



Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO

Wednesday, September 07, 2022 at 7:00 PM

MISSION STATEMENT: Enhancing the quality of life of our residents, businesses, and visitors through community focused leadership.

AGENDA

CALL TO ORDER

Pledge of Allegiance

ROLL CALL

AGENDA APPROVAL

SPECIAL PRESENTATIONS

1. Proclamation - Suicide Awareness and Prevention Month. Allyce Torres, Program Director of North Range's Suicide Education and Support Services Program
2. Business of the Month Presentation – Sarah Crosthwaite, Economic Development Manager
3. CDOT Segment 6 Update and Closure Information - Abra Geissler, P.E.

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.

4. August 15, 2022 Minutes
5. August 19, 2022 Special Meeting Minutes
6. Water and Sewer Service Agreement - Thompson River Ranch East Clubhouse & Pool, with Clayton Properties Group II, Inc.
7. Additional August 2022 List of Bills
8. Agreement for Inclusion of Property between the Town of Johnstown and the Ledge Rock Center Commercial Metropolitan District

TOWN MANAGER REPORT

9. Town Manager's Report

TOWN ATTORNEY REPORT

NEW BUSINESS

[10.](#) Request for approval of a contract with Colorado Paving Inc. for the Charlotte Street Improvement Project

[11.](#) Design Contract with Sanderson Stewart for Colorado Boulevard

[12.](#) RFP Award for Raw Water Transmission Project

COUNCIL REPORTS AND COMMENTS

MAYOR'S COMMENTS

INFORMATIONAL ITEMS

[13.](#) Informational items

EXECUTIVE SESSION

14. An executive session under C.R.S. Section 24-6-402(4)(f) to the Request for Proposal regarding a Prosecuting Attorney for Municipal Court

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.

The Community That Cares

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Town of Johnstown

PROCLAMATION

- WHEREAS,** suicidal thoughts can affect anyone, regardless of age, gender, race, orientation, income level, or background; and
- WHEREAS,** over 48,000 deaths annually are attributed to suicide; with suicide rates in Colorado ranking 6th nationally, and 55 lives lost to suicide in Weld County during 2020; and
- WHEREAS,** one of the most important protective factors from suicide is having a trusted person to turn to when feeling isolated or hopeless; a person who will not judge, dismiss, or try to fix the problem, but instead encourage individuals to be open about their feelings and tell their stories; and
- WHEREAS,** suicide prevention starts with actively challenging stigma around mental health and building skills that help us approach the topic of suicide without shame or judgment, so we can save lives; and
- WHEREAS,** North Range Behavioral Health’s Suicide Education and Support Services (SESS) program supports those who have lost someone to suicide and provides education to **Johnstown** residents that help build critical suicide prevention skills; and
- WHEREAS,** hope exists in **Johnstown** because of the collaborative prevention and education efforts of North Range, Suicide Education and Support Services (SESS), Imagine Zero of Weld County, numerous survivors, as well as local government, business, non-profit, and faith-based community partners; and
- WHEREAS,** September is recognized as National Suicide Awareness and Prevention Month with the goal of promoting awareness surrounding suicide prevention resources and support available to us and our community; and
- WHEREAS,** we encourage all residents to learn how to talk about mental health; research suicide prevention resources available nationally and **throughout Weld County**; check in on the wellbeing of your family, friends, and neighbors; and share genuine appreciation for the people in your life by any gesture you deem appropriate.

NOW, THEREFORE, we, the Johnstown Town Council do hereby proclaim September 2022 as

Suicide Awareness and Prevention Month

in Johnstown and call upon the citizens, government agencies, public and private institutions, businesses and schools to recommit our community to increasing awareness and understanding of behavioral health, and the need for appropriate and accessible services for all citizens.

Signed the 7th day of September 2022 by Gary Lebsack, Mayor

The Community That Cares

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I-25 North Express Lanes: Segment 6 - Berthoud to Johnstown Johnstown Council Meeting



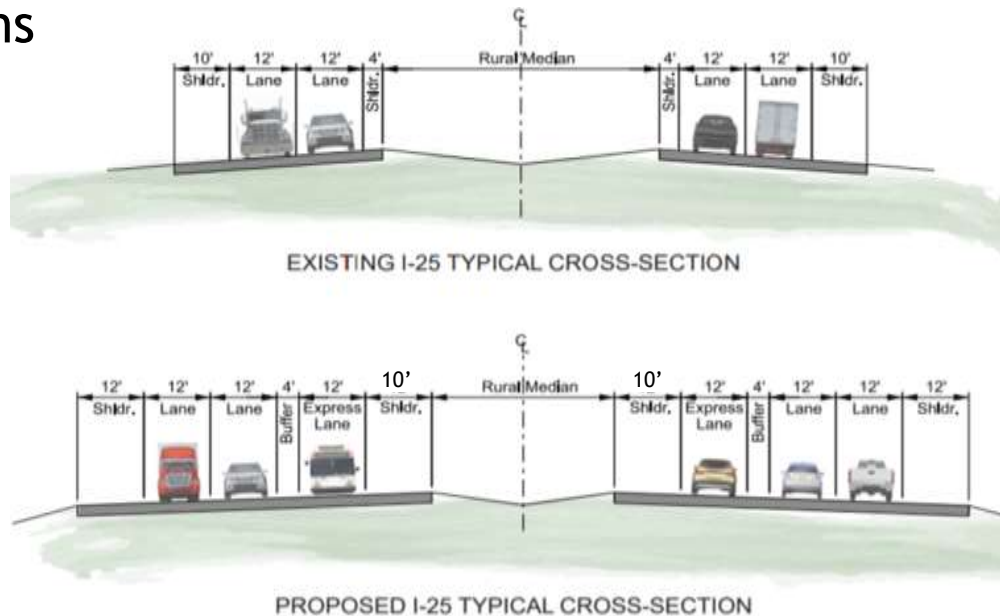
- Project Overview and Progress
- Colorado Highway 60 Interchange
 - Scope
 - Closure
 - Detour Routes
 - Public Outreach





I-25 North: CO 56 to Prospect

- Widening I-25 from south of CO 56 to Prospect (Ft. Collins) for almost 20 miles in each direction
- Increases safety and operations
- Over \$900M in corridor improvements
- Refer to previous presentations for more info:
<https://www.codot.gov/projects/north-i-25/johnstown-to-fort-collins>

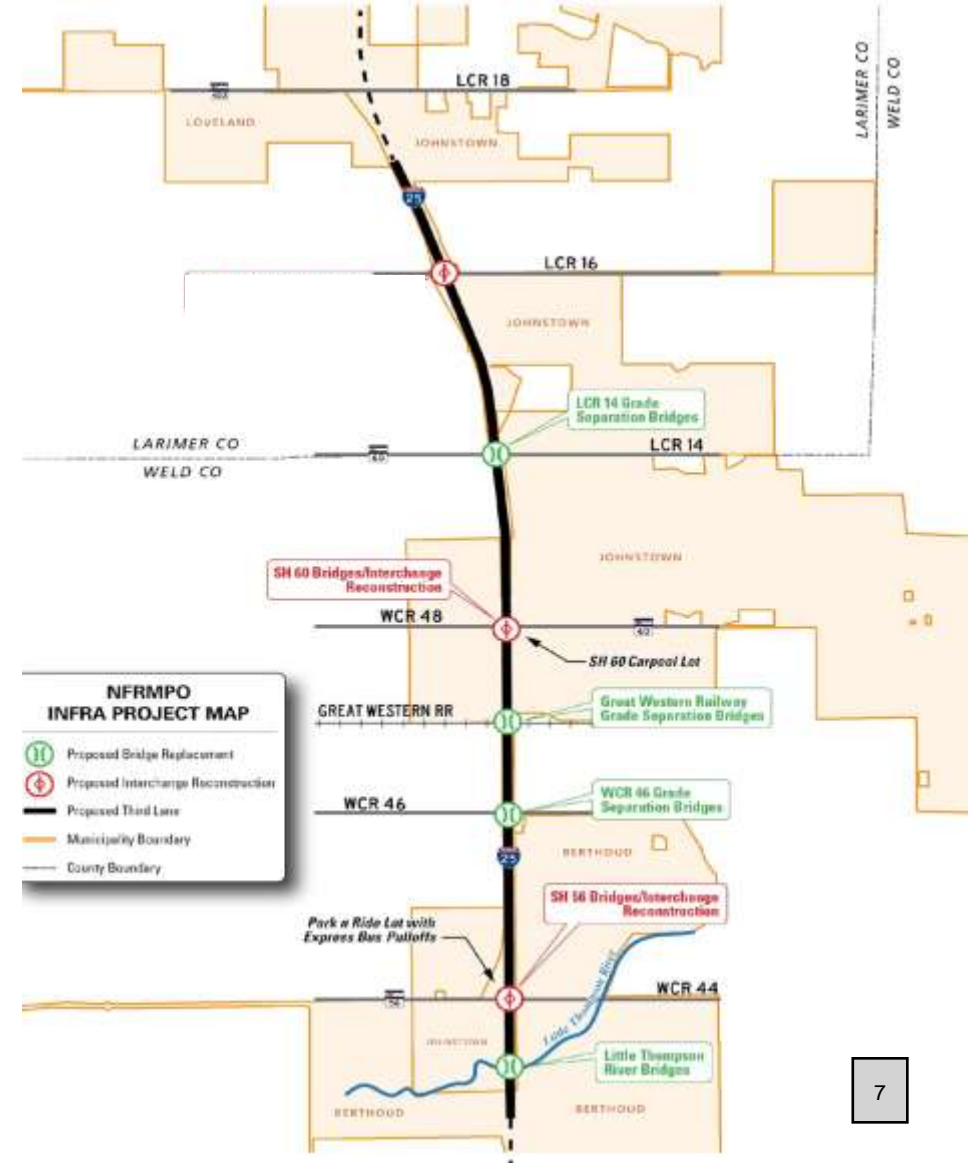




I-25 Segment 6: CO 56 to CO 402

Project Elements	Percent Complete
Pavement	50
Reconstructing CO 56 and CO 60 interchanges	70
Reconstructing/widening 12 bridges	50
Relocating over 35 Utilities	90
Right of way from 40 properties	95
Design	99
Total Construction	61

Segment 6 Project set for completion in early 2024





No lane



**Current Configuration
(August 2022)**



-
-
-

September 7, 2022 Segment 6 Johnstown Council Meeting
A portion of the lot will be open for carpooling in the Fall 2022



Phase II - Southbound Inside Parking I-25 Segment 6 Update

Item #3.

Southbound inside lanes/shoulder – complete in Fall 2022



September 7, 2022



Segment 6 Johnstown Council Meeting



Roadway Work

- **Phase 1** - Complete
- **Phase 2** - Ongoing, complete by Fall 2022
- This Fall/early Winter - Traffic will be shifted to a barrier-separated, head-to-head alignment on the southbound barrel
- **Phase 3** - Winter 2022 - will construct bridges and pave widening





CO 60 Interchange Item #3. I-25 Segment 6 Update

- CDOT has built base configuration
- Johnstown is contributing money for aesthetic and landscaping improvements



September 7, 2022



Segment 6 Johnstown Council Meeting



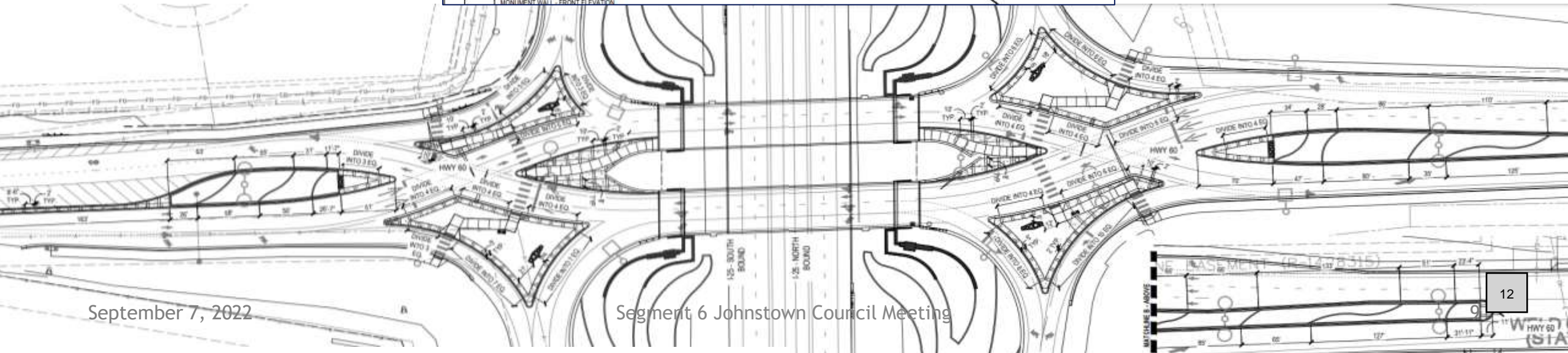
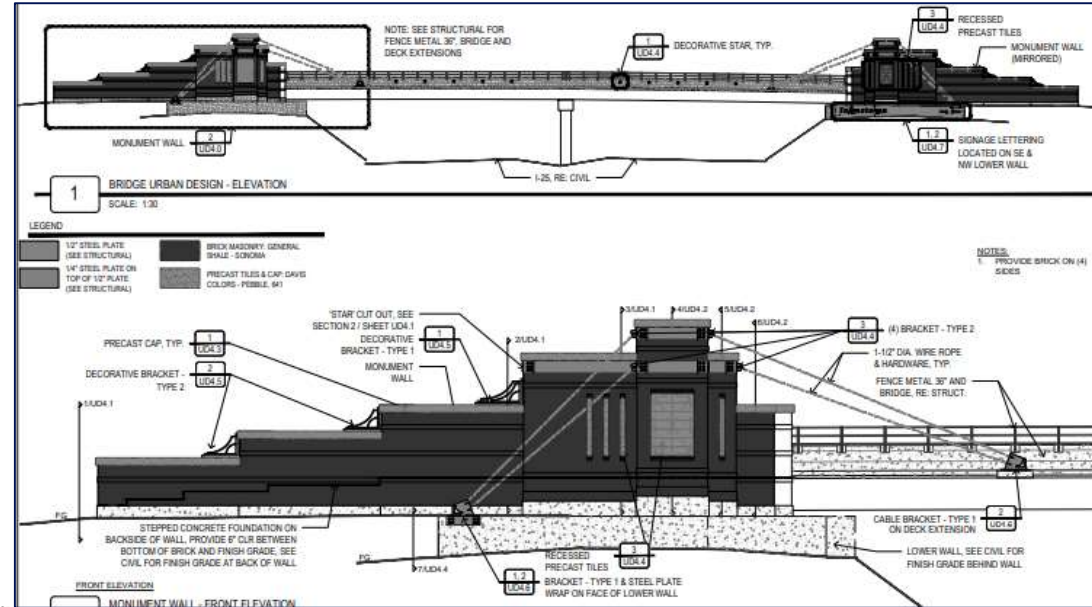


Benefits

- Safer
- Operationally more efficient
- Video Link:
<https://www.youtube.com/watch?v=8PConmQy6QM>

21-day Closure Work Elements

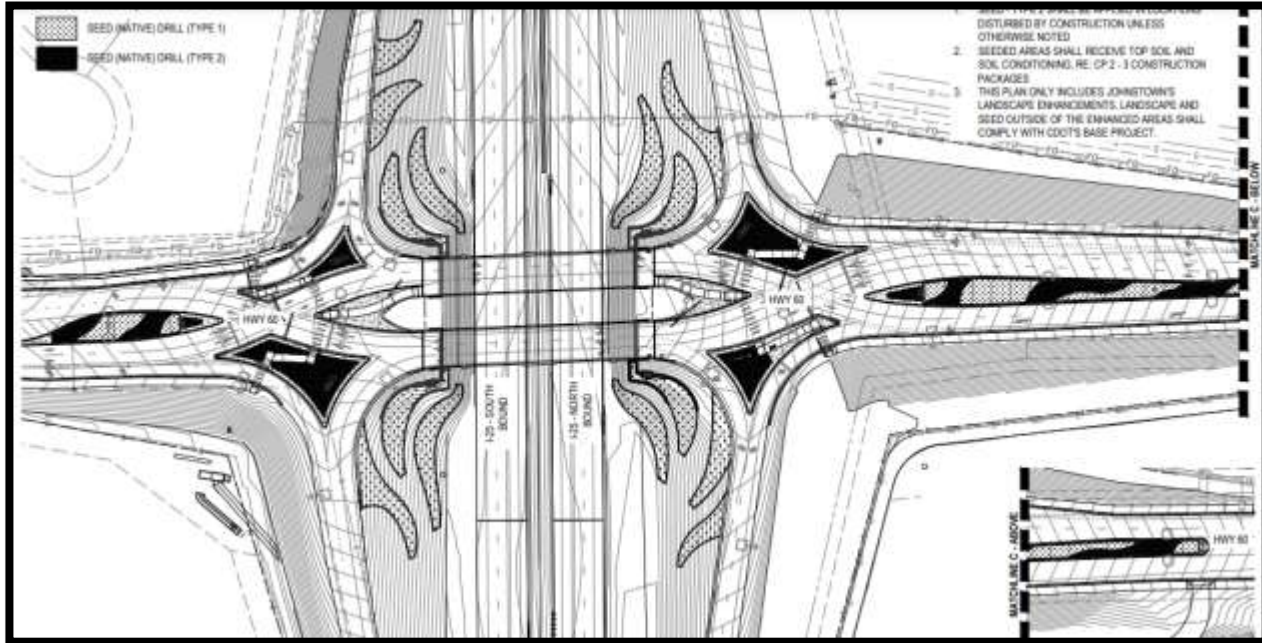
- Drainage Pipes
- Curb and Gutter
- Asphalt Tie ins
- Traffic Signals
- Striping





Colorado Highway 60 Closure

- Needed for motorist and workers safety
- CO 60 East/West Closure Over I-25
 - 21-day maximum
 - Start September 12th
 - Complete no later than October 2nd
- CO 60 Ramp Closures
 - Intermittent ramp closures throughout the 21-day closure
 - Will message with variable message boards
- Other
 - Extended weekday and weekend shifts to maximize work
 - After 21-day closure, it will be in a one-lane in each direction DDI configuration
 - Strong coordination with adjacent Buc-ees improvements



CO 60 interchange will be fully operational by Q2 2023

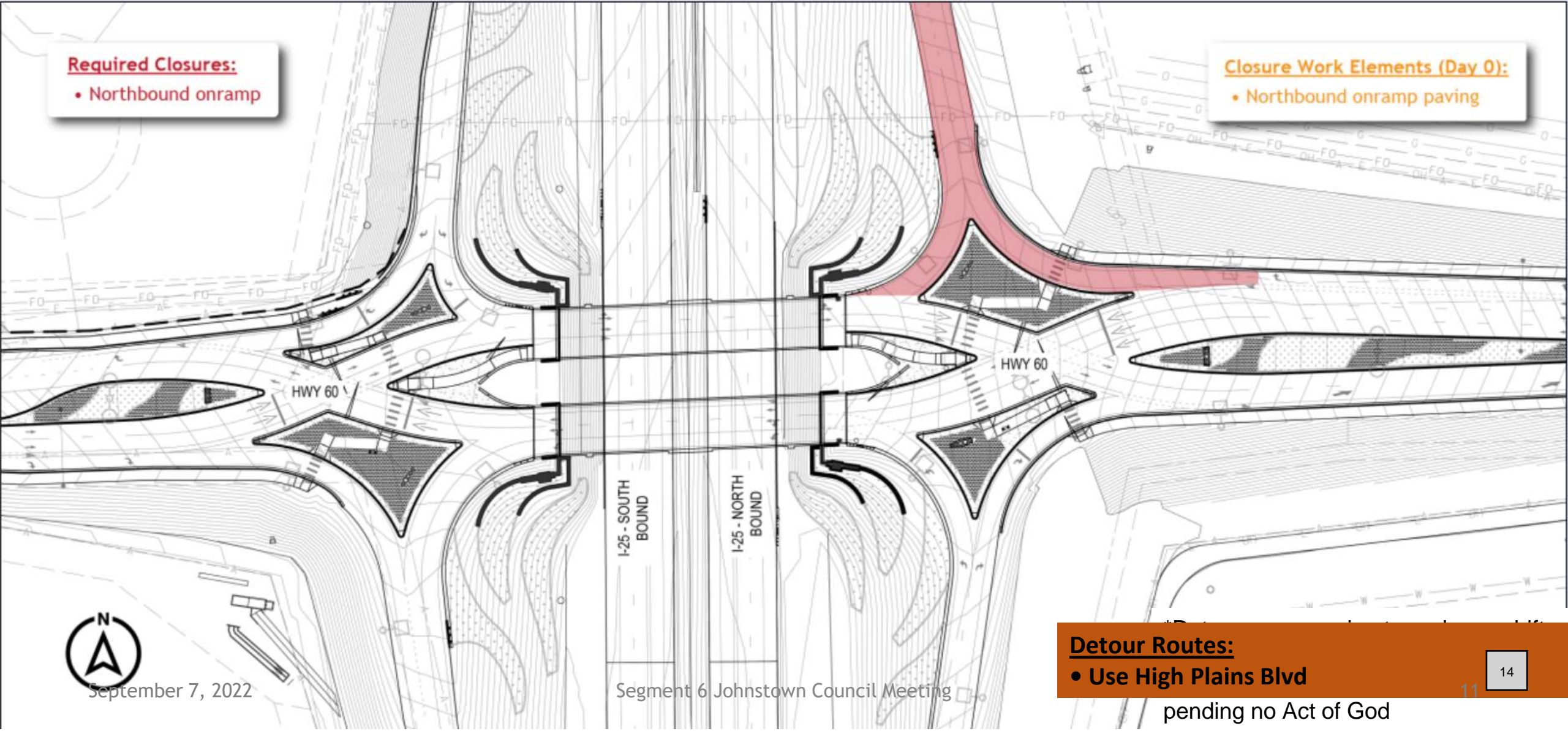


Required Closures:

- Northbound onramp

Closure Work Elements (Day 0):

- Northbound onramp paving



Detour Routes:

