent in the payment of any state or local taxes, penalties, or interest related to a business?				☐ ☒
b. Has the applicant, including its manager, partners, officer, directors, stockholders, members (LLC), managing members (LLC), or any other person with a 10% or greater financial interest in the applicant failed to pay any fees or surcharges imposed pursuant to section 44-3-503, C.R.S.?				☐ ☒

DR 8403 (09/25/19)

18. 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 to be fingerprinted by an approved State Vendor through the Vendor's website. See application checklist, Section IV, for details.

Name Please see attached Rider.	Home Address, City & State	Date of Birth	Position	% Owned
Name	Home Address, City & State	Date of Birth	Position	% Owned
Name	Home Address, City & State	Date of Birth	Position	% Owned
Name	Home Address, City & State	Date of Birth	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: ☐

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.

Oath of Applicant

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>Mark Young</i>	Printed Name and Title Mark R. Young, Ex. VP, Gen. Counsel on behalf of TA Operating LLC	Date 12/4/2020
---	---	-------------------

Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority 2/4/2021	Date of local authority hearing – for new license applicants cannot be less than 30 days from date of application 44-3-311(1) C.R.S.
---	--

Each person required to file DR 8404-I 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 _____

☐ Upon approval of state licensing authority

☐ New Fermented Malt Beverage Off Premises licenses, and On/Off Premises licenses, distance requirements of 44-3-301 C.R.S. are satisfied

☐ New Fermented Malt Beverage On/Off premises licenses must meet the qualifications of 44-4-104 C.R.S.

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	Printed Name	Title
Signature (attest)	Printed Name	Title

TA Operating LLC History Rider

8.(b) TA Operating LLC, a wholly owned subsidiary of TravelCenters of America Inc., a publicly traded company which is listed on the Nasdaq (Nasdaq: "TA"). TA through its wholly owned subsidiaries owns and/or operates in excess of 220 travel centers across the United States, some of which serve and/or sell alcoholic beverages pursuant to retail licenses held by TA (including four (4) in Colorado). None of the alcoholic beverage licenses described above has ever been revoked, but some licenses have been voluntarily surrendered as a result of sale of a licensed business. From time to time, some of the licensed locations have been the subject of alcoholic beverage regulatory inquiry leading to offers in compromise or, in limited cases, a brief suspension.

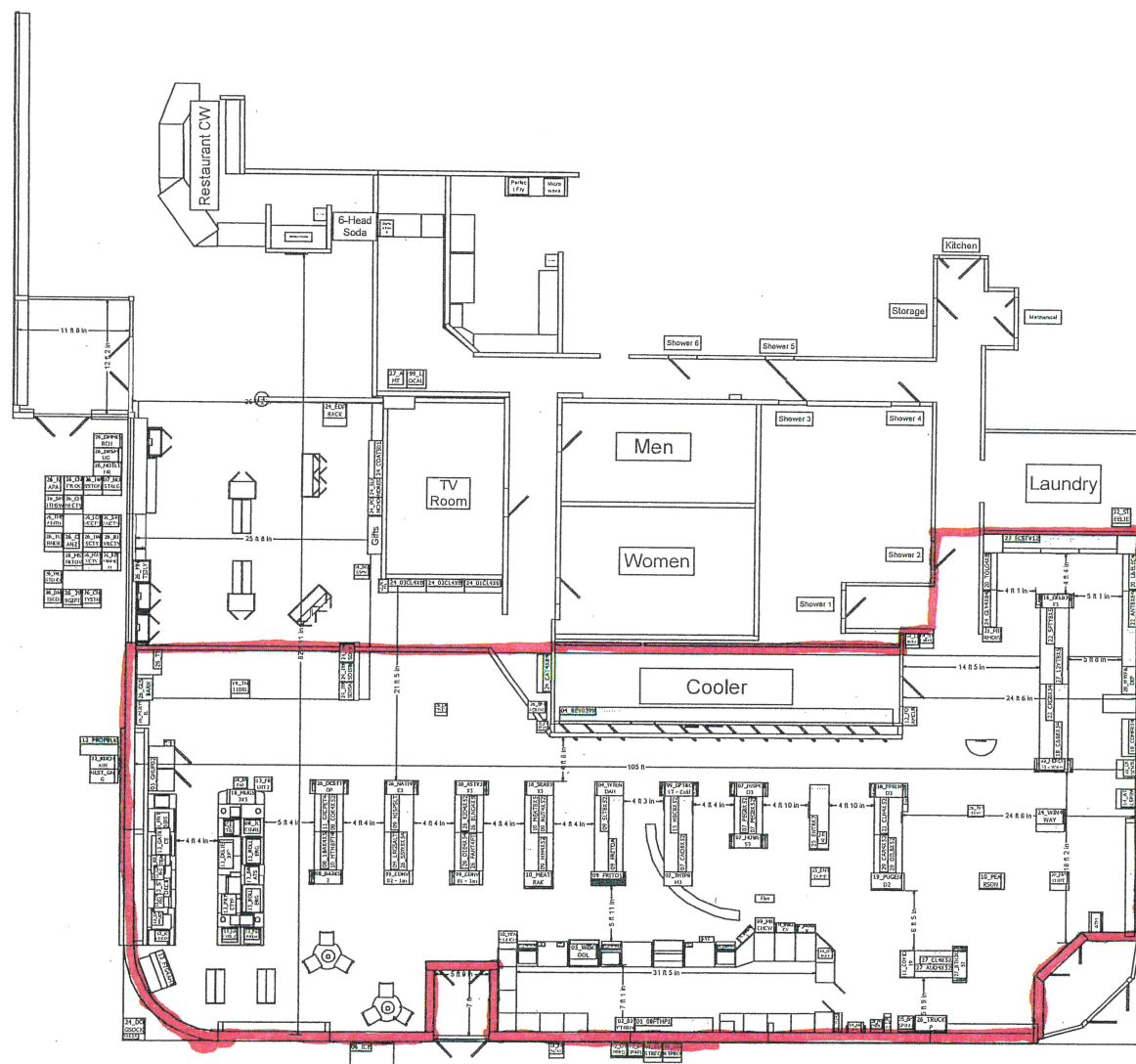
8.(c) In addition, some of the officers and directors are also officers and/or directors of Service Properties Trust (Nasdaq: "SVC") and Five Star Senior Living, Inc. (Nasdaq: "FVE") and their subsidiaries and affiliates. Each of SVC, TA and FVE is a publicly traded company on Nasdaq (the "Public Companies"). HPT, through its subsidiaries and affiliated companies, owns in excess of 300 hotels and 180 travel centers across the United States, several of which sell alcoholic beverages pursuant to licenses under HPT or its subsidiaries. FVE operates and owns in excess of 250 senior living communities across the United States, several of which sell alcoholic beverages pursuant to licenses under FVE or its subsidiaries. Finally, some of the officers and directors are also shareholders and/or officers and/or directors of Sonesta International Hotels Corporation ("Sonesta") which owns and/or manages in excess of 55 hotels across the United States, some of which serve alcoholic beverages pursuant to licenses held by Sonesta, including three (3) in Colorado. As corporate principals of the Public Companies and Sonesta, these individuals have a past or present interest in those licenses. Their affiliation with the alcoholic beverage licenses is solely in the capacity of shareholder and/or corporate official.

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TA Operating LLC

Rider to Number 18

<u>Name</u>	<u>Home Address, City & State</u>	<u>Date of Birth</u>	<u>Position</u>	<u>% of Ownership</u>
Adam D. Portnoy	Boston, MA 02116		Managing Director	0%
Jonathan M. Pertchik	Naples, FL 34108		CEO, Managing Director	0%
Barry A. Richards	Amherst, OH 44001		President	0%
Peter J. Crage	Windermere, FL 34786		EVP, CFO & Treasurer	0%
Mark R. Young	Boston, MA 02125		EVP, General Counsel	0%
Jennifer B. Clark	Sudbury, MA 01776		Secretary	0%



0399
Measurements - Johnson's Corners, CO
14 Jan 2021

Lozier Fixture - Black/Platinum - May 2015



March 21, 2021

RESULTS OF THE LIQUOR LICENSE SURVEY REGARDING: **Petro Stopping Centers**
 2842 SE Frontage Road
 Johnstown, CO 80534

Applicant: TA Operating LLC
 Purpose: Application for a Retail Fermented Malt Beverage On/Off Premises License

ISSUE: A petition was circulated to determine if the needs of the neighborhood and desires of the inhabitants were or were not being presently met by existing similar alcoholic beverage outlets. Those in favor of Petro Stopping Center being granted a Retail Fermented Malt Beverage On/Off Premises License indicated by checking the "Favor – YES" column of the signature sheet and those opposed checked the "Oppose - NO" column. The results were as follows:

Favor "YES"		Oppose "NO"		<u>TOTAL SIGNATURES</u>
95%	21	5%	1	22

SURVEY STATISTICS

	Favor "YES"		Oppose "NO"		TOTAL
Business Survey Results	100%	8	---	0	8
Residential Survey Results	93%	13	7%	1	14

Percentages in this report have been rounded to the nearest whole number.

	BUSINESS	RESIDENTIAL	TOTAL
No Response	5	20	25
Declined to Participate	3	3	6
Not Qualified to Sign	3	3	6
Disqualified	0	0	0
"No" Signatures	0	1	1
"Yes" Signatures	8	13	21
TOTAL CONTACTS & ATTEMPTS	19	40	59

Petro Stopping Center

SURVEY STATISTICS

>Number of Businesses and Residents Contacted: 59 Attempts – 25 No Response = 34
 >Business Survey Participation Rate: 8 Signatures/ 11 Qualified Contacts = 73%
 >Residential Survey Participation Rate: 14 Signatures/ 17 Qualified Contacts = 82%
 >Percentage of Residents Home During Survey: 20 Contacts/ 336 Attempts = 29%

<u>REASONS FOR OPPOSITION SIGNATURES</u>		<u>REASONS FOR DECLINING TO PARTICIPATE</u>	
No Reason	1	Don't Sign Any Petitions / Surveys	3
Total	1	Not Intersted	2
		Against Company Policy	1
		Total	6
		<u>CONTACTS NOT QUALIFIED TO SIGN</u>	
		Owner / Manager Unavailable	3
		Under 21	2
		Non-Resident	1
		Total	6

PETITION METHODOLOGY

- Survey Date and Times:

Residential/Business:	Friday	March 19, 2021	11:00 am – 6:00 pm
-----------------------	--------	----------------	--------------------

- Survey Areas: Circulators started in areas closest to the proposed licensed site and obtained signatures throughout the boundary area. Please see attached map.
- Circulators of the Survey: There was one circulator for this survey. Prior to the start of the survey, the circulator was briefed on the type of liquor license application, the areas to be surveyed and reminded to remain unbiased in his approach to residents and business people. The circulator had with him a face sheet with the applicant business name, location and hearing information, instructions, and the petition/survey issue along with signature sheets and a map of the proposed location. The circulator used tally sheets to record all contacts, attempts and reasons for opposition signatures and refusals. Upon conclusion of the survey, the circulator signed notarized affidavits of circulation. The original survey packets were pre-filed with the Johnstown City Clerk's Office.

Report prepared and respectfully submitted by,

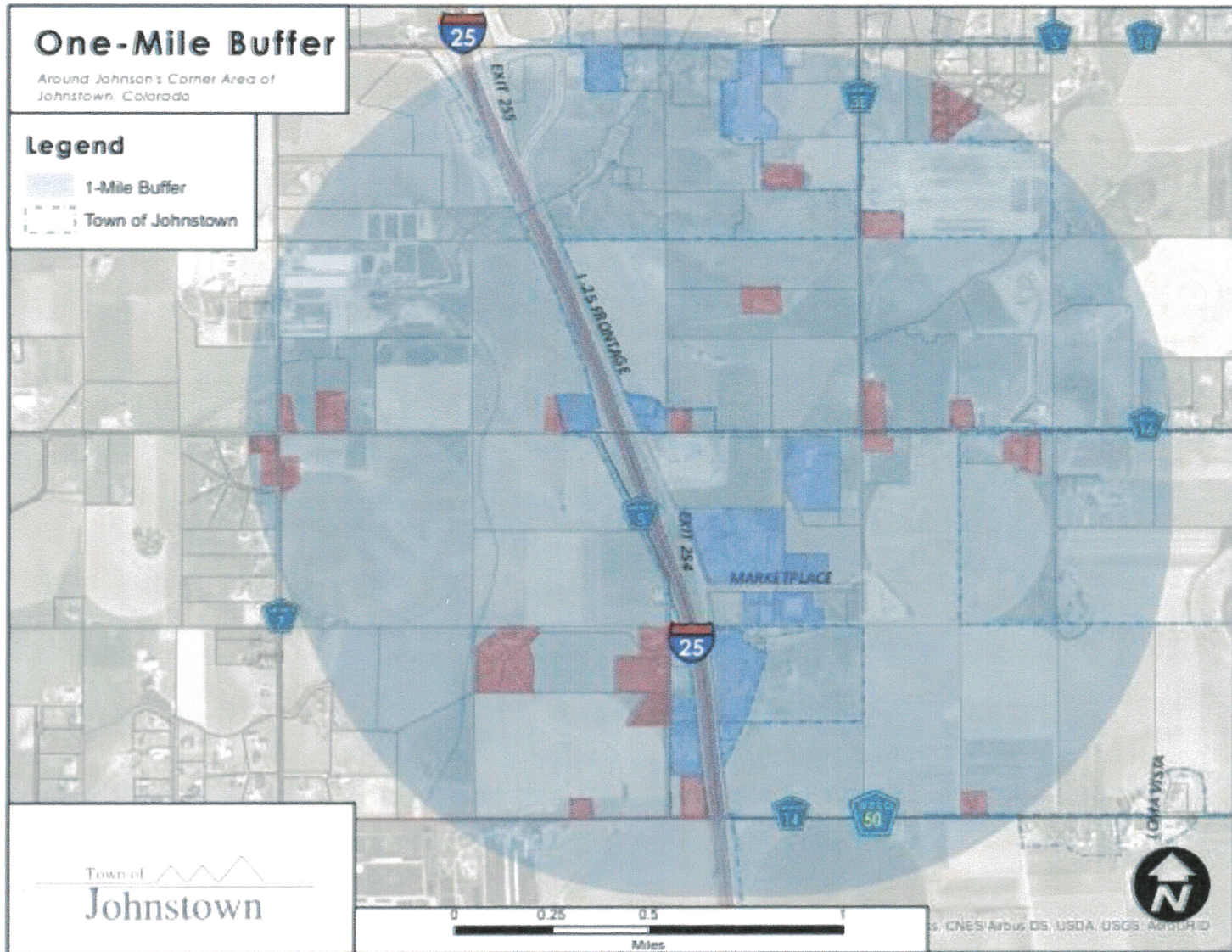


Eva L. Garretson
Liquor Licensing Professionals, LLC

Need & Desires Surveys / Petitions
Colorado Responsible Vendor Trainer

5515 Saddle Rock Place
Colorado Springs, CO 80918

719.390.8844
LiquorPros@msn.com



SURVEY RESULTS:

**RESIDENTIAL
AREAS COVERED
IN SURVEY**

**BUSINESS AREAS
COVERED IN
SURVEY**

SURVEY DATES:

MARCH 19, 2021

LiquorPros

LiquorPros@msn.com
719.390.8844
www.LiquorPros.com

COUNCIL DATE: 04/05/2021

TOWN OF JOHNSTOWN POLICE DEPARTMENT**Information Fermented Malt Beverage or Liquor Application**

- Name and address of Applicant} TA Operating LLC d/b/a Travel Centers of America
Two Newton Place
255 Washington Street, Suite 100
Newton, MA 02458
1. Trade Name and Address} Petro Stopping Centers
2842 SE Frontage Road
Johnstown, CO 80534
2. Date of Application: 02-04-2021
3. Type of Application: Retail Fermented Malt Beverage On/Off Premises 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} Owned
F.
5. Evidence of Public Notice
A. Posting of Premises} Posted March 22, 2021
B. Legal Publication } Johnstown Breeze March 18, 2021
6. Investigation: Police Department Case#}
A. Applicant has made application for a new Retail Fermented Malt Beverage License.
B. Background Investigation: A background check was done through CBI and found no concerns.
8. Findings of fact:
A. The required fees were submitted.
B. It is my recommendation the Fermented Malt Beverage License be approved.



CHIEF OF POLICE



DATE

TOWN OF JOHNSTOWN LIQUOR LICENSING AUTHORITY 450 S. Parish Avenue Johnstown, CO 80534 Phone No. (970) 587-4664 IN THE MATTER OF: TA OPERATING, LLC 2842 SE Frontage Road Johnstown, CO 80534	Δ AUTHORITY USE ONLY Δ
ORDER GRANTING FERMENTED MALT BEVERAGE LICENSE FOR TA OPERATING, LLC	

THIS MATTER came before the Town of Johnstown Liquor Licensing Authority (“Authority”) on TA Operating, LLC’s (“Applicant”) Application for a Fermented Malt Beverage License dated February 4, 2021, for a premises located at 2842 SE Frontage Road, Town of Johnstown, State of Colorado (“Application”). The Authority, having conducted a Public Hearing on April 5, 2021 after due notice, reviewed the Application and considered the evidence adduced by Town staff’s investigation and the evidence presented by the Applicant and parties in interest, as the term is defined in C.R.S. §44-3-311(5)(b), including but not limited to the petition circulated by the Applicant, hereby:

FINDS that, pursuant to C.R.S. §44-3-307, the appropriate fees have been paid and Applicant is of good moral character and entitled to hold a liquor license; and

FURTHER FINDS that, pursuant to C.R.S. §44-3-312(2)(a), the reasonable requirements of the designated neighborhood, the desires of the adult inhabitants and the number, type and availability of alcoholic beverage outlets support the issuance of the license; and

ORDERS that the Application is GRANTED.

Done and dated this ____ day of April, 2021.

BY THE AUTHORITY:

Gary Lebsack
Mayor, Town of Johnstown
Chairperson, Liquor Licensing Authority

ATTEST:

Diana Seele, Town Clerk



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: **Public Hearing First Reading:** Ordinance No. 2021-195, an Ordinance to Renew an Electric Utility Franchise Agreement Between the Town of Johnstown, Colorado and United Power Inc.

ACTION PROPOSED: Consider First Reading of Ordinance No. 2021-195 for a Franchise Agreement to United Power

ATTACHMENTS: Franchise Agreement with United Power

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is a franchise agreement renewal between the Town of Johnstown and United Power Inc. Some of the highlights related to this franchise agreement include the following:

- The franchise provided is non-exclusive to United Power for the use of our right of ways.
- The term outlined in the franchise agreement, is for a 20-year period.
- The establishment of a franchise fee of 3% on all sales of electric power to customers within the Town.
- There is a most favored party clause, which allows that any changes that are provided to other local governments that United Power has a franchise agreement with and the local government receive a benefit better than our benefits within our community and in the agreement, they will allow the Town to receive that same benefit.

Staff is recommended approval of this franchise agreement upon first reading which will allow United Power to continue providing service to its customers within the Town of Johnstown, and utilize our right of ways and easements for the purposes of providing electric utility service.

LEGAL ADVICE:

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

The Town Attorney prepared the ordinance as presented and was directly involved with the negotiations of the franchise agreement.

FINANCIAL ADVICE:

Not applicable at this time.

RECOMMENDED ACTION: Approve the Ordinance as presented upon first reading.

SUGGESTED MOTIONS:

For Approval

I move to approve Ordinance as presented to renew the franchise agreement between the Town of Johnstown, Colorado and United Power Inc. on first reading with the condition that all the fees incurred in establishment and renewal of this franchise agreement are paid for by United Power.

For Denial

I move we deny the Ordinance renewing the franchise agreement with United Power as presented on first reading.

Reviewed and Approved for Presentation,



Town Manager

**TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2021-195**

**AN ORDINANCE APPROVING ELECTRIC UTILITY FRANCHISE
AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN AND
UNITED POWER, INC.**

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

WHEREAS, the Town Council desires to enter into an Electric Utility Franchise Agreement (“Franchise Agreement”) with United Power, Inc., a Colorado not-for-profit electric cooperative (“United Power”), for the provision of electric utility services to the portion of the Town that the United Power is certified to serve (“Service Area”) and to its residents; and

WHEREAS, the Franchise Agreement, attached hereto and incorporated herein by reference as **Exhibit A**, contains, among others, the following provisions:

- A. Grants to the United Power the non-exclusive right to make reasonable use of Town streets, public utility easements and other public places, subject to the terms and conditions contained therein: (1) to provide electric utility service to the Service Area and its residents and (2) to acquire, construct, install, locate, maintain, operate, and to access, extend into, within, and through the Town the facilities reasonably necessary for the United Power to furnish, sell and distribute electricity within and through the Service Area;
- B. Specifies that the franchise shall be effective for a term of twenty (20) years from its effective date; and
- C. Sets a franchise fee of three percent (3%) of the United Power’s revenues, as defined therein.

WHEREAS, the Town Council finds that the passage of this Ordinance is in the best interests of the Town of Johnstown.

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF
JOHNSTOWN, COLORADO, AS FOLLOWS:**

Section 1. The Electric Utility Franchise Agreement between the Town of Johnstown and United Power, Inc., a Colorado not-for-profit electric cooperative, attached hereto and incorporated herein by reference as **Exhibit A**, is hereby approved, subject to the condition set forth in Section 2.

Section 2. Pursuant to Article IV of Chapter 5 of the Johnstown Municipal Code, United Power shall pay all expenses associated with the negotiation and execution of the Franchise Agreement.

Section 3. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Johnstown and that it is promulgated for the health, safety and welfare of the public. This Ordinance bears a rational relationship to the proper legislative object sought to be obtained.

Section 4. 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 ____ day of _____, 2021.

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 _____, 2021.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Gary Lebsack, Mayor

**ELECTRIC UTILITY FRANCHISE AGREEMENT
BETWEEN THE TOWN OF JOHNSTOWN, COLORADO
AND
UNITED POWER, INC.**

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ARTICLE 1: DEFINITIONS

1.1 Short Title. This agreement shall be known as the Town of Johnstown/United Power Electric Franchise Agreement (“Franchise, Franchise Agreement, or Agreement”).

1.2 Definitions. For the purpose of this Franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words “shall” or “will” are mandatory and “may” is permissive. Words not defined in this article shall be given their common and ordinary meaning.

“**Commission**” or “**CPUC**” means the Colorado Public Utilities Commission.

“**Council**” or “**Council Members**” means the governing body of the Town of Johnstown.

“**Electric Distribution Facility**” means that portion of United Power’s electric system, which delivers electricity from the substation breakers to United Power’s meters including all devices connected to that system.

“**Electricity**” and “**Electric Service**” means all electric energy and electric service provided to customers located within the Town, including street lighting and traffic signal services.

“**Emergencies**” means an event that directly influences the ability to provide service or is life threatening.

“**Energy Conservation**” means the decrease in energy requirements of specific customers during any selected time period, with end-use services of such customers held constant.

“**Energy Efficiency**” means methods of energy conservation, reduced demand or improved load factors resulting from hardware, equipment, devices, or practices that are installed or instituted at a customer facility.

“Facilities” means all physical components of United Power which are deemed necessary by United Power to provide electricity within and through the Town for transportation, distribution and sale of electricity and include, but are not limited to, plants, works, systems, substations, transmission and distribution structures, lines, street lighting fixtures, equipment, conduit, transformers, underground lines, meter reading devices, communications and data transfer equipment, wireless facilities and equipment (which are properly permitted by the Town to be in a Town right-of-way), wires, cables, poles, and building structures.

“Party” or **“Parties”** refers to and includes United Power and the Town, either singly or collectively as the context requires.

“Private Project” refers to any project which is not covered by the definition of “Public Project.”

“Public Project” refers to (1) any public work or improvement within the Town that is wholly owned or wholly funded by the Town; or (2) any public work or improvement within the Town where fifty percent (50%) or more of the funding is provided by any combination of the Town, the Federal government, the State of Colorado, the County of Weld other entities established under Titles 29, 31 and 32 of the Colorado Revised Statutes.

“Renewable Resource” refers to any facility, technology, measure, plan or action utilizing a renewable “fuel” source such as wind, solar, biomass, geothermal, municipal, animal, waste-tire or other waste, or hydroelectric generation of twenty megawatts or less, including any eligible renewable energy resource as defined in § 40-2-124(1)(a), C.R.S., as the same shall be amended from time to time.

“Residents” means all persons, businesses, industry, governmental agencies and any other entity whatsoever, presently located or which are hereinafter located, in whole or in part, within the territorial boundaries of the Town of Johnstown.

“Revenues” means those amounts of money, which United Power bills for the sale of electricity under authorized rates to residents and any other sums that are generated by United Power from the use of its Facilities located within the Streets and Public Utilities easement. The word “revenue” does not include any other receipts including, but not limited to, receipts from the Town or any other person or entity, pole attachment revenue, disconnect/reconnect charges or late payment charge, right-of-way fees imposed by the Town (UP shall not be entitled to collect right-of-way fees absent written authorization from the Town), or permit charges, as “Revenues” consists of only receipts of money from the sale of electricity to Residents.

“Service Area” means the area within the Town of Johnstown that United Power is certified to serve by the CPUC.

“Streets and Public Places” means streets, alleys, viaducts, bridges, highways, avenues, boulevards, roads, lanes, public and private (to the extent permitted by law) rights-of-way, easements, and places suitable for the placement of Facilities that are located in the Town.

“Street Lighting Facilities” refers to all United Power Facilities necessary to provide street lighting service.

“Street Lighting Service” refers to the illumination of streets and other Town property by means of United Power-owned non-ornamental street lights and United Power-owned ornamental street lights located in the Town or along the streets adjacent to the Town limits thereof, supplied from United Power’s overhead or underground electric distribution system.

“Tariff” or **“Tariffs”** shall mean the rules, regulations and rates which apply to United Power’s provision of electric service to its customers as implemented by United Power. To the extent Colorado law allows the CPUC regulation over the distribution of electric service by United Power, such regulations validly implemented would also apply to the distribution of electric service under this Agreement.

“Town” means the Town of Johnstown, a Colorado home rule municipal corporation, located in Weld and Larimer Counties, Colorado.

“Town Manager” means the Town Manager of the Town of Johnstown, and any agent, representative, officer or employee of the Town designated by the Town Council Members or the Town Manager to act as the official Town representative with the authority to act on behalf of the Town under this Franchise.

“Town Property” refers to the surface, the air space above the surface and the area below the surface of any property owned or controlled by the Town or hereafter held by the Town, which would not otherwise fall under the definition of “Streets.”

“Town Streets” or **“Streets”** means the roads, streets and associated right-of-way easements owned or controlled by the Town.

“Traffic Facilities” refers to any Town-owned or authorized traffic signal, traffic signage or other traffic control or monitoring device, equipment or facility, including all associated controls, connections and other support facilities or improvements, located in any streets or other Town property.

“Traffic Signal Lighting Service” refers to the furnishing of electricity from United Power’s distribution system for use in traffic facilities pursuant to the rules and regulations relating to such service in United Power’s Tariffs.

“Utility Easement” refers to any easement over, under, through, or above public or private property, lawfully acquired by, used by, or dedicated to the use of United Power, its predecessors in interest, or other public or private utility companies for the placement of public or private utility facilities including, but not limited to, United Power Facilities. Utility Easement shall not include any easement for the use of United Power that is located within the Streets.

“United Power” means United Power, Inc. of Colorado, a Colorado not-for-profit electric cooperative, and its successors and assigns, but does not include its affiliates, subsidiaries, or any other entity in which it has an ownership interest.

ARTICLE 2: GRANT OF FRANCHISE

2.1 Grant of Franchise. The Town hereby grants to United Power, for the period specified herein, and subject to the conditions, terms and provisions contained in this Agreement and United Power Tariffs (which are included within this Agreement), a non-exclusive right to furnish, sell and distribute electricity within the Town, to the Town, and to all Residents of the Town within United Power’s Service Area as specified by the CPUC. Subject to the conditions, terms and provisions contained in this Agreement, the Town also hereby grants to United Power an non-exclusive right to acquire, construct, install, locate, maintain, operate, and to access, extend into, within, and through the Town and Town Property, all Facilities reasonably necessary to furnish, sell and distribute electricity within the Service Area, and as may be necessary to carry out the terms of this Agreement; subject to the Town’s prior right of usage for and subject to the Town’s reasonable exercise of the police powers including, but not limited to, zoning, subdivision, permit, and building code requirements. These rights shall extend to all areas of the Town and Town Property within United Power’s Service Area as specified by the CPUC, as the Town is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise in said service area. The Town and United Power do not waive any of their rights under the statutes

and Constitution of the State of Colorado and the United States, except as otherwise specifically set forth herein. The rights granted in this Franchise will include the right to provide Street Lighting Service and Traffic Signal Lighting Service to the Town, for which the Town will pay in accordance with its agreement with United Power or its established Tariffs. These rights shall extend to all areas of the Town within United Power's Service Area, as it is now constituted, and to additional areas as the Town may increase in size by annexation or otherwise within United Power's Service Area.

2.2 Effective Date and Term of Franchise. This Franchise shall be effective as of the effective date of the ordinance adopting the same and shall supersede any prior franchise grants to United Power by the Town, and shall supersede the provisions of Article II, Chapter 5 of the Johnstown Municipal Code. The term of the Franchise shall be twenty (20) years unless extended by mutual agreement of the Parties. This Franchise is not intended to revoke any prior license, grant, or right to use the Streets or other Town Property and such licenses, grants or rights of use are hereby affirmed. Such rights shall hereafter be governed by the terms of this Franchise. Any events occurring prior to the effective date of this Agreement shall be construed under the agreement in place as of the date of any such event except that any provisions relating to undergrounding of distribution lines shall be construed under this Agreement. All under-grounding fund balances in existence and work-in-process on the date this Franchise Agreement becomes effective shall carry forward unaffected by this transition and as provided generally herein.

2.3 Financial Responsibility.

(A) At the time of presentation of the letter accepting the terms of this Franchise, United Power shall submit to the Town certificates of insurance to demonstrate that United Power has the following insurance coverage to meet its obligations under the Franchise

Agreement: worker's compensation insurance, comprehensive general liability and automobile liability insurance. The Town shall be listed as an additional listed insured for the comprehensive general liability insurance. United Power shall continuously maintain such coverage during the term of the Franchise, and the certificates of insurance shall be kept current by annual revisions as of January 1 during the term of the Franchise. The Town reserves the right to request and receive a copy of an insurance certificate(s) from United Power's insurers, demonstrating the placement of the coverage required hereunder. The Town may require, from time to time, and United Power agrees to provide, additional reasonable funding of United Power's indemnification obligations as a self-insured, if United Power is acting as a self-insured. Nothing herein contained shall create any right in any third party or cause the Town to be liable to any party for a failure so to act.

(B) The parties hereto understand and agree that the Town, its officers, and its employees are relying on, and do not waive or intend to waive by any provision of this Franchise Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, et seq., C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

2.4 Notice of Boundary Changes.

(A) United Power will provide the Town with a map defining the current United Power Service Area within the Town within thirty (30) days of the execution of this Agreement and will transmit the map as an attachment to a letter from United Power to the Town Manager.

(B) United Power will notify the Town within thirty (30) days of any changes in boundaries of United Power Service Area in the Town. Such notice will be in written form

addressed to the Town Manager and will transmit the map as an attachment defining the new boundaries, if requested.