- Use High Plains Blvd

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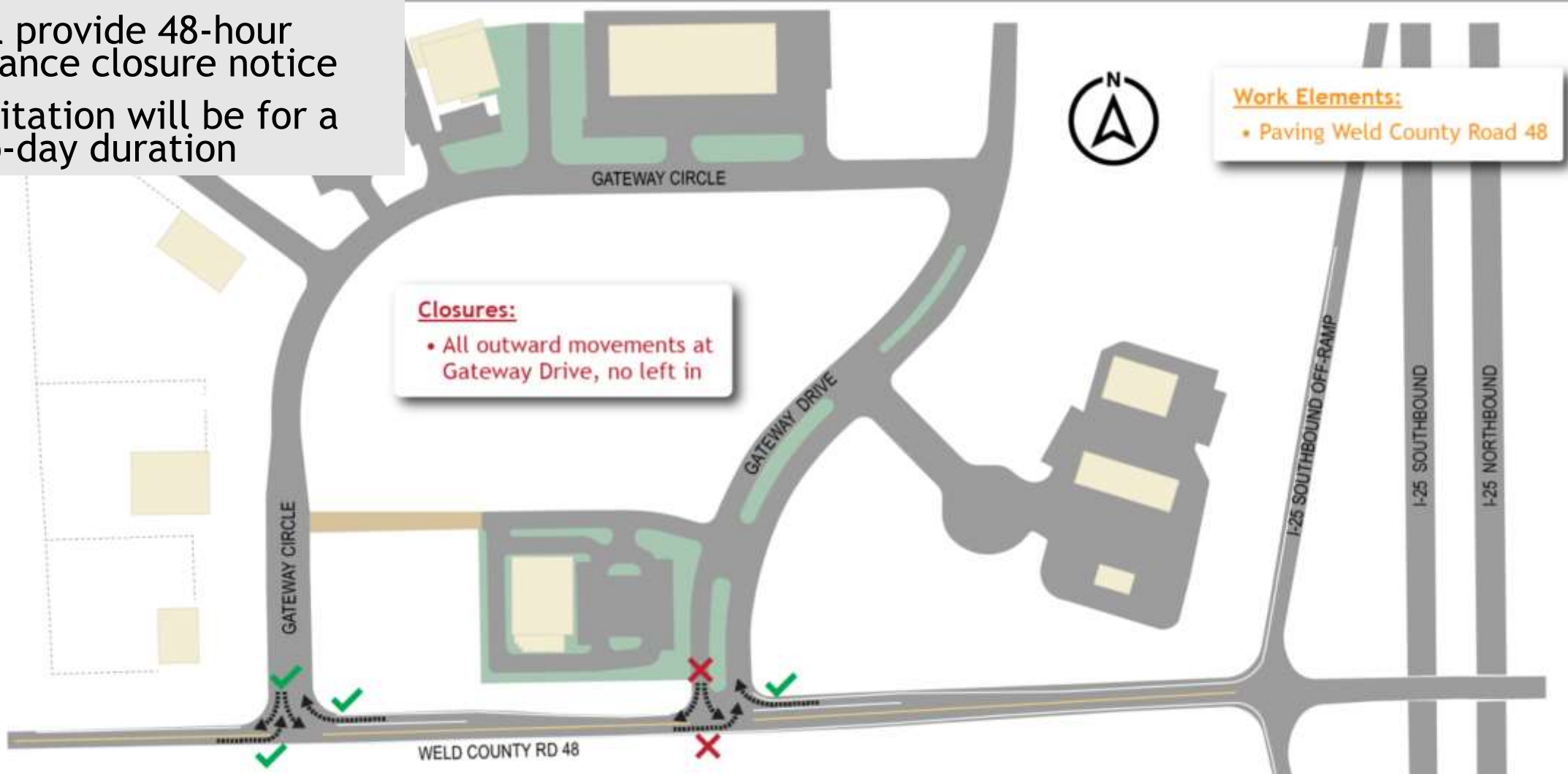
Segment 6 Johnstown Council Meeting

pending no Act of God



Gateway Drive Limitations

- Will provide 48-hour advance closure notice
- Limitation will be for a two-day duration



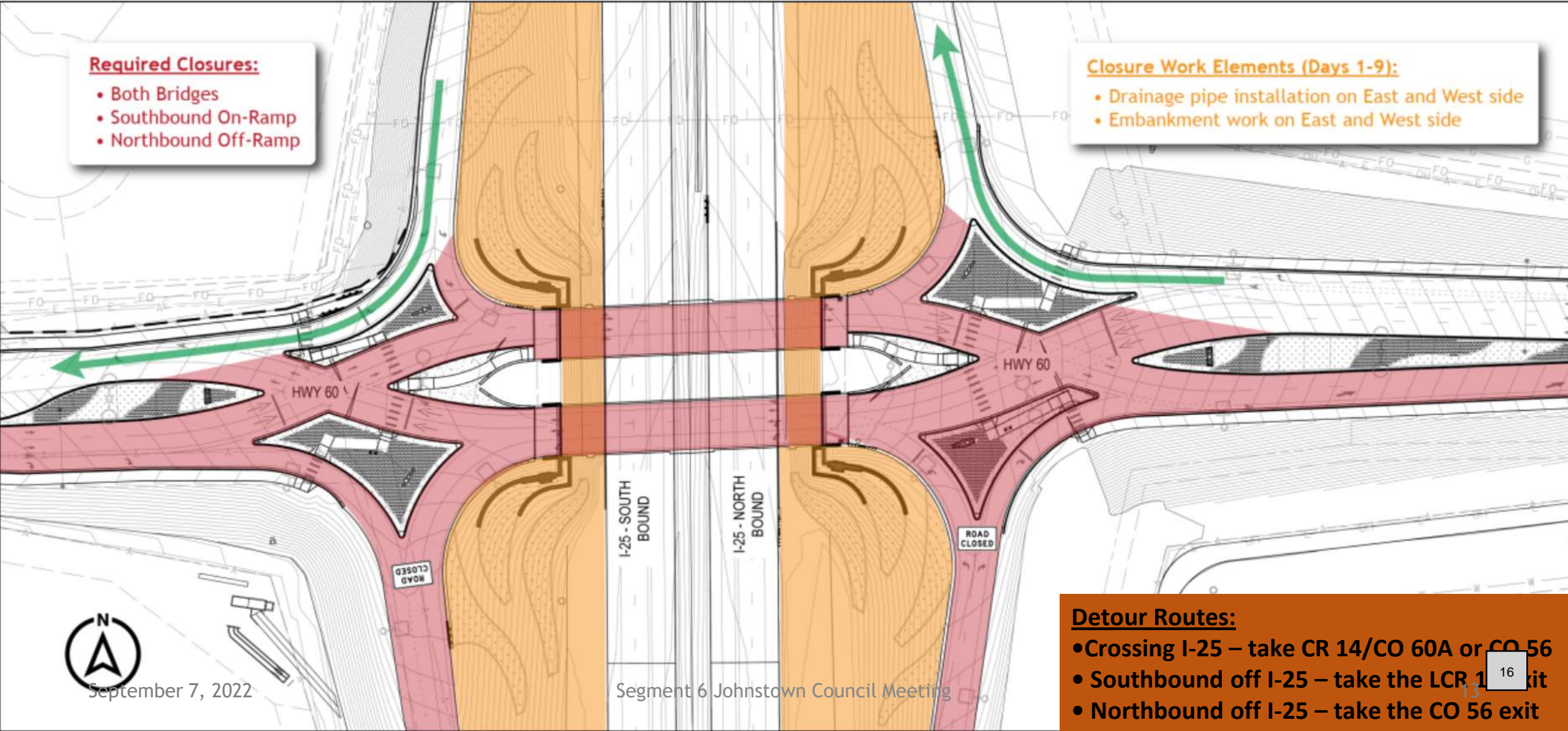


Required Closures:

- Both Bridges
- Southbound On-Ramp
- Northbound Off-Ramp

Closure Work Elements (Days 1-9):

- Drainage pipe installation on East and West side
- Embankment work on East and West side



Detour Routes:

- Crossing I-25 – take CR 14/CO 60A or CO 56
- Southbound off I-25 – take the LCR 131 exit
- Northbound off I-25 – take the CO 56 exit

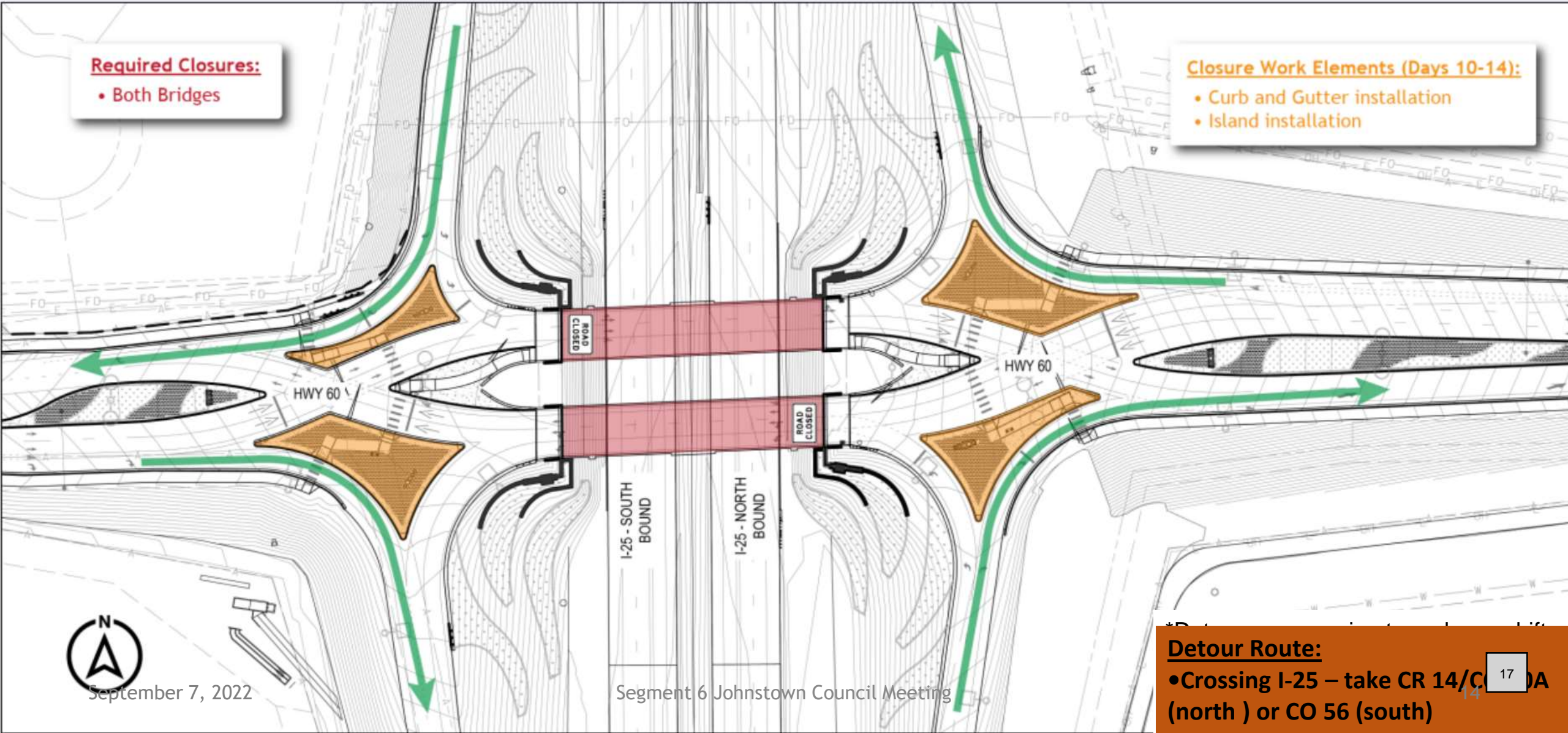


Required Closures:

- Both Bridges

Closure Work Elements (Days 10-14):

- Curb and Gutter installation
- Island installation



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Detour Route:

- Crossing I-25 – take CR 14/CO 56A (north) or CO 56 (south)



September 26th - October 1st

Required Closures:

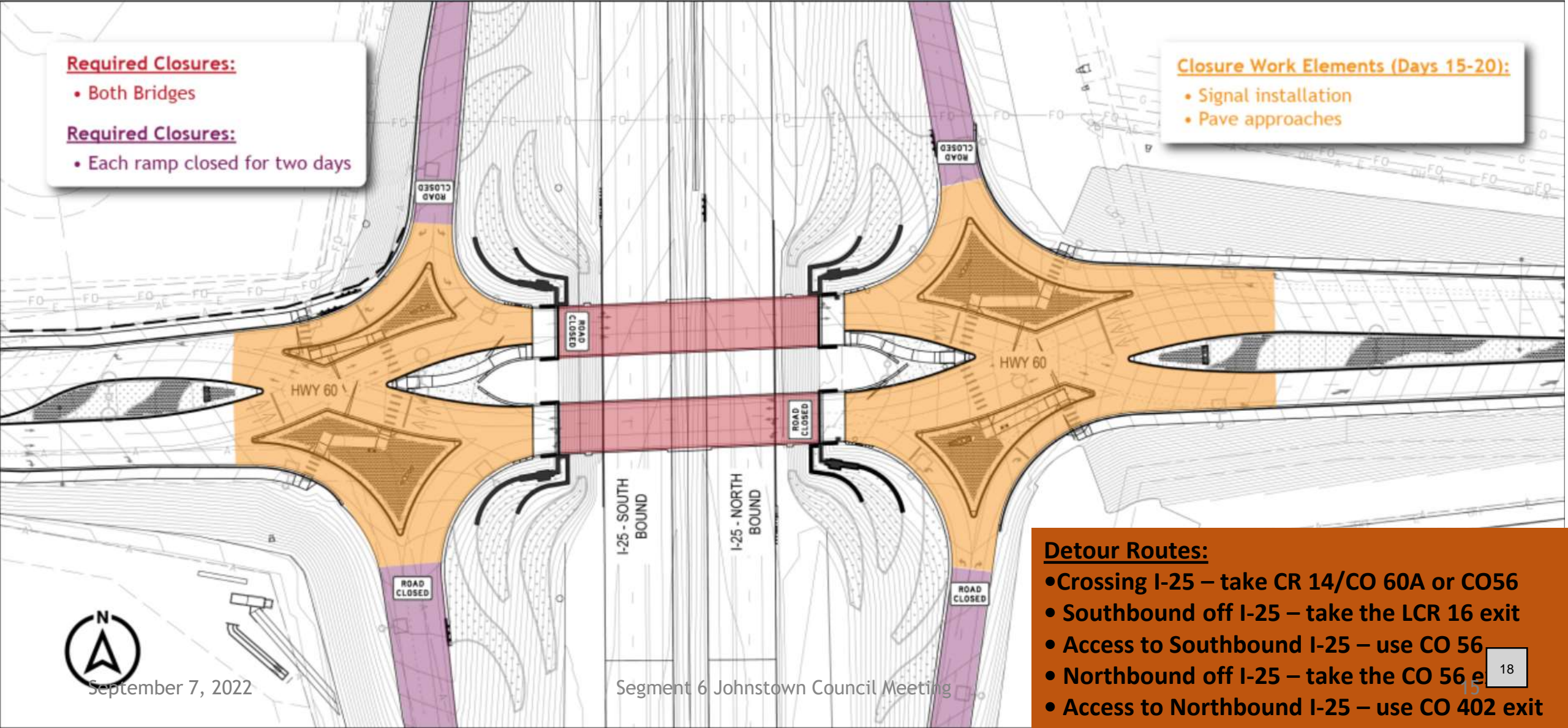
- Both Bridges

Required Closures:

- Each ramp closed for two days

Closure Work Elements (Days 15-20):

- Signal installation
- Pave approaches



Detour Routes:

- Crossing I-25 – take CR 14/CO 60A or CO56
- Southbound off I-25 – take the LCR 16 exit
- Access to Southbound I-25 – use CO 56
- Northbound off I-25 – take the CO 56 exit
- Access to Northbound I-25 – use CO 402 exit



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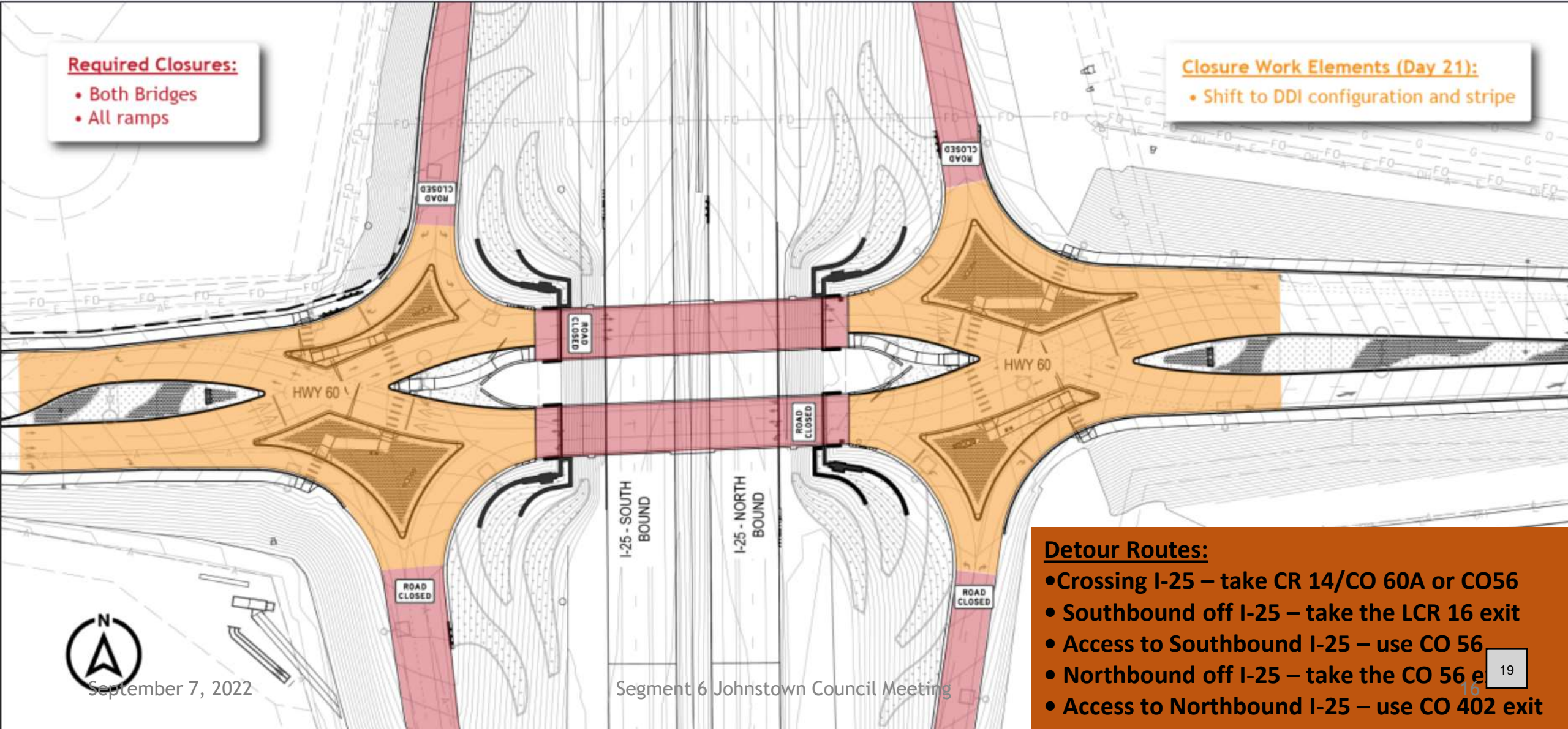
October 2nd - Full Final Striping

Required Closures:

- Both Bridges
- All ramps

Closure Work Elements (Day 21):

- Shift to DDI configuration and stripe



Detour Routes:

- Crossing I-25 – take CR 14/CO 60A or CO56
- Southbound off I-25 – take the LCR 16 exit
- Access to Southbound I-25 – use CO 56
- Northbound off I-25 – take the CO 56 e
- Access to Northbound I-25 – use CO 402 exit



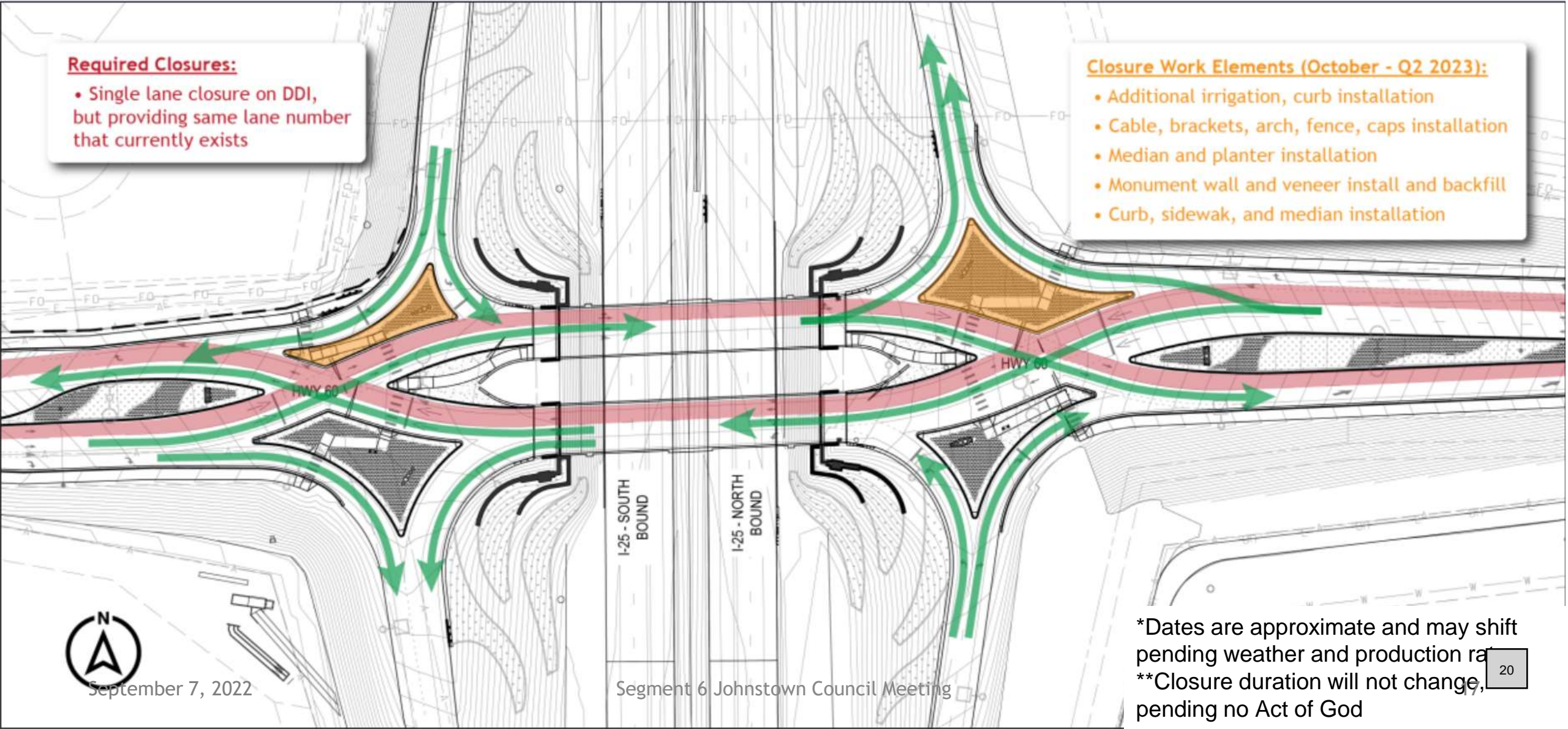
Single-Lane DDI

Required Closures:

- Single lane closure on DDI, but providing same lane number that currently exists

Closure Work Elements (October - Q2 2023):

- Additional irrigation, curb installation
- Cable, brackets, arch, fence, caps installation
- Median and planter installation
- Monument wall and veneer install and backfill
- Curb, sidewalk, and median installation



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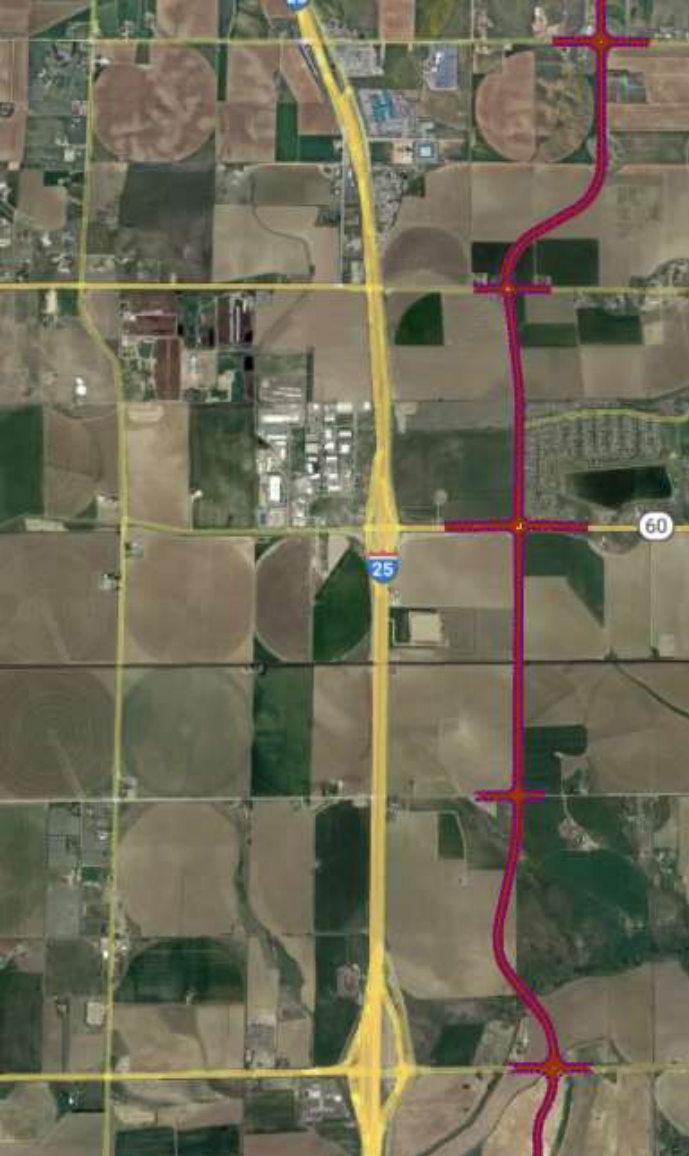
Segment 6 Johnstown Council Meeting

*Dates are approximate and may shift pending weather and production rates
 **Closure duration will not change, pending no Act of God



CO 60 and Ramp Closure Summary

Item #3.



21-Day Closure		
Day	Work Scope	Closures
<ul style="list-style-type: none"> •Day 0 •September 11 	<ul style="list-style-type: none"> •Paving 	<ul style="list-style-type: none"> •NB On
<ul style="list-style-type: none"> •Days 1 through 9 •September 12-20 	<ul style="list-style-type: none"> •Drainage Pipe Installation on east and west side •Embankment work on east and west side 	<ul style="list-style-type: none"> •Both Bridges •SB ON •NB OFF
<ul style="list-style-type: none"> •Days 10 through 14 •September 21-25 	<ul style="list-style-type: none"> •Curb and Gutter Installation •Island Installation 	<ul style="list-style-type: none"> •Both Bridges
<ul style="list-style-type: none"> •Days 14 through 20 •September 26-October 1 	<ul style="list-style-type: none"> •Signal Installation •Pave approaches 	<ul style="list-style-type: none"> •Both Bridges •Each ramp closed two days
<ul style="list-style-type: none"> •Day 21 •October 2 	<ul style="list-style-type: none"> •Stripe and pavement markings •Shift to single-lane in both directions, DDI Configuration and stripe 	<ul style="list-style-type: none"> •Both Bridges •All ramps
After 21-Day Closure		
Q1 and Q2 2023	<ul style="list-style-type: none"> •Additonal Irrigation, Curb Installation •Cable, Brackets, Arch, Fence, Caps Installation •Median and Planter Installation •Monument Wall and Vaneer Install and Backfill •Curb, Sidewalk, Median Installation 	Single lane closure on DDI, but providing same lane number that currently exists
*All days are estimates and may shift based on weather, construction production, etc.		
*The 21-day closure duration will not shift pending no act of God		



Residents expressed concerns during the Virtual Public Meeting (8/22/22) about increased traffic, solutions that will be implemented are:

- Increased police presence to address speeding
- Flagging at critical intersections to manage queuing during peak hours (morning and evening), possible locations:
 - CO 56 and WCR 7
 - CO 60 and WCR 7
 - CO 56 and Colorado Blvd
 - CO 60 and Colorado Blvd
 - High Plains Blvd. and CR 14
- Open High Plains as part of the detour route
- Maintain flexibility - will adjust based on ramp closures and observations

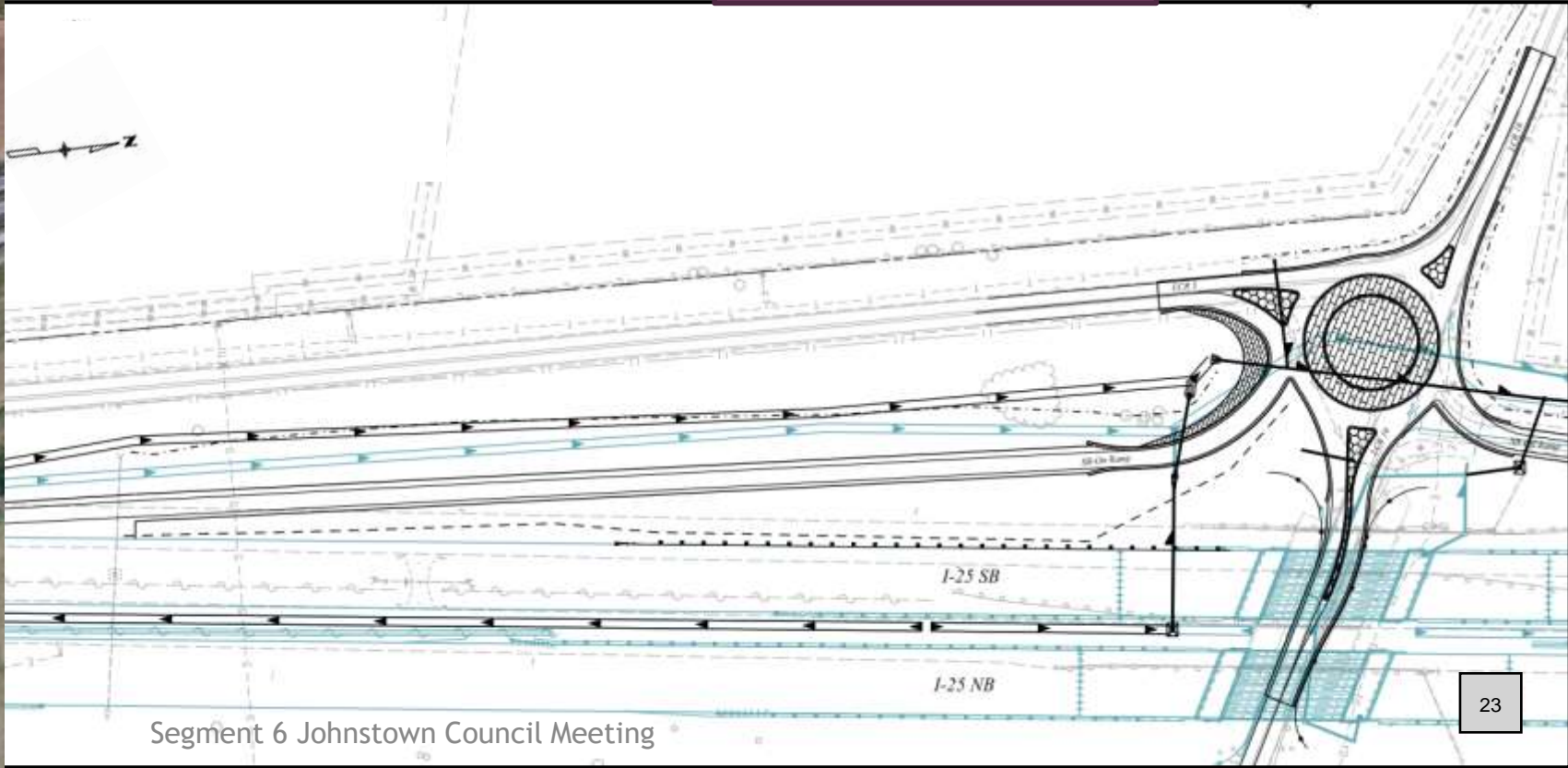




LCR 16 Interchange Improvements Item #3. I-25 Segment 6 Update

- Adding a Southbound onramp
- Necessitates a five-legged roundabout to connect with
- Start construction this spring (90-day closure of LCR 16 through movement and SB offramp)

Conceptual Plan

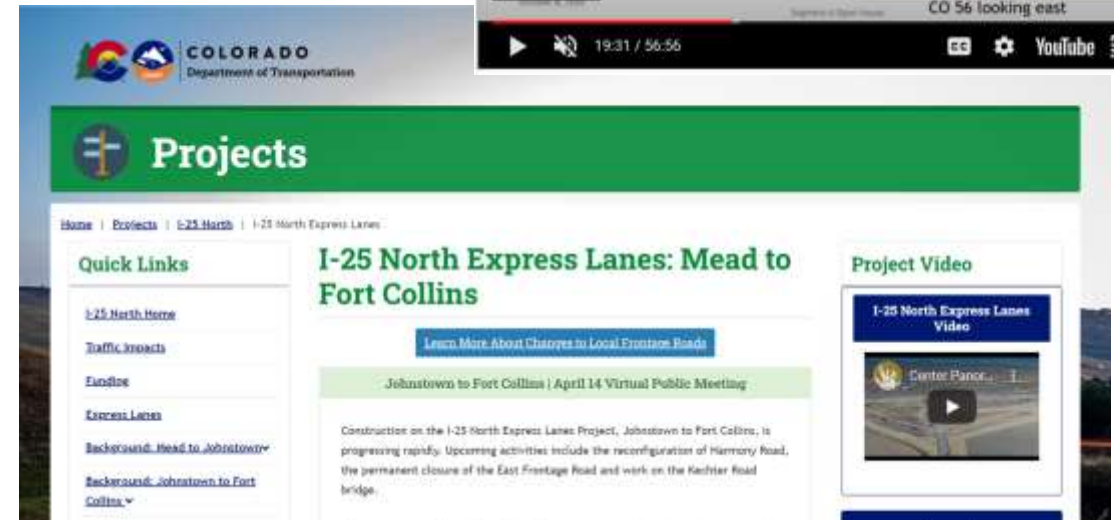
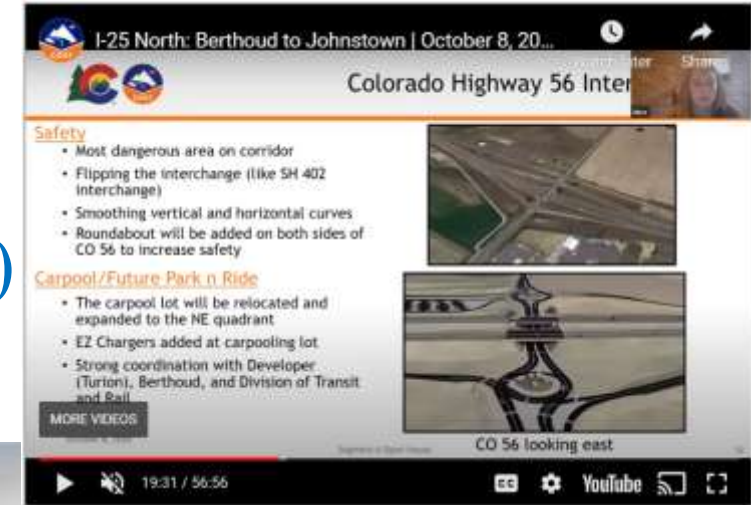




CO 60 Closure Communication Plan Item #3.

Impacts communicated in variety of ways:

- Advance message boards on the highway
- Flyers at local businesses, homes and schools
- Weekly emails prior to and during (highlighting progress)
- Virtual public meeting
- Social media
- Press release
- Website
- Individual meetings





Project Contact Information

- To learn more please visit <https://www.codot.gov/projects/north-i-25>
- Email northi25expresslanes@gmail.com
- Hotline 720-593-1996

- For more information on Express Lanes please visit <https://www.codot.gov/programs/expresslanes/express-lanes> .



Questions?

September 7, 2022



WCR 34 Bridge Hit (Exit 219) Item #3.

- 1. Sustained severe damage to two of the four bridge girders on August 8th
- 2. South half of bridge is being monitored
- 3. Safe for cars to pass under on I-25



September 7, 2022

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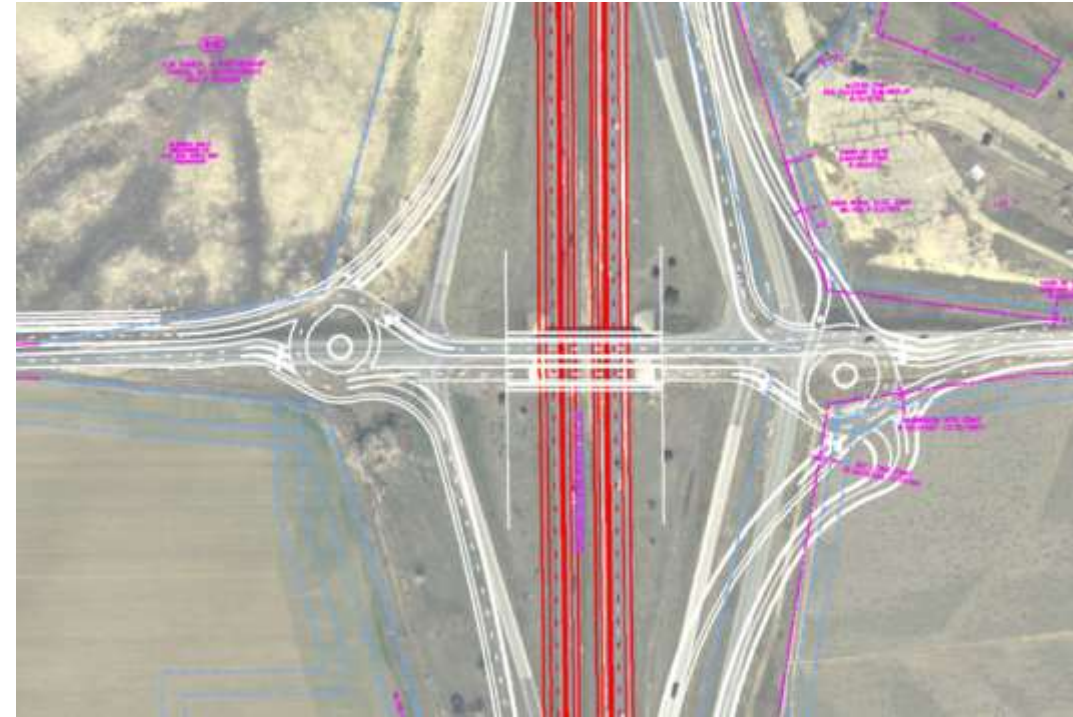
Damage: Roadway Item #3.





Repair and Evaluation Plan Item #3.

1. Open Bridge to one lane direction in the westbound direction and repair I-25 roadway
2. I-25 ramp reroute required to perform necessary work
3. Will determine if the bridge can be repaired or if the resources would be better used to progress straight to a full bridge replacement





Town of Johnstown

TOWN COUNCIL REGULAR MEETING

450 S. Parish, Johnstown, CO
Monday, August 15, 2022 at 7:00 PM

MINUTES

CALL TO ORDER

Mayor Gary Lebsack called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

ROLL CALL

Present:

Mayor Lebsack

Councilmember Berg

Councilmember Mellon

Councilmember Molinar

Councilmember Young

Councilmember Dominguez

Councilmember Morris

AGENDA APPROVAL

It was moved by Councilmember Berg and seconded by Councilmember Mellon to approve the agenda.

The motion was carried with a unanimous vote.

SPECIAL PRESENTATIONS

There were no special presentations on the agenda.

PUBLIC COMMENT

Loveland Fire Rescue and Authority Chief Tim Sendelbach extended an invitation to Council for the opening of Fire Station #10.

Barbara Kirkmeyer, candidate for Congress, introduced herself to Town Council.

CONSENT AGENDA

Councilmember Young noted corrections to the August 1, 2022 minutes.

Councilmember Mellon moved to approve the consent agenda with the noted changes to the minutes.

Councilmember Morris provided the second and the motion carried unanimously.

1. August 1, 2022 Minutes
2. Second Reading Ordinance 2022-234 Approving the SunCatcher Annexation
3. Second Reading Ordinance 2022-235 Approving PUD-MU Zoning for SunCatcher Annexation
4. Second Reading Ordinance 2022-236 Approving the SunCatcher PUD Outline Development Plan
5. Resolution 2022-34 Approving the Ledge Rock Center Design Handbook
6. Annexation Agreement with Sauer South, LLC, for SunCatcher Annexation
7. Subdivision Development and Improvement Agreement with Buc-ee's Johnstown, LLC, for Buc-ee's Travel Center
8. Water and Sewer Service Agreement for Buc-ee's Johnstown, LLC, for Buc-ee's Travel Center
9. First Amendment To Intergovernmental Agreement Between The Town Of Johnstown And The Little Thompson Water District
10. Third Amendment to Franchise Agreement - Town of Johnstown and TDS
11. August 2022 List of Bills
12. July 2022 Financial Statements

TOWN MANAGER REPORT

13. Town Manager's Report

Town Manager Matt LeCerf overviewed the attached report, noting upcoming work sessions and the cancellation of the September 19, 2022 meeting, if Council had no objection. Mr. LeCerf also noted discussions with Allo Communications, regarding deployment of fiber to all areas as Allo informed staff some areas may be isolated and unable to be serviced. Allo has been asked to provide a map for clarification on where those areas would be.

TOWN ATTORNEY REPORT

The Town Attorney did not have a report.

PUBLIC HEARING

14. Resolution 2022-36 Approving the SunCatcher Preliminary/Final Subdivision Plat

Mayor Lebsack opened the public hearing for Resolution No. 2022-36.

Planning and Development Director Kim Meyer presented this annexation, stating there were no public improvements plans as of this time and noting the potential solar farm would be heard later on the agenda. The item had been presented to Planning Commission in July.

Mayor Lebsack opened the public hearing for comment for residents wishing to speak in favor of the item, to which there was none. Mayor Lebsack opened the public hearing for comments opposed, to which there was none.

Councilmember Young moved to approve Resolution No. 2022-36 with Councilmember Morris providing the second.

The motion was approved unanimously.

15. Resolution 2022-37 Approving a Use by Special Review for a Solar Facility on the SunCatcher Property

Mayor Lebsack opened the public hearing for Resolution No. 2022-37.

Ms. Meyer noted this is within the Suncatcher PUD and does allow for solar use. Planning Commission chose to approve this item without the landscape screening. Council asked for clarification on the height allowances of the solar panels, which was noted there would not an option for the height to be lower than the proposed ten feet when tilted due to regulations and items such as shading.

Mayor Lebsack opened the public hearing for comment for residents wishing to speak in favor of the item, to which there was none. Mayor Lebsack opened the public hearing for comments opposed, to which there was none.

Councilmember Berg moved to approve Resolution 2022-37 with an amendment of removing section 1, subparagraph 8 removing the second part of section A which states "and which shall include an annual escalator equal to 4%".

Councilmember Young provided the second, and the motion passed unanimously as amended.

16. Resolution 2022-35 Approving the East Ledge Rock Center Preliminary/Final Subdivision Plat

Mayor Lebsack opened the public hearing for Resolution No. 2022-35.

Ms. Meyer noted the location of this item and reviewed previous and upcoming filings. Council noted the proposal of this item has not changed, but did note there would be increased traffic when the new high school opens which should be taken into account.

Mayor Lebsack opened the public hearing for comment for residents wishing to speak in favor of the item, to which there was none. Mayor Lebsack opened the public hearing for comments opposed, to which there was none.

Councilmember Mellon moved to approve the resolution, with Councilmember Molinar providing the second.

The motion passed unanimously.

Mayor Lebsack closed the public hearing portion of the meeting.

NEW BUSINESS

17. Subdivision Improvement and Development Agreement with Sauer South, LLC, for SunCatcher Subdivision Filing No. 1

Ms. Meyer presented the Development Agreement for the Suncatcher Annexation. After discussion regarding splitting the system development fees into phases, Council direction was to not split the fees into phases.

Councilmember Morris moved to approve the resolution, with Councilmember Berg providing the second.

The motion passed with all in favor.

COUNCIL REPORTS AND COMMENTS

Councilmember Morris noted resident concerns regarding traffic.

Councilmember Young noted upcoming Library Board and Historical Society meetings.

Councilmember Mellon inquired about a town flag.

MAYOR'S COMMENTS

Mayor Lebsack expressed appreciation for all the departments working to keep the streets safe for residents.

EXECUTIVE SESSION

- 18. An executive session to receive legal advice from the Town attorney pursuant to C.R.S. Section 24-6-402(4)(b) regarding economic development and Ledge Rock Development.

Councilmember Berg so moved with Councilmember Young providing the second.

The motion passed with all in favor and Council moved into executive session.

Mayor Lebsack reconvened the Council meeting at 10:03 p.m. and noted no decisions were made in the executive session.

INFORMATIONAL ITEMS

- 19. Informational Items were included in the packet.

ADJOURN

Mayor Lebsack adjourned the August 15, 2022 Town Council Meeting at 10:04 p.m.

Gary Lebsack, Mayor

Hannah Hill, Town Clerk



Town of Johnstown

TOWN COUNCIL SPECIAL MEETING

450 S. Parish, Johnstown, CO

Friday, August 19, 2022 at 6:00 PM

MINUTES

Mayor Gary Lebsack called the meeting to order at 6:00 p.m. and led the Pledge of Allegiance.

Present:

Mayor Lebsack

Councilmember Berg

Councilmember Mellon

Councilmember Young

Councilmember Morris

Absent:

Councilmember Molinar (Arrived at 6:01)

Councilmember Dominguez

AGENDA APPROVAL

Councilmember Mellon moved to approve the agenda, with Councilmember Young providing the second.

The motion passed unanimously.

EXECUTIVE SESSION

1. An executive session to receive legal advice from the Town attorney pursuant to C.R.S. Section 24-6-402(4)(b) regarding economic development and Ledge Rock Development.

Councilmember Berg so moved with Councilmember Mellon providing the second.

The motion passed unanimously.

Council recessed into Executive Session at 6:02 pm.

Council returned from Executive Session and reconvened the meeting at 6:53 pm, and Mayor Lebsack noted the only item discussed was the information in the stated motion.

PUBLIC HEARING

2. Ordinance 2022–237. An Ordinance Amending The Town Of Johnstown Municipal Code Concerning Town Sales Taxes To Provide A Credit Against Sales Tax If A Certain Public Improvements Fee Has Been Paid In Connection With The Development Known As Ledge Rock Center; Repealing And Replacing Ordinance No. 2022-231

Mayor Lebsack opened the public hearing.

Matt LeCerf, Town Manager, noted this item would repeal and replace Ordinance No. 2022-231 which established a credit PIF 2.0%, and this ordinance would from 2.0% to 2.75% at the Ledge Rock Center associated with the commercial development.

Mayor Lebsack opened comments for all those in favor and those opposed, to which there was none.

Councilmember Berg moved to approve Ordinance No. 2022-237, and Councilmember Morris provided the second.

The motion passed with all in favor.

Mayor Lebsack adjourned the August 19, 2022 Special Meeting at 7:00 pm

Gary Lebsack, Mayor

Hannah Hill, Town Clerk



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: September 7, 2022

SUBJECT: Water & Sewer Service Agreement – Thompson River Ranch, East Clubhouse, with Clayton Properties Group II, Inc.

ATTACHMENTS: 1. Water & Sewer Service Agreement

PRESENTED BY: Kim Myer, Planning and Development Director

ITEM DESCRIPTION:

The Developer, Clayton Properties Group II, Inc., has requested approval of a site development plan for a 5,981 square-foot multiuse clubhouse and pool in the Thompson River Ranch PUD.

The annual in-building water demand is estimated at 0.94 acre-feet. The annual permanent irrigation water demand is estimated at 2.22 acre-feet.

The site will contain 0.79 acres of spray-irrigated turf areas and 0.17 acres of drip-irrigated plantings.

The Developer has a preexisting credit, under separate agreement, from the Clayton Property Group SFE Water Credit Bank and will be use 7.36 SFE, representing 3.68 acre-feet/year to supply the potable water needs for in-building use, the pool, and the irrigated landscape requirements. Additional credits remain in this bank.

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-building	0.94	0.05
Pool	0.52	0.21
Landscape Irrigation	2.22	1.88
Total Potable	3.68	2.14

This project will *not* contain any common area irrigation to be used from the Town Common Area Irrigation Supply.

The Community That Cares

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LEGAL ADVICE:

The agreement was prepared by the Town Attorney.

FINANCIAL ADVICE :

N/A

RECOMMENDED ACTION:

Approve the Water & Sewer Service Agreement for Thompson River Ranch, East Clubhouse, Clayton Properties Group II, Inc.

Reviewed and Approved for Presentation,



Town Manager

**WATER AND SEWER SERVICE AGREEMENT
(THOMPSON RIVER RANCH POOL/CLUBHOUSE)**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____, 2022, by and between **CLAYTON PROPERTIES GROUP II, INC.**, a Colorado corporation d/b/a Oakwood Homes (“Developer”), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, Developer owns an interest in land located in a portion of Section 23, T.05N. R.68W., 6th P.M., Larimer County, Colorado, more particularly known as Lot 1 of Thompson River Ranch Filing No. 11, N1/2 and SE1/4 of section 23, T.05N, R.68W of the 6th P.M as shown on Exhibit “A” attached hereto and incorporated herein by this reference (“Subject Property”); and

WHEREAS, the Subject Property was annexed to the Town as part of a larger annexation of 1109.18 acres of land, which was the subject of an Annexation Agreement between Thompson Ranch, LLLP, The Gerrard Family Limited Partnership, LLLP, Joel H. Wiens, and Rite-A-Way Industries, Inc., as Developer, and the Town dated December 18, 2000; and

WHEREAS, the Subject Property is being developed by Developer as a 5,981 sq. ft. multiuse clubhouse and a 4,838 sq. ft pool with 0.954 acre of irrigated landscape. Of the total landscape, 0.787 acre will be spray-irrigated turf and 0.167 will be drip-irrigated shrubs, trees, and plant beds (“Project”); and

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

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

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance, (“Ordinance”), Developer has submitted to the Town a preliminary water and sewer demand analysis for the Project. Said analysis is on file with the Town and is hereby accepted by the Town, as modified by the Town’s Water Engineer by memorandum dated March 1, 2022. The analysis addresses all of the projected water demands for the Project. Said analysis indicates that the water dedication set forth in Paragraph 2 will meet the estimated water supply needs for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-building	0.94	0.05
Pool	0.52	0.21
Irrigated Landscape	2.22	1.88
Total Potable	3.68	2.14

2. Water Rights Dedication and Credits.

A. Pre-existing Credit.

i. SFE Water Bank. Pursuant to an Assignment, Assumption and Bill of Sale from W.R. Investment, LLC (“WRI”) and Exit 223, LLC to Clayton Properties Group II, Inc. d/b/a Oakwood Homes, dated on or about September 19, 2018, Developer acquired a water bank containing 610 single family equivalent (“Clayton Property Group SFE Water Credit Bank”) from WRI. Prior to the use of water for the Project, the Developer has allocated 187.42 SFE credits from the Clayton Property Group SFE Water Credit Bank to other filings in the Thompson River Ranch development.

ii. Common Area Landscape. Pursuant to the Water Agreement between the Town and WRI, dated on or about May 7, 2018, and the Assignment, Assumption and Bill of Sale from WRI and Exit 223, LLC to the Developer, the Town has agreed to provide non-potable water for up to 96 acres of common area irrigation (“Town Common Area Irrigation Supply”). Prior to the use of water for the Project, the Developer has irrigated 56.43 acres of common area from the Town Common Area Irrigation Supply.

B. Credit for the Project.

i. Residential In-Building and Residential Irrigation. The Parties agree that a portion of the now existing credit from the Clayton Property Group SFE Water Credit Bank described in paragraph 2.A.i., above, in the amount of 7.36 SFE, representing 3.68 acre-feet/year, will be used to supply the potable water needs for in-building use, the pool, and the irrigated landscape requirements as set forth in paragraph 1, above.

ii. Common Area Landscape. The Parties agree that the Project will not contain any common area irrigation to be used from the Town Common Area Irrigation Supply described in paragraph 2.A.ii., above.

3. Surplus Dedication Credit. The Developer has surplus credit available in the Clayton Property Group SFE Water Credit Bank and the Town Common Area Irrigation Supply.

Upon notice and written approval of the Town, Developer may be utilize the surplus credit within the Subject Property to offset increased demands, if any, which are not currently projected.

4. Commitment to Serve Water and Sewer. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Project up to 1.46 acre-feet per year of water supply for residential in-building use and the pool, together with the corresponding sewer service. The Town further agrees to provide up to 2.22 acre-feet of potable water for 0.954 irrigated acres as described above.

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

6. Payment of Water Court Transfer fees. The water court transfer fee for the dedications of the above-described water supply was previously paid to the Town. However, in accordance with the Ordinance, additional fees may be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the parties in accordance with the Town's Ordinance.

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

TO DEVELOPER:

Clayton Properties Group II, Inc.
Attn: Brett Price
Regional Vice President of Land
4908 Tower Road
Denver, CO 80249

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
hhill@JohnstownCO.gov

WITH A COPY TO
THE TOWN ATTORNEYS:

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

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264
peterampe@hillandrobbs.com

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

8. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

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

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

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

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

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

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

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

16. Entire agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

17. 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.

18. Recordation. This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Larimer County, Colorado, shall run with the Subject property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

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

Signatures follow on separate page

Exhibit A

Lot 1 Thompson River Ranch Filling No. 11 Rec. No 20180025762. Being located in the North half of the Southeast Quarter of Section 23, T5N, R 68 W of the 6th P.M., Town of Johnstown, County of Larimer, State of Colorado

Town of Johnstown
List of Bills - August 6, 2022 - August 28, 2022

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
4X Industrial LLC	Hydrant meter deposit refund	PW	1,500.00
Ace Hardware	Supplies	PW	1,171.21
Adamson Police Products	Uniforms	PD	409.75
Aerzen USA Corporation	Equipment	PW	4,000.00
All Copy Products, Inc	Copier	ADM	193.15
American West Land Surveying Co	Professional services	PW	6,500.00
Anatum GeoMobile Solutions	Supplies	PW	175.69
Applied Concepts, Inc	Vehicle equipment	PD	4,049.00
Aqua Backflow, Inc.	Supplies	PW	190.00
Arapahoe Rental	Supplies	PW	117.69
Arrowhead Scientific Inc.	Lab supplies	PD	643.16
BearCom	New vehicle upfit	PD	57,798.47
Bell Gould Linder & Scott, P.C.	Legal services	ADM	125.00
BHA Design Incorporated	Design - I-25 loop	PW	1,600.00
Big Thompson & Platte River Ditch Co	Assessment fee	PW	500.00
Bludot Technologies Inc.	CRM software	ADM	195.00
BlueWater Engineering Ltd	Engineering services - WTP	PW	25,532.42
BPS Tactical, Inc.	Uniforms	PD	560.00
Brightly Software Inc	Software	PW	3,467.14
Browns Hill Engineering & Controls	Scada	PW	2,913.28
Bulldogfence	Fencing	PW	3,000.00
C.A.S.E. Company	Supplies	PW	317.40
Canyon Systems, Inc.	Supplies	PW	111.00
Card Services	Travel/training/supplies	ALL	13,890.19
Central Weld County Water District	Interconnects	PW	1,162.18
CenturyLink	Phone/internet	PW	393.55
Cintas	Mat supplies/service	ALL	981.18
CMC Tire	Vehicle supplies	PW	1,362.36
CMS Mechanical Services	Building maintenance	PW	486.00
Colorado Analytical Labs	Lab testing	PW	2,110.00
Colorado Concrete Construction	Concrete repair	PW	7,000.00
Colorado Department of Public Health	Permit fees	PW	10,310.00
Colorado Greenbelt Management	Grounds maintenance	PW	1,375.00
Colorado Materials, Inc.	Supplies	PW	3,521.86
Connell Resources, Inc.	Central phase 2/hydrant meter deposit refund	PW	763,185.29
Consolidated Home Supply Ditch & Co	Legal services	PW	357.00
Core & Main	Water meters	PW	10,390.64
Coren Printing, Inc	Supplies	PD	127.00
DBC Irrigation Supply	Supplies	PW	171.75
DeFALCO Construction Co	Old Town project	PW	35,712.68
Denali Water Solutions LLC	Sludge removal	PW	2,690.19
DES Pipeline Maintenance, LLC	Maintenance	PW	3,687.50
DPC Industries Inc	Chemicals	PW	30,835.76
E-470 Public Highway Authority	Training	PD	96.60
Elite Printing Group, LLC	Supplies	PD	172.00
Ergomed	Employment screening	ADM	410.00
Evoqua Water Technologies LLC	GAC chemicals	PW	124,356.00
Faris Machinery Co.	Equipment maintenance	PW	758.00
Farmers Extension Ditch Co.	Professional services	PW	5,526.20
Felsburg Holt & Ullevig Inc	Billback - Engineering services	ADM	4,845.00
Firestone Complete Auto Care	Vehicle repair	PD	1,767.35

Town of Johnstown
List of Bills - August 6, 2022 - August 28, 2022

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
First Class Security Systems	Fire system monitoring	PW	128.80
First National Bank	Custodial services	ADM	1,023.02
Fort Collins Dodge Chrysler Jeep	Vehicle repairs	PD	1,437.45
Frontier Fertilizer & Chemical	Chemicals	PW	416.70
Galls LLC	Uniforms	PD	175.63
Ground Engineering Consultants, Inc.	Old Town project	PW	962.00
Hach Company	Lab supplies	PW	1,361.92
Hays Market Inc	Supplies	PD/ADM	49.10
Helton & Williamsen, P.C.	Billback - Engineering services	ADM	20,522.50
Horizon View Homes	Refund permit fees	ADM	207.00
Hotsy Equipment Of Northern Co, Inc	Equipment maintenance	PW	2,450.00
IMEG Corp	Billback -Engineering services	ADM	34,250.00
IMEG Corp	Engineering services	PW	60,801.28
Insight North America, LLC	Investment services	ADM	3,013.02
Interstate Battery of the Rockies	Supplies	PW	139.95
J&D Creations	Uniforms	PW	2,264.89
J&S Contractors Supply Co.	Equipment supplies	PW	4,001.80
Johnstown Breeze	Publications	ADM	1,726.56
J-U-B Engineers, Inc.	Engineering services south tank	PW	22,885.17
Julie A. Scroggins Attorney at Law	Municipal court judge	ADM	975.00
JWO Engineering	SH60 project	PW	57,014.89
Kinsco, LLC	Uniforms	PD	88.89
Kissinger & Fellman P.C.	Legal services	ADM	488.00
Larimer County Sales Tax Administrator	Use Tax - Reimbursement	ADM	17,834.74
Law Office of Avi Rocklin LLC	Billback - Legal services	ADM	8,392.00
Law Office of Avi Rocklin LLC	Legal services	ADM	5,484.00
Lazar, Michael	Municipal Court Judge	ADM	900.00
Lefthand Printworks	Supplies	PD	141.62
Lexipol, LLC	Policy manual	PD	3,597.38
Life Stories Child & Family Advocacy	Quarterly fees	PD	156.00
LN2 Food Truck Events	Appreciation dinner	ADM	732.00
Loveland Barricade LLC	Supplies	PW	245.00
Lowe's	Supplies	PW	231.92
Mac Equipment, Inc	Supplies and repairs services	PW	1,559.48
Maplewood Acres, Inc.	Professional services	PW	1,892.10
Mares Auto Inc.	Vehicle maintenance	PW	145.00
Mastec	Vac services	PW	525.00
MEI Total Elevator Solutions	Building maintenance	PW	2,120.00
Midwest Hose & Specialty Inc	Supplies	PW	239.77
Miracle Recreation Equipment	Equipment maintenance	PW	205.99
Motorola Solutions, Inc.	Vehicle upfit	PD	15,757.26
Mountain States Pipe & Supply	Water meters	PW	21,289.75
Multistudio, Inc	Land use code	ADM	6,664.00
Nalco Company LLC	Chemicals	PW	18,860.06
Napa Auto Parts, Inc	Supplies	PW/PD	7,591.25
Northern Engineering	Billback - Engineering services	ADM	563.75
Otak	Little T Trail	PW	7,331.75
PETTY CASH	Supplies	ADM	202.84
Pitney Bowes Inc	Postage meter	PD	168.93
Poudre Valley REA	Utilities	PW	10,635.76
Prairie Mountain Media	Public hearing notice	ADM	7.04

Town of Johnstown
List of Bills - August 6, 2022 - August 28, 2022

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
ProCode Inc.	Inspection services	ADM	15,750.00
Ramey Environmental Compliance Inc.	OCR services	PW	7,543.66
Rebeca Farris	Reimbursement - training	PD	30.74
Redi Services, LLC	Port o lets	PW	1,000.00
Rental Equipment Center - Fort Collins	Equipment rental	PW	1,434.15
Rhinehart Oil Co., Inc.	Fuel	PW	18,949.83
Richard Chavez	Reimbursement - repair	PW	545.00
Ron Turley Associates Inc	Fleet software	PW	4,637.00
Ronald Blackmer Construction	Building maintenance	PW	446.87
Royal-T	Building maintenance	PW	105.00
Ryan Oglesby	Reimbursement - Special Olympics	PD	94.68
Shannon Berg	Facade grant award	ADM	5,357.50
Sirchie	Supplies	PD	145.96
SMH West, LLC	South Tank construction	PW	419,610.72
Striglos	Supplies	ADM	295.00
TDS	Phones	PD/PW	2,170.82
Tier One Networking, LLC	Computers	ADM/PW	18,691.00
TimberLAN	IT services	ALL	2,000.00
T-Mobile	Telephone	PD	32.91
Town of Mead	Broadband	ADM	259.50
Trinity SCS, Inc.	Supplies	PW	273.00
TruGreen Chemlawn	Chemicals	PW	2,152.92
Twin Silos, LLC	Escrow refund	ADM	128,196.51
UC Health Medical Group	Medical services	PD	183.39
UE Compression	Supplies	PW	611.58
United Power, Inc	Utilities	PW	776.90
USA Bluebook	Supplies	PW	397.54
Utility Notification Center of Colorado	Locates	PW	889.20
Utility Refunds	Utility refund	ADM	2,422.75
Vector Disease Control	Mosquito spraying	PW	3,524.70
Verizon Wireless	Cell phones	PW/PD	3,986.62
Waste Connections of Colorado Inc.	Trash services	PW	76,478.56
Weld County Dept of Public Health	Lab services	PW	650.50
Weld County Public Safety IT	Professional services	PD	64.12
Weld County Public Works Dept	Permits	PW	2,058.30
Western Fire Extinguisher	Supplies	PW	240.00
Whispir	Newsletter and courtesy calls	ADM	326.80
White Cap	Supplies	PW	343.92
Whiteside's	Uniforms	PW	190.96
William J Birdwell	Training	PW	1,000.00
Williams, Kyle	Reimbursement - Special Olympics	PD	217.66
Winters, Hughes & Laue, LLC	Prosecuting attorney services	ADM	5,411.25
Xcel Energy	Utilities	PW	69,417.84
YMCA of Northern Colorado	Operating subsidy	ADM	83,333.34
Yost Cleaning	Monthly cleaning service	PW	2,804.00
			2,377,661.30



Town of Johnstown

TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS

AGENDA DATE: September 7, 2022

SUBJECT: Agreement for Inclusion of Property between the Town of Johnstown and the Ledge Rock Center Commercial Metropolitan District

ACTION PROPOSED: Consider Agreement for Inclusion of Property

ATTACHMENTS: 1. Agreement for Inclusion of Property
2. Petition for Inclusion (attached to Agreement)

PRESENTED BY: Matt LeCerf, Town Manager and Avi Rocklin, Town Attorney

AGENDA ITEM DESCRIPTION:

For consideration is an Agreement for Inclusion of Property (“Agreement”) between the Town of Johnstown (“Town”) and the Ledge Rock Center Commercial Metropolitan District (“District”). Based on prior agreements between the Town and the District, the Town has agreed to convey real property, known as Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, situated in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, recorded at the Office of the Weld County Clerk and Recorder at Reception No. 4838311 consisting of approximately 7.835 acres (“Property”), to Ledge Rock Center, LLC, the developer, for purposes of the commercial portion of the development known as Ledge Rock Center when the District issues bonds. The District intends to issue bonds in the next month and utilize such funds to construct public improvements associated with the development. In order to issue the bonds, the bond counsel and underwriter are requiring that the Property be included in the boundaries of the District prior to such issuance. To effectuate the inclusion, the Town, as the owner of the Property, is required to petition the District to be included in the boundaries of the District. A form of Petition for Inclusion is attached to the Agreement. Once the Petition for Inclusion is executed by the Town, the District is required to obtain authorization from its Board of Directors for inclusion of the Property and thereafter file a request for inclusion in the District Court.

Importantly, the Agreement provides that, if the District does not issue bonds by October 31, 2022, unless otherwise agreed by the Town, that the District will be required to exclude the Property from the boundaries of the District.

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

LEGAL ADVICE:

The Agreement was reviewed by the Town Attorney.

FINANCIAL ADVICE:

Not Applicable.

RECOMMENDED ACTION: Approve Agreement for Inclusion of Property between the Town of Johnstown and the Ledge Rock Center Commercial Metropolitan District, and authorize the Mayor to sign the Agreement and sign the Petition for Inclusion attached thereto.

Reviewed and Approved for Presentation,



Town Manager

**AGREEMENT FOR INCLUSION OF PROPERTY
(Ledge Rock Center Commercial Metropolitan District)**

THIS AGREEMENT FOR INCLUSION OF PROPERTY (the “Agreement”) is made and entered into as of this ____ day of _____, 2022, by and between the **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), and the **TOWN OF JOHNSTOWN**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“Town” or “Petitioner”) (the District and the Petitioner may each be referred to herein individually as a “Party” or collectively as the “Parties,” as the context implies).