(C) The Town will notify United Power of a proposed annexation by publication of the Town Council's resolution finding the petition for annexation to be in substantial compliance with the statutory requirements in a local newspaper. The Town shall thereafter endeavor to notify United Power of final approval of all annexations of land into the Town which occur within United Power's service area, after the effective date of the annexation. Upon actual notice received by United Power of the effective date of the annexation, United Power shall begin billing and collecting Franchise Fees from customers in the newly annexed area to the Town's account for payment to the Town pursuant to this Agreement. United Power shall not be deemed to be in breach of this Agreement if, upon due diligence, it was not aware of the effective date of the annexation. In such case, United Power shall remit Franchise Fees previously collected from customers in the newly annexed area to the Town's account for payment to the Town pursuant to this Agreement.

2.5 Conditions, Limitations and Exclusions.

(A) The right to use and/or occupy public streets, alleys, viaducts, bridges, roads and public places for the purposes set forth herein is not, and shall not be deemed to be an exclusive Franchise, and the Town reserves the right to itself to make or grant a similar use of public streets and other public places to any other person, firm or corporation. The right to make reasonable use of Town streets and other public property to provide electric service to the Town and its residents under the Franchise is subject to and subordinate to any Town usage of said streets or other public property.

(B) Nothing contained in this Franchise shall be construed to authorize United Power to engage in any activities requiring a license or permission from the Town other than the provision of electric service without first obtaining such license, permit, or permission. This Agreement does not grant United Power the right, privilege, or authority to engage in the cable television business, but does not prohibit joint use agreements between United Power and cable television companies for the shared use of Facilities. This Agreement also does not prohibit joint use and/or pole attachment or similar agreements between United Power and any communications (including, but not limited to, wireless and/or broadband) service provider for the shared use of Facilities. Any such joint use, pole attachment or similar agreements entered into by United Power shall be consistent with United Power's obligations and responsibilities under this Franchise, including inserting provisions that require any joint user (except a wireless service provider, as such providers' facilities must be above ground) of an above ground Facility be required to bear their costs of relocating such facility under-ground where United Power converts its shared above ground Facilities to an under-ground facility. All above ground wireless and/or broadband attachments to United Power Facilities (except those which are United Power proprietary devices and are needed to provide service within the Town) must also comply with the Town's right-of-way permitting process. The location of all above ground wireless and/or broadband attachments is subject to Town approval.

(C) This Agreement does not grant United Power the right, privilege or authority to use or occupy any land currently designated as parks, park land or open space of the Town or which may in the future be so designated except to the extent United Power is currently using or occupying said parks, park land or open space and as otherwise authorized in writing by the Town. United Power shall not expand its use or occupancy of said parks, park land or open

space except by specific written authorization of the Town; provided, however, that nothing herein contained shall limit or restrict United Power's right to maintain, renovate, repair or replace any such facilities currently occupying said parks, park land or open space, subject to the conditions set forth in this Franchise. The Town may require removal, relocation, or under-grounding of Facilities from any parks, park land or open space subject to conditions set forth herein.

2.6 Police Powers.

(A) The Town retains the following rights in regard to this Franchise:

(1) To use, control and regulate, through the exercise of its police power, Town Streets, public easements and other Town Property, places and the space above and beneath them.

(2) To impose such other regulations as may be determined by the Town Council to be necessary in the exercise of its police power to protect the health, safety, welfare and convenience of the public.

(B) United Power expressly acknowledges the Town's right to adopt, from time to time, in addition to the provisions contained herein, such laws, including ordinances and regulations, as it may deem necessary in the exercise of its governmental powers. If the Town considers making any substantive changes in its local codes or regulations that in the Town's reasonable opinion will significantly impact United Power's operations in the Town's Streets and other Town property, it will make a good faith effort to advise United Power of such consideration; provided, however, that lack of notice shall not be justification for United Power's non-compliance with any applicable local requirements. United Power expressly acknowledges the Town's right to enforce regulations concerning United Power's access to or use of the Streets and other Town property, including requirements for permits.

(C) United Power shall comply with all laws, regulations, permits, and orders enacted by the Town that are, among others, applicable to United Power's provision of electric service within the Town.

2.7 Payment of Expenses Incurred by Town in Relation to Ordinance. At the Town's option, United Power shall reimburse the Town for reasonable expenses incurred in publication of notices and ordinances related to this Franchise.

2.8 Continuation of Utility Service. In the event this Franchise is not renewed at the expiration of its term or is terminated for any reason, and the Town has not provided for alternative utility service, United Power will not remove any United Power Facilities pending resolution of the disposition of the system, or portions thereof, and shall continue to provide, and be paid for at current rates, electric service within the Town until the Town arranges for utility service from another provider. United Power further agrees that it will not withhold any continued interim electric services necessary to protect the public. The Town agrees that in the circumstances of this Section 2.8, United Power shall be entitled to monetary compensation as provided in United Power's Tariffs on file with the CPUC and United Power shall be entitled to collect from residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for the continued interim use of the Town Streets. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electric service for residents and upon order of the CPUC shall United Power be allowed to discontinue the provision of electric service to the Town and its residents. United Power will be compensated through the agreed upon final date of interim electric service provided by United Power.

ARTICLE 3: FRANCHISE FEE

3.1 Franchise Fee. In consideration for the grant of this Franchise, United Power shall pay the Town a sum equal to three percent (3%) of all Revenues received from the sale of electricity within the Town. Payment of the franchise fee shall not exempt United Power from any lawful taxation upon its property or sales, except as set forth in 3.5 below. All amounts paid to United Power by the Town for use of electricity by any of its departments shall be excluded from computation of the franchise fee.

3.2 Surcharge of Franchise Fee. Except to the extent ever required by the CPUC, United Power may collect this fee by adding a surcharge not to exceed the franchise fee upon all Town residents that use Facilities of United Power in the Town to obtain electrical service.

3.3 Electric Service Provided to the Town. No franchise fee shall be charged to the Town for electric service provided to the Town for its own consumption, including, without limitation, electric service to municipal buildings and facilities, Street Lighting Service and Traffic Signal Lighting Service.

3.4 Franchise Fee Payment in Lieu of Certain Taxes and Other Fees. The Town accepts payment of the franchise fee by United Power in lieu of any occupation tax, occupancy tax, license tax, or similar tax or fee the Town might charge United Power or its subcontractors for the privilege of doing business in the Town, for the use or occupation of Town Streets, for the installation, operation and maintenance of United Power Facilities.

3.5 Franchise Fee Payment Not In Lieu of Permit or Other Fees. Notwithstanding the provisions of 3.4, payment of the franchise fee does not exempt United Power from any other lawful tax or fee imposed generally upon its property or persons doing business within the Town or from sales and use taxes, including by way of illustration any fee for a street closure permit, an excavation permit, a street cut permit, or other lawful permits hereafter required by the Town,

except that the franchise fee provided for herein shall be in lieu of any occupation fee or similar tax for the use of Town Streets.

3.6 Payment Schedule. Unless otherwise specifically provided herein, payment of the franchise fee accruing after the effective date of this Agreement shall be made in monthly installments not more than twenty days following the close of the month for which payment is to be made for the franchise fees resulting from the sale of electricity. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this Agreement. All payments shall be made to the Town in care of the Director of Finance.

3.7 Audit of Franchise Fee Payments.

(A) If requested, every three (3) years commencing at the end of the third year of this Franchise, United Power shall conduct an internal audit to investigate and determine the correctness of the franchise fee paid to the Town. Such audit shall be limited to the previous three (3) calendar years. If requested, United Power shall provide a written report to the Town Manager containing the audit findings regarding the franchise fee paid to the Town for the previous three (3) calendar years.

(B) If the Town disagrees with the results of the audit, and if the Parties are not able to informally resolve their differences, the Town may conduct its own audit at its own expense, and United Power shall cooperate fully, including but not necessarily limited to, providing the Town's auditor with all information reasonably necessary to complete the audit. If the results of a Town audit conducted pursuant to Section 3.7 concludes that United Power has underpaid the Town by three percent (3%) or more, in addition to the obligation to pay such amounts to the Town, United Power shall also pay all costs of the audit. Errors arising solely from customer addresses inadvertently not identified as located within the municipal boundaries of the

Town shall not be included in determining the error rate unless the Town has provided written notice to United Power (by written notice pursuant to Section 23.3) that such location address is within the municipal boundaries of the Town.

(C) Either Party may challenge any written notification of error as provided for in this Section 3.7 of this Franchise by filing a written notice to the other Party within thirty (30) days of receipt of the written notification of error. The written notice shall contain a summary of the facts and reasons for the Party's notice. The Parties shall make good faith efforts to resolve any such notice of error before initiating any formal legal proceedings for the resolution of such error.

(D) In addition to the three (3) year audit provided above, the Town Manager, or official Town representative, shall have access to the records of United Power related to collection of Revenues during normal business hours upon reasonable notice for the purpose of auditing to ascertain that the franchise fee has been correctly computed and paid. All information obtained by the Town Manager during a franchise fee audit shall be kept confidential and shall be utilized for the sole purpose of verifying that the franchise fee has been correctly computed and paid.

(E) In the event the Town determines, after written notice to United Power, that the Town has a claim against United Power for payments, costs, expenses, or damages of any nature, the Town may, without waiving any other rights the Town may have hereunder or pursuant to law, provide United Power written notice of the amount, and then may withhold fifty percent (50%) of such amount from any other amounts currently due and owing to United Power pending discussions between United Power and the Town to resolve the issue. Upon receipt of such written notice, United Power's designee and a designee of the Town Manager shall promptly meet at a

mutually convenient time to attempt to resolve the dispute. If not resolved, either party may take further action under law.

3.8 Change of Franchise Fee and Other Franchise Terms. The Town Council, upon giving ninety (90) days' notice to United Power, may request that the Town and United Power review the franchise fee rate and other material financial aspects of the Franchise. Upon such a request by the Town, the Parties shall engage in good faith negotiations related to amending the franchise fee rate, and/or other related provisions of this Franchise to allow the Town to receive a different franchise fee rate, or other significant change in the financial aspects of the Agreement. In no event shall the franchise fee rate be increased more than twenty percent (20%) in any five (5) year period, Notwithstanding the foregoing, the franchise fee may be modified as provided in Section 3.9.

3.9 Most Favored Party Clause. United Power shall report to the Town, within sixty (60) days of execution, the terms of any franchise or of any change of franchise in any other municipality that contains a franchise fee or other significant financial benefit greater than the franchise fee rate or other significant financial benefit to the Town contained in this Franchise. United Power shall also report about such other provisions which may be beneficial to the Town. If the Town Council decides the Franchise fee or other significant financial benefit should be incorporated into the Franchise, then such change shall be agreed to in writing and approved by the Town Council by ordinance.

3.10 Contract Obligation. This Franchise Agreement constitutes a valid and binding agreement between United Power and the Town. In the event that the franchise fee specified in this Agreement is declared illegal, unconstitutional or void for any reason by final judgment of any court (or other proper authority), United Power shall be contractually bound to pay monthly

fees to the Town in an aggregate amount that would be equivalent to the amount which would have been paid by United Power as a franchise fee hereunder as partial consideration for use of the Town Streets and other Town property.

3.11 Payment of Taxes and Fees. United Power shall pay and discharge as they become due, promptly and before delinquency, all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extra-ordinary, of every name, nature, and kind whatsoever, including all governmental charges of whatsoever name, nature, or kind, which may be levied, assessed, charged, or imposed, or which may become a lien or charge against its Facilities and this Agreement , provided that United Power shall have the right to contest any such impositions and shall not be in breach of this section so long as it is actively contesting such impositions. The Town shall not be liable for the payment of taxes, late charges, interest or penalties of any nature other than pursuant to applicable Tariffs on file and in effect from time to time with the CPUC.

3.12 Changes in Utility Service Industries. The Town and United Power recognize that utility service industries are the subject of restructuring initiatives by legislative and regulatory authorities, and are also experiencing other changes as a result of mergers, acquisitions, and reorganizations. Some of such initiatives and changes have or may have an adverse impact upon the franchise fee revenues provided for herein. In recognition of the length of the term of this Franchise, United Power agrees that in the event of any such initiatives or changes and to the extent permitted by law, upon receiving a written request from the Town, United Power will cooperate with and assist the Town in amending this Franchise to assure that the Town receives an amount in franchise fees or some other form of periodic compensation that is the same amount of franchise

fee rate paid to the Town on the date that such initiatives and changes adversely impact the future franchise fee revenue.

ARTICLE 4: ADMINISTRATION OF FRANCHISE

4.1 Supervision.

(A) **Town Designee.** The Town Manager, or the Manager's designated representative, is hereby designated the official of the Town having full power and authority to take appropriate action for and on behalf of the Town and its inhabitants to enforce the provisions of this Franchise and to investigate any alleged violations or failures of United Power to comply with the provisions hereto or to adequately and fully discharge its responsibilities and obligations hereunder. The failure or omission of said official Town representative to so act shall not constitute any waiver or estoppel nor limit independent action by other Town officials. The Town Manager may also designate one or more Town representatives to act as the primary liaison with United Power as to particular matters addressed by this Franchise and shall provide United Power with the name and telephone numbers of said Town representatives. The Town may change these designations by providing written notice to United Power. The Town's designee(s) shall have the right, at all reasonable times, to inspect any United Power Facilities in Town Streets.

(B) **United Power Designee.** United Power shall designate a representative to act as the primary liaison with the Town and shall provide the Town with the name, address, and telephone number for United Power's representative under this Franchise. United Power may change its designation by providing written notice to the Town. The Town shall use this liaison to communicate with United Power regarding electric service and related service needs for Town Facilities.

(C) In order to facilitate such duties of the said official Town representative, United Power agrees as follows:

(1) To allow said official Town representative or his or her designee reasonable access to any part of United Power's plant and Facilities that are directly used to serve the Town, and that said Town official may make and supervise tests to determine the quality of the electric service supplied to customers of United Power within the municipal boundaries of the Town. Access to United Power Facilities described in this paragraph and 4.1(C)(2) shall be on an "appointment made" basis during normal business hours, which appointment shall be scheduled within a reasonable time and not be unduly delayed. The Town official(s) provided access shall be accompanied by at least one employee of United Power of its choosing. The Town official(s) shall comply with all United Power requirements for such access, and particularly safety requirements. For safety reasons, United Power shall have the right to designate — at its sole discretion — the method, means, and timing of such access, which access United Power can terminate or deny at its discretion.

(2) To grant said official Town representative or his or her designee reasonable access to the books and records of United Power, insofar as they relate to relevant matters covered by this Franchise only, upon advance appointment made during normal business hours.

(3) To provide said Town official with such reasonable reports containing or based on information readily obtainable from United Power's books and records as the Town may from time to time reasonably request with respect to the electric service supplied under this Franchise.

(4) To meet as requested, but no less than annually, with said official Town representative to share information useful in coordinating management, operation, and repair of the Facilities of United Power and the operations and property of the Town.

4.2 Coordination of Work.

(A) United Power agrees to meet with the Town's designee upon a reasonable written request for the purpose of reviewing, implementing, or modifying mutually beneficial procedures for the efficient processing of United Power bills, invoices and other requests for payment.

(B) United Power agrees to coordinate its activities in Town Streets and on other Town Property with the Town in accordance with the Johnstown Municipal Code, regulations, and this Franchise. The Town and United Power will meet annually upon the written request of the Town designee to exchange their respective short-term and long-term forecasts and/or work plans for construction and other similar work which may affect Town Streets and other Town Property. The Town and United Power shall hold such meetings as either deems necessary to exchange additional information with a view towards coordinating their respective activities in those areas where such coordination may prove beneficial and so that the Town will be assured that all provisions of this Franchise, building and zoning codes, and air and water pollution regulations are complied with, and that aesthetic and other relevant planning principles have been given due consideration.

4.3 Examination of Records. The Parties agree that any duly authorized representative of the Town and United Power shall have access to and the right to examine any directly pertinent non-confidential books, documents, papers, and records of the other Party involving any activities related to this Franchise. All such records must be kept for a minimum of four (4) years from their date of creation, and then may be, at the option of their holder, appropriately disposed of. To the extent that either Party believes in good faith that it is necessary in order to monitor compliance with the terms of this Franchise to examine confidential books,

documents, papers, and records of the other Party, the Parties agree to meet and discuss providing confidential materials including, but not limited to, providing such materials subject to a reasonable confidentiality agreement which effectively protects the confidentiality of such materials.

ARTICLE 5: REPORTS

5.1 Reports of United Power Operations. United Power will submit reasonable financial and operating reports containing or based on information available from United Power's books and records annually to the Town and other reports the Town may from time to time reasonably request with respect to the operations of United Power under this Franchise only. Such reports shall be marked "CONFIDENTIAL" by United Power and the Town shall keep the reports as confidential and not subject to public inspection, except as otherwise required by law. Such form of reports may be changed from time to time as mutually agreed between the Town and United Power. If the Town requests more than a reasonable audit, the Town and United Power will split the costs thereof equally.

5.2 Annual Reports. United Power will provide the Town on or before May 1 of each year beginning, for the preceding calendar year, after the effective date of this Franchise:

- (A) United Power's then modified debt service calculation;
- (B) A report of margins collected by United Power; and
- (C) Short-term (three years or less) and long-term (over three years) plans for all major capital improvements, construction and excavation within the Town or affecting service to the Town and its residents.

5.3 Requested Reports. Upon a reasonable request by the Town, United Power will provide the Town:

(A) A list of real property and leasehold interests in real property owned by United Power within the municipal boundaries of the Town, for the purpose of calculating property taxes;

(B) A map (paper or electronic copy) indicating the major location of United Power Facilities within and contiguous of the municipal boundaries of the Town of Johnstown;

(C) A report regarding the reliability indexes of United Power's electric service;

(D) A list of all Town electrical accounts and account numbers and items metered;

(E) A list of street lights in the Town energized by United Power; and/or

(F) Service outages.

5.4 Copies of Tariffs and Regulatory Filings. United Power will notify the Town of all proposals to change rates relating to service by United Power to its customers located within the Town. Upon a reasonable request by the Town, United Power will provide the Town with copies of all rules, regulations, rate tariffs, and policies. Town acknowledges that United Power is a not-for-profit electric cooperative formed primarily to distribute electrical energy, and its utility rates are not subject to regulation by the CPUC and are largely determined by the cost of acquiring electric power from its supplier(s).

ARTICLE 6: SUPPLY, CONSTRUCTION AND DESIGN

6.1 Adequate Supply at Lowest Reasonable Cost. United Power will work with its wholesale power suppliers to take all reasonable and necessary steps to assure an adequate supply of electricity to United Power's customers at the lowest reasonable cost consistent with long term supply reliability.

6.2 Service Reliability.

(A) United Power will operate and maintain United Power Facilities efficiently and economically and in accordance with general utility practices and best systems, methods, and skills consistent with the provision of adequate, safe, and reliable electric service. United Power recognizes and agrees that, as part of its obligations and commitments under this Franchise, United Power shall carry out each of its performance obligations in a timely, expeditious, efficient, economical, and workmanlike manner.

(B) United Power shall be excused from the performance of its obligations hereunder, to the extent that performance of said obligations are delayed due to: failure of high voltage transmission Facilities needed to serve the Town which are beyond United Power's responsibility and control including, but not limited to, strikes; acts of public or private enemies; war; order of military authority; anarchy; insurrections; riots; effects, results, and/or consequences of epidemics and/or pandemics; meteorological; atmospheric (including, but not limited to, effects of or objects from the atmosphere, troposphere, stratosphere, mesosphere, thermosphere, exosphere, and beyond); spacial; stellar; weather; tornadoes; landslides; earthquakes; floods; any Act of God; or any other reason beyond United Power's control. Notwithstanding the foregoing, if the supply of electricity to United Power's customers should be interrupted due to any circumstance beyond United Power's control, United Power will take all necessary and reasonable actions to restore such supply at the earliest practicable time.

6.3 Planned Outage. If the supply of electricity to United Power's customers should be interrupted due to a planned outage, except cases of emergency outage repair, United Power shall notify, consistent with the provisions of Section 6.7, its customers as soon as practical in

advance of the planned outage. United Power agrees that it will in good faith try to contact all customers at least forty-eight (48) hours prior to a planned outage.

6.4 Town Participation. The Town shall have the right to approve or deny major facility site plans within the Town in accordance with applicable law. Upon reasonable notice to United Power, the Town shall have the right to hold public hearings related to United Power's Facilities, site selection, under-grounding of overhead lines, construction, and service quality. United Power agrees to fully participate in such public hearings as requested by the Town and to provide to the Town information available to United Power that relates to the hearings described in this paragraph.

6.5 Compliance with Town Requirements. Representatives of the Town and United Power will meet annually to discuss annual and long-term planning for capital improvement projects contemplated by each within the Town. United Power will include within its capital improvement projects the plans of the Town relating to same. United Power and the Town, upon request, shall exchange copies of their reports or plans regarding annual and long-term planning for capital improvement projects with descriptions of construction activities including, to the extent known, the timing and method of construction.

6.6 Excavation, Construction, and Maintenance and Repair Work. United Power will be responsible for obtaining, paying for, and complying with all applicable permits including, but not limited to, excavation, street closure and street cut permits, in the manner required by the laws, ordinances, and regulations of the Town. All construction, excavation, maintenance and repair work done by United Power will be done in a timely manner, which minimizes inconvenience to the public and individuals. When United Power does any work in or affecting the Town Streets, it will, at its own expense, promptly remove any obstructions therefrom and

restore such Town Streets or other Town Property to a condition that meets applicable Town standards. If weather or other conditions do not permit the complete site restoration for work done pursuant to this Section, United Power may, with the written approval of the Town, temporarily restore the affected Town Streets or other Town Property, provided that such temporary site restoration is at United Power's sole expense and provided further that United Power promptly undertakes and completes any necessary permanent site restoration when the weather or other conditions no longer prevent such permanent restoration. All site restoration work under this section will be subject to inspection by the official Town representative and compliance by United Power with reasonable remedial action required by said official pursuant to inspection and left in equivalent or better conditions as found. Upon the request of the Town, United Power will restore the Streets or other Town Property to a better condition than existed before the work was undertaken, provided that the Town shall be responsible for any additional costs of such site restoration. If United Power fails to promptly restore the Town Streets or other Town Property as required by this Section, the Town may, upon notice to United Power, restore such Town Streets or other Town Property or remove the obstruction therefrom; provided, however, that such Town actions do not unreasonably interfere with United Power Facilities. United Power shall be responsible for the actual cost incurred by the Town to restore such Town Streets or other Town Property or to remove any obstructions therefrom in an addition to a ten percent (10%) administrative fee. In the course of its site restoration of Town streets or other Town property under this Section, the Town shall not perform work on United Power Facilities unless specifically authorized by United Power in writing on a project by project basis and subject to the terms and conditions agreed to in such authorization.

6.7 Outages and Restoration of Service.

(A) **Customer Notification.** Upon a reasonable request by the Town, United Power will provide annually to the Town Manager a written protocol that addresses the process for customer notification of power outages, including the specific provisions to be included in the notice, the estimated time for restoration, the manner by which such notice will be provided, and the contact names and telephone numbers associated therewith.

(B) **Town Notification.** United Power will provide to the Town daytime and nighttime telephone numbers of a designated United Power representative from whom the Town designee may obtain status information from United Power on a twenty-four (24) hour basis concerning interruptions of electrical service in any part of the Town.

(C) **Restoration.** In the event United Power's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, United Power will use due diligence to restore such systems to satisfactory service within the shortest practicable time, or provide a reasonable alternative to such system if United Power elects not to restore such system.

6.8 Installation and Maintenance of United Power Facilities.

(A) **United Power Facilities.** Except for emergencies, the construction, excavation, installation, maintenance, renovation, repair and replacement of any Facilities by United Power within the municipal boundaries of the Town will be subject to permitting, inspection and approval of locations by the official Town representative and all applicable Town ordinances and regulations. Such regulation shall include, but not be limited to, the following matters: location of Facilities in the streets, alleys and dedicated easements; disturbance and reconstruction of pavement, sidewalks and surface of streets, alleys, dedicated easements and driveways. All United Power Facilities will be installed so as to cause a minimal amount of

interference with such property. United Power Facilities will not interfere with any water mains or sewer mains or Town telecommunications Facilities, traffic signal lights, parks, or any other municipal use of the Town's streets and right-of-ways except to the extent the Town agrees through the permit process. United Power will erect and maintain its Facilities in such a way as to minimize interference with trees and other natural features and vegetation. United Power and all its subcontractors will comply with all permitting, local regulations and ordinances. In emergency situations, United Power will promptly, after the fact, provide notice to the Town and comply with permitting and inspection requirements of the Town. United Power will install, repair, renovate and replace its Facilities with due diligence in good and workmanlike manner, and United Power's Facilities will be of sufficient quality and durability to provide adequate and efficient electric service to the Town and its residents. All new substations located in unincorporated areas within the Town's Growth Management Area shall, to the extent reasonably feasible, comply with all applicable Town land use and other Town Code requirements.

(B) **Town Projects.** Where United Power performs construction projects requested by the Town, United Power will provide in advance a cost estimate for such work in sufficient detail to justify the estimated total cost. The Town shall deposit funds with United Power in the amount of the cost estimate prior to commencement of the work. Construction project change orders shall be limited to significant changes in project scope that are requested by and approved by the Town. United Power will promptly invoice any Town approved change orders to the Town and the Town will promptly pay the change order invoice. Upon completion of the agreed work, United Power will provide a final detailed report to the Town, reconciling the original projected cost estimates, including any approved change orders, to the actual costs incurred in completing the project. Upon reconciliation of the construction of the extension, the construction

deposit shall be compared to the actual cost of the design and construction as entered in to the books of United Power. If the actual cost is less than originally estimated, United Power will promptly refund the portion of the construction deposit greater than the actual costs, without interest, to the Town. United Power will exercise commercially reasonable means to keep the cost of projects performed for the Town to a minimum, and will bill the Town for such construction projects based on the actual costs incurred in completing the project. Where projects requested by the Town, that are located on a Town owned parcel, require removal of electrical Facilities, United Power will not reasonably withhold approval of the Town to perform such work, so long as United Power has determined that said work can be accomplished in as safe manner as to not cause harm to any of its distribution system, or other electrical Facilities.

6.9 Obligations Regarding United Power Facilities.

(A) **United Power Facilities.** All United Power Facilities within Town Streets will be maintained in good repair and condition.

(B) **United Power Work Within the Town.** All work within Town Streets performed or caused to be performed by United Power will be done:

- (1) In a high-quality manner;
- (2) In a timely and expeditious manner;
- (3) In a manner which minimizes inconvenience to the public; in a cost-effective manner, which may include the use of qualified contractors; and in accordance with all applicable laws, ordinances, and regulations.

(C) **Permit and Inspection.** The installation, renovation, and replacement of any United Power Facilities in the Town Streets or other Town Property by or on behalf of United Power will be subject to permit, inspection and approval by the Town. Such inspection and

approval may include, but will not be limited to, the following matters: location of United Power Facilities, cutting and trimming of trees and shrubs, and disturbance of pavement, sidewalks, and surfaces of Town Streets or other Town Property. United Power agrees to cooperate with the Town in conducting inspections and will promptly perform any remedial action lawfully required by the Town pursuant to any such inspection.

(D) **Compliance.** United Power and all of its contractors will comply with the requirements of all municipal laws, ordinances, regulations, permits, and standards, including but not limited to requirements of all building and zoning codes, and requirements regarding curb and pavement cuts, excavating, digging, and other construction activities. United Power will assure that its contractors working in Town Streets or other Town Property hold the necessary licenses and permits required by law.

(E) **Increase in Voltage.**

(1) **Customer Notification.** United Power will use best efforts to notify affected customers if there will be facility changes that result in a material increase in voltage of the service to such customers.

(2) **Town Facilities.** United Power will reimburse the Town for the reasonable and necessary cost of upgrading the electrical system or facility of any Town building or facility that uses electric service where such upgrading is caused or occasioned by United Power's decision to increase the voltage of delivered electrical energy; unless such change is caused by, requested, or mandated by the Town, in which case the Town shall reimburse United Power for any reasonable costs United Power incurs in relation to such upgrading.

(F) **As-Built Drawings.** Upon reasonable written request of the Town designee, United Power will provide within ninety (90) days of the request, as-built drawings of

any United Power Facility newly installed within the Town Streets or contiguous to the Town Streets. As used in this section, as-built drawings refers to the Facility drawings as maintained in United Power's geographical information system or any equivalent system. United Power will not be required to create drawings that do not exist at the time of the request, but shall be required to obtain as-built drawings of all improvements made subsequent to the execution of this Agreement.

6.10 Relocation of United Power Facilities.

(A) **Relocation Obligation.** United Power will, at its sole cost and expense, temporarily or permanently remove, relocate, change, or alter the position of any United Power Facility in Town Streets or in other Town Property whenever the Town shall determine that such removal, relocation, change or alteration is necessary for the completion of any public project. For all relocations, United Power and the Town agree to cooperate on the location and relocation of United Power Facilities in the Town Streets or other Town Property in order to achieve relocation in the most efficient and cost-effective manner possible. Upon a reasonable request by the Town, United Power will exercise commercially reasonable means to relocate Facilities in a shorter period of time for good cause shown by Town and United Power shall not unreasonably deny such relocation. Notwithstanding the foregoing, once United Power has relocated any United Power Facility at the Town's direction, if the Town requests that the same United Power Facility be relocated within two (2) years, the subsequent relocation shall not be at United Power's expense.

(B) **Private Projects.** United Power shall not be responsible for the expenses of any relocation required by the Town's direct or indirect assistance for private projects, and United Power has the right to require the payment of estimated relocation expenses from the affected private party before undertaking such relocation. Upon completion, the Parties shall perform a "true-up" to ensure United Power has been fully compensated for all work performed.

(C) **Relocation Performance.** The relocations set forth in Section 6.10(A) of this Franchise Agreement shall be completed within a reasonable time, not to exceed ninety (90) days from the later of the date on which the Town designee requests in writing that the relocation commence, or the date when United Power is provided all reasonably requested service application submittal requirements. Upon United Power's request, which request shall not be unreasonably denied by the Town, United Power shall be entitled to a reasonable extension of time to complete a relocation where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including without limitation fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of labor, materials or equipment and failures or delays in delivery of materials. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(D) **Town Revision of Supporting Documentation.** Any revision by the Town of all service application submittal requirements provided to United Power that causes United Power to substantially redesign and/or change its plans regarding facility relocation shall be deemed good cause for a reasonable extension of time to complete the relocation under the Franchise.

(E) **Completion.** Each such relocation shall be deemed complete only when United Power actually relocates the United Power Facilities, restores the relocation site in accordance with Sections 6.6 and 6.7 of this Franchise or as otherwise agreed with the Town, and removes from the site or properly abandons on site all unused Facilities, equipment, material and other impediments.

(F) **Scope of Obligation.** Except as otherwise set forth herein, the relocation obligation set forth in this Section shall only apply to United Power Facilities located in Town Streets or other Town Property, and shall not apply (i) to United Power Facilities located in, on, or above property owned by United Power in fee, (ii) to United Power Facilities located in, on, or above Town Property whose ownership or use was donated to the Town by United Power, and (iii) to United Power Facilities located in, on, or above privately-owned easements and/or Utility Easements. With respect to payment for the relocation of those limited Facilities, subject to the provisions of Section 6.10(A), which shall supersede this Section, if the Town requests the relocation, the Town shall pay all costs associated therewith to United Power, except that if a substantial portion of the relocation involves United Power Facilities located in the Town Streets or other Town Property, then United Power shall pay the costs associated with the relocation. If the relocation is at the instance of United Power, then United Power shall pay all costs associated with the relocation. In no event shall the Town pay for relocation expenses associated with third party attachments to United Power Facilities.