RECITALS

WHEREAS, the District is a duly and validly created quasi-municipal corporation and political subdivision of the State of Colorado located in the Town of Johnstown, Weld County, Colorado, created in accordance with the provisions of the Special District Act, Section 32-1-101, et seq., C.R.S. (the “Act”), with the general power and authority to provide certain public infrastructure improvements and services and to incur debt or other financial obligations for the purpose of providing and supporting the public infrastructure improvements and services needs for the properties, residents and taxpayers within the District’s Service Area in conformance with the District’s Service Plan; and

WHEREAS, the Town is the owner of a parcel of land known as Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, situated in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, recorded at the Office of the Weld County Clerk and Recorder at Reception No. 4838311 consisting of approximately 7.835 acres (“Property”); and

WHEREAS, on or about February 23, 2022, the Parties entered into that certain Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial and, on or about June 20, 2022, the Parties entered into that certain First Amendment to Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial, and on or about September 1, 2022, the Parties entered into that certain Amended and Restated Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial (collectively, the “Purchase and Sale Agreement”); and

WHEREAS, the Purchase and Sale Agreement and the Second Amended and Restated Development and Reimbursement Agreement, executed between the Parties and Ledge Rock Center, LLC, a Kansas limited liability company (“Developer”), dated on or about September 1, 2022 (“Development Agreement”), contemplate the District’s issuance of Bonds; and

WHEREAS, the Town has agreed to include the Property into the District and, pursuant to the Purchase and Sale Agreement, convey the Property to the Developer, upon terms and conditions set forth in the Purchase and Sale Agreement and in the Development Agreement, provided, however, that if the District has not issued Bonds by October 31, 2022, then, unless the

Town consents to an extension of time, the Purchase and Sale Agreement shall terminate and the Town shall not be obligated to convey the Property to the Developer; and

WHEREAS, the District and the Town have also agreed to exclude the Property from the District if the District has not issued Bonds by October 31, 2022, unless the Town consents to an extension of time.

AGREEMENT

NOW THEREFORE, for and in consideration of the foregoing recitals, which are incorporated herein, the promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Inclusion; Inclusion Process.

(a) Concurrent with Petitioner's execution of this Agreement, Petitioner shall execute and submit to District the petition for inclusion attached hereto as Exhibit A, which Petition for Inclusion requests the inclusion of the entirety of the Property into the District (the "Petition for Inclusion").

(b) The District shall schedule and hold a public meeting and hearing on the Petition for Inclusion within thirty (30) days following receipt of the Petition for Inclusion (the "Public Meeting"). If the District's Board of Directors (the "Board") approves the Petition for Inclusion at the Public Meeting, the Board shall also adopt a resolution approving the Petition for Inclusion (the "Inclusion Resolution").

(c) Following its approval of the Inclusion Resolution, the District shall submit either the Petition for Inclusion and Inclusion Resolution to the District Court for Weld County, Colorado (the "District Court") or take any other action to further the inclusion.

(d) The District shall submit the Inclusion Resolution and the Petition for Inclusion to the District Court, seek an order and decree from the District Court to include the Property into the boundaries of the District (the "Order for Inclusion"), and record the Order for Inclusion in the public records of Weld County to complete the inclusion process in conformance with the provisions of the Act.

(e) Petitioner agrees to cooperate in good faith with District in connection with the Public Meeting and in ultimately obtaining the Order for Inclusion from the District Court consistent with the terms and conditions of this Agreement.

(f) In the event the District fails to issue Bonds by October 31, 2022, unless an extension is agreed to by the Town, then this Agreement shall terminate and the Parties shall cooperate and work together to complete the exclusion of the Property from the District.

(g) Notwithstanding anything to the contrary contained herein, the District shall comply with all of the requirements of the Act, regarding inclusions and exclusions as necessary and in connection with the inclusion of the Property into the boundaries of the District or the exclusion of the Property from the District should the District not issue Bonds by October 31, 2022.

2. Conditions of Inclusion. In the event the Order for Inclusion is entered by the District Court and/or recorded by the District or by any other party, whether intentionally or unintentionally, for any reason, inconsistent with the provisions of this Agreement and the foregoing conditions, the Parties shall cooperate with one another and take any and all actions reasonably necessary to reverse and nullify the effects of the Order for Inclusion.

3. Effect of Inclusion. Petitioner acknowledges and agrees that upon inclusion of the Property into the boundaries of the District, the Property shall, subject to the terms of this Agreement, and other jurisdiction of the District consistent with the provisions of the Act and other applicable law.

4. No Effect on Other District Agreements. Nothing contained in this Agreement shall be deemed or construed to amend, modify or otherwise alter any other agreements or instruments to which the District and the Town is a party, or otherwise bound, including without limitation, the District's Service Plan.

5. Unique to Property. The provisions of this Agreement are deemed to be unique and special with regard to the Property, and do not create a precedent for future inclusions or matters pertaining to other properties.

6. Entire Contract. This Agreement constitutes the entire agreement between the Parties with regard to the subject matter hereof and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the subject matter hereof are of no force and effect.

7. Enforcement; Governing Law; Venue. The Parties acknowledge and agree that this Agreement may be enforced in law or in equity by decree of specific performance, damages, or other legal and equitable relief as may be available to the Parties, subject to the provisions of the statutes of the State of Colorado. The Parties agree that in any action to enforce any provision of this Agreement, the Town, if the prevailing party, shall be entitled to recover attorney fees from the District. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and the Parties agree that the exclusive venue for judicial resolution of any dispute relating to the terms and provisions of this Agreement shall be the District Court in and for the County of Weld, State of Colorado.

8. Further Assurances; Fair Dealing. The Parties shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as the other Parties may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby. In all cases where the consent or approval of one Party is required before the other may act, or where the agreement or cooperation of the

Parties is separately or mutually required as a legal or practical matter, then in that event the Parties agree that each will act in a fair and reasonable manner with a view to carrying out the intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on any Party any greater duty or obligation to another, other than that which already exists as a matter of Colorado law, including, but not limited to any fiduciary duty or other responsibility greater than that of reasonable parties contracting at arms length.

9. Notice. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via Federal Express or other nationally recognized overnight air courier service, by electronic mail delivery or by depositing same in the United States mail, postage prepaid, addressed. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by electronic mail, the same will be deemed to have been given and received upon acknowledgement by the intended recipient. Any Party may at any time, by giving written notice to the other Parties hereto as provided in this Section, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534
mlecerf@townofjohnstown.com

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue #330
Loveland, CO 80538
avi@rocklinlaw.com

and

MaryAnn M. McGeady
Elisabeth Cortese
Erica Montague
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
legalnotices@specialdistrictlaw.com

If to the District:

Ledge Rock Center Commercial
Metropolitan District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000

With a copy to:

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

Denver, CO 80203

doleary@spencerfane.com

10. No Third-Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement shall be strictly reserved to the Parties. It is the express intention of the Parties that any person other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

11. Governmental Immunity. Nothing in this Agreement or in any actions taken by the District pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

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

13. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

14. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

15. Construction and Interpretation. Captions to sections and subsections are for convenience and reference purposes only and will not affect the construction of the meaning of the terms and provisions of this Agreement. Unless another agreement is indicated or the context otherwise requires, references herein to attachments, recitals, sections, and subsections are to attachments, recitals, sections, and subsections of this Agreement. Whenever the context requires or permits, the singular will include the plural, the plural will include the singular, and the masculine, feminine, and neuter will be freely interchangeable. The terms “herein,” “hereinafter,” and “hereof” mean and refer to sections and provisions contained in this Agreement.

16. Counterparts; Electronic Execution. This Agreement may be executed in multiple counterparts, and the signature of a Party affixed to a counterpart signature of the other Party shall be deemed to constitute execution of this Agreement. The Parties acknowledge and agree that this Agreement and all related documents may be executed by electronic means, which electronic signatures shall be considered as original signatures for all purposes and shall have the same force and effect as original signatures.

[remainder of page intentionally left blank; signature pages follow]

LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

By: _____
Its: President
Date: _____

Attest:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Inclusion Agreement was acknowledged before me this ____ day of _____, 2022, by _____, as President and Secretary Ledge Rock Center Metropolitan District, a quasi-municipal corporation of the state of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

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

By: _____
Gary Lebsack, Mayor

Date: _____

Attest:

Hannah Hill, Town Clerk

**Exhibit A
Form of Petition for Inclusion**

IN THE MATTER OF THE)
)
LEDGE ROCK CENTER COMMERCIAL)
METROPOLITAN DISTRICT) **PETITION FOR INCLUSION**
)
WELD COUNTY, COLORADO)

The undersigned hereby respectfully petitions the Ledge Rock Center Commercial Metropolitan District (the "District"), acting by and through its Board of Directors, for the inclusion of the hereinafter described real property into the boundaries of the District, which real property is situated within the County of Weld, State of Colorado.

The undersigned hereby consents that the herein described property be included in said District and that an Order may be entered in the District Court in and for the County of Weld, State of Colorado, including said land into the boundaries of the District.

The undersigned represents to the District that it is current record owner of the property hereinafter described and that no other persons, entity or entities own an interest therein except as beneficial holders of encumbrances.

The undersigned further represents to the District that the area sought to be included into the District is located entirely within the County of Weld, State of Colorado, and does not include property within any other county or incorporated city, town, or city and county, and that no notice of the proposed inclusion under Section 32-1-207(2), C.R.S., as amended, is required.

Acceptance of the Petition shall be deemed to have occurred at that time when the Board of Directors of the District sets the date for the public hearing for consideration of the Petition.

The name and address of the petitioner and legal description of the property are as follows:

Petitioners: Town of Johnstown, a Colorado home rule municipal corporation

Address: Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: MLeCerf@JohnstownCO.gov

Legal Description: See Exhibit 1

PETITIONER:

Town of Johnstown, a Colorado home rule municipal corporation

By: _____
Name: Gary Lebsack
Title: Mayor

ATTEST:

Hannah Hill, Town Clerk

EXHIBIT 1

Legal Description for Inclusion Area for Ledge Rock Center Commercial Metropolitan District

Legal Description:

Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, located in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, recorded at the Office of the Weld County Clerk and Recorder at Reception No. 4838311, consisting of approximately 7.835 acres, more or less.



Town of Johnstown

MEMORANDUM

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: September 7, 2022

CC: Town Staff
Local Media

SUBJECT: Town Manager's Report

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

- 09/07/2022 – Regular Council Meeting
- 09/12/2022 – Budget Work Session 1 (6:00 p.m.)
- 09/19/2022 – Regular Council Meeting - CANCELLED
- 09/26/2022 – Budget Work Session 2 (6:00 p.m. – If necessary)

Administration, Finance, Planning, & Human Resources

- *Municipal Court* – The Request for Proposal for a Prosecuting Attorney has closed, and Staff will be meeting with Council for direction.
- *Town Clerk's Office* – Staff will be meeting internally to review procedures for business licensing and special event processes. The application for Fall Fest submitted by the Johnstown Downtown Development Authority has been approved.
- *2023 Budget* – Meetings with departments have been completed.
- *Land Use Code* – Town staff is reviewing some initial drafts of the pending land use code updates. Work Session with Council was held on August 22 to obtain Council feedback and input on various issues to move forward with additional draft sections. Public Works,

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Utilities and Planning are also coordinating on the updates to both the LUC and the Design Standards and Engineering Specifications.

- *Larimer County* – Staff continues to coordinate with Larimer County Public Works and Planning departments on various interim and final roadway improvements, intersection configurations, and alignments that impact both entities. Most recently discussions have centered on intersections at CR 18 with CR 3 and CR 3e, and the future High Plains Boulevard alignment.
- *Glenn A. Jones Memorial Library* – Planning Staff met with the Library Director to discuss immediate and long-term options for an on-site accessory structure to assist with storage needs.
- *Oil & Gas Development* – Planning staff engaged with PDC Energy and the COGCC to review the proposed [Guanella CAP \(Comprehensive Area Plan\)](#) related to multiple well sites envisioned in Weld County. The western edge of the CAP boundary includes areas just within the Town’s GMA, north of CR 48.5, along the river, with the drill site (Belford) sitting east of Hwy 257 in Milliken.
- *Community Engagement at Weld RE5J Unite to Ignite Event* – Town Staff attended the Weld RE5J Unite to Ignite event on Saturday, August 27 to engage with residents and school aged kids about the Town of Johnstown. In addition to Communications staff, Economic Development staff (Sarah Crosthwaite) and the JPD School Resource Officer (Officer Kelley) also attended the event. Residents were able to learn about general Town initiatives, the Downtown Identity Branding and Wayfinding Project, as well as meet Johnstown’s SRO. Overall, the event went really well and Staff spoke with a number of residents who appreciated the information.



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- *Upcoming Community Engagement* – Town Staff will have a table at the following upcoming events to meet residents where they are, answer questions, and provide information about the programs and services of the Town.
 - September 10 – Touch a Truck Event at United Methodist.
 - September 10 - A booth at Johnstown Historical Society’s Quilt and Craft Fair.
 - September 18 – There will be a booth at JDDA’s Fall Fest Downtown.
- *Downtown Johnstown Branding & Wayfinding Project Update* – Staff conducted another round of business walks in August to meet with additional businesses in the Johnstown Plaza and 2534 area to discuss this project and gain community awareness. Additionally, Staff has another business walk scheduled in September to meet with the downtown businesses to provide an update regarding this project. Staff has also launched a new survey specifically for stakeholders to gain a deeper understanding of Downtown Johnstown and help us categorize how different stakeholder groups in our community perceive the corridor. This survey will be made available to identified stakeholders throughout Johnstown specifically the Johnstown Downtown businesses. Staff has also designed new project stickers which will be handed out to businesses so that they can provide it to their patrons to continue to raise awareness of the project.
- *Regional Resiliency & Recovery Roadmap Workshop* – The Town is participating in a Northern Colorado resiliency group that is being hosted by Upstate Colorado. The workshop is meant to identify regional challenges brought about by the COVID-19 pandemic and how to strengthen the regions position. The Town participated in the last meeting on August 16 and looks forward to sharing any updated information regarding this initiative with Council and the public as it becomes available and in final form.
- *Weld County Workforce Development Month* – In honor of Workforce Development Month in September, Weld County Employment Services will be hosting an open house on Wednesday, September 14 from 7:30 AM – 9:00 AM at 315 N. 11th Avenue, Building B, Greeley CO. The open house will provide an opportunity for community leaders, economic development, and businesses to connect. Town Staff plans to attend this event and encourages any interested parties to reach out the Town’s Economic Development office for more information.
- *Mineral Lease Agreement* – The Town is currently in discussions with both PDC Energy and Occidental regarding leasing of the minerals owned by the Town. We expect to have both lease agreements in a general form and overview to be completed in September and presented to Council in October with a recommendation.
- *Xcel Energy* – Town Staff continues to have positive discussions with Xcel Energy regarding available power supply for the current and future development of the Town. This purpose is to ensure that Xcel is prepared to meet the power supply needs of the community. Significant additional loads are planned to be online in Q2 of 2024.

- *Executive Assistant* – Rachel Blazek started working for the Town last week as the Town Manager’s new Executive Administrative Assistant. She is a great addition and will help to support many of the administrative functions of the Town.

Police Department

Training:

- *Active Shooter Training*- The Johnstown Police Department with Windsor Police, Milliken Police, Front Range Fire, Platteville Gilcrest Fire and Loveland Fire completed active shooter response training over three days at Letford Elementary. This included skills instruction and full-scale scenario training.
- *Sex Offender Training*- Officer Grounds completed sex offender training put on by Colorado Bureau of Investigations.
- *Animal Capture Training*- Code Enforcement Officers hosted and completed a chemical capture certification course at the Police Department. This prepares them to dart a dangerous animal with medication allowing them to capture it safely.

Community Policing, Outreach & Miscellaneous Items:

- Officers are participating in a program through Culvers to give out coupons for free ice cream to kids that they see doing good for the community.
- Officer Kelley and Jamie Barker attended a Weld RE5J event in Milliken in support of the school district.
- Officer Kelley and Lieutenant Williams assisted with a school safety evaluation on Elwell prior to its grand opening.

Public Works and Utilities

- *Raw Water Transmission* – The Town received three bids for the Request for Proposal (RFP) for the design, land acquisition, bidding and construction phase engineering and observation services for an approximately 11 mile 24”- 48” diameter Raw Water Transmission Main to expand the Town’s current raw water supply to the Water Treatment Plant. Town staff will be presenting the project to Council on September 7.
- *South Water Tank* – Contractor has finished welding the tank together on the ground. The next steps are to prepare and paint the tank while it is still on the ground and then raise the tank into place before finishing the top of the tank. The tank is currently being prepared for painting, which is anticipated to begin in early September.
- *South Water Tank Distribution Pipeline* – Project pipe crews are focused on completing the sections of waterline between WCR40 and WCR42 on the west side of WCR17. The Contractor has also started main line installation on WCR 13.
- *Water Treatment Plant Expansion* – The pilot test for the design of ozone treatment systems and filters are wrapped up. The Design Engineer has submitted the 30% plans and met with operations to review. The owner’s representative, Blue Water Engineering, is on board and assisting Town Staff in making key decisions.

- *Central Interceptor Phase 1* – The contractor is wrapping up some small items and collections and distributions staff is working with them to optimize the performance of the lift station.
- *Central Interceptor Phase 2* – Contractor is installing sewer main along WCR46 between CR 17 and CR 15. The bore crew has begun installing the bore under WCR13.
- *North Interceptor* – The 100% design plans have been issued to the Contractor. The contractor has begun preparing the site for the new lift station and providing project submittals to the Town and the design engineer for review to be able to procure equipment. The Contractor is also working with Weld County to obtain the necessary permits.
- *Low Point Sewer Expansion* – Approximately 95% of the concrete has been installed. Masonry work has begun around the new MBR building and will continue throughout the site in the coming months.
- *Central Plant Design* – The Design Engineer submitted the Site Location Application for the project to the State (CDPHE) as well as the Utility Plan update for the project to the North Front Range Water Quality Planning Association (NFRWQPA) which was discussed at the NFRWQPA meeting on July 28. NFRWQPA approved the plan. Staff is working on early procurement of the equipment that Council has approved to ensure that the project stays on schedule.
- *Old Town Drainage* – Paving of Estes and Greeley is complete and crews are working on finishing up the landscaping along both Greeley and Estes.
- *Charlotte Street Improvements* – The construction contract is on the September 7 Council Meeting for consideration. Should Council approve the contract, a Notice to Proceed to the contractor will be given to the contractor on September 8.
- *County Road 17/Parish Ave Mill and Overlay* – The project has started and crews are working south from County Road 40. The project is currently ahead of schedule and is making very good progress. Crews will mill a section at a time and place a bottom lift on the roadway so each section can be re-opened. Once the bottom lift is installed on the entire project, crews will install the final top lift.
- *Traffic Signal Design for Carlson Blvd and State Highway 60* – Design for the traffic signal is at 60% design level and being reviewed by CDOT for comments. Town Staff met with CDOT Local Agency personnel to discuss the project and an IGA from CDOT is forthcoming for Council’s consideration. The IGA is required as part of the MMOF funding. Once the IGA is approved, the Town will be able to purchase the traffic signal poles that have a 4–6-month lead time.
- *State Highway Feasibility Study* – The Town and consultant met to go over preliminary design options for SH 60 from 1-25 to County Road 19. The design options will be presented to the Council for feedback on October 10 during a work session.
- *Little Thompson River Trail*- Design for the trail is 95% complete and final approval from CDOT is forthcoming. Town staff and the design firm are currently working on the Request for Proposal documents and working on a release date for the proposal.
- *Chip seal* – Chip seal for portions of County Road 13 and County Road 15 are occurring in September. Chip seal for High Plains Blvd is complete. High Palins Blvd just north of

SH 60 was chipped sealed in preparation of the High Plains Blvd scheduled opening on September 8.

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Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

- AGENDA DATE:** September 7, 2022
- SUBJECT:** Request for approval of a contract with Colorado Paving Inc., for the Charlotte Street Improvement Project
- ACTION PROPOSED:** Consider approval of a contract with Colorado Paving for the Charlotte Street Improvement Project and authorize the Town Manger to sign the contract.
- ATTACHMENTS:**
1. Contract (with incentive)
 2. Site Map
- PRESENTED BY:** Troy White, Director of Public Works
-

AGENDA ITEM DESCRIPTION:

In April 2021, the Town Council approved a contract for the design of the Charlotte Street Improvement Project. Although the primary purpose of the project is the installation of storm water infrastructure, the project will also include replacement of an irregularly crowned roadway, landscape, and utility reconstruction (water, sewer, and gas).

The project will remove and replace the roadway from Jay Avenue to Columbine Avenue. The road will be lowered in several areas to accommodate proper drainage of storm water and to mitigate intersection grade differences along the corridor. The roadway improvements will also follow Accessibility Guidelines for the installation of new sidewalks and handicap ramps that will provide safe and accessible pedestrian pathways throughout the project.

The main water and sewer lines will be replaced in Charlotte Street and new service lines provided to the Property line along most of the project corridor. The contractor has been directed to work with homeowners who wish to replace their water and sewer service lines during the project. Homeowners will be responsible for hiring their own contractor for work performed on their property.

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The landscaping design will have minimal impacts to existing properties and the Town has met with residents on site to discuss impacts specific to their properties.

Following completion of the project design, the Charlotte Street Project was issued for bid construction on DATE TIME and the bid were open and received on DATE TIME. Below is a list of the bids and amount submitted for the construction project:

Company	Bid Amount
Colorado Paving	\$4,546,707.21
HEI Civil	\$5,347,031.45
Wagner Construction	\$5,857,500.00
Native Sun Construction, Inc	\$6,393,164.00
SMH West, LLC	\$4,876,000.00
Connell	\$4,948,670.10

Based on reference checks of the low responsive bidder, the project is being recommended for award to Colorado Paving.

PROJECT INCENTIVE:

The project is scheduled to be complete on or around July 30, 2023. Town Staff and the contractor have discussed the possibility of a \$50,000 incentive for an early substantial completion date of on or before June 1, 2023 (approximately 60 days early). Should the work not be substantial complete on or before June 1, 2023, no proration incentive amount would be paid to the contractor. Should Council not want to approve the early incentive, the not to exceed amount would reduce by \$50,000. The not to exceed amount on this staff report includes:

- 1. Contract Price: \$4,546,708.00
 - 2. Five percent (5%) contingency: \$ 227,335.00
 - 3. June 1, 2023 Early Incentive: \$ 50,000.00
- \$4,824,043.00

Therefore, if Council chooses to forego the early completion incentive, the not to exceed amount would reduce to \$4,774,043.00.

DESIGN ENGINEER SUPPORT:

The construction will also include a contract with Tait and Associates (the projects design engineer) estimated at \$45,000 for project support including Request for Information (RFI) submittals and attendance at weekly construction meetings. Original design cost for the project was \$450,000.