(G) **Underground Relocation.** Underground Facilities shall be relocated underground. Above ground Facilities shall be placed above ground unless United Power is paid for the incremental amount by which the underground cost would exceed the above ground cost of relocation, or the Town requests that such additional incremental cost be paid out of available funds under Article 8 of this Franchise (except that wireless and/or broadband facilities properly permitted to be in the Town right-of-way which must be, and are specifically hereby permitted to be, located above ground and cannot be relocated, in order to operate shall not be required to be placed underground, but shall remain subject to the Town's permitting requirements and may only be placed in an above ground location approved by the Town).

(H) **Coordination.** When requested in writing by the Town or United Power, representatives of the Town and United Power shall meet to share information regarding anticipated projects which will require relocation of United Power Facilities in Town Streets or other Town Property. Such meetings shall be for the purpose of minimizing conflicts where possible and to facilitate coordination with any timetable established by the Town for any public project.

(I) **Proposed Alternatives or Modifications.** Upon receipt of written notice of a required relocation, United Power may propose an alternative to or modification of the public project requiring the relocation in an effort to mitigate or avoid the impact of the required relocation of United Power Facilities. The Town shall in good faith review the proposed alternative or modification. The Town's acceptance of the proposed alternative or modification shall be at the sole discretion of the Town, provided however that such acceptance shall not be unreasonably withheld. In the event the Town accepts the proposed alternative or modification, United Power agrees to promptly compensate the Town for all reasonable additional costs, expenses or delay that the Town reasonably determines that it has incurred as a direct result of implementing the proposed alternative. For implementing the proposed alternative, the Town will provide in advance a cost estimate for such work in sufficient detail to justify the estimated total cost. United Power shall deposit funds with the Town in the amount of the cost estimate prior to commencement of the work. Construction project change orders shall be limited to significant changes in project scope within the proposed alternative or modification that are determined in the sole discretion of the Town. The Town will promptly invoice United Power for any change orders incurred by the Town and United Power will promptly pay the change order invoice. Upon completion of the agreed work, the Town will provide a final detailed report to United Power,

reconciling the original projected cost estimates, including any approved change orders, to the actual costs incurred in completing the project. Upon reconciliation of the construction of the extension, the construction deposit shall be compared to the actual cost of the design and construction as entered into the books of the Town. If the actual cost is less than originally estimated, the Town will promptly refund the portion of the construction deposit greater than the actual costs, without interest, to United Power.

6.11 Service to New Areas. If, during the term of this Franchise, the municipal boundaries of the Town are expanded within United Power's Service Area, United Power shall extend service to residents of the newly incorporated areas, and United Power shall be paid therefor, in accordance with United Power's extension policy set forth in its Tariffs at the earliest practicable time. Service to annexed areas shall be in accordance with the terms of this Franchise Agreement, including payment of franchise fees as defined in Section 3.1 of this Franchise.

6.12 New or Modified Service to Town Facilities. In providing new or modified electric service to Town Facilities, United Power agrees to perform as follows:

(A) **Performance.** United Power will complete each project requested by the Town within a reasonable time. The Parties agree that a reasonable time will not exceed one hundred eighty (180) days from the date upon which the Town designee makes a written request, unless a shorter time is warranted, as determined by the Town, for a public purpose. Upon request of the Town, United Power may complete electric service to Town Facilities in less than one hundred eighty (180) days for good cause shown and United Power will not unreasonably deny such expedited service. United Power shall be entitled to an extension of time to complete a project where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to

perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials, or other causes described in 6.2(B) above. Upon request of United Power, the Town designee may, in writing, also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(B) **Town Revision of Supporting Documentation.** Any revision by the Town of supporting documentation provided to United Power that causes United Power to substantially redesign and/or change its plans regarding new or modified service to Town Facilities shall be deemed good cause for a reasonable extension of time to complete the relocation under the Franchise.

(C) **Completion/Restoration.** Each such project shall be complete only when United Power actually provides the service installation or modification required, restores the project site in accordance with the terms of the Franchise or as otherwise agreed with the Town and removes from the site or properly abandons on site any unused Facilities, equipment, material and other impediments.

6.13 Modifications to United Power Facilities. United Power will modify United Power Facilities, including manholes and other appurtenances in Town Streets and other Town Property, to accommodate Town street maintenance, repair and paving operations at no cost to the Town. In providing such modifications to United Power Facilities, United Power agrees to perform as follows:

(A) **Performance.** United Power will complete each requested modification within a reasonable time, not to exceed thirty (30) days from the date upon which the Town makes

a written request and provides to United Power all information reasonably necessary to perform the modification. United Power shall be entitled to an extension of time to complete a modification where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to fire, strike, war, riots, acts of governmental authority, acts of God, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials, or other reasons as described in 6.2(B) above. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(B) **Completion/Restoration.** Each such modification shall be complete only when United Power actually adjusts United Power facility to accommodate the Town operations in accordance with Town instructions and, if required, readjusts, following Town paving operations.

(C) **Coordination.** As requested by the Town or United Power, representatives of the Town and United Power shall meet regarding anticipated street maintenance operations which will require such modifications to United Power Facilities in Town Streets or other Town Property. Such meetings shall be for the purpose of coordinating and facilitating performance under this Section.

6.14 Third Party Damage Recovery.

(A) **Damage to United Power Interests.** If any individual or entity damages any United Power Facilities, the Town will notify United Power of any such incident and will provide to United Power within a reasonable time all pertinent information within its possession

regarding the incident and the damage, including the identity of the individual or entity who/which caused the damage.

(B) **Damage to Town Interests.** If any individual or entity damages any United Power Facilities for which the Town is obligated to reimburse United Power for the cost of the repair or replacement of the damaged facility, to the extent permitted by law, United Power will notify the Town of any such incident and will provide to the Town within a reasonable time all pertinent information within its possession regarding the incident and the damage, including the identity of the responsible individual or entity.

(C) **Meeting.** United Power and the Town agree to meet periodically, upon written request of either Party, for the purpose of developing, implementing, reviewing, improving and/or modifying mutually beneficial procedures and methods for the efficient gathering and transmittal of information useful in recovery efforts against third parties for damaging United Power Facilities.

6.15 Technological Improvements. United Power may install future improvements and technological advances to its equipment and service within the Town, at United Power's discretion (but upon reasonable notice to the Town), when such improvements and advances are technologically and economically feasible, and safe and beneficial to the Town and in accordance with all Town ordinances and regulations. At a minimum, United Power shall install future improvements and technological advances to its equipment and service within the Town that are equivalent to the improvements United Power installs in similarly sized and situated municipalities. Upon reasonable notice from the Town, United Power shall meet with the Town representatives to discuss planned growth and anticipated activities related to long term availability of electric service in the Town.

ARTICLE 7: COMPLIANCE

7.1 Town Regulation. The Town expressly reserves, and United Power expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained, such provisions, ordinances and rules and regulations ("New Provisions") as may be deemed necessary by the Town, in the exercise of its police power, to protect the health, safety and welfare of its citizens and their properties. The Town shall make a good faith effort to provide United Power advanced notice of any provisions, ordinances, rules or regulations which may affect United Power's rights, obligations, and performance hereunder. If the New Provisions substantially alter the Parties' rights, obligations or performance hereunder, upon written request of United Power, the Parties shall meet and confer on a proposed course of action, which may include modifying this Agreement or terminating it.

7.2 Compliance with Regulatory Agencies. United Power states that its Facilities will comply with the standards promulgated by all regulatory agencies with jurisdiction over United Power's services.

7.3 Continued Compliance with Air and Water Pollution Laws. United Power shall take reasonable measures to ensure that its Facilities and operations meet the standards required by applicable Town, county, state, and Federal air and water pollution laws, and laws regulating transportation of hazardous materials. Upon the Town's reasonable request, United Power will provide the Town with a status report of such measures.

ARTICLE 8: UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

8.1 New Lines Under-grounded. United Power will place all newly constructed electrical distribution lines underground unless approved otherwise by the Town in writing.

8.2 Overhead Conversion of Electrical Lines. United Power agrees to allocate an annual amount, equivalent to one and one-half percent (1-1/2%) of the preceding calendar year's

electric revenues derived from customers within the Town boundaries, for the purpose of under-grounding United Power's existing overhead electric distribution Facilities within the Town, at the expense of United Power, as requested by the Town (the "Under-grounding Funds"). Any unexpended portion of the one and one-half percent (1-1/2%) revenues shall be carried over to succeeding years, and shall be in addition to the contribution in subsequent years. Until three (3) years from the conclusion of this Agreement and upon request by the Town, United Power agrees to anticipate amounts to be available for up to three (3) years in advance to be used to underground its overhead distribution Facilities, as requested by the Town. Any amounts so advanced shall be credited against amounts to be expended in succeeding years until such advance is eliminated. Except as provided in Section 6.10(G) no relocation expenses which United Power would be required to expend pursuant to Article 6 of this Franchise Agreement shall be charged to this allocation. United Power shall not withhold approval of the plans of the Town except where essential for safety, or protection of the operating integrity of United Power's electric system. If, after any and all undergrounding of United Power lines has taken place and no more United Power overhead lines remain in the Town, there are any undergrounding funds remaining, or, if at any time the Town and United Power mutually agree in writing, undergrounding funds may be used by the Town for other mutually agreed electric utility related projects in the Town mutually agreed upon by the Town and United Power.

8.3 Planning and Coordination of Under-grounding Projects. The Town and United Power shall mutually plan in advance the scheduling of under-grounding projects to be undertaken according to this Article as a part of the review and planning for other Town and United Power construction projects. In addition, the Town and United Power agree to meet, as required, to review the progress of then-current under-grounding projects and to review planned future

under-grounding projects. The purpose of such meetings shall be to further cooperation between the Town and United Power to achieve the orderly under-grounding of United Power Facilities. At such meetings, the Parties shall review:

- (A) Undergrounding, including conversions, public projects and replacements which have been accomplished or are underway, together with United Power's plans for additional undergrounding;
- (B) Public projects anticipated by the Town; and
- (C) Such meetings shall be held to achieve a continuing program for the orderly under-grounding of electrical lines in the Town.

8.4 Cooperation with Other Utilities. When undertaking a project of under-grounding, the Town and United Power shall work with other utilities or companies which have their lines overhead to attempt to have all lines under-grounded as part of the same project. When other utilities or companies such as cable television and telephone companies or other utilities with overhead Facilities embark upon a program of underground construction where United Power has overhead Facilities, United Power will cooperate with these utilities and companies and undertake to underground United Power Facilities as part of the same project at no cost to the Town. United Power shall not be required to pay for the cost of under-grounding the Facilities of other companies or the Town.

8.5 Town Requirement to Underground. In addition to the provisions of this Article, the Town may require any above ground United Power Facilities to be moved underground at the Town's expense; provided, however, that United Power shall not be required to underground any of its Facilities to which wireless and/or broadband facilities are attached and/or jointly used (which facilities were properly permitted by the Town to be in the subject right-of-way), as such

facilities (of United Power or other joint use/attaching provider) are required to be above ground in order to operate, and all requirements of undergrounding in this Agreement are subject to this exception, unless the Town provides a reasonable alternative above-ground location to relocate the wireless and/or broadband facilities.

(A) **Undergrounding Performance.** Upon receipt of a written request from the Town, United Power will, to the extent of monies available in the Fund and as otherwise provided herein, underground United Power Facilities in accordance with the procedures set forth in this Section 8.5.

(B) **Performance.** United Power shall complete each under-grounding project requested by the Town within a reasonable time, not to exceed one hundred eighty (180) days from the later of the date upon which the Town designee makes a written request or the date the Town provides to United Power all reasonable service application submittal requirements, unless a shorter time is warranted for a public purpose. United Power shall be entitled to an extension of time to complete each under-grounding project where United Power's performance was delayed due to a cause that could not be reasonably anticipated by United Power or is beyond its reasonable control, after exercise of best efforts to perform, including but not limited to, fire, strike, war, riots, acts of governmental authority, acts of God, forces of nature, judicial action, unavailability or shortages of materials or equipment and failures or delays in delivery of materials, or other reasons as set forth in 6.2(B) above. Upon request of United Power, the Town may also grant United Power reasonable extensions of time for good cause shown and the Town shall not unreasonably withhold any such extension.

(C) **Town Revision of All Service Application Submittal Requirements.** Any revision by the Town of all service application submittal requirements provided to United

Power that causes United Power to substantially redesign and/or change its plans regarding an undergrounding project shall be deemed good cause for a reasonable extension of time to complete the under-grounding project under the Franchise.

(D) **Completion/Restoration.** Each such undergrounding project shall be deemed complete only when United Power actually undergrounds the designated United Power Facilities, restores the undergrounding site in accordance with Sections 6.6 and 6.7 of this Franchise or as otherwise agreed with the Town designee and removes from the site or properly abandons on site any unused facilities, equipment, material and other impediments.

(E) **Estimates.** Promptly upon receipt of an undergrounding request from the Town and all service application submittal requirements necessary for United Power to design the undergrounding project, United Power will prepare a detailed, good faith cost estimate of the anticipated actual cost of the requested project for the Town to review and, if acceptable, issue a project authorization. United Power will not proceed with any requested project until the Town has provided a written acceptance of United Power estimate.

(F) **Report of Actual Costs.** Upon completion of each under-grounding project, United Power will submit to the Town a detailed report of United Power's actual cost to complete the project and United Power shall reconcile this total actual cost with the accepted cost estimate.

(G) **Audit of Underground Projects.** The Town may require that United Power undertake an independent audit of any under-grounding project for five hundred thousand dollars (\$500,000.00) or greater. The cost of any such independent audit shall be paid from and reduce the amount of the fund. United Power shall cooperate fully with any audit and the independent auditor shall prepare and provide to the Town and United Power a final audit report

showing the actual costs associated with completion of the project. If a project audit is required by the Town, only those actual project costs, including reasonable internal costs and overhead as charged to the project by United Power's normal cost accounting rules and protocols, confirmed and verified by the independent auditor as commercially reasonable and commercially necessary to complete the project shall be charged to the fund.

8.6 Audit of Underground Fund. Upon a reasonable written request by the Town, but no more frequently than once every three (3) years, United Power will audit the fund for the Town. Such audits shall be limited to the previous three (3) calendar years. United Power will provide the audit report to the Town and will reconcile the fund consistent with the findings contained in the audit report. If the Town has concerns about any material information contained in the audit, the Parties shall meet and make good faith attempts to resolve any outstanding issues. If the matter cannot be resolved to the Town's reasonable satisfaction, United Power will, at its expense, cause an independent auditor, selected by agreement with the Town, to investigate and determine the correctness of the charges to the underground fund. The independent auditor shall provide a written report containing its findings to the Town and United Power. United Power will reconcile the fund consistent with the findings contained in the independent auditor's written report. If the independent auditor's report confirms United Power's allocations, costs and expenses, the Town shall be responsible for fifty percent (50%) of the cost for the independent auditor's work and report.

ARTICLE 9: ENVIRONMENT AND CONSERVATION

9.1 Environmental Leadership. United Power is committed to using the earth's resources wisely; supporting the advancement of emerging technologies, and helping its customers use energy as efficiently as possible. United Power will strive to conduct its operations in a way that avoids adverse environmental impacts where feasible, subject to constraints faced by a

cooperative utility. In doing so, United Power will consider environmental issues in its planning and decision making, and will invest in environmentally sound technologies when such technologies are deemed prudent and feasible. United Power will continue with its voluntary carbon reduction program to reduce greenhouse gas emissions and shall continue to explore ways to reduce water consumption at its Facilities. United Power will continue to work with the U.S. Fish and Wildlife Service to develop and implement avian protection plans to reduce electrocution and collision risks by eagles, raptors and other migratory birds caused by transmission and distribution lines.

9.2 Energy Conservation and Efficiency.

(A) Energy Efficiency Programs.

(1) **General.** The Town and United Power recognize and agree that energy conservation and efficiency programs offer opportunities for the efficient use of energy and reduction of customers' energy consumption and costs. United Power recognizes and shares the Town's desire to advance the implementation of cost-effective energy conservation and efficiency programs, which direct opportunities to United Power's customers to manage more efficiently their use of energy and, thereby, create the opportunity to reduce their energy consumption, costs, and impact on the environment. United Power will seek to develop and offer energy efficiency programs to its customers. United Power commits to offer Demand Side Management (DSM) programs and similar succeeding programs, which provide customers the opportunity to reduce their energy usage. In doing so, United Power recognizes the importance of (i) implementing cost-effective programs, the benefits of which could otherwise be lost if not pursued in a timely fashion and (ii) developing cost-effective energy management programs for the various classes of United Power's customers. United Power commits to offer programs that attempt to capture market

opportunities for cost-effective energy efficiency improvements such as municipal specific programs that provide cash rebates for efficient lighting, energy design programs to assist architects and engineers to incorporate energy efficiency in new construction projects, and recommissioning programs to analyze existing systems to optimize performance and conserve energy. United Power will advise the Town and United Power's customers of the availability of assistance that United Power makes available for investments in energy conservation, and may do so through dissemination of such information through its Community Affairs Representatives, newsletters, newspaper advertisements, bill inserts and energy efficiency workshops and by maintaining information of these programs on United Power's website.

(2) **Town Improvements.** United Power agrees to work with the Town to implement periodic grant or other financial assistance programs or mechanisms to assist the Town in defraying costs incurred by the Town in making technology changes and/or modifications to Town Facilities or purchasing equipment to provide energy efficiencies and/or conservation. A mutually cooperative process including discussion during the June to August time frame for each ensuing budget year to include such expenditures in the next annual budget cycle will materially assist the Parties in best utilizing such grant or other financial assistance programs. Both Parties must agree on the program uses, terms, conditions and funding mechanisms for all such grant or other financial assistance programs before United Power will advance any funds for such program.

(B) **Renewable Resource Programs.** United Power agrees to invest in clean, renewable electric power and include renewable resource programs as an integral part of United Power's provision of electric service to its customers. United Power will continue to promote existing or new programs in its service territory and take the following steps to encourage

participation by the Town and United Power's customers in available renewable resource programs:

- (1) Notify the Town regarding eligible renewable resource programs;
- (2) Provide the Town with support regarding how the Town may participate in eligible renewable resource programs; and,
- (3) Advise customers regarding participation in eligible renewable resource programs.

(C) **Five Year Review.** The Town and United Power agree to meet no less frequently than every five (5) years during the term of the Franchise to review and exchange information concerning new and additional energy conservation and efficiencies that may be implemented to further the stated intention of this Article 9.

ARTICLE 10: USE OF UNITED POWER FACILITIES

10.1 Town Use of United Power Facilities. The Town shall be permitted to make reasonable use of United Power's distribution Facilities such as poles and conduits in the Town at no cost to the Town for the placement of Town equipment or Facilities necessary to serve a legitimate police, fire, emergency, communications, public safety or traffic control purpose, or for any other purpose consistent with exercise of the Town's municipal powers and services; provided, however, that such use does not interfere with United Power Facilities or increase costs to United Power. The Town may, upon written approval by United Power, which approval shall not be unreasonably withheld, and as long as United Power's and industry standard safeguards are not compromised, string decorative banners or similar type of removable attachments to United Power Facilities. The Town shall notify United Power in writing in advance of its intent to use United Power Facilities and the nature of such use. The Town shall be responsible for its materials costs and any costs associated with modifications to United Power Facilities to accommodate the

Town's joint use of such United Power Facilities and for any electricity used. No such use of United Power Facilities shall be required if it would constitute a safety hazard or would interfere with United Power's use of United Power Facilities. Any such Town use must comply with the National Electric Safety Code and all other applicable laws, rules and regulations. Subsequently, if United Power determines that it will no longer utilize the shared facilities, Town will be responsible, at its cost, for procuring alternatives for its facilities. United Power will be required to provide at least one hundred eighty (180) days' notice if it intends to abandon any shared Facility, unless such change is occasioned by external circumstances beyond United Power's control. In that event, reasonable notice is all that is required.

10.2 Use of United Power Land. United Power will grant to the Town use of distribution and transmission rights-of-way which it now, or in the future, owns or has an interest in within the Town for the purposes set forth in the Colorado Parks and Open Space Act of 1984, § 29-7.5-101, *et seq.*, C.R.S. provided that United Power shall not be required to allow such use in any circumstance where such use would interfere with United Power's use of the distribution and transmission rights-of-way or increase United Power's costs. Such grant shall be made only if United Power is given at least sixty (60) days advance notice of the Town's desired use. Any use by the Town pursuant to this Section 10.2 shall be made at the Town's sole expense, and shall be subject to any safety or other requirements imposed by United Power. The Town hereby expressly understands that United Power's rights-of-way contain electrical lines that could prove deadly if contact is made with any electrical current. To the extent permitted by law, the Town shall hold harmless and indemnify United Power for any and all liability and damages associated with the Town's use of United Power's distribution and transmission rights-of-way, conduits and poles, including the payment of United Power's reasonable attorney and expert witness fees, if

applicable, except to the extent the loss is caused by United Power's own negligence or willful misconduct.

10.3 Third Party Use of United Power Facilities. If requested in writing by the Town, United Power may, but will not be required to, allow other companies who hold Town franchises, or otherwise have obtained consent from the Town to use the streets, to utilize United Power Facilities for the placement of their Facilities upon approval by United Power and agreement upon reasonable terms and conditions including payment of fees established by United Power. No such use shall be permitted if it would constitute a safety hazard or would interfere with United Power's use of United Power Facilities or increase United Power's costs. United Power shall not be required to allow the use of United Power Facilities for the provision of utility service except as otherwise required by law.

10.4 Emergencies. Upon request, United Power will cooperate with the Town in developing an emergency management plan. In the case of any emergency or disaster, United Power will, upon a reasonable verbal request by the Town, make available United Power Facilities for temporary emergency use during the emergency or the disaster period. Such use of United Power Facilities shall be of a limited duration and will only be allowed if the use does not interfere with United Power's own use of such United Power Facilities or increase United Power's costs.

ARTICLE 11: RIGHT OF FIRST PURCHASE/USE OF UNITED POWER LAND

11.1 Right of First Purchase. If at any time during the term of this Franchise, United Power proposes to sell or dispose of any of its real property located within the Town, it will provide to the Town the right of first purchase of same. United Power will obtain an appraisal by a qualified appraiser on any such real property and the Town shall have ninety (90) days after receipt of the qualified appraisal in which to exercise the right of first purchase at the appraised value by giving written notice to United Power. If the Town is not satisfied with the appraisal tendered by

United Power, the Town may obtain, within ninety (90) days of United Power's tender of its appraisal, which time period may be extended upon request of the Town and approval by United Power, which approval shall not be unreasonably withheld, and at the Town's cost, a second appraisal which, upon receipt, shall be tendered to United Power. If United Power is satisfied with the Town's appraisal, then, upon notice, the Town shall purchase the property at the price set forth in the second appraisal. If United Power is not satisfied with the second appraisal, then the appraisers issuing the first and second appraisals shall choose a third appraiser who will also appraise the property. The Town and United Power shall share the cost of the third appraiser equally and shall be bound by the value concluded by the third appraiser. The sixty (60) day time period by which the Town may have the first right to purchase the property shall be extended thirty (30) days from the dates of the second or third appraisal (as the case may be), and the Town shall close on the sale and pay the value set forth in the controlling appraisal within said thirty (30) days. Should the Town not provide the required written notice that it wishes to purchase the subject property within the time frames above, United Power may proceed to negotiate with others for the sale of such property, provided that United Power may not sell such property for an amount less than ninety-five percent (95%) of the appraised value without first providing the Town an opportunity to purchase such property at such lesser price, in which instance the Town shall have thirty (30) days to determine if it wishes to purchase such property.

ARTICLE 12: INDEMNIFICATION OF TOWN

12.1 Town Held Harmless. United Power will construct, maintain and operate its Facilities in a manner which provides reasonable protection against injury or damage to persons or property. United Power shall not be obligated to hold harmless or indemnify the Town for claims, demands, judgments or losses which are a result of the negligence or willful misconduct of the Town or its officers, contractors, agents or employees.

12.2 Notice to United Power. Within sixty (60) days after receipt of the same by the Town Attorney, the Town will provide notice to United Power of the pendency of any claim or action against the Town arising out of the exercise by United Power of its Franchise rights. United Power will be permitted, at its own expense, to appear and defend or to assist in defense of such claim.

12.3 Indemnification.

(A) **Town Indemnified.** United Power agrees to indemnify, defend and hold the Town harmless from and against claims, demands, liens, and all liability or damage of whatsoever kind on account of or arising from the grant of this Franchise, the exercise by United Power of the related rights, or from the operations of United Power within the Town, and shall pay the costs of defense plus reasonable attorneys' fees. The Town shall (a) give prompt written notice to United Power of any claim, demand or lien with respect to which the Town seeks indemnification hereunder and (b) unless in the Town's judgment a conflict of interest may exist between the Town and United Power with respect to such claim, demand or lien, shall permit United Power to assume the defense of such claim, demand, or lien with counsel satisfactory to the Town. If such defense is assumed by United Power, United Power shall not be subject to any liability for any settlement made without its consent.

Notwithstanding any provision hereof to the contrary, United Power shall not be obligated to indemnify, defend, or hold the Town harmless to the extent any claim, demand or lien wholly arises out of, relates to, or is in connection with negligence or willful misconduct by or of the Town or its officers, contractors, agents or employees.

12.4 Immunity. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities and limitations the Town may have under the Colorado

Governmental Immunity Act (§24-10-101, et seq., C.R.S.) or of any other defenses, immunities, or limitations of liability available to the Town by law.

12.5 Waiver of Subrogation. The Town and United Power hereby waive and release any and all rights of action for negligence against the other which may hereafter arise on account of damage to their respective property resulting from any fire, or other casualty of the kind covered by standard fire insurance policies with extended coverage, regardless of whether or not, or in what amounts, such insurance is now or hereafter carried by the Town and United Power. These waivers and releases shall apply between the Town and United Power, and they shall also apply to any claims under or through either one as a result of any asserted right of subrogation. All policies of insurance covering property damage obtained by either the Town or United Power concerning the property shall waive the insurer's right of subrogation against the other Party.

ARTICLE 13: TRANSFER OF FRANCHISE

13.1 Consent of Town Required.

(A) United Power shall not sell, transfer or assign this Franchise or any rights under this Franchise to another, by merger or otherwise, excepting only corporate reorganizations of United Power not involving a third party, unless the Town shall approve in writing such sale, transfer or assignment of rights. Approval of the sale, transfer or assignment shall not be unreasonably withheld. The charging or collection of the transfer fee hereinafter set forth is conclusively deemed reasonable.

(B) In order that the Town may share in the value this Franchise adds to United Power's operations, any such transfer or assignment by United Power of rights under this Franchise requiring Town approval under Section 13.1(A) shall require that the transferee to promptly pay to the Town an amount that is equal to the greater of: (i) Fifty thousand dollars (\$50,000.00) or (ii) three times the most recent twelve (12) months of franchise fees collected by the Town from United

Power. In the event only a portion of United Power's service area within the municipal boundaries of the Town is transferred, the transfer fee shall be calculated by multiplying the greater of (i) and (ii) above by number of customers transferred, divided by the then current number of customers served by United Power in the Town before said transfer. Such transfer fee shall not be recovered from the Town or from the Town residents or property owners through electric rates of customers in the Town or by a surcharge of the Residents of the Town by the transferee or United Power.

(C) Any sale, transfer or assignment of electric Facilities which cause degradation of electric service within United Power's Service Area or results in a significant increase in rates to Town customers, shall constitute a violation of this Franchise, for which United Power shall remain liable.

ARTICLE 14: MUNICIPALLY-PRODUCED RENEWABLE ENERGY

14.1 Municipally-Produced Renewable Energy.

(A) **Town Reservation.** The Town expressly reserves the right to engage in the generation of renewable energy for the sole purpose of selling such renewable energy to United Power, and not for the purpose of operating its own utility. United Power agrees in good faith to negotiate a power purchase agreement to purchase Town-generated energy made available for sale, and consistent with CPUC and established United Power Board requirements, and considering the then existing agreements with United Power's current providers.

ARTICLE 15: PURCHASE OR CONDEMNATION

15.1 Franchise Not to Limit Town's Rights. Subject to the provisions of Part 2 of Title 40, Article 9.5 of the Colorado Revised Statutes, nothing in this Franchise prohibits the Town from becoming an aggregator of utility service or from selling utility service to customers should it be permissible under law; provided, however, that if the Town does so, it will comply with the provisions of such statutes requiring the compensation of United Power therefor.

15.2 Town's Right to Purchase or Condemn. The right of the Town to construct, purchase or condemn any public utility works or ways, and the right of United Power in connection therewith, as provided by the Colorado Constitution and Statutes, are hereby expressly reserved. The Town shall have the right during the term of this Franchise and using the procedures set forth herein, to purchase United Power Facilities, land, rights-of-way and easements now owned or to be owned by United Power located within the municipal boundaries of the Town.

15.3 Notice of Intent to Purchase or Condemn. The Town shall provide United Power no less than ninety (90) days' prior written notice of its intent to purchase or condemn United Power Facilities. Nothing in this section shall be deemed or construed to constitute consent by United Power to the Town's purchase or condemnation of United Power Facilities.

15.4 Negotiated Purchase Price or Condemnation Award. Upon the exercise of the Town's option to purchase, the Parties shall negotiate in good faith to determine a mutually acceptable purchase price. This purchase price will be calculated by the methodology set forth in § 40-9.5-201, C.R.S.

15.5 Continued Cooperation by United Power.

(A) In the event the Town exercises its option to purchase or condemn, United Power agrees that it will continue to supply in whole or in part any service it supplies under this Franchise Agreement and the ordinance adopting the same, at the Town's request, for the duration of the term of this Agreement and shall continue to pay the Franchise Fee to the Town during this period. United Power's Facilities shall be available for continued service until nine (9) months after final order is entered in a condemnation proceeding or the effective date of a purchase agreement between the Parties; provided however, said obligation to maintain Facilities shall not exceed a twenty-four (24) month period after the termination of the Franchise. United Power shall

continue to provide service pursuant to the terms of this Agreement for said twenty-four (24) months until the Town has either purchased or condemned United Power's Facilities, or alternative arrangements have been made to supply electricity to the Town and its residents, whichever date shall occur earlier, and shall continue to pay the Franchise Fee, or funds equivalent to the Franchise Fee, to the Town during this period. The Town shall not pay for any services no longer required.

(B) United Power will cooperate with the Town by making available then existing pertinent United Power records, which are not privileged, to enable the Town to evaluate the feasibility of acquiring United Power Facilities. United Power will not be obligated to conduct studies or accrue data without reimbursement by the Town, but will make such studies if reimbursed its actual costs for the same. United Power will take no action, which could inhibit the Town's ability to effectively or efficiently use the acquired systems. At the Town's request, United Power will supply electricity for use by the Town in a Town-owned system.

ARTICLE 16: CHANGING CONDITIONS.

United Power and the Town recognize that many aspects of the electric utility business are currently the subject of discussion, examination and inquiry by different segments of industry and affected regulatory authorities, and that these activities may ultimately result in fundamental changes in the way United Power conducts its business and meets its service obligations. In recognition of the present state of uncertainty respecting these matters, United Power and the Town agree, on request of the other, to negotiate in good faith an amendment of this Franchise or enter into separate, mutually satisfactory arrangements to effect a proper accommodation of such developments.

ARTICLE 17: UNCONTROLLABLE FORCES.

Neither the Town nor United Power shall be in breach of this Franchise Agreement if a failure to perform any of the duties under this Franchise is due to uncontrollable forces, which

shall include but not be limited to accidents, breakdown of equipment, shortage of materials, acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government, other causes or contingencies of whatever nature beyond the reasonable control of the Party affected, including the causes set forth in 6.2(B) above, and which could not reasonably have been anticipated and avoided.

ARTICLE 18: BREACH AND REMEDIES

18.1 Non-Contestability. The Town and United Power agree to take all reasonable and necessary actions to assure that the terms of this Franchise are performed and, except as may be specifically provided in this Franchise Agreement, neither will take any unilateral legal action to secure the modification or amendment of this Franchise.

18.2 Breach/Notice/Cure/Remedies. Except as otherwise provided in this Franchise, if a party (the “breaching party”) to this Franchise fails or refuses to perform any of the terms or conditions of this Franchise (a “breach”), the other party (the “non-breaching party”) may provide written notice to the breaching party of such breach. Upon receipt of such notice, the breaching party shall be given a reasonable time, not to exceed thirty (30) days, in which to remedy the breach and except as provided under Article 17. If the breaching party does not remedy the breach within the time allowed in the notice, the non-breaching party may exercise the following remedies for such breach:

- (A) Specific performance of the applicable term or condition; and,
- (B) Recovery of actual damages from the date of such breach incurred by the

non-breaching party in connection with the breach, but excluding any consequential damages.

18.3 Termination of Franchise by Town. In addition to the foregoing remedies, if United Power fails or refuses to perform any material term or condition of this Franchise (a “material breach”), and such failure is not an occurrence by force majeure under Article 17, the

Town may provide written notice to United Power of such material breach. Upon receipt of such notice, United Power shall be given a reasonable time, not to exceed ninety (90) days, within which to remedy the material breach. If United Power does not remedy the material breach within the time allowed in the notice, the Town may, at its sole option, terminate this Franchise. This remedy shall be in addition to the Town's right to exercise any of the remedies provided for elsewhere in this Franchise. Upon such termination, United Power shall continue to provide electric service to the Town and its residents until the Town makes alternative arrangements for such service and be paid for such service in an amount equivalent to the Franchise Fee payable hereunder. United Power shall also be entitled to collect from Residents and shall be obligated to pay the Town, at the same times and in the same manner as provided in the Franchise, an aggregate amount equal to the amount which United Power would have paid as a franchise fee as consideration for use of the Town streets.

18.4 United Power Shall Not Terminate Franchise. In no event, other than caused by the Town's material breach of this Agreement, does United Power have the right to terminate this Franchise, but may transfer its rights hereunder after notice to Town and as otherwise set forth in Article 13.

18.5 No Limitation. Except as provided herein, nothing in this Franchise shall limit or restrict any legal rights or remedies that either Party may possess arising from any alleged breach of this Franchise.

ARTICLE 19: UNITED POWER OPERATIONS

19.1 Corporate Structure. Unless otherwise required by law, United Power shall continue its operations hereunder as a Colorado nonprofit corporation and cooperative controlled by its customers and as generally provided under § 40-9.5-101, et seq., C.R.S. This subsection

shall not limit the power of United Power to engage in other lawful business ventures through the use of subsidiary or controlled entities, including for profit ventures.

ARTICLE 20: AMENDMENTS

20.1 Amendment to Franchise. This Franchise Agreement represents the entire Franchise Agreement between the Parties and, except as otherwise specified in this Agreement and the granting of the Franchise Fees and matters related thereto, there are no oral or collateral agreements or understandings.

This Franchise Agreement may be amended only by an instrument in writing signed by United Power and the Town.

20.2 Proposed Amendments. At any time during the term of this Franchise, the Town or United Power may propose amendments to this Franchise by giving thirty (30) days written notice to the other of the proposed amendment(s) desired. However, nothing contained in this Section 20.2 shall be deemed to require either Party to consent to any amendment proposed by the other Party.

ARTICLE 21: EQUAL OPPORTUNITY

21.1 Equal Opportunity. United Power is an equal opportunity employer. United Power will comply with all federal, state and Town laws regarding employment, contracting and operating its business activities with a policy of non-discrimination with people of all race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability, or any other protected status in accordance with all Federal, state, or local laws.

21.2 Contracting. United Power agrees to require all of its contractors to comply with all Federal, state, and Town laws regarding employment, contracting and operating their business activities with regards to non-discrimination with people of all race, color, religion, national origin,

gender, age, military status, sexual orientation, marital status, or physical or mental disability, or any other protected status in accordance with all Federal, state, or local laws.

21.3 Economic Development. The Parties agree that promoting economic development with the Town is in the best interest of all Parties. United Power is committed to the principle of stimulating, cultivating, and strengthening the participation and representation of under-represented groups in the local Johnstown business community. United Power believes that increased participation and representation of under-represented groups will lead to mutual and sustainable benefits for the local economy. United Power is also committed to the principle that the success and economic well-being of United Power is closely tied to the economic strength and vitality of the diverse communities and people it serves. United Power believes that contributing to the development of a viable and sustainable economic base among all United Power customers is in the best interests of United Power and its member-owners and will keep these goals in mind in formulating its economic development strategies, programs and policies.

ARTICLE 22: UNDOCUMENTED WORKERS

Undocumented Workers. At all times during the term of this Franchise Agreement, United Power agrees that it will comply with all applicable Federal, State, and Town laws prohibiting the employment of, or contracting with, undocumented workers.

22.2 Employment Prohibited. United Power will not knowingly employ or contract with an undocumented worker to perform work for United Power that is or may be related to this Franchise Agreement or knowingly contract with a subcontractor who knowingly employs or contracts with undocumented workers to perform work under this Franchise Agreement.

22.3 Affirmative Action. United Power agrees to take affirmative action to ensure that it does not employ or contract with undocumented workers to perform work on this Franchise by

participation in the Social Security Administration and Department of Homeland Security E-Verify Program.

22.4 Subcontractors.

(A) United Power will require all subcontractors of United Power to certify in writing to United Power that the subcontractor does not knowingly employ or contract with undocumented workers and further to agree in writing not to knowingly employ or contract with an undocumented worker to perform work that is or may be related to this Franchise Agreement.

(B) United Power shall not enter into a contract with a subcontractor that fails to certify to United Power that the subcontractor shall not knowingly employ or contract with an undocumented worker to perform work that is or may be related to this Franchise Agreement.

(C) If United Power obtains actual knowledge that a subcontractor performing work under this Franchise Agreement knowingly employs or contracts with an undocumented worker, United Power shall:

(1) Notify the subcontractor and the Town within three (3) days that United Power has actual knowledge that the subcontractor is employing or contracting with an undocumented worker; and

(2) Terminate the subcontract with the subcontractor if within three (3) days of receiving the notice required pursuant to Section 21.4(C)(2), the subcontractor does not terminate the employment or contract with the undocumented worker; except that United Power shall not terminate the contract with the subcontractor if during such three (3) days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an undocumented worker.

22.5 Compliance. United Power will comply with any reasonable request by the Town or the Colorado Department of Labor and Employment made in the course of an investigation that the Town or the Department is undertaking for the purpose determining the immigration status of all newly hired employees or contractors working on this Franchise, including, but not limited to:

(A) Inspections and/or interviews at such locations as this contract is being performed;

(B) Review documentation related to the immigration status and/or employment eligibility of all newly hired employees or contractors performing work which is or may be related to this Franchise; or,

(C) Any other reasonable steps as necessary to determine whether United Power or subcontractor is complying with the provisions of this Franchise related to the employment of or contracting with undocumented workers.

22.6 Documentation. United Power will, upon request, provide to the Town copies of documentation and verification of immigration status and employment eligibility received by United Power for itself or from subcontractors; and, if requested, copies of information received from a subcontractor submitted to establish that the subcontractor has not knowingly employed or contracted with an undocumented worker.

22.7 Violation. If United Power violates a provision of this Article 22, such violation may constitute a breach of this Franchise Agreement and the Town, in its sole discretion, may terminate the Franchise for breach of contract. If the Franchise is so terminated, United Power shall be liable for actual damages to the Town.

ARTICLE 23: MISCELLANEOUS

23.1 No Waiver. Neither the Town nor United Power shall be excused from complying with any of the terms and conditions of this Franchise by any failure of the other, or any of its

officers, employees, or agents, upon any one or more occasions. Further, neither the Town nor United Power waives any rights under the laws, statutes and/or constitution of the State of Colorado or of the United States except as otherwise specifically set forth herein.

23.2 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this Agreement shall inure to the benefit of and be binding upon United Power, its successors and assigns as same may succeed to the rights of United Power pursuant to Article 13.

23.3 Notice and Representatives. Both Parties shall designate from time to time in writing, representatives for United Power and the Town who will be the person(s) to whom notices shall be sent regarding any action to be taken under this Agreement. Notice shall be in writing and forwarded by overnight courier (with receipt /signature required), United States first-class certified mail (return receipt requested), or by hand delivery, facsimile or electronic transmission with proof of delivery (the sender shall confirm the receiver's facsimile number or email address in advance of sending, and shall request a confirmation of receipt), to the persons and addresses as hereinafter stated unless the names and addresses are changed at the written request of either Party, delivered in the manner provided herein. Until any such change shall hereafter be made, notices shall be sent to the following:

For the Town of Johnstown:

Town Manager
Johnstown City Hall
P.O. Box 609
450 Parrish Avenue.
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

For United Power:

Chief Executive Officer
United Power, Inc.
500 Cooperative Way
Brighton, CO 80603
Email: notices@unitedpower.com

23.4 Severability. Should any one or more provisions of this Agreement be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the Parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a replacement provision that will achieve the original intent of the Parties hereunder.

23.5 Entire Agreement. This Agreement constitutes the entire agreement of the Parties. There have been no representations made other than those contained in this Agreement.

23.6 Third Parties, Rights to Third Parties. Nothing herein contained shall be construed to provide rights or benefits to third parties.

23.7 Prevailing Party. In any judicial or administrative action to enforce any of the terms or conditions of this Franchise, the Party that substantially prevails as determined by the court shall be entitled to recover its costs and expenses incurred in such action, including reasonable attorney fees, but only to the extent permitted by law, recognizing the constitutional and statutory limitations prohibiting, among other potential limitations, a municipality from expending unbudgeted and unappropriated funds.

23.8 Headings for Reference Only. The headings used in this Franchise are for references only and convey no substantive rights or impose no substantive obligations on the Parties.

23.9 Responsibility for Language. The Parties hereby acknowledge during the drafting of this document each has been represented by legal counsel and that each Party bears equal and

identical responsibility for the language of this Agreement. In case of ambiguity, there shall be no presumption based upon responsibility for drafting this Franchise, and the Agreement shall not be construed against one Party in favor of another.

23.10 Authority. Each Party represents and warrants that except as set forth below, it has taken all actions that are necessary or that are required by its ordinances, regulations, procedures, bylaws, or applicable laws, to legally authorize the undersigned signatories to execute this Agreement on behalf of the Parties to its terms. The persons executing this Agreement on behalf of each of the Parties warrant that they have full authorization to execute this Agreement.

23.11 Applicable Law and Venue. Colorado law shall apply to the construction and enforcement of this Franchise. The Parties agree that venue for any litigation arising out of this Franchise shall be in the District Court for Weld County, State of Colorado.

ARTICLE 24: APPROVAL

TOWN APPROVAL. This grant of Franchise Agreement shall not become effective unless approved and granted by ordinance of the Town Council.

UNITED POWER APPROVAL. United Power shall file with the Town Clerk its written approval of this Franchise and of all of its terms and provisions at least ten (10) days prior to public hearings set for consideration of the Ordinance by the Town Council. United Power shall file with the Town Clerk its written ratification thereof within ten (10) days after the approval of this Franchise Agreement by the Town Council. The acceptance and ratification shall in form and content be approved by the Town Attorney. If United Power shall fail to timely file its written acceptance or ratification as herein provided, this Franchise shall be and become null and void.

(The remainder of this page is blank; signature page follows)

IN WITNESS WHEREOF, the Parties have executed this agreement this ____ day of _____, 2021.

UNITED POWER, INC.,
a Colorado nonprofit cooperative corporation

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Chief Executive Officer of United Power

By: _____
Mayor

ATTEST:

Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF ADAMS)

The foregoing instrument was acknowledged before me this ____ day of _____, 2021 by _____, Chief Executive Officer of United Power, Inc., a Colorado cooperative association.

WITNESS MY HAND AND OFFICIAL SEAL.

Notary Public
My Commission expires:

(SEAL)



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: Community Dog Park

ACTION PROPOSED: Discussion Purposes Only

ATTACHMENTS: 1. Trust for Public Land: Dog Parks 101- 2019
2. Potential Dog Park Site Map

PRESENTED BY: Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

At a recent Town Council meeting, Councilmember Tallent requested of Staff to gather information related to establishing a dog park in the community. The information provided presents several questions, answers and ideas related to the development of a dog park in the community. Staff has provided this information at this time for discussion purposes only, with a hope to provide the guidance necessary by the Town Council to ensure that Staff is moving in the right direction. Additionally, photographs and details regarding neighboring community sites of their dog parks are attached for visual information. Special thanks to Danielle Gardner and Darryll Wollnik for their support in providing the important information to facilitate the discussion of this item. Below is a listing of questions considered when evaluating a dog park in the community.

Q: What is the recommended size of a dog park?

A: Recommended size for a dog park is between ½ acre and 2 acres.

Additional Information: The map provided within this agenda item has identified property currently owned by the town that has 2 acres of contiguous land available that can be prioritized for this purpose.

Q: What is the recommended location for a dog park?

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

A: It is recommended to maintain a 50–200-foot buffer from any residential areas. If Council desires to have a dog park in a certain area, we may want to conduct a public hearing with adjacent land owners to gather their feedback.

Additional Information: It would be Staff recommendation that if a site is identified that based on the location, we hold a public hearing/open house to gather perspectives and information from the neighboring property owners related to their support for the site location.

Q: What are the best surface materials to use?

A: We found no consensus as to the best type of surface material. Several cities have multiple surfacing types including crushed, fine, or decomposed granite around the entrance area, concrete, grass and mulch. Grass is used most often in larger areas. If possible, lawn areas should be rested periodically to allow turf to recover. The City of Denver, for example does not currently use grass as it is the hardest surface to maintain.

Q: What kinds of amenities or equipment are needed for a successful dog park?

A: A source of drinking water is recommended for both humans and dogs if possible. Most cities provide benches and seating while very few have dog play amenities. All cities said they comply with ADA for access to the dog park sites. All parks looked at provide trash containers and some provide dog bag holders and bags (we currently provide dog bag stations at all Town parks). The City of Denver does not provide bags as the cost is too great.

Q: What type of fencing is suggested? Is there a minimum height requirement?

A: A galvanized or vinyl coated chain link fence, with a minimum height of 4 feet is recommended. Double gated entries are encouraged to allow dog owners to unleash the dogs in a corral prior to letting the dog run free.

Q: Is it better to develop a single dog area or sectioned areas based on dog size or energy level?

A: Most cities do provide small dog areas if space allows or “high energy” vs “low energy” spaces

Q: What hours of operation are recommended?

A: Available hours from dawn to dusk is common.

Milliken Dog Park

Materials: Grass, dirt

Fencing: Wood

Amenities: benches, lights

Parking: Minimal



Dog Park at Fairgrounds Park, Loveland

Materials: wood chips, dirt, concrete

Fencing: Wood

Amenities: dog/human drinking fountain, benches, shade structure, large regional park

Parking: Yes



Timnath Community Park, Timnath

Materials: Crushed gravel, concrete

Fencing: Wood

Amenities: dog/human drinking fountain, shade structures, rocks, large regional park

Parking: Yes



Twin Silos Park, Fort Collins

Materials: Crushed gavel, concrete

Fencing: Wood

Amenities: dog/human drinking fountain, shade structure, rocks, large regional park

Parking: Yes, busy street



Potential Dog Park Sites

In the Town of Johnstown, Colorado

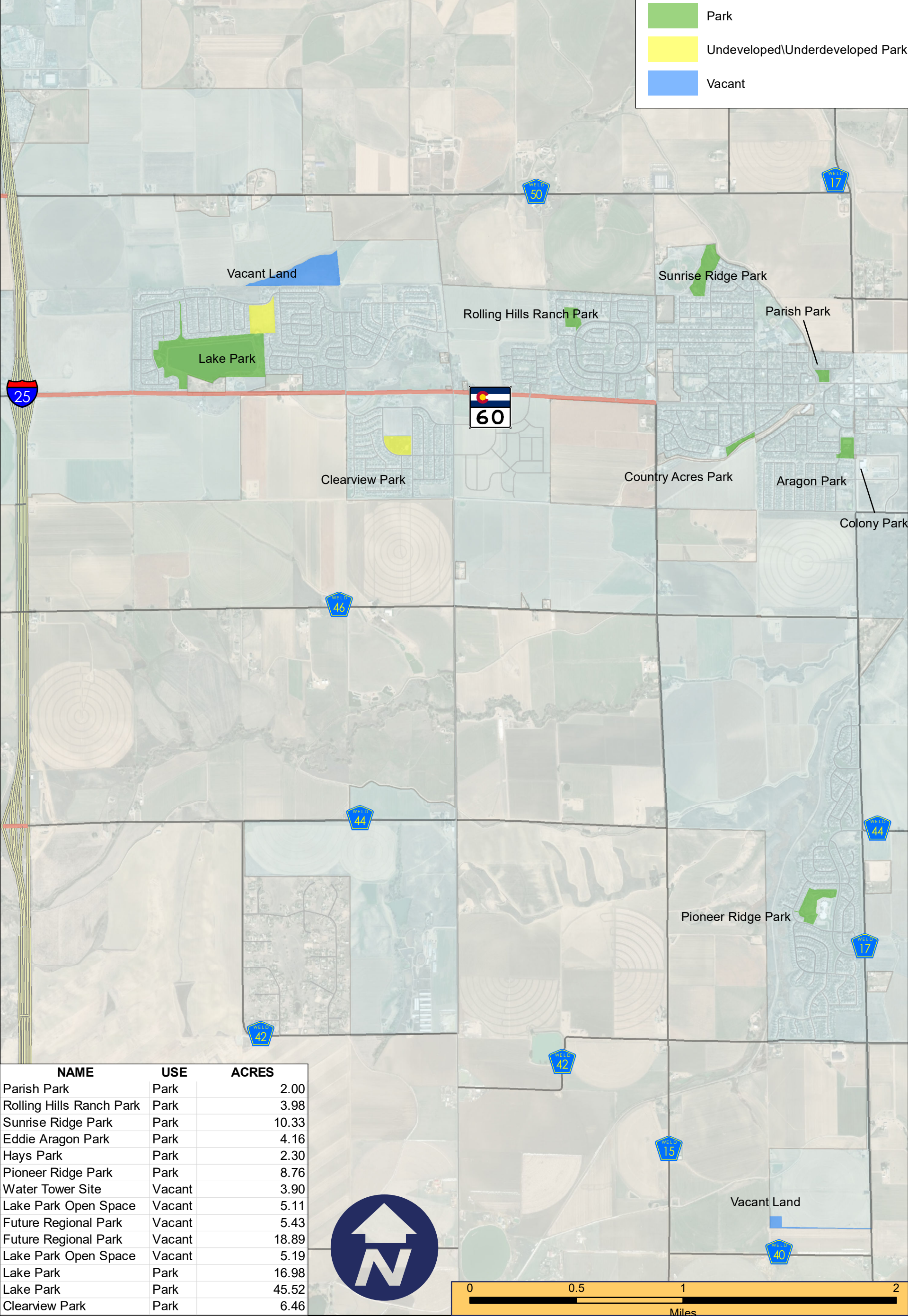
Legend

Town Limits

Town-Owned Property

Use

- Park
- Undeveloped\Underdeveloped Park
- Vacant



NAME	USE	ACRES
Parish Park	Park	2.00
Rolling Hills Ranch Park	Park	3.98
Sunrise Ridge Park	Park	10.33
Eddie Aragon Park	Park	4.16
Hays Park	Park	2.30
Pioneer Ridge Park	Park	8.76
Water Tower Site	Vacant	3.90
Lake Park Open Space	Vacant	5.11
Future Regional Park	Vacant	5.43
Future Regional Park	Vacant	18.89
Lake Park Open Space	Vacant	5.19
Lake Park	Park	16.98
Lake Park	Park	45.52
Clearview Park	Park	6.46

Dog parks 101, 2019

The Trust for Public Land - Center for City Park Excellence.

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Executive summary: How to build a dog park.

We get many questions from parks agencies, park advocates, and the press about dog parks through the year, but especially around the release of our ParkScore Index in late May. People have many questions about “the right way” to build a dog park and want to bring together the right combination of people and resources to make it possible. Based on those discussions, as well as some interviews and even some personal experience, we have put together this guide. It will continue to be revised (we welcome your thoughts) and posted on our Park Advocacy resource, Parkology.org.

1. Have a plan.

With so many dog parks in public parks, there are both best practices and lessons learned that both public agencies and park advocates could learn from. The most important point is: have a plan. You can modify it as you go, but being upfront about what you need to do helps everyone understand what is required and keeps the process public and transparent.

A plan should address all of those questions that people will ask as you move through both the approvals process as well as the funding process. It should answer some of the following questions:

- What kinds of facilities you want to build?
- Should the dog park or off-leash area be fenced, or are you planning for open areas that are open during a certain number of hours during the day?
- For open areas in a larger park, are you planning to rotate from season to season?
- Are you planning water features, including drinking fountains, splash pads, or pools?
- Are you planning climbing or other agility features?
- Are you including seating and shade?

There are many options, and you should first consult what types of dog parks already exist in your

community, as well as any standards that have been developed or approved by public agencies. (We will cover this in detail in a bit.)

Public agencies should develop a standard for dog parks with a public input process based on best practices that are generally available widely. Required elements for dog parks generally include:

- **COMPLETE FENCING** around the perimeter of the designated area, or natural barriers that prohibit dogs from leaving the area.
- **DOUBLE-GATE ENTRY** – A standard feature is a double-gate entry system with a gated waiting area for the dog and human to enter, remove the dog’s leash, and then open the gate to the main off-leash area, reversing the process for exiting. This ensures that unplanned escapes will be kept to a minimum, allows for leashing and unleashing in a separate area, and enables dog owners to manage the transition into and out of the dog park.
- **SEPARATE AREAS FOR SMALL AND LARGE DOGS.** Allow for dogs of different sizes and ages to avoid interacting (and causing possible conflicts) by creating separate areas for different-sized dogs and their humans. Puppies and shy dogs then have the opportunity to interact and get used to the high level of activity that can occur in a dog park.
- **SURFACING PLAN** (including renewal) – There are many surfacing options, and the choices depend on weather, drainage, and current conditions. That said, there are many options, ranging from artificial turf to engineered wood fiber to gravel. All have pluses and minuses, and local knowledge of what works in other park facilities (such as playgrounds or other high-traffic areas) is critical. For example, artificial turf is great, but it requires cleaning and built in irrigation and sanitizing systems are increasingly common. Natural turf is softer but requires a lot more care – including a plan for renewal, including temporary closures for regrowth. Gravel, rock dust or some sort of crusher fines work well but can get stuck in dog paws and

become dusty in drier climates or seasons. Regular mulch or engineered wood fiber is increasingly used in playgrounds, but needs to be replaced often, depending on the usage patterns.

- **AN ALTERNATIVE** to fenced and gated sites are areas that are subject to time restrictions for off-leash use. Prime examples are Long Meadow in Prospect Park, Brooklyn, NY, or Boston Common, which have off-leash rotating areas depending on the time of the year. These parks set out specific areas as well as specific times of day for off-leash usage.
- **DOG WASTE PLAN** (bag dispensers and trashcans) – A key requirement of any dog park is dealing with dog waste, as well as general trash and recycling. All dog owners should be strongly encouraged to bring their own bags (you never know where a dog will poop!) and be encouraged to “pack it out,” to minimize the impact on the dog park as well as the ongoing maintenance and operations for the parks department.
- **A DESIGN TO ENCOURAGE MOVEMENT.** We’ve heard from many dog trainers and public health officials that a key ingredient in developing good park areas are designs that keep dogs and their people moving in the off-leash area. Many people might think that unclipping your dog’s leash once inside the double gate and plopping oneself down on a bench is all you need to do. Nope. Dogs are pack animals and love to socialize, but also need to be managed by their owners. We all need exercise, and areas for object chasing, agility and other forms of activity, mixed with socialization, are a key contributors to a great dog park.

2. Make sure your dog park is open and inviting.

Try to make your dog park inviting to everyone, not just dogs and their owners or walkers. As many case studies have shown, having a good working relationship with neighbors is critical to the success of any dog park. While welcoming elements might be considered frills, it is important to think about what makes your favorite park inviting and welcoming, as many of the same rules apply.

- **WATER FOUNTAINS OR FEATURES** for humans and pups. Having a source of water, especially in warmer climates, is key. Dogs can get overheated

easily, and we all want everyone to stay hydrated and safe.

- **SEATING FOR HUMANS.** Generally, it is a good idea to keep people and their dogs moving, but everyone needs a break. Having seating is good; it can often double as an agility feature.
- **PARKING AND BIKE RACKS.** Not everyone can walk their dog to the park; some people need to come via other means.
- **SHADE.** In general, we need trees in our parks, and dog parks are no exception. Alternatives can include shade structures, like those increasingly found shading playgrounds in warmer climates.
- **SIGNAGE.** It is very important to post clearly at dog park entrances the park’s hours, rules, volunteer opportunities, and opportunities for joining friends-of-the-park or dog park groups.
- **VISUAL ATTRACTIVENESS, ESPECIALLY FROM OUTSIDE THE PARK.** It is important to be a good neighbor to the rest of the park, the adjacent street, and local residents and businesses. Improvements such as flower plantings, attractive street fencing, and artwork are always welcome and are ways that the local friends group can make a difference in the upkeep of the park. One of the authors passes his community dog park going to and from the subway each day, and it’s a lively place with dogs and their people socializing, playing together, and engaging with passersby. (There’s a set of athletic fields and a very busy hike-and-bike trail in the immediate vicinity.)

3. Be open and communicative.

Be sure to cast a wide net and work with likely as well as unlikely allies as you work to plan, build, and run your dog park.

GROUPS FAVORING DOG PARKS should reach out to the city’s parks department to determine if there are ordinances as well as design standards (including the elements mentioned above) that need to be followed in order to create a dog park.

Groups favoring dog parks should also reach out to current users of the park, and local community leaders, to understand the history of the community and the park, prior and current park uses, and other possible plans or efforts for the park that may be

already underway. This identifies the issues and concerns of individuals or other groups, and allows all players to engage in the process with their eyes fully opened.

Public parks agencies should seek input from groups that may, at first glance, not seem to be allies. These can include:

- **PUBLIC ANIMAL MANAGEMENT AGENCIES AND SHELTERS.** These agencies can be sources of information—for example about runaways or stray dogs, dogs chained in yards, dog bites, dog adoptions, and other issues—and help by identifying potential allies of dog parks or the benefits of building one. They can provide programming, including adoptions, run-with-a-dog programs, onsite health clinics, obedience classes, licensing, and vaccinations. (All of these efforts can go a long way in addressing issues that often come up in news reports, including sick dogs, misbehaving dogs, or conflicts with dog owners.)
- **COMMUNITY-BASED DOG-ADVOCACY GROUPS.** These groups are often breed-specific or rescue-oriented. Community and other friends groups can be critical to the success of a dog park. In fact, a number of public park agencies require a friends group to help maintain and manage the dog park, or even to raise money for construction, maintenance, or improvements. More than any other partner, these groups, made-up mostly of volunteers, assume a strong ownership role in the park, helping to maintain standards of behavior and cleanliness, keeping “eyes on the park,” and managing community and park-agency issues on a regular basis.
- **NONPROFITS INVOLVED IN DOG WELLBEING.** These include adoption agencies, low-cost spay and spay-and-neuter clinics, animal shelters, area veterinarians, affinity groups, agility and obedience trainers, and more. Like the animal management agencies and shelters, these organizations are a great source of programming, both at the dog park and offsite, and can help educate dog owners and promote positive activation of dog parks.

4. Embrace the standards.

Many city parks departments have developed standards and master plans for dog parks. But even when

standards and plans are in place and other dog parks are already established, it is important for groups to reach out and communicate proposals and plans for a new dog park. Although the expenses associated with community outreach, collaboration, and coalition building can seem high, these investments are essential to establishing and maintaining a successful dog park. We’ve provided a case study below to show how.

Case Study: RUFF and the DeFillippo playground and dog park in the North End, Boston.

RUFF (Responsible Urbanites for Fido) began in response to increased complaints about dogs and dog owners in the North End neighborhood of Boston. The North End is a close-knit and tightly packed neighborhood that has been an Italian-American for several generations and, prior to that, was home to successive Irish Enclave and a Jewish communities, all these changes coming in the last 100 years. RUFF began to organize and help address issues related to dogs, including the use of leashes in parks, volunteer efforts to clean-up parks frequented by dogs and their owners, and raising funds to pay for Mutt Mitts and other supplies.

About 2015, the group began looking for public spaces to put in a pilot dog park, working closely with the Boston Parks and Recreation Commission as well as local community groups. Of all of the parks in the neighborhood, they ended up with what they thought was their last choice. The site was on multiple levels in and around the DeFlippo Playground. The park has historically been known as “Gassy,” from the days when a giant aboveground gas tank stood in the middle of the neighborhood. But, it was site for a dog park, and RUFF saw a great opportunity.

The group raised some funds and embarked on a pilot project. They purchased fencing for the site and had it installed, complete with gates that had to be manually locked and unlocked daily. To do this, they rotated through volunteers for the first few months. With a little fundraising, they installed automatic gates that unlocked in the morning and locked automatically at closing.

Through the pilot, which lasted several years, RUFF worked to address ongoing issues (like excessive barking and dog waste), held gatherings that offered education and services (licensing, dog wash, vet check-ups), and continued coordinating with both neighborhood organizations and the public parks agency. Over time, the group raised additional funds and worked out the details to build a permanent dog park, complete with artificial turf, irrigation to clean and disinfect the turf in season, additional play and safety features, and improvements to the pilot elements, including fencing.

The park opened in the spring of 2018. In the meantime, RUFF volunteers continue to do what they have been doing for the past four years: addressing neighborhood issues, daily maintenance and operations (shoveling snow, cleaning steps, and small repairs), and, most importantly, enjoying the park.

5. Unique features, cool features, ideas and suggestions for dog parks.

Off-leash dog parks are not just for playing, walking, and running. Facilities for swimming, agility and more are being added to public dog parks in cities across the United States. We have highlighted a selection and will be adding to this list on *parkology.org*. We invite your contributions as well.