MATERIAL TESTING AND INSPECTION SERVICES:

The construction will also include a contract with a material testing firm estimated at \$25,000 to perform materials testing and special inspection services. The scope includes testing and inspections for soils compaction, concrete, asphalt, and the associated laboratory testing services. Ground Engineering provided utility boring services for the design of the project in the amount of \$5,000.

CERTIFIED ARBORIST SUPPORT:

The construction will also include a contract with SaveATree Consulting Group estimated at \$10,000 to provide certified arborist support for the project. The arborist will observe construction in and around the trees along Charlotte Street to help mitigate tree root damage and to render a decision on what trees may need to be removed as a result of construction. Staff anticipates between 2-4 trees will need to be removed (one tree is currently dead). Staff discussed this issue with residents during our on-site visits with homeowners.

The total estimated cost for Charlotte Street Project: \$5,359,043.00

Pre-construction:

- 1. Design Services: \$450,000.00
 - 2. Design Utility Boring Services: \$ 5,000.00
- \$455,000.00

Construction:

- 1. Construction Services: \$4,546,708.00
 - 2. Contingency (5%): \$ 227,335.00
 - 3. Early completion incentive: \$ 50,000.00
 - 4. Design Engineers support: \$ 45,000.00
 - 5. Material Testing: \$ 25,000.00
 - 6. Arborist Support: \$ 5,000.00
- \$ 4,899,043.00

Total estimated cost: \$5,354,043.00

LEGAL ADVICE:

The Town Attorney reviewed the Contract.

FINANCIAL ADVICE:

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Charlotte Street was originally budgeted in 2022 for \$4 million. Remaining funds will carry forward in the 2023 budget and will include the additional funds necessary to complete the project. The Town was awarded a \$750,000 Energy Impact Grant for the Project.

RECOMMENDED ACTION: Approve a contract with Colorado Paving in an amount not to exceed \$4,824,043.00 for construction of the Charlotte Street Improvement Project.

SUGGESTED MOTIONS:

For Approval: I move to approve a contract with Colorado Paving Inc., in an amount not to exceed \$4,824,043.00 for construction of the Charlotte Street Improvement Project and authorize the Town Manger to sign the contract.

For Denial: I move to deny the contract with Colorado Paving in an amount not to exceed \$4,824,043.00 for construction of the Charlotte Street Improvement Project.

Reviewed and Approved for Presentation,



Town Manager

**TOWN OF JOHNSTOWN, COLORADO
AGREEMENT FOR CONSTRUCTION CONTRACT**

[NAME OF PROJECT]

THIS AGREEMENT FOR CONSTRUCTION CONTRACT (“Agreement”) is made by and between the Town of Johnstown, Colorado, a home-rule municipal corporation of the State of Colorado (“Town”), whose address is 450 S. Parish Avenue, Johnstown, CO 80534, and Colorado Paving Inc, (“Contractor”) of the State of Colorado, whose address is 15210 Edna Drive, Brighton Colorado, 80603. The Town and the Contractor may be collectively referred to as “parties.”

In consideration of these mutual covenants and conditions, the Town and Contractor agree as follows:

SCOPE OF WORK. The Contractor shall commence and complete the construction of the Charlotte Street Improvements (“Project”) and, in furtherance thereof, execute the entire Work described in the Contract.

CONTRACT DOCUMENTS. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, written or oral representations and agreements. The Contract incorporates the following Contract Documents. In resolving inconsistencies among two or more of the Contract Documents, precedence shall be given in the same order as enumerated.

LIST OF CONTRACT DOCUMENTS.

The Contract Documents, except for modifications in writing issued after execution of this Agreement, are:

1. Change Orders;
2. Agreement for Construction Contract;
3. The following Addenda, if any:
Number 1: Date: 7/20/2022 Bid Questions and Answers
Number 2 : N/A
Number 3: Date: 7/26/2022 Final Bid Tab
4. Special Conditions;
5. Town of Johnstown Construction Contract General Conditions;
6. Technical Specifications;
7. The following Drawings:
Title: Charlotte Street improvements – Town of Johnstown Date:6/29/2022
8. Notice to Proceed;
9. Notice of Award;
10. Advertisement to Bid;
11. Bid Bond;
12. Bid Proposal;
13. Information and Instructions to Bidders; Project Manual - Charlotte Street Project
14. Performance Bond and Payment Bond; and
15. Insurance Certificates.

CONTRACT PRICE. The Town shall pay the Contractor on a per unit price basis for the total quantity of Work performed and the completion of the Project according to the Contract, subject to Change Orders approved and executed in writing by the Town. The Town will pay the Contractor, in accordance with the unit prices of the Bid Schedule, a total amount not to exceed \$4,546,707.21 (“Contract Price”), subject to full and satisfactory performance of the terms and conditions of the Contract. The Town has appropriated sufficient funds for the Work.

COMPLETION OF WORK. The Contractor shall begin the Work covered by the Contract Date within 15 calendar days and shall substantially complete work within 320 calendar days from and including the date of Notice to Proceed, as modified, if at all, by an executed Change Order extending the Contract Time (the “Substantial Completion Date”).

INCENTIVE PAYMENT. In addition to the Contract Price, and notwithstanding the Substantial

Completion Date set forth above, if the Contractor achieves substantial completion of the Project and the Town issues the Notice of Substantial Completion on or before June 1, 2023, the Town agrees to pay the Contractor an incentive bonus in the amount of Fifty Thousand Dollars (\$50,000). Such amount shall not be prorated and is only payable if the foregoing conditions are satisfied.

LIQUIDATED DAMAGES.

The parties recognize that time is of the essence of the Contract and that the Town will suffer financial loss if the Contractor fails to substantially complete the Work by the Substantial Completion Date. The parties also recognize the delays, expense and difficulties involved in proving in a legal proceeding the actual loss suffered by the Town if the Work is not completed on time. Accordingly, instead of requiring any such proof, the Town and Contractor agree that, as liquidated damages for the delay, but not as a penalty, Contractor shall pay the Town the sum of five hundred Dollars (\$500.00) for each day that expires after the Substantial Completion Date.

SERVICE OF NOTICES. Notices to shall be hand delivered, sent by electronic mail on the condition that the recipient acknowledges receipt thereof or sent by registered or certified mail, postage prepaid, to the following address:

To the Town:

TOWN OF JOHNSTOWN
Attn: Town Manager
450 S. Parish Ave
Johnstown, CO 80534
Email: mlecerf@johnstownco.gov

To the Contractor:

PROJECT MANAGER. The Town hereby designates the following person as the Project Manager for the Project:

Name: Mark Stanley
450 South Parish Avenue
Johnstown, CO 80534
Phone: 970-481-9252
Email: mstanley@johnstownco.gov

CONTRACTOR’S REPRESENTATIVE. The Contractor hereby designates the following person as the Contractor’s Representative for the Project:

Name: Jesus Sanchez
Address: 1521 Edna Drive
Brighton Colorado, 80603
Phone: 720-556-3123
Email: jsanchez@copaving.com

INSURANCE PROVISIONS. The Contractor shall not commence any work until the Contractor obtains, at the Contractor's own expense, all required insurance as specified in the General Conditions. Such insurance must have the approval of the Town of Johnstown as to limits, form and amount, and must include the Town as an additionally insured party.

RESPONSIBILITY FOR DAMAGE CLAIMS. The Contractor shall indemnify, save harmless, and defend the Town, its officers, employees and agents, from and in all suits, actions or claims of any character brought because of: any injuries or damage received or sustained by any person, persons or property because of operations for the Town under the Contract; the Contractor's failure to comply with the provisions of the

Contract; the Contractor's neglect of materials while constructing the Work; any act or omission, neglect or misconduct of the Contractor; any claims or amounts recovered from any infringements of patent, trademark, or copyright, unless the design, device, materials or process involved are specifically required by Contract; any claims or amount arising or recovered under the "Workers' Compensation Act," by reason of the Contractor's failure to comply with the act; pollution or environmental liability; and/or any failure of the Contractor to comply with any other law, ordinance, order or decree. The Town may retain so much of the money due the Contractor under the Contract, as the Town considers necessary for such purpose. If no money is due, the Contractor's Surety may be held until such suits, actions, claims for injuries or damages have been settled. At the Town's discretion, money due the Contractor may not be withheld when the Contractor produces satisfactory evidence that the Contractor and the Town are adequately protected by public liability and property damage insurance.

The Contractor also agrees to pay the Town all expenses incurred to enforce this "Responsibility for Damage Claim" provision, including but not limited to attorney's fees. The Contractor further agrees to pay for the Town's cost of defense if the Contractor's insurer fails to provide or pay for the defense of the Town, its officers, employees and agents, as additional insureds.

Nothing in the **INSURANCE PROVISIONS of the General Conditions** shall limit the Contractor's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs, including but not limited to attorney's fees, resulting from its performance or nonperformance under the Contract.

STATUS OF CONTRACTOR. The Contractor shall perform all the Work under the Contract as an independent contractor and not as an agent or employee of the Town. No employee or official of the Town will supervise the Contractor nor will the Contractor exercise supervision over any employee or official of the Town. The Contractor shall not represent that it is an employee or agent of the Town in any capacity. **The Contractor and its employees are not entitled to Unemployment Insurance benefits from the Town. Contractor is obligated to pay federal and state income tax on moneys paid pursuant to the Contract.** This is not an exclusive contract.

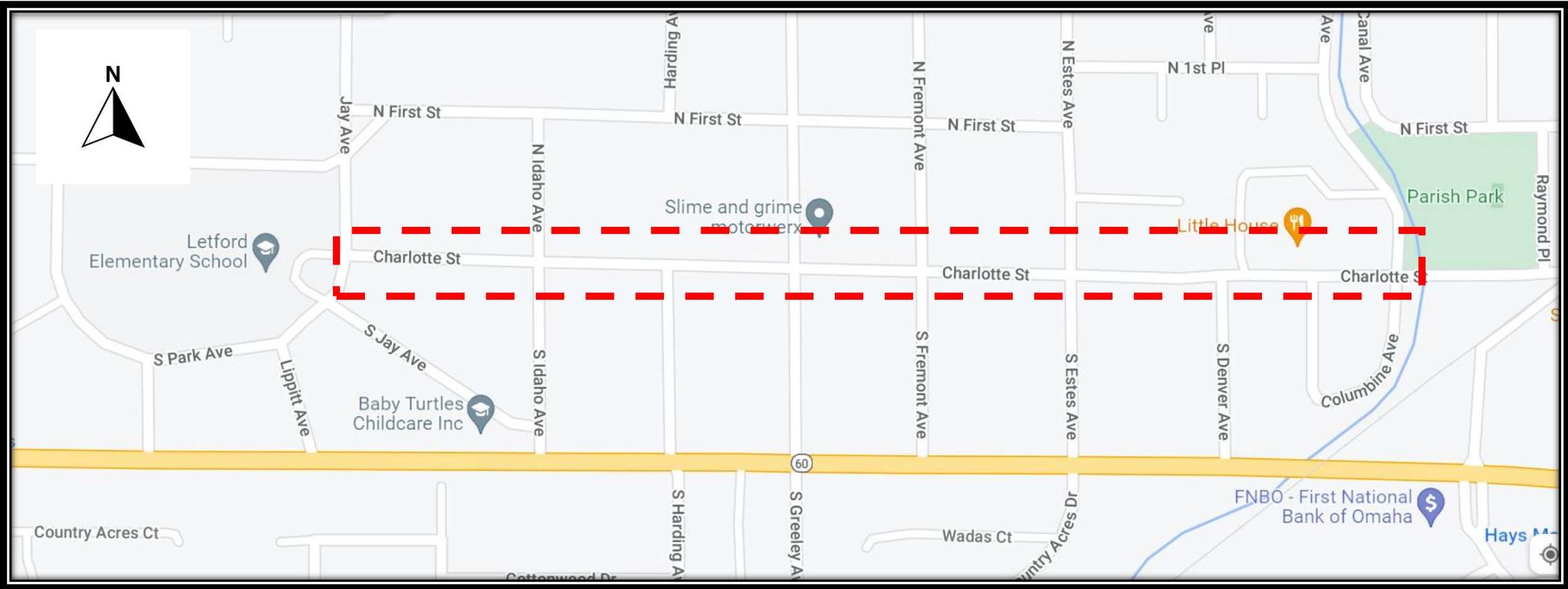
THIRD PARTY BENEFICIARIES. None of the terms or conditions in the Contract shall give or allow any claim, benefit, or right of action by any third person not a party to the Contract. Any person except the Town or the Contractor receiving services or benefits under the Contract shall be only an incidental beneficiary.

INTEGRATION. The Contract is an integration of the entire understanding of the parties with respect to the matters set forth in it.

DEFINITIONS AND CAPITALIZED TERMS. The Definitions in the General Conditions apply to the entire Contract unless modified within a Contract Document. Unless otherwise defined, the capitalized terms used herein shall have the meaning set forth in the General Conditions.

[Remainder of page intentionally left blank.]

Charlotte Street Project – Site Map



Courtesy Google Maps



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

- AGENDA DATE:** September 7, 2022
- SUBJECT:** Request for approval of a contract with Sanderson Stewart for the design of 1,900 lineal feet of half-street improvements to Colorado Blvd.
- ACTION PROPOSED:** Consider approval of a contract with Sanderson Stewart in amount for half-street design of Colorado Blvd.
- ATTACHMENTS:** 1. Contract and Site Map
- PRESENTED BY:** Troy White, Director of Public Works
-

AGENDA ITEM DESCRIPTION:

As part of the Purvis development the developer will be responsible for the east half-street improvements to Colorado Blvd adjacent to their site. Additional improvements to State Highway 60 are also required as part of their site development.

Town staff believes it would be fiscally prudent and would provide a significant public benefit to widen the west half-street of Colorado Blvd at the same time as the Purvis development improvements. Therefore, Staff has requested a design estimate for these improvements for Council’s consideration.

The design of the west half-street improvements would include the frontage along Corbett Glen as well as the frontage along the northern area of the cemetery (see attached map). These improvements would provide for better traffic flow in and around the Town Cemetery, Corbett Glen, and the new Purvis development, and would allow for better traffic transition back down to the single lane roadway just north and south of the improvements. Additionally, when development occurs on the west side of Colorado Blvd, just north of SH 60, the Town would work with that developer to tie into these improvements.

The Community That Cares

www.TownofJohnstown.com

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

Staff has selected the services of Sanderson Stewart as they are the street engineer for the Purvis Development. Sanderson Stewart already has the base survey for the roadway and is familiar with utilities in the area that will allow for better plan integration and faster project delivery. Sanderson Stewart provided a quote for the engineering design services in the amount of \$89,235.

Should Council support the design of the west-half street improvements, funding for construction will be proposed in next year’s budget, estimated at \$1.5 million dollars.

LEGAL ADVICE:

The Town Attorney reviewed the Contract.

FINANCIAL ADVICE:

A budget amendment may be necessary at the end of FY 2022 to accommodate this contracted expenditure.

RECOMMENDED ACTION: Approve a contract with Sanderson Stewart in an amount not to exceed \$89,235.00 for design of approximately 1900 lineal feet of Colorado Blvd.

SUGGESTED MOTIONS:

For Approval: I move to approve a contract with Sanderson Stewart in an amount not to exceed \$89,235.00 for design of approximately 1900 lineal feet of Colorado Blvd.

For Denial: I move to deny the contract with Sanderson Stewart for design of approximately 1900 lineal feet of Colorado Blvd.

Reviewed and Approved for Presentation,



Town Manager

**TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this 7th day of September 2022 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and Engineering, Inc dba Sanderson Stewart, a Montana Corporation (“Contractor”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Town desires to engage the services of Contractor and Contractor desires to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), to the Town; and

WHEREAS, the Parties wish to memorialize their contractual relationship.

AGREEMENT

NOW, THEREFORE, incorporating the foregoing Recitals herein and in consideration of the mutual promises, agreements, undertakings and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby mutually agree as follows:

SECTION 1: PARTIES

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement.

SECTION 2: SERVICES, COMPENSATION AND TERM

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Compensation. In consideration of Contractor’s performance of the Services contemplated herein, the Town agrees to pay Contractor the compensation set forth on Exhibit A. Contractor shall submit detailed invoices reflecting the portion of the Services completed to the date of the invoice. The Town shall provide payment for Services to Contractor within thirty (30) days of receipt of the invoice. In its discretion, the Town may withhold payment for disputed portions of invoices on the condition that the Town provides written notice to Contractor of the dispute. Upon delivery of notice, the Town and Contractor shall promptly endeavor to resolve such dispute.

2.03 Expenses: Contractor shall not incur any expense or debt on behalf of the Town without the Town’s prior written authorization.

2.04 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through April 30, 2023, and shall not extend beyond that date absent the written approval of the Town.

SECTION 3: OPERATIONS

3.01 Contractor Status. Contractor avers that it has the background, expertise and education to provide the Services. Contractor shall be responsible for the proper performance of the Services in accordance with the terms hereof. Contractor shall obtain the necessary permits, if any, and maintain all required licenses, including but not limited to a Town business license.

3.02 Schedule. Unless otherwise set forth in Exhibit A, Contractor shall provide the Services in accordance with the timeline requested by the Town

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance.

A. Contractor understands and agrees that Contractor shall have no right of coverage under any existing or future Town comprehensive or personal injury liability insurance policies. As a material term of this Agreement, Contractor agrees to maintain and keep in force during the term of this Agreement one or more policies of insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado in the following amounts:

1. Workers’ compensation insurance as required by law;
2. Commercial general or business liability insurance with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000.00) each occurrence and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate;
3. Automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of Contractor’s owned, hired or non-owned vehicles assigned to or used in performance of the Services. In the event that Contractor’s insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of Contractor who utilizes an automobile in providing services to Town under this Agreement; and
4. Professional liability insurance with minimum limits of ONE MILLION DOLLARS (\$1,000,000.00) each claim and TWO MILLION DOLLARS (\$2,000,000.00) general aggregate.

B. Contractor shall procure and maintain the minimum insurance coverages listed herein. All coverages shall be continuously maintained to cover all liability, claims, demands and other obligations assumed by Contractor pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto. Except for workers compensation insurance, the Town shall be listed as an additional insured party on Contractor's insurance policies.

C. A certificate of insurance shall be completed by Contractor's insurance agent(s) as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and, upon request by the Town, shall be subject to review and approval by the Town. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be provided to the Town.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities, or failures to act, under this Agreement. Contractor agrees that it will at all times protect, indemnify and hold harmless the Town, its elected officials, employees, agents, and their successors and assigns, from and against all liabilities, losses, claims, demands, actions and costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons arising from or resulting in any manner from the actions or failures to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person.

SECTION 5: TERMINATION

5.01 Termination. The Town or Contractor may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

SECTION 6: INDEPENDENT CONTRACTOR

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID**

PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

SECTION 7: NOTICE

7.01 Notices. All notices required under this Agreement shall be in writing and shall be: 1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth; or 3) sent by electronic mail (“email”) return receipt or written acknowledgment requested and received. 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. All notices by email shall be effective upon acknowledgment of receipt by the intended recipient. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO THE TOWN:
Town of Johnstown
Attn: Matt LeCerf
450 S. Parish Avenue
P.O. Box 609
Johnstown, CO 80534
Email: Mlecerf@johnstownco.gov

TO CONTRACTOR:
John Tufte, P.E.
Principal/Region Manager
Sanderson Stewart
425 W Mulberry Street, Suite 201
Fort Collins, CO 80521

SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not budgeted and appropriated.

8.03 Laws and Regulations. In the conduct of the Services, Contractor shall comply with all applicable laws, rules and regulations, and the directives or instructions issued by the Town or its designated representatives.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

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

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the 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 amended from time, or otherwise available to the Town, its elected officials, employees or agents.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the Parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

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

8.12 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.13 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, employee or agent of the Town.

8.14 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.

8.15 Controlling Document. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

8.17 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which, together, shall constitute one and the same instrument.

8.18 Data Security. If Contractor has access to personal identifying information during the term of this Agreement, Contractor shall, pursuant to Section 24-73-101, *et seq.*, C.R.S., destroy all paper and electronic documents containing such personal identifying information within six months of termination of this Agreement, unless otherwise required by law. During the term of this Agreement, Contractor shall implement and maintain reasonable security procedures that are appropriate to the nature of the personal identifying information disclosed or maintained and that are reasonably designed to help protect the information from unauthorized access, use, modification, disclosure or destruction. If Contractor discovers or is informed of a security breach, Contractor shall give the Town notice in the most expedient time and without unreasonable delay, no later than ten (10) calendar days after it is determined a security breach occurred. Contractor shall cooperate with the Town in the event of a security breach that compromises computerized data, if misuse of personal information about a Colorado resident occurred or is likely to occur. Cooperation includes sharing with the Town information relevant to the security breach.

8.19 Right to Injunction. The Parties hereto acknowledge that the Services to be rendered by Contractor and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by Contractor.

[Remainder of page intentionally left blank.]

**EXHIBIT A
SERVICES**

August 17, 2022

Mr. Troy White
Public Works Director
Town of Johnstown
450 S Parish Ave, PO Box 609
Johnstown, CO 80534
Email: TWhite@JohnstownCO.gov

Reference: Proposal for Surveying and Engineering Services
Weld County Rd 13 (Colorado Boulevard) Widening Improvements
Just North of Hwy 60 (adjacent to Purvis Farm property)
Weld County, Johnstown, Colorado

Dear Troy:

Thank you for the opportunity to submit this proposal to provide professional services for the referenced project which is described as follows:

Provide survey and civil engineering services associated with the design and plan preparation for approximately 1,900 lineal feet of full width roadway, per the Town of Johnstown's Street Standards, in Johnstown, Colorado. (Refer to site location in Appendix A).

Improvements are anticipated to consist of accel/decel lanes, middle turn lanes, full width sections and road tapers to tie into existing conditions. It is imagined that the west side of Colorado Boulevard, north of Ballentine Boulevard, might look like this image after the widening.

If this proposal is acceptable to you, please execute this agreement. This document and included Terms and Conditions will set forth the terms of the agreement between The Town of Johnstown (hereinafter "Client") and Sanderson Stewart. The included Terms and Conditions are incorporated into and part of the agreement between Client and Sanderson Stewart.



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 August 17, 2022
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Overview

Per the Town of Johnstown's request, we have prepared this proposal to design the west side improvements for Colorado Boulevard (adjacent to the Purvis Farm property). Since the east side improvements associated with the Purvis Farm project are currently at final design, it is assumed that any changes to the east side improvements due to the design of the west side improvements for the Town will also be covered under this proposal. This proposal is based on conversations with the Town and the Purvis Farm Developer and from Town comments received through the Purvis Farm PUD review approval process.

The section of roadway to receive improvements is located along Weld County Road 13 (Colorado Boulevard) adjacent to and on the west side of the Purvis Farm property, in Johnstown, Colorado.

There are certain existing condition items that may provide challenges and could affect the project scope both inside and outside of road right-of-way. Such items are the following:

- Accommodation of existing Home Supply Extension irrigation ditch lateral lines within ROW
- Accommodation of existing Thornton 42-inch raw waterline and future NISP raw waterline
- Accommodation of existing oil and gas pipeline(s) and easement(s)
- Creation and/or vacation of easements
- Existing landscaping remove/replace along west side of existing roadway
- Accommodation and/or relocation of existing utilities (overhead poles, gas, fiber, etc.)
- Stormwater management and where to convey developed runoff due to street widening
- ADA improvements to existing intersections and sidewalks

We assume that the approval process will be administrative only with reviews conducted through the Town (Public Works, IMEG, FHU and applicable referral agencies).

Additional topographic survey and utility locates beyond what was surveyed for the Purvis Farm project will be required.

This proposal assumes that there will be a maximum of three (3) rounds of review by the review agencies listed above. All submittals are assumed to be collated and physically/electronically delivered to the Town by Sanderson Stewart.

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We believe the scope of work outlined below provides the necessary services required to achieve approval by the Town of Johnstown. Those services and associated providers as we understand them to be, are listed as follows:

Included:

- Civil Engineering – Sanderson Stewart
- Survey/Utility Locates – Sanderson Stewart (Majestic Surveying/Primo)
- Traffic Engineering, as required – Sanderson Stewart

Excluded:

- Landscape Architecture and Irrigation Design, if required – TB Group
- Lighting and Photometrics – Provided by Others, if required
- Geotechnical engineering/report – Provided by Others, if required
- Utility Relocation – Provided by Others, as required

The following is an outline of our proposed scope of work.

Base Scope of Work

Sanderson Stewart will provide the following phases as part of its basic services:

Phase 1. Topographic Survey – Provided by Majestic Surveying

Majestic Surveying will perform additional topographic survey of the subject project area for approximately 3.5-acres. This survey will be tied to NAVD 88 Vertical datum and referenced to Colorado State Plane Coordinates, North Zone. The drawing will be provided in Civil 3D 2018 .dwg format. All planimetric features will be located and a surface will be created with a 1-FT contour index. Platted lot lines and easements will be shown based on best available evidence.

This task also includes private utility locates from Primo Locating Services, LLC for \$650.00.

Refer to Appendix for project survey limits exhibit.

Phase 2. Conceptual Planning Assistance and Design

Sanderson Stewart will assist the Client and project team with the design and preparation of up to three (3) conceptual layouts for the overall roadway improvements from which the approved layout may be selected. These concept designs will consider such elements as Town direction, traffic warrants, required geometries and adjacent improvements/constraints at a conceptual level.

- A. Provide code review for compliance with the Town of Johnstown Standards and other

Initials

pertinent requirements to help determine layout and if any variances are required.

- B. Review concept options with the Client and project team and provide comments concerning possible design requirements, constraints, and possible layout issues. Sanderson Stewart will assist in an initial layout and up to two (2) rounds of revisions to the conceptual plan.
- C. Coordination with the Client, project team, Purvis Farm development team, Fire Department, and private utility companies, as required.

Phase 3. Site Design and Construction Drawings

Sanderson Stewart will provide the design and construction plans and other documents needed for development of the roadway improvements for the proposed project as described in the selected concept plan. Design and Construction Drawings will be completed in accordance with the Town of Johnstown Design Criteria & Construction Regulations. The following items are included in this phase:

- Provide review of design standards for compliance per the Town of Johnstown design criteria.
- Provide sufficient design to identify required rerouting, relocating and/or modifications to existing public/private utilities necessary to accommodate improvements.
- Provide sufficient design to identify areas where removal/replacement of existing trees, landscaping and/or irrigation systems would be necessary to accommodate improvements.
- Complete grading design to support roadway requirements and provide for positive drainage to existing or proposed storm systems.
- Prepare required sediment and erosion control plans and documents, as required by the Town.
- Preparation of construction drawings, including:
 - Cover Sheet
 - Construction Notes & Legend
 - Existing Conditions & Removals Plans
 - Site Plan Sheets
 - Overall Grading Plan
 - Overall Drainage Plan (if needed)
 - Sediment and Erosion Control Plan & Details
 - Detailed Grading Sheets (as needed)
 - Overall Utility Plan (if needed)
 - Plan and Profile Sheets (as required for storm, sanitary, water)
 - Streets Plan and Profile Sheets
 - Paving, Signage and Striping Plans
 - Construction Details

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- Construction drawing plan sheet count estimated to be 15-20 sheets
- Prepare specification notes to be included on the plans. Town of Johnstown specifications will be referenced.
- This proposal assumes the construction of these Colorado Boulevard improvements will occur in a single phase and will not require phasing plans.

Phase 4. Drainage Report and Analysis

Sanderson Stewart will perform the necessary analysis to prepare a Preliminary and Final Drainage Report & Plan in accordance with the Storm Drainage Design Criteria by the Johnstown Waste Water Department (JWWD), the Mile High Flood District and Johnstown's Overall Master Drainage Plan, as required. This task will generally include:

- Criteria/standards research
- Existing document and report review
- Modeling and calculations
- Report preparation with necessary spreadsheets, maps, and exhibits
- BMP analysis and selection, as required
- Prepare drainage plans for inclusion in report

Phase 5. Public Improvements Opinion of Costs

An Engineer's Opinion of Probable Construction Cost for public improvements will be prepared by the site Contactor who will construct the full width roadway improvements of Colorado Boulevard and the Purvis Farm development.

Phase 6. Traffic Engineering Assistance (T&M – Time and Materials)

Sanderson Stewart's Community Transportation Studio will assist with roadway geometry design and review of plans in relation to the prescribed warrants outlined in the Traffic Impact Study that was prepared by this studio for the Purvis Farm project. We will coordinate with the Town's Public Works Department, and the Town's Engineer and Traffic Engineer, as required, to make sure the improvements are designed per Town requirement and the adjacent developments are accommodated.

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Phase 7. Meetings & Coordination (T&M – Time and Materials)

Sanderson Stewart will coordinate with the Client, project team (including sub-consultants), Purvis Farm Development team and utility providers, as required, during the phases described above. We have anticipated approximately 50 hours for the following meetings and coordination pertaining to the Scope of Services provided above:

- Perform one (1) site visit with design team to review existing conditions and take site photos
- Attend two (2) meetings with Client and project team to evaluate the opportunities and constraints associated with the project site in accordance with the Client’s goals and objectives to progress the concept layout
- Attend three (3) Town Staff Review Meetings for ongoing project review
- Coordinate with the Town departments, as required
- Coordinate with utility companies regarding utility services for the project, including gas, power, telephone, and cable television
- Additional hours have been assumed for ongoing coordination with the external project team, as needed, over the course of the project

Base Services - Fees and Billing Arrangements

For phases 001 through 005, we propose to bill for our services on a lump sum basis plus reimbursable expenses incurred. The Time & Materials (T&M) fees for phases 006 and 007 are suggested amounts for budgeting purposes only.

<u>Phase</u>	<u>Fee</u>
Phase 001 – Topographic Survey with Utility Locates	\$2,500.00
Phase 002 – Conceptual Planning Assistance and Design	\$7,200.00
Phase 003 – Site Design and Construction Drawings	\$45,600.00
Phase 004 – Drainage Report and Analysis.....	\$12,300.00
Phase 005 – Public Improvements Opinion of Cost (provided by Contractor).....	\$0.00
Lump Sum Total	\$67,600.00
 Phase 006 – Traffic Engineering Assistance (T&M, Suggested Budget)	 \$10,500.00
Phase 007 - Meetings & Coordination (T&M, Suggested Budget).....	\$9,800.00
 Retainer (Waived)	 \$0.00
 Private Utility Locates (T&M, Suggested Budget).....	 \$650.00
Reimbursable Expenses (T&M, Suggested Budget).....	\$850.00

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 August 17, 2022
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Reimbursable expenses would be billed per Sanderson Stewart's standard rate schedule (see Appendix for rate schedule) on a T&M basis. Due to the unpredictable nature of the design process, our T&M service fees and Reimbursable Expenses could be less than or more than the suggested budget listed above. We would make reasonable attempts to notify you ahead of time should our fees exceed these estimated amounts.

For requested additional services beyond the scope of services outlined above, an adjustment to the fee amounts or additional fees will be negotiated.

Optional Services

Option A. Construction Administration Assistance and Record Drawings

Sanderson Stewart will provide construction administration assistance upon request. We would anticipate our scope of services to include approximately 40 hours of time during the construction phase to provide responses for a total of five (5) requests for information (RFIs), submittal reviews, provide plan interpretation, attend the initial pre-construction meeting and for three (3) intermediate site visit for the purpose of observing the progress of the grading and/or construction of the site improvements to determine general conformance with the plans. We do not anticipate full-time construction observation for this project. Once the project is completed, Sanderson Stewart will provide one (1) final site visit to verify that the site has been constructed in general conformance with the design plans and will prepare a punch list of items reflecting observed construction defects. Any additional site inspections, additional RFIs, or major plan revisions will be undertaken only at the request of Client and will be performed as additional services.

In addition, Sanderson Stewart will prepare Final Record Drawings and submit the close-out documentation to the Town of Johnstown to include site, grading and/or roadway certification documents and verification letters, as may be required by the Town.

- Coordination with the site general contractor to obtain field notes and field survey provided by contractor.
- Transferring field notes and as-built survey data to design drawings.
- Prepare Record Drawings for the Town of Johnstown to include the affected and pertinent plan sheets for street and storm.

For the optional services listed above, we would propose to bill for our services on a Time & Materials basis plus reimbursable expenses incurred. We suggest you budget for the following estimated fee amount and reimbursable expenses listed below, should you request these services.

Note: Coordination of construction and logistics associated with the roadway improvements described herein will be completed by the Purvis Farm development team.

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Optional Services	Approximate T&M Fee
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A – Construction Administration Assistance and Record Drawings.....	\$14,500.00
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Reimbursable expenses would be billed per Sanderson Stewart’s standard rate schedule. Due to the unpredictable nature of the design process, our optional services fees could be less than or more than the hourly suggested budget amounts listed. We would make reasonable attempts to notify you ahead of time should our fees exceed these estimated amounts.

For requested additional services beyond the optional services outlined above, an adjustment to the fee amounts or additional fees will be negotiated.

Invoice and Billing: Sanderson Stewart will bill for its services on a phased billing basis as described above. Sanderson Stewart will begin work once this agreement has been executed by both parties.

Sanderson Stewart shall submit invoices to the Client for work accomplished during each calendar month. For services provided on a lump sum basis, the amount of each monthly invoice shall be determined on the “percentage of completion method” whereby Sanderson Stewart will estimate the percentage of the total work (provided on a lump sum basis) accomplished during the invoicing period. Monthly invoices shall include, separately listed, any charges for services for which time charges and/or unit costs shall apply. Such invoices shall also include, separately listed, any charges for consultants retained by Sanderson Stewart and reimbursable costs. Such invoices shall be submitted by Sanderson Stewart as soon as possible after the end of the month in which the work was accomplished and shall be due and payable by the Client upon receipt. The Client agrees that the monthly invoice from Sanderson Stewart is correct, conclusive, and binding on the Client; unless the Client, within 20 working days from the date of receipt of such invoice, notifies Sanderson Stewart in writing of alleged inaccuracies, discrepancies, errors in the invoice, or the need for additional backup.

Project Schedule

Once Sanderson Stewart receives Client’s authorization to proceed (retainer has been waived), we are prepared to begin work on the project immediately and at that time, Sanderson Stewart shall prepare and submit to the Client a schedule for the performance of Sanderson Stewart’s services. This schedule shall include reasonable allowances for review and approval times required by the Client, performance of services by the Client’s consultants, and review and approval times required by public authorities having jurisdiction over the project. This schedule shall be equitably adjusted as the project progresses, allowing for changes in scope, character, or size of the project requested by the Client, or for delays or other causes beyond Sanderson Stewart’s reasonable control.

The Client and Sanderson Stewart are aware that many factors outside Sanderson Stewart’s control may affect Sanderson Stewart’s ability to complete the services to be provided under this

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WCR 13 Widening Improvements
 August 17, 2022
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agreement. Sanderson Stewart will perform these services with reasonable diligence and expediency consistent with sound professional practices.

General Assumptions, Exclusions and Additional Services

1. The project will be completed in accordance with the scope of services as outlined above and assumes a “one-time design”. Any modifications to the design concept after work has been completed will be considered additional services.
2. Additional submittals beyond those outlined above will be considered additional services.
3. Upon request, Sanderson Stewart can provide construction administration assistance as outlined above in the Optional Services section.
4. Environmental Report/Studies (if required) shall be provided by others.
5. Geotechnical services are not part of the scope of services. If requested, Sanderson Stewart can provide this service for an additional fee.
6. Traffic Impact Study preparation and/or modifications to the existing TIS prepared for Purvis Farm are not included in the scope of services. If requested, we can provide this service for an additional fee.
7. Preparation of separate specifications and/or project manual is not part of this Scope of Services. If requested, we can provide this service for an additional fee.
8. It is assumed there is an adequate stormwater outfall point adjacent to the proposed improvements and that no off-site improvements will be needed. Should off-site improvements to create an outfall point be required, this may be performed as additional services.
9. It is assumed that existing utilities will and can be relocated, modified and/or re-routed by the contractor and/or owner of utility in order to accommodate the proposed improvements.
10. It is assumed the entire development is located outside of the 100-year floodplain/floodway.
11. Irrigation ditch/lateral system design is not included in this scope of services. If requested, Sanderson Stewart can provide this service for an additional fee.
12. Notification to mineral rights owners and providing proof of such is not a part of our scope of services and will be completed by others. If requested by the Client, we can provide this as an additional service at the current hourly rate.
13. Referral mailings to surrounding property owners is not included in this scope of services. If requested, we can provide this as an additional service.
14. Any additional environmental studies and reports such as for special wildlife, natural habitats and/or hazardous materials impact shall be performed by others, if required.
15. Variance requests to the Town of Johnstown are not included in this scope of services. If requested by the Client to pursue variances, we can provide necessary documents and attend meetings as an additional service.
16. The Client will negotiate and complete any agreements pertaining to the improvements and this project.

Initials

WCR 13 Widening Improvements
 August 17, 2022
 Page 10

17. If work within the Colorado Boulevard ROW requires utility locates that are ASCE QL-B or better, a SUE report may be required which is not included in this scope of work. Sanderson Stewart can perform this work as an additional service, upon request.
18. A Public Works permit application is not part of our scope of services and is assumed to be prepared by the Contractor, as required. This service can be provided for an additional fee.
19. Preparation of the Colorado Stormwater Discharge Associated with Construction Activities permit application is not included in the base scope of service and is assumed to be prepared by the Contractor. Sanderson Stewart can perform this work as an additional service, upon request.
20. A local grading permit application is not part of our scope of services and is assumed to be prepared by the Contractor. This service can be provided for an additional fee.
21. Local and/or State dewatering permitting assistance is not part of our scope of service and is assumed to be prepared by the Contractor, if required. Upon request, Sanderson Stewart can assist in preparing said permitting as an additional service.
22. A State Fugitive Dust Control Plan, Air Pollutions Emissions Notice (APEN), and/or an Emissions Permit are not part of our scope of services and is assumed to be prepared by the Contractor, as required. This service can be provided for an additional fee. We are assuming that the General Contractor will be preparing these applications.
23. Retaining wall design is not part of our scope of services. If requested by the Client, we shall contract with a licensed retaining wall designer at the Owner's expense.
24. Bid administration is not part of this Scope of Services. If requested, Sanderson Stewart can provide this service for an additional fee.
25. Sanderson Stewart will have unlimited access to the subject property.
26. Coordination/communication with property owners adjacent to and affected by the roadway improvements shall be conducted by the Client.
27. Preparation of multi-sheet phasing plans is not part of our scope of services. If requested by the Client, Sanderson Stewart can prepare such phasing plans as an additional service.
28. As-built survey is not a part of this scope of services. If requested by the Client, we can provide a proposal for the as-built survey once final construction drawings are complete.
29. Survey of utilities and drainage outside of the proposed survey limits are not included in these scopes of services but can be provided as additional services if requested.
30. Construction staking is not included in this scope of services. Sanderson Stewart can perform this work as an additional service, upon request.
31. Potholing services are not included in this scope of services and shall be provided by others.
32. Fees for any unforeseen applications, filings or permitting, fees required by governing agencies, or any other fees not specifically defined herein are not included in our fees and shall be paid by Client.
33. Any task directive given to Sanderson Stewart from Client by phone, email, or any other means of communication that is not part of the above Scope of Services shall be considered notice to proceed with that particular task and will be performed as additional services.
34. Other requested services beyond those basic services described above may be provided as an additional service.

Initials

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 August 17, 2022
 Page 11

If the Client and Sanderson Stewart agree in writing, Sanderson Stewart will provide additional services. Additional services are not included in the basic services and shall be paid for by Client, in addition to payment for basic services, in accordance with Sanderson Stewart's prevailing fee schedule. Notwithstanding the foregoing, Sanderson Stewart shall have the right, but not the obligation, to provide, without advance authorization from the Client, other services made necessary by the default of the contractor or Client, or by deficiencies, delays, or defects in the work provided by the contractor. Sanderson Stewart shall provide written notice of the provision of such services as soon as reasonably possible.

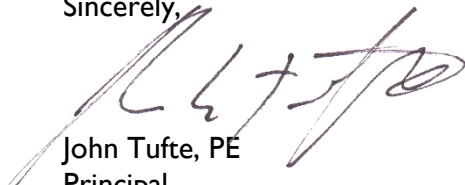
Services not set forth above as basic services are specifically excluded from the scope of Sanderson Stewart's services. Sanderson Stewart assumes no responsibility to perform any services not specifically listed as basic services.

Entire Agreement: This agreement, including the attached Terms and Conditions incorporated into and made part of this contract, constitutes the entire agreement between Sanderson Stewart and Client. It supersedes all prior communications, understandings, and agreements, whether oral or written. It shall become effective after being signed and dated by both parties; and, upon each page being initialed by Sanderson Stewart. Any amendment or modification to this contract must be written and executed by both Sanderson Stewart and Client.

Conclusion

We appreciate the opportunity to provide you with this proposal and look forward to being a part of your team. Please feel free to call me at 970-893-2016 (Direct) or 970-893-1688 (Cell) if you have any questions regarding this proposal. Otherwise, if it meets your approval, simply email this signed and dated agreement to me at jtufte@sandersonstewart.com.

Sincerely,



John Tufte, PE
 Principal



Charles Sonnier, PE
 Senior Engineer/Project Manager

 Initials

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I hereby authorize SANDERSON STEWART to proceed as described above and, by my signature, acknowledge and agree to the Terms and Conditions attached to (**Appendix**) and made part of this contract. Moreover, an electronic or faxed copy of my signature shall be as effective as any original:

By _____
Client Title Date

By _____
Sanderson Stewart Title Date

CJS/mz
Enc.