- First dog park in NYC – Tompkins Square Park (https://en.wikipedia.org/wiki/Dog_park)
- Millie Bush Dog park – Houston, TX – <http://www.pct3.com/dog-parks/millie-bush-dog-park>
- Laurel Canyon Dog Park – Los Angeles – <https://www.laparks.org/dogpark/laurel-canyon>
- Bear Creek Dog Park, Colorado Springs, CO – <https://communityservices.elpasoco.com/parks-and-recreation/bear-creek-dog-park/>
- Montrose Beach Dog Park, Chicago – only beach where dogs are allowed (in many parts of the northern US, dogs are often excluded from beaches from memorial day through labor day) – <http://mondog.org/>
- Prospect Park, Brooklyn, NY – <https://www.prospect-park.org/visit-the-park/things-to-do/dogs/>
- Bark Park at Heritage Park, Henderson, NV – <http://www.cityofhenderson.com/henderson-happenings/>

[parks-and-trails/locations-and-features/bark-park-at-heritage-park](#)

6. Sample standards and policies for dog parks

Here are some examples of policies and / or standards that have been created by public agencies for dog parks.

- Ann Arbor, MI: <https://www.a2gov.org/departments/Parks-Recreation/play/Documents/Recommendations%20and%20Guidelines%20for%20Dog%20Park%20Site%20Selection%20updated%204-10-15.pdf>
- American Kennel Club: <http://images.akc.org/pdf/GLEGo1.pdf>
- City of Norfolk, VA Dog Park Criteria: <https://www.norfolk.gov/DocumentCenter/View/1531>
- CityLab – The Anatomy of a Large Dog Park: <https://www.citylab.com/life/2017/04/how-to-design-the-best-dog-park/522870/>
- District of Columbia – Dog Park Design Guidelines: https://dpr.dc.gov/sites/default/files/dc/sites/dpr/publication/attachments/dpr_DogParkDesignStandards.pdf
- Raleigh, NC Dog Park Study: <https://www.raleighnc.gov/parks/content/ParksRec/Articles/Projects/DogParkStudy.html> and final report: <https://publicinput.com/dogparks>
- Separating small and large dogs in dog parks: <https://www.dog-on-it-parks.com/blog/dog-park-design-cosiderations-large-small-dog-areas/>
- Ten tips for planning and building a dog park: <http://www.doodycalls.com/blog/ten-tips-for-planning-and-building-a-dog-park-in-your-community/>
- PetSafe: <https://www.petsafe.net/learn/how-to-design-a-dog-park>



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: April 5, 2021
SUBJECT: Award Design Consultant for Charlotte Street Rehabilitation Project
ACTION PROPOSED: Approve Design Consultant Selection
ATTACHMENTS: 1. Proposal for Services
PRESENTED BY: Ellen Hilbig, Deputy Public Works Director

AGENDA ITEM DESCRIPTION:

During the 2021 budget appropriation, Public Works identified Charlotte Street between Letford Elementary and Parish Park as an ideal candidate for a street Rehabilitation project. Staff will work with a design consultant to evaluate the current right-of-way which includes a 50ft pavement width with sidewalks on each side and number of challenging intersection configurations. The design consultant is tasked with presenting two roadway configuration alternatives to the community for input on use and overall vision. The project will include the replacement of aged utility infrastructure including sewer and water lines as well as extending the Old Town stormwater design along Charlotte Street to continue addressing surface flooding issues. The project will also evaluate utilizing similar aesthetic improvements to the pavers and bump outs to facilitate safe pedestrian crossings that were installed in 2013 along the section of Charlotte Street adjacent to Parish Park.

Charlotte Street is a unique opportunity as it is adjacent to SH 60 and provides sufficient ROW width to explore multimodal transportation options such as a dedicated bike routes and wider sidewalks to increase safety and walkability. Letford Elementary is planned to become a future community park allowing for Charlotte Street to evolve into a park-to-park connection that can facilitate community events as well as develop into a future parade route.

The Town recruited Tait & Associates Engineering to provide a proposal to perform the design for Charlotte Street due to their knowledge of the design area and the successful working relationship developed on the Old Town Street and Drainage Rehabilitation project. The project has a restricted design schedule of 6 months in order to meet the September 3rd DOLA application deadline for the Energy/Mineral Impact Assistance Fund Grant (EIAF).

The goal is for the design to be 90% complete by August when Staff applies for the \$1,000,000 matching EIAF grant through DOLA during the 2021 grant application process. Staff believes that the Charlotte Street Rehabilitation project qualifies as a strong contender to be awarded grant funds. If the Town applies in August and is awarded the grant by December, construction would be anticipated to started at the beginning of 2022.

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Tait & Associates Engineering provided a proposal cost of \$445,512 to complete the project in the limited design window that exceeded the \$400,000 budgeted for the project in 2021 by \$45,512. Staff will bring a formal budget amendment to address the additional funds to Council later this year to adjust what is required for this project, if it is necessary.

Town of Johnstown Comprehensive Financial Management Policies.

11. Exemptions from Public Bidding. The Town recognizes the need to use outside sources for providing Professional Services, constructing Capital Projects (vendors and contractors) and for providing services for day-to-day operations and maintenance. The Town requires staff to solicit bids for any purchase of goods over \$50,000, per engagement or annually. This requirement may be waived by the Town Manager for ongoing service contracts where the past experience related directly to the Town is a compelling reason to continue a service contract from year to year. Selection of vendors, contractors or consultants may be based on past experience with the Town, knowledge of the Town and region, philosophy of the nature of the job, availability of time, quality of product, quality of service and material, maintenance, warranties, price and other such criteria as deemed appropriate for a particular public project. The Town recognizes the following exemptions for the Public Bid Process:

- a. Professional Services. This purchasing policy shall not apply to professional services and the requirements shall not be mandatory in the employment of professional services. Professional services include, but are not limited to the following: Attorneys, Bond Counsel, Certified Public Accountants/Auditors, Consultants, Engineers, Financial Advisors, Physicians and Real Estate Brokers. The Council may award these services as desired and at their discretion. The staff shall use the following criteria when applicable and necessary, based on specific project that includes:
 - 1. Past experience in performing the services requested;
 - 2. Responsiveness to the needs of the Town, with respect to time to complete the project, the approach to the project, and anticipated design concepts offered
 - 3. Responsibility and experience in dealing with municipal governments and projects of similar size, scope and nature;
 - 4. The professional's engagement team, including the experience and resumes of key personnel assigned; and
 - 5. Results of reference checks and past performance for other clients.

LEGAL ADVICE:

The Town will utilize its Standard Professional Services Agreement for this Design.

FINANCIAL ADVICE:

Staff budgeted \$350,000 in the Streets & Alley Fund and \$50,000 in the Drainage Fund for a total of \$400,000. The design proposal cost came in at \$445,512 exceeding the budgeted amount by \$45,512. Staff will bring a formal budget amendment to address the additional funds to Council later this year to adjust what is required for this project, if it is necessary.

RECOMMENDED ACTION:

Approve selection of Tait & Associates Engineering as the design consultant for the Charlotte Street Rehabilitation project in order to meet the design schedule required to apply for the 2021 DOLA grant and authorize the Town Manager to sign the Professional Services Contract with Tait & Associates Engineering for the Contract amount of \$445,512.

SUGGESTED MOTIONS:

For Approval: I move to award Tait & Associates Engineering as the design consultant for the Charlotte Street Rehabilitation project and authorize the Town Manager to sign the Professional Services Contract with Tait & Associates Engineering for the Contract amount of \$445,512.

For Denial: I move to deny the selection of Tait & Associates Engineering as the design consultant for the Charlotte Street Rehabilitation project and proceed with competitive bids.

Reviewed and Approved for Presentation,



Town Manager

March 18, 2021

Marco Carani
Director of Public Works
Town of Johnstown
450 S. Parish
Johnstown, CO 80534

**PROPOSAL FOR PLANNING AND ENGINEERING SERVICES FOR THE TOWN OF
JOHNSTOWN'S CHARLOTTE STREET REHABILITATION IMPROVEMENTS**

Mr. Carani:

Tait & Associates, Inc., Design Concepts, Kellar Engineering, and Underground Consulting Solutions are excited to support the Town of Johnstown with roadway, landscape, drainage, and utility reconstruction along the Charlotte Street Corridor from Columbine Avenue to Jay Avenue. This proposal is based on our site walk with you where potential alternatives for the corridor were discussed and additional correspondence since that time. The efforts on the Old Town Street and Drainage Rehabilitation Project have also provided us with a good basis for understanding of the Town's expectations for drainage and street layout concepts.

Attached is a scope of services and cost breakdown for planning and engineering services anticipated. These efforts will take the project from concept development to final construction documents for the project. Do not hesitate to contact us with any questions or concerns.

Very truly yours,
TAIT & Associates, Inc.



Alex Hoime, PE
Vice President

Agreed & accepted by:
Town of Johnstown

Matt LeCerf
Town Administrator



CHARLOTTE STREET CONCEPT DEVELOPMENT

SCOPE OF SERVICES

Phase 1: Concept Design and Investigation

Task 1 - Concept Design, Meetings, and Preliminary Cost Estimate: TAIT, Kellar, and Design Concepts will review existing information available on the project. Based on the initial research, site aerials, and communication with Town Staff, concept plans and exhibits will be prepared to depict 2 alternative design scenarios. Deliverables with each of these options include the following:

- Colored Site Plan Layouts
- Colored Cross Sections
- Preliminary Utility and Drainage Layout
- Rough Order of Magnitude Cost Estimate

Task 2 - Field Survey – Roadway and Utilities: TAIT will perform a detailed field survey of the existing road and utility infrastructure improvements. Survey data will be collected for all existing surface improvements, including drives, sidewalks and access drives within and adjacent to the area of work. Sub-surface utility locations will be marked by our utility locate subconsultant. Potholing will be performed at locations of crossings. This effort will include evaluation of the following features:

- Existing surface conditions, curb & gutter, returns, sidewalks, ramps
- Existing water, sewer, storm drainage, and dry utility improvements in the Right of Way
- Right of Way issues / visible encroachments
- Horizontal & Vertical alignments

Phase 1: Concept Design and Investigation _____ **\$78,687**

Phase 2: Construction Documents

Task 1 - Project Management, Meetings, and Scoping: TAIT & Associates, Inc. (TAIT) will research, investigate and review existing documents, studies and reports relevant to the project. In addition, TAIT will review base information available from the Town before commencement of field or design work. TAIT will meet with Town staff to identify background information and incorporate staff suggestions, recommendations and other requirements. TAIT will be available for meetings throughout the design stage to ensure the design proposed will meet the intent of the Town Staff.

Task 2 - Potholing and Supplemental Survey: Upon furthering of the design, utility crossing locations will be more refined allowing for potholing to occur in the known areas of potential conflicts. TAIT will work with Underground Consulting Solutions (UCS) perform a detailed field survey of the existing utility infrastructure. Survey data will be collected for the exposed utilities. In addition to utilities, TAIT will collect survey at critical grade tie in locations as determined by the initial design.



Task 3 - Drainage Analysis: TAIT will perform a drainage analysis to define drainage basins and establish the sizing and placement of inlets within the project. The infrastructure installed with the Old Town project will be utilized to pass flows to the downstream infrastructure. Existing drainage patterns will be preserved where possible to not further create downstream issues.

Task 4 - Storm Drain Plan and Profile Design: Based on the information obtained in the Topographic Survey, evaluation performed in the Drainage Analysis, and further analysis performed as a part of the Phase 2 Drainage Analysis, TAIT will lay out the horizontal and vertical alignment of the proposed drainage system. Careful attention will be paid to crossing utilities, obstructions, adjacent utility alignments, and cover. Crossings will be labelled showing clearance anticipated based on locates and potholing. Precise descriptions and details will be provided within the plans to ensure accuracy in bidding and throughout construction.

Task 5 - Charlotte Street Redesign Plans: Charlotte Street is proposed to be removed and replaced from Jay Avenue to Columbine Avenue. TAIT will delineate the extent of removal to allow for adequate tie-ins to the adjacent properties. The proposed roadway will be designed to connect to existing improvements within 50 feet of each intersection. Public Right-of Way Accessibility Guidelines will be followed to provide a safe and accessible pedestrian pathways throughout the project. Eight intersections will be fully detailed with precise grades for transitions to existing and accessible pathways. It is understood that the existing school at the west end of the project is being removed. Deliverables included with this task include the Roadway Plan, Street Plan and Profile, Intersection Grading Details, Demolition Plans, Signage and Striping Plans, and Erosion Control Plans.

Task 6 - Water Main Replacement Plan: TAIT will develop the design drawings for a half mile of water main replacement. Special attention will be given to water and sewer line separation distance along with storm drainage improvements. Connections to existing mains will be evaluated along with the location of fire hydrants, meter pits and other small wire utilities and features.

Task 7 - Sanitary Sewer Main Replacement Plan and Profile: TAIT will develop the design drawings for a half mile of sanitary sewer main replacement. Existing sewer laterals will be connected at the Right of Way limit and be redirected to the proposed main. Location of the sewer will be set based to allow for efficient phasing of the lateral reconnections.

Task 8 - Dry Utility Coordination: Coordination with providers of gas, electric, and communication service will be performed throughout the project to accommodate required relocations, lowering, and undergrounding of overhead lines. Replacement of light poles along the corridor is also anticipated.

Phase 2: Construction Documents _____ **\$338,904**



Phase 3: Project Manual and Bidding Coordination

Task 1 - Project Manual, Special Conditions, and Engineers Estimate: TAIT will prepare a project manual using CDOT Specifications for Road and Bridge Construction in conjunctions with Johnstown's specifications for water and sewer. The manual will include a project specification, measurement and payment sections, contract documents, special conditions, Stormwater Management Plan, and a bid tabulation summary for the project. TAIT will also prepare an Engineers Cost Estimate for the project.

Task 2 - Bidding Coordination: TAIT will provide support for the Town during the Bid process. TAIT will be available to respond to questions during bidding, attend a pre-bid meeting, and evaluate bids for completeness.

Phase 3: Project Manual and Bidding Coordination _____ **\$25,920**

FEE SUMMARY

Phase 1: Concept Design and Investigation	\$78,687
Phase 2: Construction Documents	\$338,904
Phase 3: Project Manual and Bidding Coordination	\$25,920
Reimbursables	\$2,000

Total Cost: \$ 445,512

CONDITIONS, ASSUMPTIONS, AND EXCLUSIONS

The following conditions, assumptions, and exclusions are an integral part of this proposal:

- 1) The Town will provide record data of all infrastructure within the limit of work, as available.
- 2) Survey will not be required for the Concept Planning effort. Concepts will be based on available aerial information and record platting. Survey will be gathered as the
- 3) A traffic study has not been included in our fees.
- 4) Architecture, geotechnical evaluations, mechanical engineering, structural engineering, electrical engineering, construction consulting, staking, as-built survey, and other related trades not specifically mentioned in this proposal are excluded from this proposal and not a part of our services.
- 5) The consultant will be utilizing all Town and County information made available for this project. We assume that the Town will support the consultant for any data required, either in the form of archived reports or studies or request for information from Weld County, as required.
- 6) If conditions materially change during the course of this project, we reserve the right to re-negotiate this contract to reflect the changed conditions.



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE:	April 5, 2021
SUBJECT:	Award Equipment Purchase.
ACTION PROPOSED:	Consider Awarding Low Point Expansion Project Equipment To: Huber Technology Inc Hydro International Suez WTS Systems USA Inc Aerzen USA Trojan UV Fournier Inc
ATTACHMENTS:	1. Spreadsheet of bid and bidders
PRESENTED BY:	Marco Carani, Public Works Director

AGENDA ITEM DESCRIPTION:

Enclosed for Council review and consideration is a request for award on multiple pieces of equipment for the Low Point Expansion Equipment Purchase.

As Town Council is aware, Staff has been working with Aqua Engineering on the Low Point Expansion Project. The goal of this project is to upgrade and expand capacity of the existing plant to handle existing and future development in the 2534 area. The Town budgeted \$15,000,000 in FY2021 for the expansion of the Low Point Wastewater Treatment Plant.

Due to the fact that treatment equipment is limited to certain qualified vendors, the bid was issued by invitation only and provided to eight pre-qualified bidders: Smith& Loveless, Hydro, Huber, Suez, Dupont, Schwing, Fournier and Ovivo. These Vendors were selected by Staff to provide the best product for our community's needs. All eight of the pre-qualified bidders submitted bids on multiple pieces of equipment. After review of bids and performance of an equipment qualifications analysis by Aqua Engineering, Ramey Environmental (Town's ORC) and Town staff, the selection was narrowed down to the following bidders.

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The vendors Staff requests to proceed with issuing Notice of Award to are as follows:

Huber Technology Inc	Screening Equipment	\$427,750.00
Hydro International	Grit Equipment	\$251,500.00
Suez WTS Systems USA Inc	MBR Equipment	\$1,035,250.00
Aerzen USA	Blower Equipment	\$423,000.00
Trojan UV	UV Equipment	\$326,454.00
Fournier Inc	Dewatering Equipment	\$621,297.00
Total		\$3,085,251.00

Based on the bids received, Staff recommendation is based on the best product that has a proven track record for performance and reliability.

LEGAL ADVICE:

Not Applicable

FINANCIAL ADVICE:

In FY 2021, \$15,000,000 was budgeted and approved for this project. Remaining funds will be used for the construction phase of the project

RECOMMENDED ACTION: Staff recommends awarding these equipment purchase contracts to the vendors listed above. For a total amount not to exceed \$3,085,251.

SUGGESTED MOTIONS:

For Approval: I move to authorize the Town Manager to sign the purchase agreements as necessary for the Low Point WWTP expansion equipment as presented for a total not to exceed \$3,085,251.

For Denial: I move that we deny awarding a contract and solicit more bids for this project.

Reviewed and Approved for Presentation:



 Town Manager

Johnstown Low Point WWTP Expansion- Equipment Selection
 Proposal Evaluation
 HEADWORKS SCREENING EQUIPMENT - BID ITEM #1

Item	Evaluation Criteria	Weighted Value	Huber		Ovivo		EnviroCare	
			\$427,750		\$467,231		\$243,993	
			Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score
1	Operability	2.0	5	10	5	10	2	4
2	Installed Capital Cost	3.0	3	9	2	6	5	15
3	Operation and Maintenance Costs	2.0	4	8	5	10	3	6
4	Experience and References	1.0	5	5	3	3	5	5
5	Local Service	0.5	4	2	4	2	4	2
6	Warranties	1.5	3	4.5	4	6	5	7.5
7	Owner's Preference	2.0	4	8	5	10	2	4
			Total	47	Total	47	Total	44

Exceptions:

Notes:

Operability: Scoring is based on the capture rate (Huber has the highest, third-party verified CR). Envirocare submitted on a smaller diameter screen resulting in higher headloss
 Capital Cost: See Evaluation spreadsheet
 O&M Cost: See Evaluation spreadsheet
 Experience and References: Ovivo Ozzy Cup is a relatively new product with limited references
 Local Service: All manufactureres have established and reputable local representation. Service typically out of regional centers.
 Warranty: Huber offers a 12 month warranty. Ovivo and Envirocare are close with 6 months of additional warranty for Envirocare
 Spriac bid was non-responsive

2021.02.17 - Town Workshop Notes:

Huber

Repairs are more expensive for Huber,
 Service will be good.
 Greater experience/references
 Huber will have smallest future O&M cost

Consensus is to proceed with Huber

Ovivo

Conveyor for the Ovivo is a disadvantage
 96% capture rate (3% greater than Huber)
 2 more motors tha Huber (Separate screen/washer compactor)
 Ovivo maintenance is better than Huber (Huber requires a crane)

Johnstown Low Point WWTP Expansion- Equipment Selection

Proposal Evaluation

GRIT REMOVAL EQUIPMENT - BID ITEM #2

Item	Evaluation Criteria	Weighted Value	Huber - Vormax		Huber - Grit Wolf		Smith and Loveless		Hydro International	
			\$285,390		\$385,896		\$202,798		\$251,500	
			Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score
1	Operability	2.0	2	4	5	10	5	10	5	10
2	Installed Capital Cost	3.0	3	9	2	6	5	15	4	12
3	Operation and Maintenance Costs	2.0	4	8	3	6	4	8	5	10
4	Experience and References	1.0	2	2	1	1	4	4	4	4
5	Local Service	0.5	5	2.5	5	2.5	5	2.5	5	2.5
6	Warranties	1.5	5	7.5	5	7.5	5	7.5	5	7.5
7	Owner's Preference	2.0	4	8	4	8	4	8	5	10
			Total	41	Total	41	Total	55	Total	56

Exceptions:

Notes:

Operability: Removal efficiency and overall complexity major factors
Installed Capital Cost See Evaluation Sheet
O&M Cost See Evaluation Sheet
Experience and References: Huber has limited references.
Local Service: Local supplier representatives w. regional/national service centers.
Warranties: Same warranty offered from all vendors.

2021.02.17 - Town Workshop Notes:

Huber

S&L

S&L and Hydro claim the same removal

Hydro

Grit King (like the tea cup unit)

Less moving parts than S&L

Johnstown Low Point WWTP Expansion- Equipment Selection

Proposal Evaluation

MBR - BID ITEM #3

Item	Evaluation Criteria	Weighted Value	Kubota		Memcor		Suez	
			\$1,364,900		\$1,019,979		\$1,035,250	
			Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score
1	Operability	2.0	4	8	5	10	5	10
2	Installed Capital Cost	3.0	2	6	5	15	5	15
3	Operation and Maintenance Costs	2.0	2	4	5	10	5	10
4	Experience and References	1.0	5	5	3	3	5	5
5	Local Service	0.5	5	2.5	4	2	5	2.5
6	Warranties	1.5	4	6	5	7.5	5	7.5
7	Owner's Preference	2.0	3	6	4	8	5	10
			Total	38	Total	56	Total	60

Exceptions:

Notes:

Johnstown Low Point WWTP Expansion- Equipment Selection

Proposal Evaluation
BLOWERS - BID ITEM #4

Item	Evaluation Criteria	Weighted Value	Aerzen		Inovair	
			\$423,000		\$588,500	
			Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score
1	Operability	2.0	5	10	5	10
2	Installed Capital Cost	3.0	5	15	2	6
3	Operation and Maintenance Costs	2.0	3	6	5	10
4	Experience and References	1.0	5	5	3	3
5	Local Service	0.5	4	2	4	2
6	Warranties	1.5	3	4.5	5	7.5
7	Owner's Preference	2.0	4	8	4	8
			Total	51	Total	47

Exceptions:

Notes:

United bid was non-responsive

Johnstown Low Point WWTP Expansion- Equipment Selection

Proposal Evaluation

UV DISINFECTION - BID ITEM #5

Item	Evaluation Criteria	Weighted Value	Wedeco		Trojan	
			\$236,070		\$326,454	
			Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score
1	Operability	2.0	4	8	5	10
2	Installed Capital Cost	3.0	5	15	2	6
3	Operation and Maintenance Costs	2.0	4	5	5	10
4	Experience and References	1.0	3	3	5	5
5	Local Service	0.5	3	1.5	5	2.5
6	Warranties	1.5	4	6	4	6
7	Owner's Preference	2.0	3	6	5	10
			Total	45	Total	50

Exceptions:

Notes:

Johnstown Low Point WWTP Expansion- Equipment Selection

Proposal Evaluation

DEWATERING EQUIPMENT - BID ITEM #6

Item	Evaluation Criteria	Weighted Value	Fournier		Huber		Prime Solution		Trident		PW Tech		Schwing	
			\$621,297		\$593,746		\$777,073		\$468,750		\$525,000		\$482,061	
			Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score	Impact Value (1 to 5)	Score
1	Operability	2.0	5	10	5	10	5	10	4	8	5	10	5	10
2	Installed Capital Cost	3.0	3	9	4	12	2	6	5	15	4	12	4	12
3	Operation and Maintenance Costs	2.0	5	10	3	6	3	6	3	6	3	6	3	6
4	Experience and References	1.0	4	4	4	4	4	4	3	3	5	5	2	2
5	Local Service	0.5	5	2.5	5	2.5	5	2.5	5	2.5	5	2.5	5	2.5
6	Warranties	1.5	4	6	2	3	5	7.5	4	6	4.5	6.75	4	6
7	Owner's Preference	2.0	5	10	4	8	4	8	4	8	4	8	4	8
			Total	51.50	Total	46	Total	44	Total	49	Total	50.25	Total	47

Exceptions:

Notes:

Operability	No spare part issues, simple solenoid valves need replacement No major complaints about operations. To Easy controls				
Installed Capital Cost	Installed costs computed relative to the lowest cost.				
Operation and Maintenance Costs	Lowest O&M Cost	One of highest costs	One of lowest costs	Highest cost	Middle of pack
Experience and References	All references contacted provided positive feedback. PW Tech has many more installations than the others.				
Local Service	All suppliers have local, legitimate equipment reps that provide service. All references stated that local service has never been an issue.				
Warranties	Standard warranty is 24 months following commissioning, or 36 months after delivery. Huber did not meet these requireemnts. Prime Solutions and PW Tech provided warranties above and beyond the requirements.				
Owner's Preference	Operations has positive experiences with Fournier and Huber. These are the operation staff's preferences. Town has had poor experience with the existing Prime Solutions system, so it scored low. Trident lacks the local and similiary installation resume compared to the other more established suppliers. Operations staff has never worked with PW Tech or Schwing, so there is a learning curve and a lesser preference towards these units. Fournier has room for expansion and can more easily handle the lower flows.				

Product	Vendor	Vendor	Vendor	Vendor	Vendor	Vendor
Screening	Huber \$427,750	Ovivo \$467,231	EnviroCare \$243,993			
Grit Removal	Huber - Vormax \$285,390	Huber - Grit Wolf \$385,896	Smith and Loveless \$202,798	Hydro International \$251,500		
MBR	Kubota \$1,364,900	Memcor \$1,019,979	Suez \$1,035,250			
Blower	Aerzen \$423,000	Inovair \$588,500				
UV Disinfection	Wedeco \$236,070	Trojan \$326,454				
Dewatering	Fournier \$621,297	Huber \$593,746	Prime Solution \$777,073	Trident \$468,750	PW Tech \$525,000	Schwing \$482,061

Summary Sheet - Selected Equipment and Associated Cost:

Vendor	Huber	Hydro International	Suez	Aerzen	Trojan	Fournier	Total Equipment
Total Cost (includes submittal cost)	\$427,750	\$251,500	\$1,035,250	\$423,000	\$326,454	\$621,297	\$3,085,251



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	April 5, 2021
SUBJECT:	Change Order for South Storage Water Tank
ACTION PROPOSED:	Consider Change Order for the South Storage Water Tank
ATTACHMENTS:	1. Revised Tank Quote 2. Painting and Coating Quote
PRESENTED BY:	Marco Carani, Director of Public Works

AGENDA ITEM DESCRIPTION:

Enclosed for Council review and consideration is a change order associated with the South Storage Water Tank in the FY 2021 Water Fund Budget. The change order is related to the repairs which are ongoing to replace the roof on this facility.

On March 1, 2021 Council approved the removal and installation of a new roof on the south water storage tank located at the Water Treatment Plant. The budget appropriated in FY 2021 was \$150,000 and Council approved for this work to be completed in the amount of \$129,000. During the meeting, Council also permitted for the remaining balance of the funds to be used for the inner coating of the Tank. When the work began, the storage tanks were drained and inspected. During this inspection, more deterioration of the south tank was found and damage to the north tank was also identified during cleaning operations. To compound the issues, the roof contractor found small amounts of lead primer located on the upper part of tank where the roof needed to be supported and the contractor could not continue with repairs until lead was abated.

Town Staff pursued quotes for the coating of the inside of the storage tank, believing better cost could be identified. Quotes provided by the contractor replacing the roof were for the painting of the roof only and did not include the coating of the inside of the tank. Consequently, when Staff received bids for the coating of the tank it was substantially higher than anticipated. This quote is attached and detailed as one of the cost elements below.

In an effort to bring the Town's Water Treatment Plant back into operation as safely and quickly as possible, Staff used additional funds to make the necessary floor repairs to the North Tank while repairs continue on the South Tank. These repairs to the North Tank totaled \$18,300 and as of April 1, the plant is back online and operating with one storage tank (North Storage Tank) in operation.

This project to replace the South Storage Tank roof has increased in cost significantly. The use of our storage tanks are critical for our water plant; providing additional storage during peak

The Community That Cares

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P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141

demands, it contributes to our chlorine contact time in the system, and assists with pressure in the distribution system.

Based on the increase in costs, to complete the project, Staff is requesting a change order approval from Council in the amount of \$256,815. This brings the total project cost to \$406,815 which would include a \$15,000 contingency. A detail of the costs for this work is described below.

South Tank	
Original roof replacement	\$129,000
Manway replacement	\$15,900
Lead Testing & Abatement	\$40,215
Inner Coating	\$157,500
Painting of roof	\$20,000
Disinfection	\$3,400
Additional patching	\$7,500
South Subtotal	\$373,515
North Tank	
Floor Repair	\$18,300
North Subtotal	\$18,300
<i>Contingency</i>	\$15,000
Total Project	\$406,815

In the FY 2021 budget Staff approved a waterline installation of \$585,000. This line would help to serve the Central Wastewater Treatment Plant. After review of the priorities and needs of the system, Staff is planning to defer this improvement to be completed with the construction of the new Central Wastewater Treatment Plant. The design is expected to be recommended for award later this year and construction will begin in 2023. Consequently, we are requesting and proposing use of these funds to complete the storage tank project without the need for a budget amendment at this time.

LEGAL ADVICE:

N/A

FINANCIAL ADVICE:

Funds are available in the Water Fund to meet this need, but would defer the waterline project to a date in the future.

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RECOMMENDED ACTION: Staff recommends allowing the reallocation of funds in the Water Fund.

SUGGESTED MOTIONS:

For Approval: I move to approve the change order as presented and to complete the South Storage Tank project with a reallocation of Water Funds in an amount not to exceed \$256,815.00.

For Denial: I move we deny the reallocation of funds and request a formal budget amendment to complete this project as presented.

Reviewed and Approved for Presentation:



Town Manager

March 30, 2021

Quotation: 202102_71627b_C

Marco Carani
City of Johnstown
450 S. Parish Ave.
PO Box 609
Johnstown, CO 80534

(O) 970.587.4664
mcarani@townofjohnstown.com

Re: Johnstown Tanks Rehabilitation

Dear Marco,

Coblaco Services, Inc. is pleased to submit the following quotation for the above referenced project. Coblaco Services, Inc. will supply all equipment, labor, and material to perform the following scopes of work:

Prior to start of work:

- Prior to any execution of documents, scheduling and/or mobilization of work the customer shall sign and return a copy of this quote to marcie@coblaco.com.
- The Contractor and Coblaco personnel shall conduct a pre-job meeting to discuss safety, schedule, and detailed scope prior to mobilization.
- Prior to start of work, a Contractor Supervisor and Coblaco personnel shall review the JSA and discuss any known or potential hazards related to the work site or specified scope.
- Personnel shall wear all proper PPE required for the specific task performed.

Owner Site Preparation:

- Owner will provide unrestricted and unobstructed access to both specified work areas for all materials and equipment.
- Owner will drain Tank and perform basic clean-out from the Tank and its interior components. Contractor will sweep and sump out any remaining water.
- All personnel shall have completed any required training and wear all appropriate PPE required for the specific tasks at hand.

Bid Items:

Item No.	Description	QTY	Unit Price	Total Price
1	One (1) 50'x50' Dome Roof Tank: Prepare and paint the interior of existing tank and new steel ceiling	1	\$157,500.00	\$157,500.00
2	One (1) 50' Diameter New Dome Roof Exterior of Bid Item #1 Tank : Prepare and paint the exterior of new dome roof	1	\$20,000.00	\$20,000.00
3	System Testing & Disinfection • Provide necessary disinfection per AWWA C652 Method 2.	1	\$3,400.00	\$3,400.00

March 30, 2021

Quotation: 202102_71627b_C

4	Pitting Repairs: Upper 10' of the tank circumference 1. Apply filler to pitted areas, prior to applying topcoat.	1	\$7,500.00	\$7,500.00
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Method of Procedure:**Interior Coating:**

1. Coblaco Services will mobilize to Tank site, access Tank interiors, perform necessary air monitoring tests, post appropriate confined space permits per OSHA standards and take samples of existing coating materials for initial lead testing procedures.
2. A door sheet will be cut to allow equipment access.
3. Coblaco Services will set-up all ventilation and basic dust control to prevent dust migrations away from Tanks distances greater than 30'-0", rig blasting equipment for start of work.
4. Provide full interior SSPC-SP-10 "near white" blast.
5. Apply one (1) prime coat of Tnemec Series V140 at 6.0-10.0 mils DFT interior blasted surfaces.
6. One (1) "stripe" coat of Tnemec Series V140 all weld seams and crevices.
7. Apply one (1) final coat of Tnemec Series V140 at 6.0-10.0 mils DFT interior blasted surfaces.
8. Holiday test and repair as needed.
9. Re-install door sheet and touch up.
10. Provide final site clean-up to areas around Tanks
11. Demobilize all equipment off Sites.

Exterior Coating:

1. Prepare exterior new steel roof per SSPC-SP10, Near White Blast.
2. Apply one (1) prime coat of Tnemec Series V140 at 6.0-10.0 mils DFT to blasted surfaces.
3. One (1) "stripe" coat of Tnemec Series V140 all weld seams and crevices.
4. Apply one (1) final coat of Tnemec Series 1095 at 4-6 mils DFT interior blasted surfaces.
5. Provide final site clean-up to areas around Tanks
6. Demobilize all equipment off Sites.

Estimated Duration to Complete:

- Four (4) weeks – Does not include unforeseen issues or weather delays.

Notes and Exclusions:

- Coblaco Services, Inc. is a QP-1 & 2 Certified Contractor.
- Due to extreme corrosion, there is a possibility that damage may occur during media blast operations.
- Quotation excludes containment and capture of dust and spent blast abrasive during exterior roof blast preparation.
- Quotation contingent upon exterior roof coating being applied by brush, roller or spray application per applicator discretion.
- Quotation excludes prevailing wage requirements.
- Quotation excludes a bond. A bond can be provided for an additional 3% of quoted price.
- Quotation excludes any necessary heat or dehumidification to properly prepare, apply, and cure materials per manufacturer's recommendations.

March 30, 2021

Quotation: 202102_71627b_C

- Quotation excludes any costs associated with unknown inspection requirements, including but not limited to procurement of unknown equipment and or materials, additional time or manpower needed to perform unknown inspections, or unknown quality reporting documentation.
- Any additional work or stand-by-time will be billed at Coblaco Services' current time and materials rate, unless otherwise specified prior to said work being performed.
- Quotation valid for thirty (30) days.
- Payment terms are net thirty (30) days from date of invoice with approved credit application.



Terms & Conditions:

The quote offered herein for the above-described scope of work supersedes and revokes any and all prior quotes, offers, understandings, or agreements between Buyer and Coblaco Services with respect to such scope of work, and renders all such prior quotes, offers, understandings, or agreements null and void.

Buyer agrees and acknowledges that the quote offered for the above-described scope of work is based solely on the facts and information provided by Buyer to Coblaco Services. By accepting the quote offered for this scope of work, Buyer represents and warrants that Buyer has made a full disclosure of any and all facts, circumstances, and information which may affect the quote offered herein and/or the scope of work. Buyer agrees that, in the event Buyer later expands its work requirements beyond the scope of work described herein, or if Coblaco Services later discovers or encounters information or circumstances not disclosed by Buyer which have the effect of expanding the scope of work, Coblaco Services reserves the right, in its sole discretion, to alter the amounts, terms, and conditions contained in its original quote. Further, Buyer acknowledges that any such increases set forth by Coblaco Services may not be proportionate to the expansion of the scope of work which necessitates such changes. In the event it becomes necessary for Coblaco Services to exercise its right to alter its original quote offered hereunder due to any change to or expansion of the scope of work by Buyer or by the discovery of additional facts or information affecting the scope of work, Coblaco Services shall communicate a revised quote to Buyer which is consistent with the expanded scope of work. Buyer may accept or reject the new quote not later than five (5) business days following the delivery of such revised quote to Buyer. In the event Buyer rejects such revised quote, or fails to accept the revised quote by the deadline described above, Coblaco Services shall, in its sole discretion, elect to either continue the work for Buyer in accordance with the original quote offered and scope of work, or, in the alternative, cease all work. In the event Coblaco Services elects to cease all work, Buyer agrees and acknowledges that Coblaco Services is discharged from any and all obligations to Buyer with respect to the services to be performed in accordance with the original scope of work, and Buyer further agrees to reimburse Coblaco Services for any and all services actually performed and costs actually incurred by Coblaco Services in connection with the original scope of work. Any such reimbursement owed to Coblaco Services by Buyer shall be paid in the same manner, and on the same schedule, as would have been required of Buyer had Coblaco Services completed the scope of work on the date Coblaco Services elected to cease all work.

An invoice will be issued upon completion of the work and not delivery date. Payment terms are net thirty (30) days from date of invoice with approved credit application. If no credit has been established, payment shall be COD and required at pick up. If the balance due is not received within thirty (30) days from the date of the invoice, late fees will then be applied. A service charge of 1½ percent per month will be assessed on all overdue invoices.

If you have any questions, concerns, or require additional information please feel free to contact me at any time.

Sincerely,

A handwritten signature in blue ink, appearing to read "Albert Rangel", is written over a blue horizontal line.

Albert Rangel
Senior Estimator

Coblaco Services, Inc. / American Pipeline Services

Acceptance of Quotation/Terms & Conditions:

Customer Signature: _____ **Date:** _____

TANCO

ENGINEERING, INC.

1400 TAURUS COURT, LOVELAND, CO 80537-3297

WWW.TANCOENG.COM

TEL (970) 776-4200

FAX (970) 776-4300

March 19th, 2021

Marco Carani
City of Johnstown
Johnstown, CO

Dear Mr. Carani,

In response to your request, TANCO is pleased to submit this LUMP SUM price for various repair options on your existing tank (50' diameter x 52.5' tall) at your Johnstown, CO facility. Please reference this proposal in any resulting contract or purchase order.

Price

TANCO's Lump Sum price to provide all materials, fabrication, engineering, field labor, supervision, tools, supplies and equipment required to execute the scope of work is broken out below:

Replace Existing Cone Roof with Umbrella Roof	\$129,000
Repair Existing Damaged MW QTY: 3(Just the Neck, Flange and Cover Plate)	\$15,900
North Tank Floor Repairs	\$18,300
Dealing With Lead Based Paint	\$2,000
Lead Abatement	\$38,215
Total =	\$203,415

Schedule

We estimate that completion of your tank work will take 2 weeks with a 6 person crew working a 5-10's schedule for Option 1. We estimate that completion of your tank work will take 3-4 weeks with a 6 person crew working a 5-10's schedule for Option 2. We estimate that completion of your tank work will take 4-5 weeks with a 6 person crew working a 5-10's schedule for Option 3. Our planned working time is Monday- Friday from 6:00 a.m. – 5:00 p.m. **We can arrive onsite as soon as a PO is received for repair options 1-3. There is an 8 week lead time for the procurement of the aluminum geodome.**

See below the Clarifying Notes, Assumptions, and Exclusions form, as it is an integral part of our proposal.

Please feel free to contact me at (970) 776-4211 if you have any questions or need more information.

Regards,

Keegan Maloney
Project Manager

TANCO'S CLARIFYING NOTES, ASSUMPTIONS AND EXCLUSIONS

1. This proposal is firm for acceptance for 30 days. **Note: Material Costs Subject to Escalation Due to Import Tarrif Implementation by the Government. Material Costs are Price in Effect at Time of Shipment from Material Vendor.**
2. The schedule in this proposal is based on our current workload and is contingent upon receipt of materials as committed to us. Our labor forces and equipment are subject to prior sale.
3. This proposal is based on one move in; one move out for all contractors and subs. Any additional mobilization or shutdown time due to customer will be billed as an extra.
4. Any period of delay due to causes beyond the reasonable control of TANCO will be added to the time for completion of this work.
5. In the event that our work should be stopped periodically for reasons beyond our control, our average cost to shutdown a crew is \$ 1,000 per hour. If we could work part of the day and/or could make up some hours by working late or on Saturday, these costs could be reduced or eliminated.
6. Local building permits or special licenses required for the construction of this tank shall be obtained by others. Costs to provide any extra information (beyond standard submittals) for permitting purposes would be added to our contract price. If "hot work" or other special site permits are required, they must be issued prior to the beginning of a day's work period to avoid delays.

Clarifications

1. We assume that access to the tank site and a suitable work area around the tank will be provided. We also assume that the site is in a well-drained area and that soil conditions will allow our trucks and equipment to move around the area under their own power. If required, the work and storage areas will be kept free of excessive dust, ice, mud, and/or water by others.
2. Purchaser shall provide clear and open space adjacent to the construction site adequate for receiving and storing materials and construction equipment. As a safety precaution, our field construction forces do not operate hoisting equipment or install rigging within 15 feet of live 220 volt electric power lines (larger clear distances are required for lines of higher voltage). If such are present at the time of construction, the cost of moving them or otherwise making them safe will be for the Purchaser's account.
3. The tank is to be cleaned, isolated, and gas freed by others. TANCO is to be notified of any conditions that may present a danger to our crew.
4. We have assumed that once the tank has been cleaned, gas-freed and isolated, any special confined/enclosed spaced requirements will be unnecessary. We would continue to monitor the air both inside and outside of the tank and provide a firewatch per the following clarifying note. Entry/hot work permits also will be obtained as needed and fire extinguishers will be on hand. However, our pricing does not include such items as fresh air gear, air educators, lifelines, special clothing or PPE, warning horns, explosion-proof lights or standby rescue crews.
5. Our proposal does not include a non-working safety watch, fire watch, hole watch, or confined space rescue.
6. Our proposal does not include seal welding of any underside laps of the umbrella roof, cone roof, or existing roof. We have not included any seal welding of roof rafters to roof plate.

7. Our proposal is based on using A36 steel from API Group I.
8. Our proposal is based on using 3/16" thick roof plate.
9. Pricing is based on reusing existing roof appurtenances.
10. Our price does not include post weld heat treatment or stress relieving procedures.
11. Our proposal is based on us being able to reuse the existing center column and top dollar plate.
12. Coating pricing is based on disinfecting only areas where new coating has been applied for each repair option.
13. Our proposal does not include any coating repairs for installation of the aluminum geodome option.
14. Our proposal is based on us being able to reuse the existing top angle and rafter clips/chairs. It has been assumed that the existing rafter chairs have two bolt holes each to bolt the new rafters to and same for the center column dollar plate.
15. Our proposal is based on us being able to safely walk on the existing cone roof to perform our scope of work.
16. Our price does not include piping or valves beyond the exterior flanges on the tank nozzles. New gaskets and bolts have not been included.
17. We plan to use our current weld procedures and welder qualifications. TANCO's standard welding procedures call for all down flat welds to be single pass with E7024 rod. All welds on the tank shell will be made with E6010.
18. We have assumed that there are no special or toxic coatings or linings on the tank interior.
19. Our proposal does not include any coating work.
20. Our pricing for tank coatings only includes costs for the actual tank repairs and does not include costs for coating damages on other surfaces from performing the repair work as we do not know what the extent of the coating repairs is until we complete mechanical repairs.
21. We have assumed that the existing tank materials are weldable. Any cost to assure weldability would be added to our price.
22. Our proposal includes all required AWWA D100 required NDE.
23. TANCO's bid does not include a hydrotest.
24. We have relied on the drawings and specifications provided in developing our price. Any revisions or corrections to the information provided will be evaluated for impact to our quoted price and schedule.
25. Our price is based on receiving the entire project.
26. Taxes have not been included in our price. TANCO will collect taxes at the end of the job, if appropriate.

27. Below are the clarifications, exclusions, and assumptions for the aluminum geodome:

1.2 Design Standards and Certifications

- API 650.
- ASCE 7-16.
- EN 10204 3.1 Metallic products. Types of Inspection Documents.
- EN 485-2. Aluminum and aluminum alloy. Mechanical properties.
- EN 515. Aluminum and Aluminum alloys; wrought products; temper designations.
- EN 573-3. Aluminum and aluminum alloys. chemical composition of wrought products.
- EN 755-9. Aluminum and aluminum alloys. Extruded rod/bar, tube and profiles. Profiles and tolerances.
- ISO 9001.
- CE Marking.

1.3 Design Loads and Criteria

Item	LL(kN/m ²)	Wind (mph)	Seismic	Suspended IFR LL(kN/m ²)	Snow Load (kN/m ²)	Suspended DL(kN/m ²)	Support Type	P/V (" WC)
1	0.72	120	Ss:17% S1:5.6%	0.00	1.68	0.00	Fixed	Atm

Wind Load: Exposure category C

Snow Load: ground snow (Ct=1.2 & Ce=1.0)

Seismic: T:4 , Site Class D

External tension ring required (excluded from price), estimated required S275 200x10mm.

1.4 Materials and alloys

- Struts an Batten Bars: 6082-T6 and 6005-T6.
- Gusset Plates: 6082-T651.
- Triangular Panels and Flashing: 3003-H16.
- Structure Connections: DIN933 SS316 bolt & nuts.
- Batten Bar Gaskets: Silicone.
- Sealant: Silicone.
- Material Finish: Mill.

Thank you for the opportunity to submit this proposal. The above clarifications and comments are intended to communicate the basis of our proposal. TANCO will gladly negotiate changes to best suit your requirements. If there are any questions, or if we can be of further service, please contact us at your earliest convenience. We look forward to working with you in the near future.



Town of Johnstown

INFORMATIONAL ITEMS ONLY

These items are for Town Council information. Any of these items can be discussed if a Councilmember desires.

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Town of Johnstown

Building Permit Statistics

February 2021

Single Family Residential

Issued ytd 11

Commercial

*New Building Issued ytd 3

Other Residential

(basements/alterations/additions)

Issued ytd 15

Other Commercial

* (tenant finish/alterations/additions)

Issued ytd 0

Fees collected at permit issuance**Residential YTD****Commercial YTD**

Construction Valuation	(\$4,891,248)	(\$8,079,449)
Building permit fees	\$34,575	\$54,499
F&F or F&F Credit	\$0	\$0
Paving	\$0	\$0
Water Upgrade	\$0	\$0
Water & Sewer Reimbursement	\$0	\$0
Raw Water Development Fee	59,642	\$109,927
Water Meter	3,195	\$2,446
Water Tap	\$70,807	\$122,180
Sewer Tap	58,080	\$15,370
Sewer Inspection Fee	\$1,100	\$100
Park	\$5,500	\$0
Use Tax	\$57,649	\$123,997
Larimer Use Tax	\$11,238	\$20,585
Open Space Impact Fee	\$13,134	\$0
Library Impact Fee	\$12,628	\$0
Public Facilities Impact Fee	\$17,479	\$61,993
Police Facilities Impact Fee	\$8,063	\$20,936
Transportation Facilities Impact Fee	\$30,547	\$160,855
Traffic Signal	\$0	\$0
School District Fee	\$0	N/A

TOTAL FEES (YTD)

\$373,182

\$692,888

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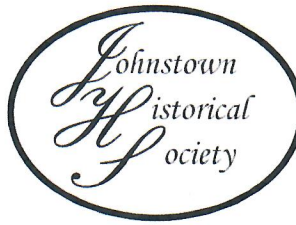
Building permits issued for individual dwelling units - 1991 to (date)

Single family, duplex, 4-plex						
Year	Issued	Month avg		Year	Issued	Month avg
*1961 - 90	165	0.0		2016	132	11.00
1991	2	0.17		2017	140	11.67
1992	5	0.42		2018	126	10.50
1993	7	0.75		2019	87	7.25
1994	47	3.92		2020	108	9.75
1995	106	8.83		2021	11	6.50
1996	145	12.00				
1997	143	11.92				
1998	175	14.58				
1999	145	12.08		TOTAL	5117	
2000	134	11.92				
2001	152	12.67				
2002	262	21.92				
2003	284	24.17				
2004	331	27.67				
2005	375	31.33				
2006	180	15.75				
2007	160	133.42				
2008	97	8.00				
2009	89	7.42				
2010	124	10.33				
2011	184	15.34				
2012	310	25.84				
2013	378	31.50				
2014	272	22.67				
2015	162	13.50				

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March 1, 2021

Matt LeCerf
Town Manager
Town of Johnstown
450 S. Parish Avenue
Johnstown, Colorado 80534

Subject: Museum Director, Initial Progress Report

Dear Matt,

Despite the unprecedented challenges nation-wide on so many levels that would define the year 2020, JHS actually had a great year overall.

We owe that to the Town of Johnstown, new members, and other generous volunteers and donors who reached out to give us a hand up from a bleak outlook after Covid-19 hit hard last spring.

The JHS Board's objective for the museum director's role was to have that person manage the day-to-day operation of the museum by performing the most critical functions of their organization and to work with the Board to grow the museum's presence in the community. The first year would be mostly an investment of time updating and improving on existing policy and procedures, working on rebuilding the Society/Museum website, creating fresh displays, and enacting a plan to increase our volunteer and member retention.

To that end, I remain confident that we are on the right path moving forward. I'm working with the new board on this year's continued transition.

This letter report provides the details of our progress and an outline of this year's goals in the sections that follow.

Respectfully submitted,

Billie DeLancey
Museum Director
Historic Parish House and Museum

1. Purpose

This report serves two purposes. First, the museum director is responsible for providing progress reports to the Town of Johnstown. This initial report highlights Billie DeLancey's activities as the museum Director (MD) from August 2020 through February 2021, along with JHS plans for events and fundraisers this year. Secondly, these reports will serve as a tool for the Board and MD to measure progress over time to ensure we stay on track with our goals.

We're off to a great start!

2. August – December 2020

How We Invested the Town's Funding

In addition to the Town creating a paid position for a museum director to manage the Parish House and Museum, JHS also received grant money to offset lost income last year because of Covid-19 and the forced cancellation of our annual in-person events and fundraisers. The total amount of \$33,552.26 in grant funding to JHS in 2020 basically falls into three categories:

Museum Director and Social Media Coordinator Pay

The Town created a new position for a part-time MD in August and provided an allowance for JHS to hire Karla Humphrey as an independent contractor to carry out the critical function of managing our social media platforms – Facebook and Google Suite. The combined amounts for paid help in 2020 totaled \$10,242.60.

Parish House Building and Grounds

The Town's commitment to paying the Colorado State Historical Fund's (SHF) grant match requirements of 25 percent of each award to JHS has been instrumental in helping to return the Parish House and grounds to its original state of grandeur in the early 1900s. Our current grant is for the engineering design for the replacement of the property's failing retaining walls. The match was \$6,000.00. Typically, the Town has paid the match as the final payment to our architect, but for this grant, the Town paid the match as the first of the three payments to Sheuber + Darden Architects from their first invoice submitted in December. JHS will pay out the remaining SHF grant proceeds to the architect as the remaining deliverables are met. This engineering design/construction documents project will be completed this summer.

Additionally, the Town paid for tree trimming services coordinated by the MD and performed by The Tree Guys of Milliken. For safety reasons, and because the current SHF grant is a "paper" grant with the anticipation of a new grant application submission later this year or in 2022 for the actual retaining walls reconstruction, it will be a few years before the trees can be removed as part of that project. The tree trimming also enhanced the exterior aesthetics of the property as well as brought it into compliance with Town regulations on street tree overhang clearances. This project totaled \$3,600.00.

The MD also managed the first part of a three-year window improvement project by Heritage Window Restoration in Commerce City, a historic building contractor. The remaining three of five original porch screens to the Parish House had been in storage for years. In lieu of storm windows, and because the screens were original to the house exterior, the three existing screens were restored by Heritage Window Restoration, and two more were manufactured to match them for a total of five porch screens. This portion of the project totaled \$5,995.00.

Together, these improvements to the Parish House property under the Town's 2020 budget totaled \$15,595.00.

Last November, mold was discovered in the east basement room at the Parish House. The MD worked with the Town Manager and ServiceMaster of Fort Collins/Loveland to coordinate the remediation. ServiceMaster removed the affected drywall under negative air pressure and used bleach to clean the wall and floor surfaces. This portion of the project totaled \$443.73, which was not included in the 2020 budget, but paid by the Town under a separate invoice.

Given that the wall and wood trim beneath the windows in the room have visible signs of past repair from water damage, and that it has reappeared, the Town Manager and MD agreed to wait until spring 2021 to replace the drywall in the room. The MD will continue to monitor for moisture once the sprinkler system is turned on and the spring rains begin. The Town maintenance crew will complete the drywall installation once we determine the source of the water intrusion, correct it, and ensure that the condition and integrity of the basement wall has not been affected.

Equipment, Supplies, and Digitization Services

Lastly, the Town budgeted an additional \$7,714.66 to be used for equipment, supplies, and digitization services. The MD researched the costs and purchased new office and computer equipment, an upgraded web version of JHS's museum software, archival and office supplies, and sent off our obsolete VHS and audio cassette tapes to be converted to .MP4 format. Having this extra funding available gave JHS the resources to help the MD fulfill her responsibilities at the Parish House.

Reorganize First to Support our Growing Community's Needs

Having a MD to manage the Parish House has changed the dynamics of JHS and the museum operations. It adds value to JHS's and the Town's vision for the downtown area and facilitates the changes needed to ensure sustainable growth for JHS and the Parish House. The MD is also an active participant of the recently created JDDA group and serves as a liaison to the JHS Board in this capacity.

Other initial work performed by the MD during 2020 included supporting the Society's most immediate needs and administrative tasks, assisting with fundraising and events, and working with the Board on internal organizational improvements, starting with the JHS Annual Meeting and Board member elections.

New and Expanded JHS Board of Directors

As a 501(c)(3) non-profit cultural organization, JHS holds an annual meeting each November for the purpose of electing/re-electing the next year's board members to fill vacancies and to present recommended changes to the Society's bylaws. Information is passed along with plans for the upcoming year, and we generally take this opportunity to recognize the hard work and generosity of our volunteers, members, and donors.

When Billie DeLancey started her position as MD in August 2020, she was actively serving as the JHS Board Secretary. Because of the potential conflict of interest this relationship presented, Billie became the Acting Secretary and continued to fulfill her responsibilities until a new Secretary could be elected. As Acting Secretary, Billie supported the Board in the effort to seek out and vet new board members.

The Board aims for diversity in its directors and reached out to five candidates; four of whom accepted an offer to interview with the Board. Interviews were held on October 7, 2020 at the Parish House with candidates Becky Lassen, Jamie Desrosier, and Cathy and Clair Hull. The Board agreed that all four candidates were qualified, and their names were placed on the ballot.

As the November 17th meeting date approached, the Board considered the recent surge in Covid-19 infections and the associated risks of having an in-person, indoor gathering, and that the Town had recently closed its buildings to the public for these safety reasons. The Board opted to cancel the Annual Meeting five days before the event and had the current JHS membership vote by absentee ballot. The completed ballots were returned via email, mail, or in-person to the MD as Acting Secretary, who tallied and documented the results. The new Board consists of the following members. The green shading represents the incoming directors:

2021 JHS Board of Directors	
President	Beverly Kirkpatrick
Vice President	Ardis Briggs-Tomlinson
Treasurer	Becky Lassen
Secretary	Cathy Hull
Director	Chad Young (formerly Treasurer)
Director	Jamie Desrosier
Director	Clair Hull

Considerable thought was put into this new Board. We improved upon our method of selecting Board members with proactive vetting and an interview process. We spelled out the increased time commitment for Board members and added a requirement that all members complete an online non-profit board member training course provided by the Colorado Secretary of State's office. Also, by increasing the number of directors from five to seven, along with having the MD and the social media coordinator involved in managing the two legs of our organization – the Parish House and Museum and our online presence, JHS will benefit from more talent and skills plugged into committee assignments. With the MD and social media coordinator also attending Board meetings – this brings the number to nine for discussion and planning.

3. Moving Forward – 2021 and Beyond

2021 Town Budget

The Town budgeted \$44,496.20 for JHS in 2021, which includes the MD's wages and an allowance for our Social Media Coordinator. The total for these expenses is \$25,991.20. Additionally, the Town provided \$4,500.00 for JHS toward website development and the second phase of the Parish House windows project in the amount of \$14,005.00.

Website

As part of JHS's re-organization efforts the MD and social media coordinator are working together on a new website. JHS will retain the ability to update and make changes through a user-friendly interface with the software. We are in the process of transferring our domain name to a new JHS account, and we will meet with a website designer/hosting service this month.

Parish House Storm Windows

The MD will continue to manage the ongoing Parish House windows project by Heritage Window Restoration. The Town budgeted \$40,000.00 for the overall project. The porch screens portion of the project was completed in December 2020, as stated above. This year, the budgeted \$14,005.00 will be applied toward the second phase of the project – energy-efficient storm windows, with the remaining

\$20,000.00 to finish the storm windows installation in 2022. This upgrade to the Parish House exterior will serve to reduce energy consumption and annual heating costs, in addition to protecting the interior windows.

Work Plan and Long-term Goals

This year will be a defining one for JHS and the Parish House and Museum. Our new leadership team is reviewing existing missions and vision statements, logos, bylaws, policies, procedures, and job descriptions. It is determining how to best grow into a bigger coat of responsibility in a sustainable manner to meet our community's needs. We have a working 2021 project timeline in place with tentative dates and an order for accomplishing this year's goals.

We also have a start on a 10-year plan with the following anniversaries as major events on the horizon for JHS and the Town of Johnstown to consider:

- July 6, 2024: 100th anniversary of the Johnstown Meteorite fall.
- July 4, 2026: National 250th (Sestercentennial) celebration of the USA.
- June 29, 2028: 100th anniversary of the Johnstown tornado.

For the first half of 2021, the MD will continue to work with the Board on reorganization efforts. She will also develop a volunteer program with the Membership/Volunteer Committee, taking advantage of these remaining few months before we reopen while the pandemic subsides as more and more people become vaccinated.

Reopening the Museum

We are currently working on a phased plan for reopening the museum starting in April with limited capacity to view the displays and our video tour of the Parish House in the Visitor's Center. An online tour request form will allow guests to sign up and schedule an appointment. We plan to reopen the Parish House on Wednesdays by this summer, with two additional open days by fall – one on the weekend to accommodate guests who work weekdays. When we reopen, we will be ready to roll with new plans, fundraisers, and events.

For the second half of 2021 (provided that Covid-19 restrictions allow it), JHS is planning to hold its *Stitches in Time Quilt & Craft Fair* and other events and fundraisers with the focus on replenishing our financial cushion. Other sources of revenue include membership dues, book sales, and donations. The MD will participate in these committee-managed activities, although most of her work this year will be focused on museum collections as the museum's curator.

Museum Collections

The MD is responsible for managing the JHS collections. This year will see a significant change in the process of how collection objects are handled and catalogued. The MD will engage in museum collections care and preservation training in June. JHS has a backlog of donated objects that will be accessioned into our collections database, which will be perfect for hands-on training for new volunteers on the importance of handling and caring for historical artifacts. Other Collections projects this year include:

Museum Software

The MD and the social media coordinator have been working with our museum collections software company – PastPerfect – on upgrading to the web version of the software to better align with our needs. This conversion is already underway and, when completed this spring, will allow us to integrate many of our separate functions, such as contact management, tracking volunteer work hours and assignments, and managing our memberships and donations.

Historic Photograph Collection

With our new museum software, flatbed scanner, and archival storage boxes and materials for a photograph and historic document collection, the MD will lead the effort to scan and catalogue our collection of historic photos and properly preserve and archive them.

Oral History Collection

The MD catalogued the inventory of VHS and audio cassette tapes and sent them out for digitization last year. A total of 140 oral histories were sent. Two of the four boxes have been returned so far, along with the accompanying digitized files. The Collections Committee will begin to review these narratives and select and edit them for various uses in new historical outreach projects as well as having them available on the JHS YouTube channel.

Johnstown Breeze Newspaper Collection Digitization – Joint Project

The MD will work with The Johnstown Breeze to research options for having the Breeze's collection of newspapers digitized from their original physical state. It is a near-complete collection dating back about 114 years, with the oldest papers reaching a critical state of deterioration. The Breeze newspaper is perhaps the oldest and best resource of local history and every-day happenings since the early 1900s, and JHS is on board to help with preserving this extensive collection of Johnstown's history.

"A Tribute to Johnstown" by Rebecca S. Healy, 1977

This little paperback book has been a great resource of Johnstown history over the years, and we are bringing it back with a fresh look. It was researched and compiled for the country's 1976 bi-centennial celebration. JHS will sell the updated versions as a revenue stream.

Museum Displays and Offsite Exhibits

The MD is working with the Collections Committee to create a display at the museum about Johnstown's fires and firefighters. Additional exhibits are being planned for bringing history to meet people where they are – at the YMCA, the library, and other public locations around town that will expand our footprint in the community.

4. Our Continued Commitment

In conclusion, JHS and the MD are committed to bringing the Parish House and Museum and our programs to the next level of museum professionalism. Together, we thank Matt LeCerf and the Johnstown Town Council for your generosity in helping us to make this leap of faith to better serve Johnstown and the region.

Weld County School District RE-5J
Cash in Lieu Statement
Prepared: 03/11/2021



Beginning Cash Balance, July 1, 2018		-
Johnstown Cash in Lieu for 2018-19	22,250.00	
Johnstown Cash in Lieu for 2019-20	12,000.00	
		34,250.00
Milliken Cash in Lieu for 2018-19	112,842.00	
Milliken Cash in Lieu for 2019-20	83,046.00	
		195,888.00
Cash in Lieu Interest for 2018-19	179.51	
Cash in Lieu Interest for 2019-20	292.51	
		472.02
Miscellaneous Cash in Lieu for 2018-19	12,750.00	
Miscellaneous Cash in Lieu for 2019-20	7,000.00	
		19,750.00
Ending Cash Balance, June 30, 2020		250,360.02



Town of Johnstown

TOWN COUNCIL MEMORANDUM

AGENDA DATE: April 5, 2021

SUBJECT: Proposed Draft Update to Johnstown Municipal Code, Chapter 2 (Licenses) ART XI re: Outdoor Vendors and accompanying Policy

ATTACHMENTS: 1. Draft Outdoor Vendor Ordinance
2. Draft Outdoor Vendor Policy

PRESENTED BY: Kim Meyer, Director of Planning & Development

With the recent interest of mobile food trucks in the Town, Staff has reviewed the applicable code sections and is proposing an update to Art XI, Chapter 6, of the Johnstown Municipal Code which would repeal and replace the existing code section in its entirety, as well as provide a separate policy to delineate best practices of operations in terms of hours, locations, and durations to allow opportunities to vend in a logical and reasonable manner that respects existing neighborhoods and businesses. This proposed code update was a collaboration between Planning Staff, the Town Manager, Town Attorney, and Town Clerk to create a workable licensing code that meets the needs of the community.

Staff provided a draft to the JDDA (Johnstown Downtown Development Association) for review and comment this past Fall, the Town did receive comments related to concerns with equity to local businesses who provide property and sales tax revenue, make large permanent investments in Johnstown, and provide employment. The general feeling expressed was that mobile vendors are subsidized by taxpayer money by being allowed to use town streets, and avoid many taxes and other fees. A daily usage fee was suggested to level the playing field.

In an attempt to offset these concerns, Staff researched neighboring municipality food truck /outdoor vendor policies. Most municipalities charge a \$25 to \$120 annual fee for a license only. Sales tax is due on sales within the municipality. Anecdotally, Staff is aware that food vendors do obtain inspections and approvals from multiple fire and health districts as well as licenses and obtaining approvals for various locations within each municipality they visit.

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The Outdoor Vendor policy does address duration of time in any one location, and minimum distance from existing restaurants and other vendors. Staff believes the majority of food trucks are likely to be invited by HOAs and neighborhoods for neighborhood events, or in association with a private business (i.e., hot dogs in front of a home improvement store). The administration and enforcement of a daily use fee was considered, but believed to be quite onerous on the Finance Department staff to attempt to track and collect such fees – given the relatively low impact and numbers of mobile vendors in the Town.

Outdoor vendors do include all independent outdoor sales, beyond just mobile food vendors, so this code update takes those other vendors into account while focusing updates on the mobile food vendors to provide a clear way for them to participate in the Johnstown community.

NEW - ARTICLE XI Outdoor Vendors

ARTICLE XI Outdoor Vendors

Sec. 6-200 Purpose.

The permitting of outdoor vendors is intended to regulate the sale of goods and services within the Town to support and enhance the Town's vibrant business community and ensure appropriate use within various commercial areas and neighborhoods within the community.

Sec. 6-201 - Definitions.

For the purposes of this Article, the following terms shall have the following meanings ascribed to them:

Food shall mean any edible item intended for human consumption, including beverages. *Garage or yard sale* shall mean the sale of new or used goods at a residence held outside and/or within a garage or accessory building.

Mobile food truck shall mean a legal, licensed motorized wheeled vehicle or towed, wheeled trailer designed and equipped to prepare and/or serve food from the interior of the truck or trailer.

Outdoor vendor shall mean any person, whether as owner, agent, consignee or employee, who sells or attempts to sell, or who offers to the public free of charge, any services, goods, wares or merchandise, including, but not limited to, food or beverage, from any approved outdoor location, except that outdoor vendor shall not include a person who:

- (1) Vends from private non-residential property where the same or similar services or goods are also offered on a regular basis from an indoor location on such premises;
- (2) Vends directly and exclusively to manufacturers, wholesalers, or retailers for the purpose of resale;
- (3) Vends by or on behalf of the Town or at an outdoor event sponsored by the Town;
- (4) Vends from property owned by the Town, if such vending is pursuant to a concession agreement or other agreement with the Town;
- (5) Vends at a garage or yard sale at a residence held outside or within a garage or residential accessory building;
- (6) Vends outdoor transportation services as a public utility under a certificate of public convenience and necessity issued by the Colorado Public Utilities Commission or as a provider of public transportation by or on behalf of a governmental agency;
- (7) Vends by or on behalf of any public or private school;
- (8) Delivers preordered packaged food; or
- (9) Vends pursuant to a Town-issued special events permit.

Outdoor Vendor Policy shall mean a policy adopted by resolution of Town Council, as amended, regulating the activities of outdoor vendors and the use of mobile food trucks and pushcarts in the Town.

Packaged shall mean bottled, canned, cartoned, securely bagged or securely wrapped, whether packaged in a food establishment or a food processing plant. Packaged shall not include a product in a wrapper, carry-out box or other nondurable container used to protect food during the service and receipt of the food by the consumer.

Private property shall mean any location that is not a public facility, right-of-way, park, plaza, street, alley or sidewalk.

Pushcart or cart shall mean a mobile vending cart or pushcart that is not motorized or attached to a vehicle and is designed to vend from the exterior of the unit. A pushcart or cart may not exceed ten (10) feet in length (excluding the length of any trailer hitch), four (4) feet in width, and eight (8) feet in height; carts larger than these dimensions shall be considered mobile food trucks for the purposes of this Article, when vending food and beverage items.

Vend or *vending* shall mean the sale, attempt to sell, or offering to the public of any services, goods, wares or merchandise.

6-202 - Licenses required.

- (a) An outdoor vendor shall obtain an outdoor vendor license for each mobile food truck, vehicle, pushcart or other outdoor point-of-sale structure used to vend the sale of goods and services in compliance with the provisions of this Article. The outdoor vendor license shall contain, among other potential items:
 - (1) The type of operation;
 - (2) The period of time for which the license is issued;
 - (3) The hours and days of permitted operation;
 - (4) The designated location or locations, including specified types of public rights-of-way, if applicable;
 - (5) A brief description of any mobile food trucks, vehicles, pushcarts and other structures;
 - (6) For mobile food trucks or vehicles, the vehicle's license plate number;
 - (7) A statement that the license is personal to the outdoor vendor and is not transferable;
 - (8) A statement that the license is valid only when used at the location or locations designated on the license;
 - (9) A statement that the license is subject to the provisions of this Article; and
 - (10) Any other conditions of approval.
- (b) An outdoor vendor shall obtain and maintain all licenses or permits required by fire districts, health departments, and county, state, or federal governments.

6-203 - Application for license; insurance; term; fee.

- (a) The Town Clerk shall create an application for an outdoor vendor license. The form of application shall be posted on the Town's website and be readily available to the public. In addition to the information required in the application, the Town Clerk may request and require any other information necessary to consider the request for an outdoor vendor license.
- (b) An application for a license shall be submitted to the Town Clerk no less than ten (10) business days prior to the first day of proposed operation.
- (c) If intending to operate on any public street or public property, an outdoor vendor shall obtain and maintain general liability, automobile, and workers compensation insurance, in the amount required in the application, shall provide certificates of insurance to the Town with the application, and, except for workers compensation, name the Town as an additionally insured party.
- (d) A request for a modification of an existing license to add new locations or modify other license restrictions or conditions, as applicable, shall be submitted to the Town Clerk and shall meet all of the requirements and be reviewed in the same manner as an application for a license hereunder.

- (e) Each license shall be valid for the then-current calendar year and, assuming compliance with this Article and the Outdoor Vendor Policy, may be renewed on January 1 of each year thereafter.
- (f) An applicant shall pay a license fee for the issuance, modification, or renewal of an outdoor vendor license in an amount determined by resolution of Town Council. The license fee shall be due and payable with the submission of the application and shall be returned if an outdoor vendor license is not issued.

6-204 - Review and approval of application.

- (a) The Town Clerk shall timely review each outdoor vendor license application and make a determination as to whether the application contains the required information and, if so, whether the issuance of a license is consistent with the requirements of this Article and the Outdoor Vendor Policy and compatible with the public interest. In making such determination, the Town Clerk, in consultation with Town staff as appropriate, shall consider, among other appropriate factors:
 - (1) The degree of congestion of any public right-of-way that may result from the proposed use and the design and location of any operating locations on private property, including the probable impact of the proposed use on the safe flow of vehicular and pedestrian traffic. Factors to be considered shall include, but not be limited to, the width of streets and sidewalks, pavement type, the volume of traffic, and the availability of off-street and on-street parking;
 - (2) The proximity, size, design and location of existing street fixtures and furniture at or near the specified locations, including, but not limited to, signposts, lampposts, bus stops, benches, telephone booths, planters and newspaper vending devices;
 - (3) The probable impacts to a neighborhood, commercial, district, or sensitive or historic area that may result from noise, odors, congestion of a street or gathering place;
 - (4) The probable impacts of the proposed use on the maintenance, care and security of the specified location, if location is on public property or right-of-way;
 - (5) The level and types of outdoor vendor activity already licensed for the specific location(s) proposed in the application; and
 - (6) Whether the proposed use conforms to the zoning requirements of the specified location.
- (b) If the Town Clerk determines that the issuance of a requested outdoor vendor license would be consistent with the requirements of this Article and with the requirements of the Outdoor Vendor Policy, with or without additional conditions, the Town Clerk shall issue the license, subject to any such conditions. If the Town Clerk determines that the issuance of an outdoor vendor license would not be consistent with the requirements of this Article or the Outdoor Vendor Policy, the Town Clerk shall notify the applicant of his or her determination in writing, with an explanation of the reasons for such denial.

6- 205 – Temporary suspension due to changed conditions.

The Town Clerk may suspend the vending operation of any licensee or all licensees at any designated location if the Town Clerk, in consultation with appropriate Town staff, determines that the licensed activity in such location no longer meets the requirements of this Article or the Outdoor Vendor Policy due to construction activity or other changed conditions affecting public health, safety, or welfare. In such event, the Town Clerk shall provide written notice to the affected licensee(s) of the temporary suspension of the license(s). The authorization to resume operations in such location shall not be reinstated until such time, if at all, as the Town Clerk provides additional written notification. A temporary suspension as contemplated herein shall not extend the term of the affected license(s).

6-206 - Revocation or nonrenewal.

DRAFT Article XI Outdoor Vendor

The Town Clerk, in consultation with appropriate Town staff, may, by providing written notice to the licensee, temporarily suspend, permanently revoke or decline to renew any outdoor vendor license if the Town Clerk determines that any of the following have occurred:

- (a) The application contained fraud, misrepresentation or a false statement of fact;
- (b) The licensee makes a fraudulent or false representation of fact in the course of business operations under the license;
- (c) The licensee fails to remit sales tax due and owing to the Town;
- (d) The licensee fails to operate or supervise operations conducted under the license to ensure the licensed activities comply with the terms of the license, the provisions of this Article and the Outdoor Vendor Policy;
- (e) The licensee authorizes, condones, or knowingly tolerates unlawful vending operations or any operation conducted in such a manner as to constitute a menace to the health, safety, or general welfare of the public;
- (f) The licensee fails to maintain the required insurance; or
- (g) The licensee's activities are not in compliance with this Article, the Outdoor Vendor Policy or any other provision of the Code.

6-207. - Appeal.

Any person aggrieved by the action of the Town Clerk as set forth in this Article, may, within ten (10) days of receipt of written notice from the Town Clerk, file a written appeal to the Town Manager. The Town Manager shall thereafter promptly review the appeal and, after taking action that the Town Manager deems appropriate, provide written notification to the licensee affirming the Town Clerk's decision, affirming the Town Clerk's decision with conditions, or reversing the Town Clerk's decision. Within ten (10) days of receipt of written notice from the Town Manager, the licensee may appeal the Town Manager's decision to the Town Council by providing written notice to the Town Clerk. The Town Clerk shall thereafter, as soon as reasonably practicable, set a hearing before Town Council. The Town Council's decision shall be final and conclusive.

For purposes of this section, written notice shall be deemed received upon hand delivery, delivery of electronic mail correspondence containing the written notification, on the condition that the recipient acknowledges receipt of the electronic mail, or three (3) days after placing the written notification in the U.S. Mail. Written notice to the licensee shall, if delivered by U.S. Mail, be sent to the licensee's last known address, which, unless the licensee otherwise notifies the Town, shall be the address contained on the application.

6-208. – Violation; cumulative remedies.

- (a) Any person who violates any provision of this Article or the Outdoor Vendor Policy may be punished in accordance with the provisions of Section 1-62 of the Code.
- (b) No remedy provided herein shall be exclusive, but the same shall be cumulative. The taking of any action permitted by this Article shall not preclude or prevent the taking of other action, including the filing a charge or conviction of a violation of this Article in the Municipal Court.

Section 6-209 to 6-219 Reserved.

OUTDOOR VENDOR POLICY
(per JMC Chapter 6, Article XI) – V3.25

I. DEFINITIONS

Unless otherwise defined here, the definitions contained in Article XI of Chapter 6 of the Johnstown Municipal Code shall apply. For purposes of this Outdoor Vendor Policy, the following terms shall have the following meanings:

Blockface shall mean one street-facing side of a block between street intersections.

Commissary shall mean a commissary that is approved as such under the laws and regulations of the State and County that govern retail food establishments.

Commissary-prepared shall mean fully prepared, cooked, and assembled in a licensed commissary, without further preparation, cooking, or no to minimal assembly after leaving said commissary. Heating and cooling of commissary-prepared foods is permitted.

Construction mobile food vendor shall mean any mobile food vendor operating in any construction location from a mobile food truck or pushcart with the intent of making temporary stops to service construction workers.

Mobile food vendor shall mean an outdoor vendor who sells and serves food and/or nonalcoholic beverages from a mobile food truck, pushcart or other nonpermanent location.

Neighborhood mobile food vendor shall mean a mobile food vendor operating in a predominantly residential area or any residential zoning district from a mobile food truck or pushcart with the intent of making temporary stops to service residents in the immediate neighborhood.

II. OUTDOOR VENDOR OPERATIONS AND RESTRICTIONS

The following operations and restrictions shall apply to outdoor vendors.

- (a) No licensee may use for the purpose of on-site storage, display or sale, any mobile food truck, vehicle, pushcart, kiosk, not described on the face of the license.
- (b) Mobile food trucks, vehicles, pushcarts, structures or devices shall be located only:
 - (1) In a legal parking space that is:
 - a. An on-street parking space that is parallel to an adjacent walkway or landscape area suitable and safe for pedestrians; or
 - b. On private property, in a manner that complies with applicable parking regulations set forth in the Code and does not substantially reduce the required parking of the primary use on the site (not more than 20% of spaces);
 - (2) In such a manner as to maintain safe movement of vehicular and pedestrian traffic, parking lot circulation, and ADA access;
 - (3) In locations that are no more than twelve (12) inches from a curb or edge of the travel lane, or in designated off-street parking areas;
 - (4) No less than twenty-five (25) feet from any street intersection, if on a public or private drive or street; and
 - (5) In locations that are at least three hundred (300) feet from the entrance to any public or private elementary, middle, or high school, without written permission from the school or district.
- (c) No licensee shall operate during the hours of 10:00 p.m. to 5:00 a.m. in non-residential areas, or 8:00 p.m. to 8:00 a.m. within three hundred (300) feet of any residential structure, and must remove any non-operational mobile food truck, vehicle, pushcart, kiosk, table, chair, stand, box, container or other structure or display device from the location during those hours and anytime the license is not actively operating.

- (d) No licensee shall park or operate at any single public or private location for more than eight (8) hours in a 24-hour period. Screened storage vehicle parking on a private lot is permitted at any time, such that any vehicle, cart, container and associated signage is clearly stored and not visible from adjacent properties, drives, or rights-of-way.
- (e) Every licensee must obtain the written consent of the property owner to operate on any private property. If operating under a Special Event Permit, these requirements may not be applicable.
- (f) No licensee may provide drive-in or drive-through services. If operating under a Special Event Permit, these requirements may not be applicable.
- (g) Each licensee who, during the course of its licensed activities, operates within or enters upon a public right-of-way or publicly owned property shall maintain liability insurance in an amount and type to be set annually by the Town in writing with proof of the same to be presented at the time of submission of the application. Any licensee who fails to provide proof of such insurance shall be prohibited from operating within or entering upon such property. If operating under a Special Event Permit, these requirements may not be applicable.
- (h) Each licensee shall pick up and dispose of any paper, cardboard, wood or plastic containers, wrappers or any litter or debris which is deposited within twenty-five (25) feet of the designated location or within twenty-five (25) feet of the point of any sale or transaction made by the licensee if the radius of the designated location exceeds twenty-five (25) feet. The licensee shall provide a suitable container for the placement of such litter by customers or other persons, and be responsible for removal of all such debris from the site.
- (i) Each licensee shall maintain in safe condition any mobile food truck, vehicle, pushcart, structure, or device, so as not to create an unreasonable risk of harm to the person or property of others.
- (j) No licensee shall leave unattended any mobile food truck, vehicle, pushcart, structure, or device.
- (k) Each licensee shall prominently display the outdoor vendor license issued by the Town in a location readily visible to the public on each mobile food truck, vehicle, pushcart, structure, or device.
- (l) Each licensee operating in an on-street location, public or private, must vend only from an adjacent paved sidewalk or safe landscape area, and not from the street-side or adjacent parking spaces.
- (m) Each licensee shall comply with the provisions of all applicable ordinances of the Town as well as the requirements of all state and federal laws, including, but not limited to, Town noise restrictions, sign regulations, limitations on discharge of liquid waste, sales and use tax requirements and food safety and other related requirements established by State or County regulation.
- (n) Each licensee shall have an affirmative and independent duty to determine the safety and suitability of any particular stopping point or location of operation, both in general and at any particular time and to operate in a manner reasonably calculated to avoid and prevent harm to others in the vicinity of the licensee's operations, including, but not limited to, potential and actual customers, pedestrians, and other vendors or vehicles.
- (o) No licensee shall stop to vend within five hundred (500) feet of another vendor.
- (p) No licensee shall stop to vend food or beverages within one hundred (100) feet of the front entrance of an established restaurant without dated written permission from the manager or owner of that establishment.
- (q) The following additional requirements shall apply to particular types of outdoor vendor licensees, as specified. These categories relate to operations of the business and are not exclusive. One outdoor vendor may fit into more than one category in a given day:
 - (1) PUSHCART vendors shall:
 - a. Vend only on private lots, or on sidewalks in locations where parallel parking is allowed;
 - b. Vend only food and nonalcoholic beverages that are commercially-packaged or commissary-prepared.
 - c. Limit the time in any one location, within a twenty-four (24) hour period, to:
 - 1. Eight (8) hours on any particular non-residential private lot;

2. Two (2) hours on any particular residential private lot; or
 3. Two (2) hours on any particular blockface if vending on a public sidewalk or space; and
 - d. Not cause undue obstruction of any public sidewalk.
- (2) CONSTRUCTION mobile food vendors shall:
- a. Only operate on or immediately adjacent to lots where new, active construction is taking place;
 - b. Not stop to vend for more than two (2) hours within an eight (8) hour period; and
 - c. Not stop to vend in residential areas that have less than three (3) single family dwellings being constructed within a 500 hundred (500) foot radius.
- (3) NEIGHBORHOOD mobile food vendors shall:
- a. Vend only on streets in locations in residential use areas where parallel parking is allowed;
 - b. Vend only in locations that are sited at least fifty (50) feet from the edge of the nearest residential driveway(s) along the same blockface;
 - c. Vend only food and nonalcoholic beverages; and
 - d. Not stop to vend for more than fifteen (15) minutes in any particular cul-de-sac, or on any particular blockface; and not stop to vend for more than two (2) hours in any location adjacent to a public or private park or open space area or park owned by the homeowners' association or metropolitan district, that space being at least twenty-five (25) feet wide where it meets the street or sidewalk, unless dated, written permission by the respective association or district has been granted for up to four (4) hours in a single location.
- (4) ALL MOBILE FOOD vendors shall, in addition to specific operational and locational requirements in subsections (1)-(3) above:
- a. Vend only on lots in non-residential use areas or on streets in locations in residential use areas where parallel parking is allowed, that meets all other locational criteria of this Policy;
 - b. Vend only food and nonalcoholic beverages;
 - c. Permanently affix or paint all signage on the mobile food truck, with no sign, flags, or banners in or alongside street right-of-way or across roadways, except as allowed in subsection (d); and
 - d. Utilize only weighted A-frame/sandwich board signs; maximum of six (6) SF of total area per sign face; maximum of one such sign per location; securely anchored to the ground; located within ten (10) feet of the vehicle used; may not obstruct ADA access or access to any public walk or right-of-way.
- (5) Outdoor vendors of miscellaneous goods and services, not food or transportation services, shall operate only on lots in non-residential use areas.
- (6) Outdoor vendors of TRANSPORTATION services shall:
- a. Operate in accordance with all local, state, and federal traffic laws and regulations;
 - b. Limit stopping, parking, or standing in street rights-of-way or alleys so as to avoid delay or any obstruction of traffic; and
 - c. Operate so as to avoid obstruction of pedestrian traffic and not on sidewalks.



Town of Johnstown

TOWN COUNCIL INFORMATIONAL COMMUNICATIONS

AGENDA DATE: April 5, 2021

SUBJECT: Thornton Pipeline Easement

ATTACHMENTS:

1. Notice of Offer and Intent
2. Easement Documents (Permanent and Temporary)
3. Master License Agreement

PROVIDED BY: Matt LeCerf, Town Manager

INFORMATIONAL DESCRIPTION:

The City of Thornton, in pursuit of the installation of a primary trunk line to access water that they purchased north of Fort Collins. To date, the City of Thornton has received right of way permits to install portions of the waterline under Highway 60, in various areas in Town right of way in the manners other entities would request installation permits, and on easements they have acquired from property owners.

Thornton continues to have interest to acquire an easement on our property near the intersection of Weld County Road 40 and Weld County Road 17. This is the site that the Town plans to install a new 1.5 million gallon water tank. They do have the ability to condemn a property through eminent domain and in an effort to try and work collaboratively to make sure that our interests are still met, it would appear at this time the best solution is to work collaboratively with them and possibly enter into a formal agreement for the Easement with compensation. An example of a formal agreement that was entered into between Thornton and the Town of Frederick is enclosed as a Master License Agreement.

While there was exploration for other options including the ability to run CBT through this trunk line to the Town, it was cost prohibited and not guaranteed in perpetuity, taking into consideration the long-term needs of Thornton's water needs. Staff believes this would be the best course of action to finding a solution for both parties on their respective projects and we welcome any feedback from Council on this alternative.

The Community That Cares

www.TownofJohnstown.com

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO | F: 970.587.0141



WESTERN STATES

Land Services, Inc.

Acquisition and Relocation Specialists

505 N. Denver Avenue

Loveland, CO 80537

Office: (970) 667-7602

Fax: (970) 667-6580

January 21, 2021

NOTICE OF INTENT TO ACQUIRE

MAILED CERTIFIED MAIL RETURN RECEIPT REQUESTED

Town of Johnstown
450 S. Parish Ave.
Johnstown, CO 80534

PROJECT: Thornton Water Project ("TWP")—Domestic Water Supply Pipeline

PARCELS: 20-3 PE, 20-3 TE

FEE OWNER: Town of Johnstown, State of Colorado, a Colorado municipal corporation

INTERESTS TO BE ACQUIRED: Permanent Domestic Water Supply Pipeline Easement
Temporary Construction Easement

Dear Town of Johnstown:

:

The city of Thornton ("Thornton") is in the process of obtaining easements for the construction of a domestic water supply pipeline referenced above as the TWP. This letter is intended to help explain our project, identify the location, describe the process, and describe rights that you have.

The TWP is a pipeline that will bring water to Thornton customers. It is anticipated that the pipeline diameter will be in the 48-inch range and will be buried underground with some appurtenances and access points above ground. Thornton has identified a specific alignment and location for the pipeline and is working with property owners to acquire the necessary easements for the pipeline.

Thornton has determined it will need to acquire a portion of your property for an easement as described in the enclosed legal descriptions and depictions designated as parcel **20-3 PE** for a permanent easement and **20-3 TE** for a temporary construction easement. Copies of the proposed easement documents are also enclosed for your information. Thornton has retained Western States Land Services, Inc., to assist in the negotiations for the acquisition of the necessary easements to accommodate the TWP.

The Acquisition Process

Thornton intends to engage in good faith negotiations with you to reach an agreement on the just compensation for the acquisition of the property interest identified above. This letter entitled “**NOTICE OF INTENT TO ACQUIRE**” is the first step in the process and spells out the next steps, describes your rights as a property owner and provides the offer price.

Thornton respectfully offers to pay you the sum of **\$4,625.00** as total just compensation for the property interest in your property. This offer is based on an appraisal/or an inspection of the property and careful evaluation of all facts known to Thornton.

Thornton may elect to employ an appraiser to prepare a report appraising the value of the easement(s). If an appraiser is retained, they will be contacting you in the near future to offer to meet with you and discuss the appraisal process and review the easement area(s) in the field.

If an appraiser is retained, and if the value determined by the appraiser is greater than the offer amount in this letter, we will present and updated proposal to acquire the aforementioned easement(s) to you reflecting the appraised value.

If an agreement is reached as to the value of the interest Thornton is acquiring in your property, the next step will be to sign the easements documents, complete a W-9 and Thornton will exchange the signed documents for a check in the agreed upon amount.

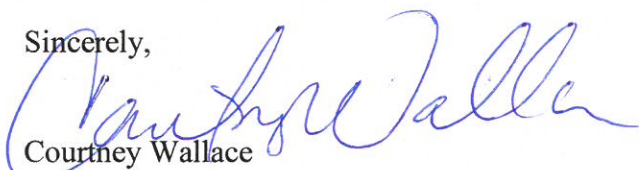
Thornton is willing, where it can, to work with property owners on the timing of construction of the TWP.

Thornton’s intent is to engage in good faith negotiations with you in order to obtain the easements on a voluntary basis for just compensation and avoid the necessity of an eminent domain proceeding. Before Thornton would initiate an eminent domain proceeding, you would receive a letter entitled **FINAL OFFER TO PURCHASE**.

Should you have any questions or comments regarding this offer or the process as outlined above, please feel free to call me at your convenience. My contact information is provided below.

Thank you for your consideration of this offer.

Sincerely,



Courtney Wallace

Western States Land Services, LLC

Land Acquisitions Agent

Office Phone: 303-938-1414

Email: cwallace@ws-ls.com

Enclosures:

1. Permanent Easement Conveyance Form
2. Temporary Construction Easement Conveyance Form

3. Legal Descriptions (PE & TCE)
4. Copy of Colorado Revised Statute § 38-1-121



CITY OF THORNTON
THORNTON WATER PROJECT
DETERMINATION OF JUST COMPENSATION
WAIVER VALUATION

PARCEL INFORMATION

Parcel ID Number: 105929400001

Parcel Area: 4.61 acres

County: Weld

Town: Johnstown

Section/Township/Range: S29, T4N, R67W

Project Tier: 20

Address: Vacant land

Property Owner: Town of Johnstown

Date of Most Recent Title Report: 1/14/2021

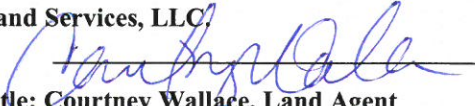
Brief description of subject and taking: The subject property is zoned Exempt (*Additional property information as necessary*)

PE/TE	Purpose	Size (acres)	Unit Price (\$/Acre)	% of unit price/term	TOTAL
20-3 PE	Perpetual Easement	0.339	\$22,000	50%	\$3,729.00
20-3 TE	Temporary Easement	0.271	\$22,000	15%	\$894.30

Damages or cost to cure (describe):

Total for temporary / permanent easement and damages	\$4,623.30
Cost to Cure	\$0.00
I certify my determination of Just Compensation is	\$4,625.00 (R)

Prepared and Certified by Western States Land Services, LLC


Name & Title: Courtney Wallace, Land Agent

Date: 1/21/21

Approved by the City of Thornton: _____

Scott Twombly, Real Estate Manager

Date:

Basis of Valuation

The unit price was derived from the analyses of comparable sales provided by local appraisers, Charles Hegarty and Gregory Gerken of Hegarty & Gerken, Inc. (Hegarty & Gerken). Hegarty and Gerken compiled a variety of vacant land sales of properties with characteristics similar to parcels along this specific segment of the alignment. The comparable sales were included in the Basic Data Report ("BDR") prepared by Hegarty and Gerken in 2017. Western States Land Services has consulted with Thornton Water Project appraisal coordinator, Doug Nitzkowski, for a review and update of the BDR and we provide the following as support for our recommendation.

Sales B-7, B-4, B-5 and B-13 from the above referenced BDR and attached hereto, were selected as comparable sales for this property. In 2019 we applied an 8% annual adjustment to each of the sales to bring them current; then averaged the adjusted values of the sales which provided an average, time-adjusted unit price of \$18,970. Since that time two years have passed so an additional time-based adjustment has been made of 16% for a suggested total per acre price of \$22,000 per acre.

$$\$24,165 + \$16,723 + \$21,539 + \$13,451 = \$75,878 / 4 = \$18,970 + 3035.20 \text{ (16\%-time adjustment)} = \$22,005$$

We suggest rounding this to \$22,000/acre to be used as the unit price.



EXHIBIT A

Thornton Water Project – CIP 12-777

Town of Johnstown

PN: 105929400001

Parcel: 20-3 PE

Date: December 31, 2019

LEGAL DESCRIPTION

A strip of land, 50.00 feet in width, located in the N1/2 of the S1/2 of the SE1/4 of Section 29, T4N, R67W of the 6th P.M., County of Weld, State of Colorado, described as follows:

COMMENCING at the C-S-S1/64 Corner of said Section 29 from which the C-S1/16 Corner of said Section 29 bears N00°47'16"W, 659.53 feet (Basis of Bearing), thence S89°17'17"E, 68.35 feet along the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of that 30-foot Petroleum Pipeline Easement granted to Duke Energy Field Services, LP as described in instrument recorded August 29, 2001, as Reception No. 2879033 of the records of Weld County, Colorado, and the POINT OF BEGINNING;

Thence N0°47'36"W, 295.21 feet along a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the Northerly Line of that tract of land conveyed to the Town of Johnstown as described in Warranty Deed recorded August 4, 2006, as Reception No. 3409281 of the records of Weld County, Colorado;

Thence N89°17'28"W, 50.02 feet along the Northerly Line of that tract of land as described as said Reception No. 3409281 to a point on a line that is 10.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement;

Thence S0°47'36"E, 295.21 feet along a line that is 10.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29;



EXHIBIT A

Thence S89°17'17"E, 50.02 feet along the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement and the POINT OF BEGINNING.

Area = 14,761 square feet (0.339 acres), more or less.

NOTICE: According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.


 Frank N. Drexel
 Colorado Professional Land
 Surveyor No. 24305
 1500 Kansas Ave #2-E, Longmont, CO 80501
 Date: 12-31-19

File: 20-3 PE 123119-Lgl.doc

Project: 1302-1

EXHIBIT A

SW1/4
SEC. 29POINT OF COMMENCEMENT
C-S-S1/64 COR. SEC. 29T4N, R67W, 6TH P.M.
FOUND #6 REBAR W/ 3-1/2"
ALUM. CAP MKD. "KING SURVEYORS
INC LUND LS 34995 2006" 0.2'
BELOW GRAVEL PAD SURFACE
0.07'S. & 0.01'W.20' PETROLEUM PIPELINE ESMT.
DCP MIDSTREAM, LP
REC. 3460782
PORTION OF ESMT.
MAY NOT EXTEND
EAST OF SECTION LINE.C-S1/16 COR. SEC. 29
NOT FOUND OR SET.30' PETROLEUM PIPELINE ESMT.
50' TEMP. CONSTRUCTION ESMT.
DUKE ENERGY FIELD SERVICES, LP
REC. 2879033
PORTION OF ESMT.
MAY NOT EXTEND
EAST OF SECTION LINE.W. LINE N1/2, S1/2, SE1/4, SEC. 29
N00°47'16"W 659.53'
(BASIS OF BEARING)

295.21'

S00°47'36"E

295.21'

N00°47'36"W

S89°17'17"E

50.02'

N89°17'28"W

50.02'

S89°17'17"E

68.35'

S89°17'17"E

50.02'

N89°17'28"W

50.02'

S89°17'17"E

50.02'

N89°17'28"W

50.02'

POINT OF
BEGINNING20-3
PEPN: 105929400001
TOWN OF JOHNSTOWN
REC. 3409281
REC. 3426760N. LINE N1/2, S1/2,
SE1/4, SEC. 29S. LINE N1/2, S1/2,
SE1/4, SEC. 29N1/2, S1/2, SE1/4
SEC. 29S1/2, S1/2, SE1/4
SEC. 29Scale: 1"=100'
Date: 12/31/19
Dwg: 13201-EE
Sheet 3 of 3NOTE: THIS EXHIBIT MAP IS INTENDED
ONLY AS AN AID TO FOLLOW THE
ATTACHED LEGAL DESCRIPTION AND DOES
NOT REPRESENT A LAND SURVEY PLAT
ACCORDING TO COLORADO STATUTES.



EXHIBIT A

Thornton Water Project – CIP 12-777

Town of Johnstown

PN: 105929400001

Parcel: 20-3 TE

Date: December 31, 2019

LEGAL DESCRIPTION

A strip of land, 40.00 feet in width, located in the N1/2 of the S1/2 of the SE1/4 of Section 29, T4N, R67W of the 6th P.M., County of Weld, State of Colorado, described as follows:

COMMENCING at the C-S-S1/64 Corner of said Section 29 from which the C-S1/16 Corner of said Section 29 bears N00°47'16"W, 659.53 feet (Basis of Bearing), thence S89°17'17"E, 68.35 feet along South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of that 30-foot Petroleum Pipeline Easement granted to Duke Energy Field Services, LP as described in instrument recorded August 29, 2001, as Reception No. 2879033 of the records of Weld County, Colorado, and the POINT OF BEGINNING;

Thence N0°47'36"W, 295.21 feet along a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the Northerly Line of that tract of land conveyed to the Town of Johnstown as described in Warranty Deed recorded August 4, 2006, as Reception No. 3409281 of the records of Weld County, Colorado;

Thence S89°17'28"E, 40.01 feet along the Northerly Line of that tract of land as described as said Reception No. 3409281 to a point on a line that is 100.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement;

Thence S0°47'36"E, 295.22 feet along at line that is 100.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29;



EXHIBIT A

Thence N89°17'17"W, 40.01 feet along the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement and the POINT OF BEGINNING.

Area = 11,809 square feet (0.271 acres), more or less.

NOTICE: According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.


 Frank N. Drexel
 Colorado Professional Land
 Surveyor No. 24305
 1500 Kansas Ave #2-E, Longmont, CO 80501
 Date: 12-31-19

File: 20-3 TE 123119-Lgl.doc

Project: 1302-1

SW1/4
SEC. 29

Scale: 1"=100'
Date: 12/31/19
Dwg: 13201-EE
Sheet 3 of 3

NOTE: THIS EXHIBIT MAP IS INTENDED ONLY AS AN AID TO FOLLOW THE ATTACHED LEGAL DESCRIPTION AND DOES NOT REPRESENT A LAND SURVEY PLAT ACCORDING TO COLORADO STATUTES.



POINT OF COMMENCEMENT
C-S-S1/64 COR. SEC. 29
T4N, R67W, 6TH P.M.
FOUND #6 REBAR W/ 3-1/2"
ALUM. CAP MKD. "KING SURVEYORS
INC LUND LS 34995 2006" 0.2'
BELOW GRAVEL PAD SURFACE
0.07'S. & 0.01'W.

20' PETROLEUM PIPELINE ESMT.
DCP MIDSTREAM, LP
REC. 3460782
PORTION OF ESMT.
MAY NOT EXTEND
EAST OF SECTION LINE.

C-S1/16 COR. SEC. 29
NOT FOUND OR SET.

30' PETROLEUM PIPELINE ESMT.
50' TEMP. CONSTRUCTION ESMT.
DUKE ENERGY FIELD SERVICES, LP
REC. 2879033
PORTION OF ESMT.
MAY NOT EXTEND
EAST OF SECTION LINE.

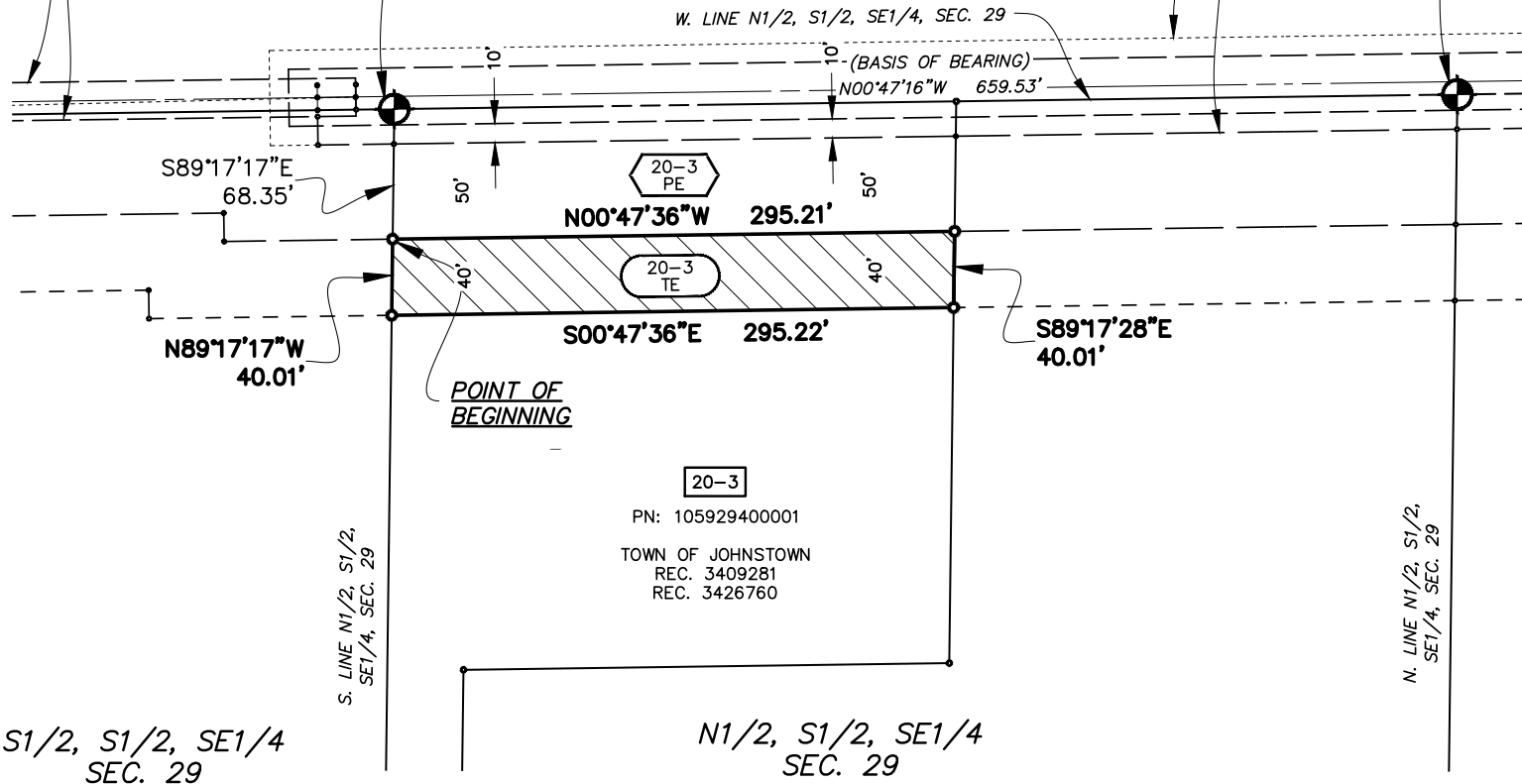


EXHIBIT A

DEED OF PERPETUAL NON-EXCLUSIVE EASEMENT
(Water Line)

THIS DEED OF PERPETUAL NON-EXCLUSIVE EASEMENT, is made this ____ day of _____, 2021, between Town of Johnstown, State of Colorado, a Colorado municipal corporation whose address is 450 S. Parish Avenue, Johnstown, Colorado 80534 (“Grantor”), and the City of Thornton a Colorado home rule municipality (“Grantee”), located at 9500 Civic Center Drive, Thornton, Colorado 80229. Grantor and Grantee may be individually referred to as a “Party” and collectively referred to herein as “Parties.”

WITNESSETH

1. That for and in consideration in the amount of Ten Dollars (\$10.00) and of the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, sells, and conveys to Grantee, its successors and assigns a Perpetual Non Exclusive Easement on, under, through, over and across property owned by Grantor, as described and depicted in **Exhibit A (20-3 PE)** attached hereto and incorporated herein by this reference the (“Property”) to access, install, construct, enlarge, use, operate, maintain, replace, repair, reconstruct, improve, relocate, inspect, survey, test and remove, at any time and from time to time as may be useful to, or required by Grantee, water pipelines, conduits, vaults, meters, valves, manholes, access roads subject to paragraphs 2.a. and 5. below or any other underground water pipeline utility structures (including, but not limited to, communication facilities) and all necessary underground cables, wires and all improvements and appurtenances thereto, with above ground improvements limited to vent pipes and utility location markers (“Improvements”).

2. Grantor further grants to Grantee:

- a. While the property is unplatted and used for agricultural purposes the right to ingress and egress through, to, in, on, over, across and along Grantor’s adjoining property to access the Perpetual Easement for the purpose of exercising the rights herein granted. To the maximum extent practicable, Grantee shall use existing gates, public roads, trails or facilities for access to avoid disruption to Grantor’s adjoining property;
- b. The right to mark the location of the Perpetual Easement by suitable markers set in or on the ground; provided that permanent markers shall be placed in locations, which will not interfere with any reasonable use Grantor shall make of said Property.

3. Grantor reserves the right to use and occupy the Property for any and all lawful purposes consistent with the rights and privileges above granted and which will not interfere with or endanger any of Grantee’s Improvements or otherwise interfere with Grantee’s rights hereunder.

4. The Parties further agree that the uses of the Property by Grantor and the agreements concerning those uses shall be as follows:

- a. Grantor shall not itself or through other persons or entities, erect or construct any building or other structure, or drill or operate any well, or construct any permanent obstruction, or allow the installation of other utilities on, over or in the Property without obtaining the prior specific written permission of Grantee;
- b. With the prior specific written permission of Grantee and to the extent that Grantee determines that such project will not interfere with or endanger any of Grantee's Improvements, Grantor may, install landscaping (except trees), pavement, curbs, gutters, sidewalks, trails, parking areas and associated curb cuts, driveways, fences, sprinkler systems, posts, poles or walls within the Property;
- c. Grantor for itself, or through other persons or entities, shall take no action that would impair or in any way decrease or increase the ground level, or the lateral or subjacent support for the appurtenances and Improvements within the Property without obtaining the prior specific written permission of Grantee;
- d. Without liability for damage, Grantee may remove anything identified under subparagraphs 4.a. and b. herein that is placed on, over, or in the Property without the prior specific written permission of Grantee at Grantor's cost (including, but not limited to removal, court, collection and attorneys' fees and costs). In addition, Grantee shall have the right, without liability for damage, to cut, trim, control and remove trees, brush, and other obstructions that injure or interfere with Grantee's occupation or enjoyment of the Permanent Easement or Improvements. Grantor shall also be liable to Grantee for all costs (including, but not limited to restoration, court, collection and attorneys' fees and costs) associated with or arising from a violation of the terms of paragraph 4.

5. Any future platting of the Property into multiple lots shall cause access to the Easement to be limited to those points at which public streets as shown on the plat cross the Easement. Access from individual lots abutting or incorporating the Easement shall be limited to emergency situations only. Public street intervals shall be no less than 600 feet apart or landowner shall reserve utility access easements for maintenance vehicles to allow access through public streets within the subdivision to the Easement.

6. Grantee shall restore or repair to its original condition or as close thereto as possible, except as necessarily modified to accommodate the Improvements any damages caused on said Property, arising out of the construction or reconstruction, maintenance or repair of said Improvements in the exercise of the rights hereby granted to Grantee;

7. In case Grantee shall permanently abandon the Perpetual Easement herein granted, and cease to use the same, all right, title and interest hereunder of Grantee shall revert to the then owner of the Property.

8. Grantee is responsible for obtaining any permits, approvals and consents, and meeting any other legal obligations or requirements including those imposed by any governmental authority prior to construction of Improvements within the Property. Grantor shall not object to or otherwise interfere with any application for any such permits, approvals and consents.

9. The Parties hereto agree that neither has made or authorized any agreement with respect to the subject matter of this instrument other than expressly set forth herein, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either Party, its agents or employees.

10. Grantor promises and agrees to defend Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the land involved or Grantor's rights to make the grant herein above contained.

11. The covenants herein contained shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors and assignees.

12. The signatories hereto warrant that they have full and lawful authority to make the grant, covenants and promises herein above contained as Grantor, and the covenants and promises herein above made as Grantee.

13. The Parties agree that this Perpetual Easement shall be recorded, at Grantee's sole cost, in the office of the County Clerk and Recorder's Office in which this Perpetual Easement is located.

IN WITNESS WHEREOF, the Parties have executed this Deed of Perpetual Easement effective as of the date first written above.

[Signature Pages Follow]

GRANTOR:

Town of Johnstown, State of Colorado, a Colorado
municipal corporation

ATTEST:

STATE OF _____)
)ss.
COUNTY OF _____)

Subscribed and acknowledged before me this _____ day of _____ 2021, by
Town of Johnstown, State of Colorado, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: _____.

Notary Public

GRANTEE:

CITY OF THORNTON, COLORADO, a Colorado
home rule municipality

Mark Koleber, Thornton Water Project Director

ATTEST:

Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:
Luis A. Corchado, City Attorney

Senior Assistant City Attorney

STATE OF COLORADO)
)ss.
COUNTY OF ADAMS)

Subscribed and acknowledged before me this _____ day of _____, 2020,
by Mark Koleber, Thornton Water Project Director, City of Thornton.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
EASEMENT DESCRIPTION (METES AND BOUNDS INCLUDING SURVEY
DRAWING)

MASTER LICENSE AGREEMENT

This **MASTER LICENSE AGREEMENT** (“Agreement”) dated as of the ____ day of _____, 2021 (the ‘Effective Date’), is between the Town of Frederick, a Colorado municipality (the “Town” or “Owner”), and the City of Thornton, a home-rule municipality (“Licensee”). Town and Licensee may be referred to in the singular sense as a “Party” or in the collective sense as the “Parties.”

Recitals

A. Licensee owns, maintains, operates and controls a water utility system serving its customers.

B. For purposes of operating its water utility system, Licensee wishes to locate, place, install, operate, control and maintain certain Facilities (as defined below) in the License Area (as defined below) in the locations detailed in Exhibit A, in connection with the operation of Licensee’s water utility system.

AGREEMENT

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree to the following covenants, terms, and conditions:

ARTICLE 1. LICENSE

1. Definitions. The following definitions shall apply generally to the provisions of this Agreement.

1.1 “**Town**” or “**Owner**” means the Town of Frederick, a Colorado municipality.

1.2 “**Facilities**” means engineered hydraulic components of that portion of the Licensee’s water utility system constructed in the License Area for transportation of domestic water to Licensee’s water treatment facilities, consisting of an underground water transmission pipeline, fittings, control valves, valve boxes, communication facilities solely related to the operation of the water transmission pipeline, and other related appurtenances.

1.3 “**Installation Date**” shall mean the date that the first Facilities are installed by the Licensee pursuant to this Agreement.

1.4 “**Laws**” means any and all statutes, constitutions, ordinances, resolutions, regulations, judicial decisions, rules, tariffs, administrative orders, certificates, orders, or other requirements of the Town or other governmental agency having joint or several jurisdictions over the Parties to this Agreement.

1.5 “**License Area**” means Public Right-of-Way and any other real property, including parkland, open space, or trails, that is owned by the Town.

1.6 **“Public Right-of-Way”** means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes, including all public rights-of-way, utility easements and public service easements as the same now or may hereafter exist, and Town-owned properties, that are under the jurisdiction of the Town. This term shall not include Town parkland, open space, trails, state or federal rights of way, or any property owned by any person or entity other than the Town, except as provided by applicable Laws or pursuant to an agreement between the Town and any such person or entity.

2. Grant of License. Owner hereby grants to Licensee a revocable, non-exclusive license (“License”) to use the License Area, subject to the terms and conditions of this Agreement.

3. No Estate Created or Conveyed. It is the express intent of the Parties that the License granted herein does not create or convey an estate, interest, or claim in or to the License Area, and that the Licensee’s location, construction, and use of Facilities within the License Area does not create a license coupled with any property interest in or claim to the License Area.

4. No Franchise Granted or Conveyed. Nothing in this Agreement shall be deemed to grant a franchise or other right to utilize the License Area to construct water works or provide water utility services for the benefit of the Town, construct a gas plant or gas system or provide gas utility services, construct an electric system, or provide electric utility services, nor permit the Town to collect a franchise fee.

5. Obtaining Required Permits. If the installation, operation, maintenance or location of the Facilities in the License Area shall require any permits, including but not limited to Right-of-way Permit, Stormwater Quality Permit, and Building Permit, Licensee shall, under applicable Town ordinances, apply for the appropriate permits and pay any standard and customary permit fees. As a condition of obtaining any permit that involves digging or other excavation in the License Area, Licensee shall physically identify the horizontal and vertical locations of any other existing underground utility or other facilities in the License Area in the proximity of the proposed work area and illustrate such locations on plan and profile drawings also illustrating the proposed Facilities. Approval of such permits shall be timely and shall not be unreasonably withheld by Town.

6. Permitted Users. Licensee’s affiliates, employees, contractors, agents, and representatives (“Permitted Users”) may use the License, provided that all such uses shall be within the scope of this Agreement.

7. Scope of Use Agreement. Any and all rights expressly granted to Licensee under this Agreement, which shall be exercised at Licensee’s sole cost and expense, shall be subject to the Town’s lawful exercise of its police powers and the prior and continuing right of the Town under applicable Laws to use any and all parts of the License Area exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the License Area. Any work performed pursuant to the rights granted under this Agreement shall be subject to the reasonable prior review and approval of the Town and shall conform with applicable Laws.

ARTICLE 2. USE OF LICENSE AREA

1. Permitted Use. The License Area may be used by the Licensee for the sole and exclusive purpose of accessing, locating, constructing, installing, operating, maintaining, repairing, removing, and replacing the Facilities. Thornton shall provide to Town at least seven (7) days advance notice of any routine repairs or maintenance of the Facilities and notice within 48 hours after any emergency work on the Facilities.

1.1 No Interference. Licensee in the performance and exercise of its rights and obligations under this Agreement shall not interfere in any manner with the existence and operation of any and all public and private rights of way (except in the case where Licensee's rights are prior or superior to such private right of way), sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, cable television, and other communications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable Laws or this Agreement.

2. Plan and Profile. Licensee shall provide Town with plans and profiles for the construction and installation of the Facilities in the License Area consistent with Town's Design Standards and Construction Specifications for Public Improvements at least thirty (30) days in advance of any proposed construction. The Town Engineer shall review and approve the plans and profiles in writing before Licensee begins the installation of such Facilities. The Town Engineer may require modifications to such plans and specifications prior to approval thereof or issuance of any appropriate permits. Any proposed changes to the approved plans and specifications shall be submitted to the Town for review and approval in writing prior to making such changes. Such approval will be timely provided, and will not be unreasonably withheld by Town. Town Engineer's review will be limited to whether the Facilities are consistent with Town's Design Standards and Construction Specifications for Public Improvements. In addition:

2.1 Facilities shall have a minimum ten feet (10') of horizontal clearance from Town's underground water facilities existing at the time of installation of the Facilities.

3. Compliance with Plan and Profile. The Facilities shall be installed in accordance with the plans and specifications approved by the Town Engineer prior to beginning the installation of such Facilities, and any appropriate permits issued by the Town that involve digging or other excavation in the License Area.

4. Compliance with Laws. All work approved by the Town shall be completed in compliance with all Laws.

5. Restrictions on Use.

5.1 Except for the Facilities specifically authorized by Owner, Licensee shall not place, build, erect, or add any structures, facilities, improvements or other items on, under, over or across the License Area.

5.2 Any changes, expansions or alterations in any way to the Facilities shall require additional advance approval by Owner.

5.3 Licensee's use of the License Area shall be subject to all existing utility easements, if any, located on, under, or above the License Area.

5.4 Licensee acknowledges that the use hereunder is of the License Area in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied. Licensee acknowledges that Owner shall have no obligation to repair, replace, or improve any portion of the License Area in order to make the License Area suitable for Licensee's intended uses.

5.5 Non-exclusive Use. Licensee acknowledges that this Agreement does not provide Licensee with exclusive use of the License Area and that Town shall have the right to permit other providers of utility services to install equipment or facilities in the License Area so long as such installed equipment or facilities do not impact the Facilities or Licensee's operations, maintenance, repair, replacement, removal or use of the Facilities.

6. Utility Notification Center. Prior to undertaking any work pursuant to this Agreement, Licensee shall take all actions necessary to become a tier 1 member of the Utility Notification Center of Colorado, and comply with and adhere to local procedures, customs and practices relating to the one call locator service program established in C.R.S. Section 9-1.5-101, et seq., as such may be amended from time to time.

ARTICLE 3. TERM AND TERMINATION

1. The initial term of this Agreement shall commence on the Effective Date, and shall extend for a term of ten (10) years commencing on the Installation Date, unless terminated by either Party in accordance with the provisions herein ("Initial Term"). This Agreement will automatically renew for successive (10) year terms ("Renewal Term") upon the expiration of the Initial Term and any Renewal Term, unless earlier terminated as provided herein or a written notice of non-renewal is given by either party to the other party at least thirty (30) calendar days prior to the expiration of the Term then in effect.

2. The Town may terminate this Agreement by delivering thirty (30) days advance written notice to Licensee if Licensee removes and does not replace the Facilities, abandons its use or operation of the Facilities, or otherwise abandons its use and enjoyment of the License Area pursuant to the rights granted herein.

3. Either Party may terminate this Agreement if the other Party defaults in the performance of any of its obligations hereunder and fails to cure such default within thirty (30) days following the giving of written notice by the other party ("Cure Period"), unless such Cure Period is extended by mutual agreement of the Parties.

4. In the event of termination, Licensee shall not be compensated for the cost of removal of Licensee's Facilities from the License Area.

5. Removal of Facilities Upon Termination. Upon termination of this Agreement, the Parties agree that Licensee shall cut, clean, and remove all Licensee's Facilities located in the License Area, unless such removal of Licensee's Facilities is waived by the Town in its sole discretion, in which case Licensee shall cap and structurally fill any underground pipeline installed within the License Area.

ARTICLE 4. RESERVATION OF RIGHTS

1. Owner reserves all other rights in and to the License Area, including the Town's lawful exercise of its police powers and the prior and continuing right of the Town under applicable laws to use and occupy any and all parts of the License Area exclusively or concurrently with any other person or entity for any purposes whatsoever, including without limitation, other utilities and utility crossings, irrigation systems, landscaping (except trees within fifteen (15) feet of the Facilities), vehicular and pedestrian access, or any other surface or underground improvements.

2. Should the Facilities, for any reason, impede, restrict or limit in any manner whatsoever Owner's use of the License Area, Licensee shall be responsible for any incremental cost incurred by the Town to bypass or to avoid disturbing the Facilities when designing, constructing, installing, or modifying any future Town-owned improvements within the License Area.

3. Licensee's loss of use of the Facilities arising out of or relating to the Owner's use of the License Area shall not entitle Licensee to any compensation for damages or loss from Owner, in any manner whatsoever.

ARTICLE 5. MAINTENANCE; RELOCATION AND DISPLACEMENT; DAMAGE AND RESTORATION

1 Maintenance.

1.1 Licensee agrees to take such actions, at its sole expense, as are necessary to maintain the Facilities in good and safe working condition at all times. Licensee further agrees to comply at all times with the Laws in Licensee's use and occupancy of the License Area when performing any maintenance activities.

1.2 In the exercise of its rights pursuant to this Agreement, Licensee shall avoid any damage or interference with any Town installations, structures, utilities, or improvements on, under, or adjacent to the License Area.

2. Relocation and Displacement of Facilities. Licensee understands and acknowledges that Town may require Licensee to relocate one or more of its Facilities. Licensee shall at Town's direction relocate such Facilities at Licensee's sole cost and expense not later than one hundred and eighty (180) days after receiving written notice, unless the Town grants, in writing, an extension, that the Town reasonably determines that the relocation is needed for any of the following purposes: (a) if required for the construction, completion, repair, relocation, or maintenance of a Town facility or Public Right-of-Way; (b) because the Facilities are interfering with or adversely affecting proper operation of street lights, traffic signals, governmental communications networks or other Town property; or (c) to protect or preserve the public health or safety. In any such case, Town shall use its best efforts (but shall not be required to incur financial costs) to afford Licensee a reasonably equivalent alternate location. If Licensee shall fail to relocate any Facilities as requested by the Town within one hundred and eighty (180) days after the above-referenced notice in accordance with the foregoing provision, Town shall be entitled to relocate the Facilities at the Licensee's sole cost and expense, without further notice to the Licensee. To

the extent the Town has actual knowledge thereof, the Town will attempt promptly to inform Licensee of the displacement or removal of Facilities.

3. Damage and Restoration. If the Town's facilities in the License Area are damaged, or the License Area itself is damaged, by Licensee's use of the Facilities or from the Facilities themselves, or if removal or relocation of the Facilities, where required or permitted, causes damage to any Town facilities in the License Area or to the License Area itself, Licensee shall repair such damage at its sole cost and expense within thirty (30) days after such damage occurs or fairly and reasonably compensate Town for such damages that are incurred by Town within thirty (30) days of presentment of an invoice by Town. The degree of repair work required to be performed by Licensee under this section may include without limitation restoration or replacement. If any damage to Town facilities in the License Area is deemed, in the Town's sole determination, to require emergency repair work or poses an imminent threat to life or property, Town shall undertake best efforts to contact Licensee as soon as is reasonably practical to notify Licensee of the need for conducting emergency repairs and request that Licensee perform such repairs, but Town may take immediate action to perform any and all necessary repairs for the continued safe operation of Town facilities in License Area, for the preservation or protection of the License Area, or for the protection of the public health, safety and welfare. If Town undertakes such emergency repairs, Licensee shall fairly and reasonably compensate Town for the costs of performing any work that are incurred by Town within thirty (30) days of presentment of an invoice to Licensee by Town.

ARTICLE 6. INSURANCE

1. Coverages. Licensee shall procure and maintain or self-insure, at its own cost, a policy or policies of insurance sufficient to insure against, claims, demands, and other obligations assumed by Licensee pursuant to this Agreement. All of Licensee's contractors shall be insured pursuant to their master service contracts with Licensee. Such coverages shall include:

1.1 Worker's Compensation insurance as required by law.

1.2 Commercial General Liability insurance with minimum combined single limits of \$2,000,000 per occurrence for bodily injury and property damage and \$5,000,000 general aggregate including premises and operations, personal and advertising injury, blanket contractual liability, and products, and completed operations. The policy shall contain a severability of interest's provision, and shall include the Town and the Town's officers, employees and contractors as additional insureds to the extent of the liabilities assumed by Licensee herein.

1.3 Excess or Umbrella Liability insurance, on an occurrence basis, in excess of the Commercial General Liability insurance, with coverage as broad as such policy, with a limit of \$2,000,000.

2. Form. Such insurance shall be in addition to any other insurance requirements imposed by law. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees or its contractors shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy.

3. Certificate. Prior to initial construction, Licensee shall provide to Owner a certificate of insurance or self-insurance letter as evidence that the required coverages are in full force and effect. The certificate or letter shall identify this Agreement.

ARTICLE 7. NOTICES

Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following: (i) if to the Town, Attn: Town Manager, Town of Frederick, PO Box 435, Frederick, CO 80530; and (ii) if to the Licensee, Attn. City Manager, 9500 Civic Center Drive, Thornton, CO 80229 with a copy to: Attn. City Attorney, 9500 Civic Center Drive, Thornton, CO 80229. Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may change its address by giving notice thereof to the other party in the manner provided in this Article 7.

ARTICLE 8. MISCELLANEOUS

1. Record Drawings. Within ninety (90) days of completion of the close-out phase of Licensee's work package for installation of the Facilities, Licensee shall provide Owner detailed digital record drawings of such Facilities for review and acceptance in conformance with the Town's Design Standards and Construction Specifications. Record Drawings shall show the location of the Facilities with a reference distance to an existing section monument. The plan view shall also show existing surface features and known utilities within ten (10) feet of the Facilities.

2. Monumentation and Marking. Licensee shall place and maintain permanent, above-grade monumentation and marking at all locations where the Facilities enter upon the boundaries of the License Area and at changes of direction as approved by the Town Engineer. Markers shall include phone numbers to call for line locates and 24-hour emergency repair. Licensee shall install tracer wire no more than 18" above and along the entire length of the Facilities.

3. Assignment. Licensee may not assign or transfer this Agreement or any of the rights or privileges therein granted, without the prior, express written consent of the Town, which consent shall not be unreasonably withheld, conditioned, or delayed; except that such consent shall not be required for assignments to any governmental entity. Such consent, if granted by the Town, shall be conditioned upon such assignee's assumption, in writing in a form acceptable to Town, of all of Licensee's obligations set forth herein.

4. Waiver of Claims Against Town. Licensee hereby waives any and all claims which Licensee may or might hereafter have or acquire against Town for loss or damage to Licensee's Facilities or any loss or degradation of any utility services Licensee may provide arising from the use by Town, of the License Area for any purpose, except to the extent such claims are caused by the negligence of the Town, its officers, its employees, or its subcontractors.

5. Limitation of Town's Liability. To the extent permitted by law, the Town shall be liable only for the cost of repair to damaged Facilities arising from the negligence or willful misconduct of Town, its employees, agents, or contractors and shall in no event be liable for indirect or consequential damages. The Town does not waive any of the protections, immunities or limitations afforded it by the Colorado Governmental Immunity Act (C.R.S. §§ 24-10-101 et. seq.) as same may be amended from time to time.

6. Mechanics' Liens. Licensee shall not allow any mechanics' or similar liens to be filed against the License Area arising from any work done by Licensee within the License area. If any mechanics' or other liens shall be created or filed against the License Area by reason of labor performed by, or materials furnished for, the Licensee, the Licensee shall, within thirty (30) days thereafter, at the Licensee's own cost and expense, cause such lien or liens to be satisfied and discharged of record together with any Notices of Intention to File Mechanic's Lien that may have been filed.

7. Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

8. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. Any such prior agreement shall be deemed to be null and void and of no further effect.

9. Modification. This Agreement may not be amended except in writing by mutual agreement of the parties, nor may rights be waived except by an instrument in writing signed by the party charged with such waiver.

10. Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

11. Governing Law; Jurisdiction. This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado, without reference to its conflicts of law principles. If suit is brought by a party to this Agreement, the Parties agree that trial of such action shall be vested exclusively in the state courts of Colorado, County of Weld.

12. Severability of Provisions. If any one or more of the provisions of this Agreement shall be held by court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Agreement. Each Party hereby declares that it would have entered into this Agreement and each provision hereof regardless of whether any one or more provisions may be declared illegal, invalid, or unconstitutional.

13. Representations and Warranties. Each of the parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.

[Signatures and acknowledgments on following page]

The Parties have executed this **MASTER LICENSE AGREEMENT** to be effective on the Effective Date.

OWNER:

TOWN OF FREDERICK

By: _____

ATTEST:

By: _____

APPROVED AS TO FORM:

By: _____

LICENSEE:

CITY OF THORNTON

By: _____
Mark Koleber, Thornton Water Project Director

ATTEST:

By: _____
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:
Luis A. Corchado, City Attorney

By: _____
City Attorney