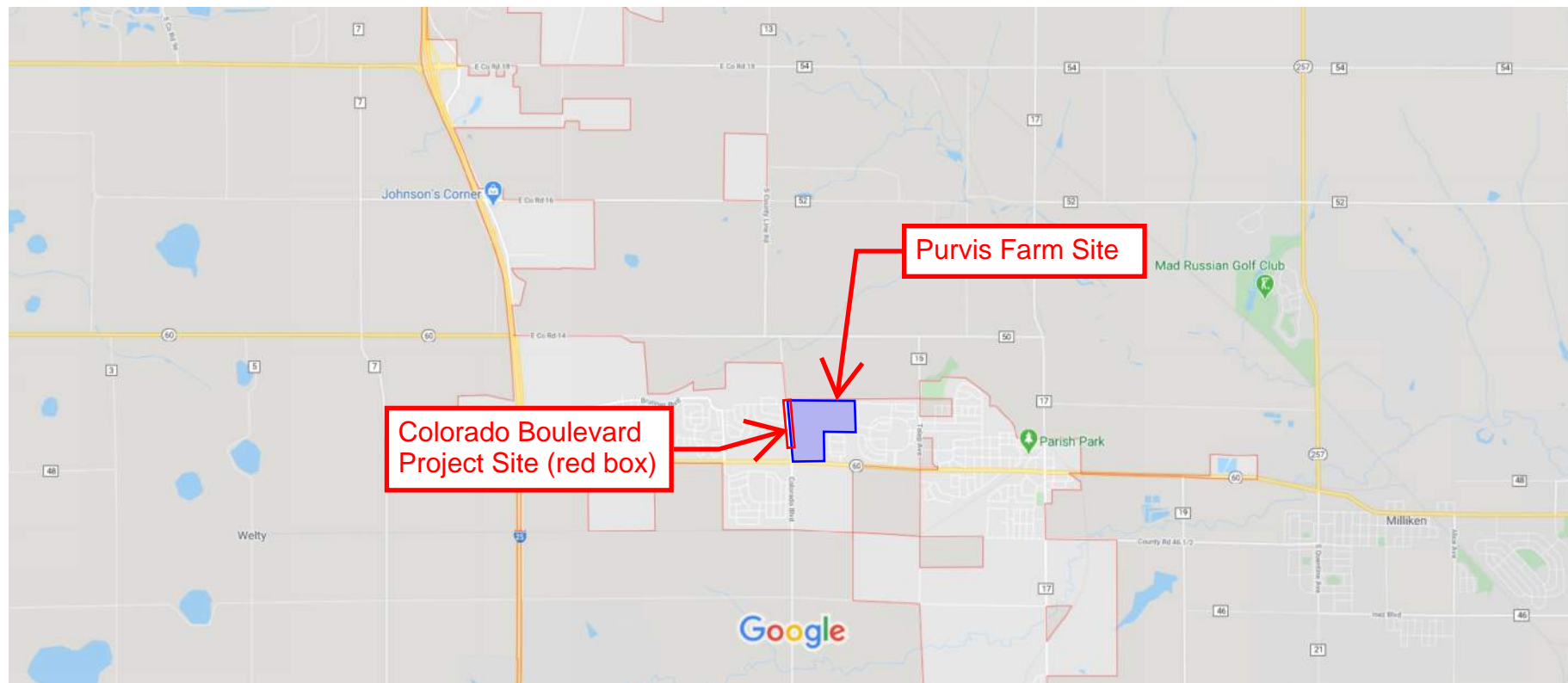
O:\2020\PM - Fee Proposals\-- Colorado\Johnstown - Purvis Farm\Proposal\Purvis Farm - ODP_Plat & PUD Proposal_DRAFT_7-31-20.docx

Initials

Colorado Boulevard Improvements
Johnstown, Colorado

APPENDIX

Google Maps Johnstown

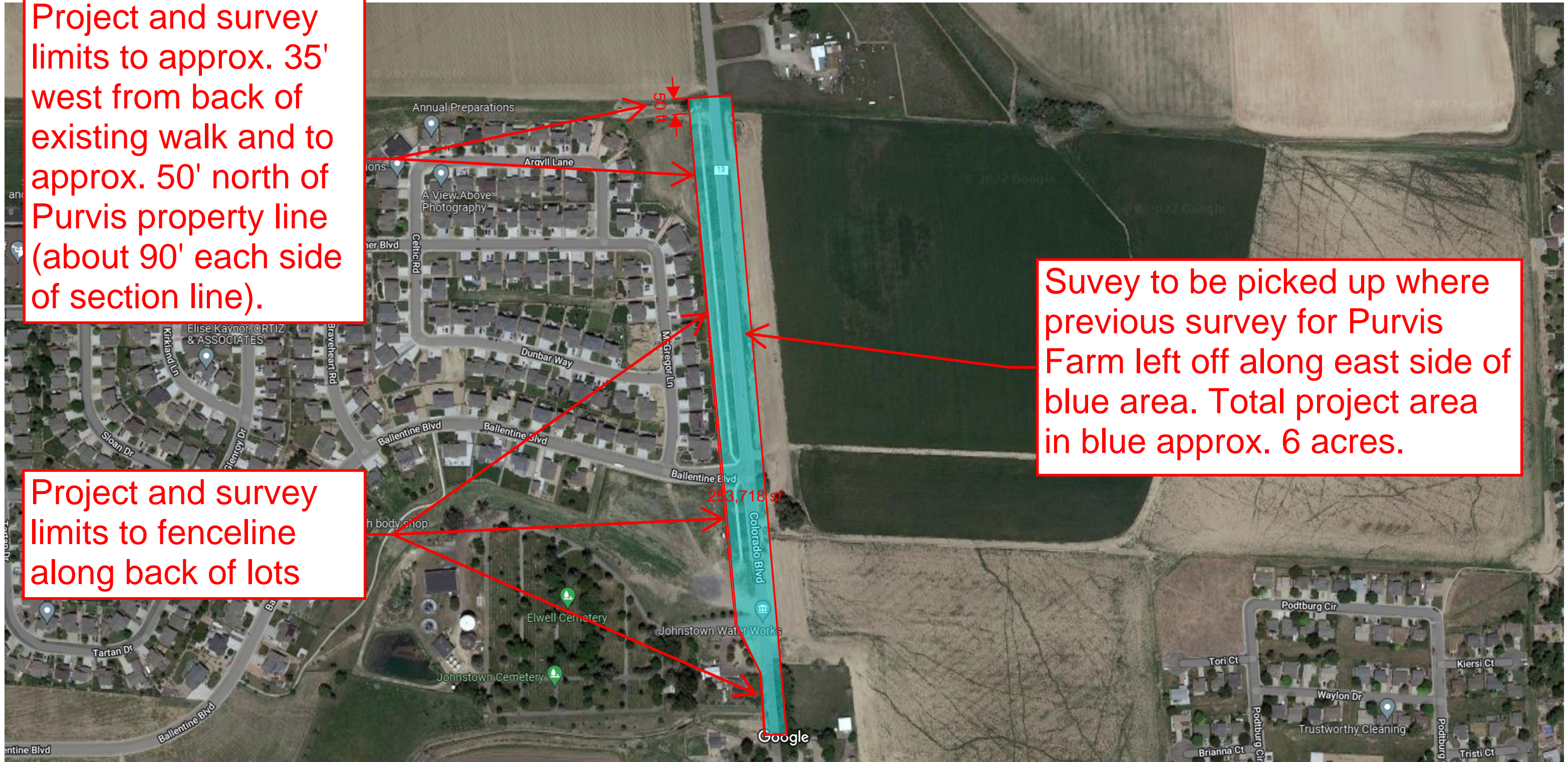


Map data ©2020 2000 ft

Project and survey limits to approx. 35' west from back of existing walk and to approx. 50' north of Purvis property line (about 90' each side of section line).

Project and survey limits to fenceline along back of lots

Survey to be picked up where previous survey for Purvis Farm left off along east side of blue area. Total project area in blue approx. 6 acres.



Map data ©2022 200 ft

TERMS AND CONDITIONS

INTEREST, SUSPENSION, AND COLLECTION COSTS: Any invoice not paid within 30 days of date of invoice shall bear interest at 1.5 percent per month on the unpaid balance. If CLIENT fails to make payment within 45 days of the date of any invoice, SANDERSON STEWART shall have the right, but not the obligation, to suspend work and withhold deliverables until payment in full, including interest, is received. SANDERSON STEWART shall have no liability whatsoever to the CLIENT for any costs or damages as a result of such suspension. If SANDERSON STEWART resumes services after payment by CLIENT, the time schedule and compensation shall be equitably adjusted to compensate for the period of suspension plus any other reasonable time and expense necessary for SANDERSON STEWART to resume performance.

If an invoice remains unpaid for more than 90 days, SANDERSON STEWART shall have the right, but not the obligation, to initiate collection procedures. If the CLIENT fails to make payment when due and SANDERSON STEWART incurs any costs in order to collect sums from the CLIENT, the CLIENT agrees that all such collection costs incurred shall immediately become due and payable to SANDERSON STEWART. Collection costs shall include, but are not limited to, legal fees, collection agency fees and expenses, court costs, collection bonds, and reasonable staff costs for SANDERSON STEWART's staff for time spent in efforts to collect. This obligation of CLIENT to pay SANDERSON STEWART's collection costs shall survive the term of this Agreement or any termination by either party.

It is understood and agreed that SANDERSON STEWART's services under this Agreement do not include participation, whatsoever, in any litigation. Should such services be required, a Supplemental Agreement may be negotiated between the CLIENT and SANDERSON STEWART describing the services desired and providing a basis for compensation to SANDERSON STEWART.

TERMINATION OF SERVICES FOR NON-PAYMENT: If the CLIENT fails to make payment to SANDERSON STEWART in accordance with this Agreement, this shall constitute a material breach of this Agreement and shall be cause for termination of this Agreement by SANDERSON STEWART.

SET-OFFS, BACK CHARGES, AND DISCOUNTS: Payment of invoices shall not be subject to any discounts or set-offs by the CLIENT unless agreed to in writing by SANDERSON STEWART. Payment to SANDERSON STEWART for services rendered and expenses incurred shall be due and payable regardless of any subsequent suspension or termination of this Agreement by either party.

INFORMATION PROVIDED BY CLIENT OR OTHERS: CLIENT agrees to provide to SANDERSON STEWART all available information necessary to perform duties as outlined in the attached scope of services. The CLIENT shall furnish, at CLIENT'S expense, all information, requirements, reports, data, surveys, and instructions required. SANDERSON STEWART is entitled to rely on the accuracy and completeness of all such information provided.

CLIENT shall furnish right-of-way entry onto the project site for SANDERSON STEWART to perform necessary field measurements or studies.

OWNERSHIP OF INSTRUMENTS OF SERVICE: All reports, drawings, specifications, computer files, field data, notes, and other documents and instruments prepared by SANDERSON STEWART as instruments of service shall remain the property of SANDERSON STEWART. SANDERSON STEWART retains all common law, statutory and other reserved rights, including the copyright to all instruments of service. If any instruments of service must be filed with governmental agencies, SANDERSON STEWART will furnish copies to the CLIENT upon request. The CLIENT will not reuse or modify the instruments of service without SANDERSON STEWART's prior written authorization. The CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless SANDERSON STEWART, its officers, directors, employees, and agents, from and against any and all damages, claims, liabilities, costs, or suits, including reasonable attorney's fees and defense costs, arising from, allegedly arising from, or in any way connected with, the unauthorized reuse or modification of any instrument of service by any person or entity other than SANDERSON STEWART.

ELECTRONIC FILES: SANDERSON STEWART may furnish drawings, reports, or data on electronic media generated and furnished by SANDERSON STEWART. The CLIENT understands and agrees that all such electronic files are instruments of service of SANDERSON STEWART, that SANDERSON STEWART shall be deemed the author, and shall retain all common law, statutory law, and other rights, including copyrights. The CLIENT agrees not to reuse these electronic files, in whole or in part, for any other purpose other than for the project. The CLIENT agrees not to transfer these electronic files to others without the prior written consent of SANDERSON STEWART. The CLIENT further agrees to waive all claims against SANDERSON STEWART resulting in any way from any unauthorized changes to or reuse of the electronic files for any other project by anyone other than SANDERSON STEWART.

The CLIENT is aware that differences may exist between the electronic files delivered and the printed hard-copy construction documents. In the event of a conflict between the signed construction documents prepared by SANDERSON STEWART and electronic files, the signed or sealed hard-copy construction documents shall govern.

Additionally, the CLIENT agrees, to the fullest extent permitted by law, to defend, indemnify, and hold harmless SANDERSON STEWART, its officers, directors, employees, and agents, against all damages, liabilities, claims, or suits, including reasonable attorney's fees and defense costs, arising from any changes made by anyone other than SANDERSON STEWART, or from any reuse of the electronic files without the prior written consent of SANDERSON STEWART.

Under no circumstances shall delivery of electronic files for use by the CLIENT be deemed a sale by SANDERSON STEWART; and SANDERSON STEWART makes no warranties, either express or implied, of merchantability or fitness for any particular purpose. SANDERSON STEWART shall not be liable for indirect or consequential damages as a result of the CLIENT's use or reuse of electronic files.

OPINIONS OF PROBABLE COST: CLIENT hereby acknowledges that SANDERSON STEWART cannot warrant that any opinions of probable cost provided by SANDERSON STEWART will not vary from actual costs incurred by the CLIENT. The CLIENT understands that SANDERSON STEWART has no control over the cost or availability of labor, equipment, materials, or over market conditions or the Contractor's method of pricing. SANDERSON STEWART makes no warranty, express or implied, that the bids or the negotiated cost of the work will not vary from SANDERSON STEWART's opinion of probable cost.

LIMIT OF LIABILITY: In recognition of the relative risks and benefits of the project to both the CLIENT and SANDERSON STEWART, the parties have been allocated such that the CLIENT agrees to limit the liability of SANDERSON STEWART to the CLIENT for any and all claims, caus

combination of causes, including attorney's fees, costs, and expert witness fees so that the total aggregate liability of SANDERSON STEWART and CLIENT shall not exceed \$50,000.00 or SANDERSON STEWART's total fees for services on this project, whichever is greater. It is intended that this limitation apply to any and all claims, liability or causes of action, however alleged or arising.

Item #11.

CONSTRUCTION SERVICES: If, under this Agreement, professional services are provided during the construction phase of the project, SANDERSON STEWART shall not be responsible for or have control over means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work; nor shall SANDERSON STEWART be responsible for the Contractor's failure to carry out the Work in accordance with the Contract Documents or for the Contractor's failure to comply with the applicable laws, ordinances, rules, or regulations. These rights and responsibilities are solely those of the Contractor.

SANDERSON STEWART shall not be responsible for any acts or omissions of the Contractor, subcontractor, or any person or entity performing any portion of the work. SANDERSON STEWART does not guarantee or warrant the performance of any Contractor and shall not be responsible for the Contractor's failure to perform its work in accordance with the Contract Documents or any applicable codes, laws, rules or regulations.

JOB SITE SAFETY: Neither the professional activities of SANDERSON STEWART, nor the presence of SANDERSON STEWART at the construction/project site, shall relieve the general contractor and all subcontractors of any of their responsibilities and duties to perform the work in accordance with the contract documents and to comply with any health or safety precautions required by any regulatory agencies. SANDERSON STEWART does not have authority to control any construction contractor or its employees in connection with their work or any health or safety programs or procedures. The CLIENT agrees that the contractor and subcontractors are solely responsible for job site safety and warrants that this intent shall be carried out in the CLIENT's contract with the general contractor. The CLIENT also agrees that CLIENT and SANDERSON STEWART shall be indemnified by the general contractor for any such claims, and shall be made additionally insured under the general contractor's insurance policies.

RECOMMENDATIONS BY SANDERSON STEWART: Sanderson Stewart may provide advice and/or recommendations to the CLIENT during Sanderson Stewart's provision of services for the CLIENT's project. If the CLIENT declines to follow the advice and/or recommendations provided by Sanderson Stewart, the CLIENT agrees that Sanderson Stewart shall not have any liability for adverse consequences or damages resulting from the CLIENT's failure to follow the advice and/or recommendations of Sanderson Stewart. Additionally, the parties agree that the CLIENT's failure to follow advice and/or recommendations of Sanderson Stewart may be cause for Sanderson Stewart to immediately terminate this Agreement at Sanderson Stewart's sole discretion.

PERMITTING: SANDERSON STEWART shall assist the CLIENT in applying for permits and approvals where required by law. In cases where the scope of services requires SANDERSON STEWART to submit, on behalf of the CLIENT, a permit application and/or approval by a third party to this contract, SANDERSON STEWART does not make any warranties, guarantees, or representations as to the success of SANDERSON STEWART's effort on behalf of the CLIENT. Payment for services rendered by SANDERSON STEWART is not contingent upon the successful acquisition of these permits.

NO ASSIGNMENT WITHOUT CONSENT: Neither party may assign this Agreement without the written agreement of the other party.

TERMINATION: In the event of termination of this Agreement by either party, the CLIENT shall, within 15 days of termination, pay SANDERSON STEWART for all services rendered and reimbursable costs incurred by SANDERSON STEWART up to the date of termination.

The CLIENT may terminate this Agreement for convenience and without cause upon 21 calendar days' written notice.

Either party may terminate this Agreement for cause upon 10 calendar days' written notice for the following reasons:

1. Substantial failure by either party to perform in accordance with this Agreement;
2. Assignment of this agreement without the written consent of the other party;
3. Suspension of the project or SANDERSON STEWART's services for more than 60 calendar days, consecutive or aggregate;
4. Material changes in the conditions under which this Agreement was executed, the Scope of Services, the nature of the project, or the failure of the parties to reach an agreement on compensation and/or schedule adjustments necessitated by such changes.

In the event of a termination not the fault of SANDERSON STEWART, the Client shall pay SANDERSON STEWART, in addition to payment for services rendered and reimbursable expenses incurred, all expenses incurred by SANDERSON STEWART in connection with the orderly termination of this Agreement, including, but not limited to, demobilization, reassignment of personnel, associated overhead costs, and all other expenses resulting from the termination.

CONSEQUENTIAL DAMAGES: Notwithstanding any other provision in this Agreement, neither the CLIENT nor SANDERSON STEWART, their respective officers, directors, shareholders, partners, employees, agents, members, subconsultants, or employees shall be liable to the other or shall make any claim for any incidental, indirect, or consequential damages arising out of or in any way connected to the project or this Agreement. This mutual waiver of consequential damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation, or any other consequential damages that either party may have incurred from any cause of action.

DISPUTE RESOLUTION, VENUE, AND CHOICE OF LAW: Any claim arising out of or related to this Agreement (except for Collection Procedures employed by SANDERSON STEWART and those waived or barred as provided elsewhere in this Agreement), shall be subject to mediation as a condition precedent to arbitration or to the institution of legal or equitable proceedings by either party. The parties shall endeavor to resolve their claims by mediation. Either party may file a request for mediation. Mediation shall proceed in advance of legal or equitable proceedings, which shall be stayed pending mediation for a period of sixty (60) days from the date of filing, unless stayed for a longer period by agreement of the parties or by court order. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Billings, Montana. Any agreements reached in mediation shall be enforceable as settlement agreements by any court having jurisdiction.

Venue for any arbitration or litigation arising out of this Contract shall be in the Thirteenth Judicial District, Yellowstone County, Montana. This Agreement shall be governed by, and interpreted under, the law of the State of Montana.

ENTIRE AGREEMENT: This Agreement is the entire agreement between SANDERSON STEWART and CLIENT. It supersedes all prior communications, understandings, and agreements, whether oral or written. Any amendment or modification to this Agreement must be written and executed by both SANDERSON STEWART and CLIENT.

CHARGE OUT RATES

EFFECTIVE FEBRUARY 16, 2022

STAFF PERSONNEL SERVICES

Staff Engineer I	\$110.00/hour
Staff Engineer II	\$125.00/hour
Project Engineer I	\$130.00/hour
Project Engineer II	\$140.00/hour
Senior Engineer I	\$175.00/hour
Senior Engineer II	\$210.00/hour
Principal	\$235.00/hour
Engineer Intern	\$70.00/hour
Expert Witness/Special Consultant	\$285.00/hour
Staff Planner I	\$95.00/hour
Staff Planner II	\$105.00/hour
Planner I	\$130.00/hour
Planner II	\$145.00/hour
Senior Planner I	\$155.00/hour
Senior Planner II	\$170.00/hour
Right-of-Way Agent	\$165.00/hour
Staff Landscape Designer I	\$95.00/hour
Staff Landscape Designer II	\$105.00/hour
Landscape Architect I	\$130.00/hour
Landscape Architect II	\$145.00/hour
Senior Landscape Architect I	\$155.00/hour
Senior Landscape Architect II	\$170.00/hour
Field Survey Technician I	\$80.00/hour
Field Survey Technician II	\$85.00/hour
Staff Surveyor I	\$105.00/hour
Staff Surveyor II	\$115.00/hour
Professional Land Surveyor	\$125.00/hour
Senior Professional Land Surveyor	\$175.00/hour
Graphic Artist	\$95.00/hour
Marketing Director	\$155.00/hour
CADD Technician I	\$85.00/hour
CADD Technician II	\$90.00/hour
Designer I	\$100.00/hour
Designer II	\$105.00/hour
Senior Designer I	\$120.00/hour
Senior Designer II	\$130.00/hour
Construction Inspector	\$85.00/hour
Construction Engineering Technician	\$100.00/hour
Senior Construction Engineering Technician	\$135.00/hour
Construction Engineer I	\$130.00/hour
Construction Engineer II	\$140.00/hour
Project Administrator	\$100.00/hour
Administrative/Clerical	\$85.00/hour

SURVEY CREW SERVICES

1-man Crew/2-man Crew	\$Per Job
Survey Equipment	\$15.00 /fieldwork hour
Survey Vehicle Mileage	\$.75 /mile
Scanner Equipment	\$150.00 /hour
Scanner Equipment (Hourly)	\$150 /hour
Scanner Equipment (Full Day)	\$1,050 /day

OUTSIDE CONSULTANTS

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

INDEPENDENT LABORATORIES

- 1) At cost if independently billed direct to client.
- 2) Cost plus 5% if billed through us.

ADMINISTRATIVE EXPENSES

Administrative expenses
(including copies, prints, phone, postage, materials, and travel) 3.5% *
* based on professional services only, unless modified by contract

Vehicle Mileage IRS Rate

These rates are updated periodically to reflect market conditions. Rate increases will be reflected in future invoicing.



Town of Johnstown

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: September 7, 2022

SUBJECT: RFP Award for Raw Water Transmission Project

ACTION PROPOSED: Consider Awarding the Raw Water Transmission Project to Civil Resources, LLC

ATTACHMENTS:

1. RFP for Raw Water Transmission Project
2. Civil Resources Proposal
3. Professional Services Agreement

PRESENTED BY: Doug Gossett, Civil Engineer II

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is a request to award the design contract to Civil Resources LLC for a new Raw Water Transmission Line from Lone Tree Reservoir to the Town’s water treatment plant to increase the volume of raw water available for treatment.

On May 20, 2022, the Town advertised a Request for Proposal (RFP) for upgrading the Town’s Raw Water Transmission Line from Lone Tree Reservoir to the Town’s water treatment plant. The Town is currently under design to increase the capacity of the water treatment plant from 6.2 million gallons per day to 12 million gallons per day. In order to supply the raw water needed to the new treatment plant, the existing 11-mile, 16-inch raw water pipeline, from Lone Tree Reservoir to the water treatment plant and the existing pump station at Lone Tree Reservoir needs to be expanded to increase capacity.

The project will consist of four primary tasks of which the first two tasks are included as part of the proposed contract. The tasks include the following:

- Conceptual Planning Phase – This will include analysis of the Towns existing raw water capacity, conceptual routing options for the new pipeline, and sizing of the new pipeline. This task will help assist the Town in selecting the best routing for the pipeline.

The Community That Cares

www.TownofJohnstown.com

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

- Design Phase – This will include the design, permitting, and easement coordination of the selected pipeline alignment.
- Bidding Phase Services (Not included in the current scope) – Consultant will assist in project bidding and selection of a contractor, including project delivery method.
- Construction Phase Engineering & Observation (not included in current scope) – Consultant will assist the Town during construction of the selected design. This will include on-site construction services and project coordination.

The Town received three bids on the project as summarized below:

Ranking	Consultant	Bid Price
1	Civil Resources LLC	\$652,000.00
2	JUB Engineers Inc	\$1,166,690.00
3	Burns &McDonnell	\$2,174,777.00

Town staff reviewed the three bids using the criteria outlined in the RFP. The criteria included the following:

- Approach to Scope
- Company and Personnel Qualifications
- Value/Cost of Effort

After careful deliberation and review, Staff recommends awarding the bid to Civil Resources, LLC based on their approach, experience, and value. Staff is requesting that a 20 percent contingency of \$130,400.00 be considered with authorization from the Town Manager to cover unforeseen expenses and additional services that may be requested by the Town to conduct a thorough analysis of the Town’s raw water system or as recommended by the Consultant. The total cost of the project, including contingency, is \$782,400.00.

LEGAL ADVICE:

The Town Attorney has reviewed and accepted the language in the Town’s professional services agreement to be utilized for contract execution.

FINANCIAL ADVICE:

In Fiscal Year (FY) 2022, the Town budgeted \$1,400,000 for the Raw Water Design. A portion of these funds will be utilized in 2022 and the remaining balance proposed for appropriation in FY 2023 to complete the project design.

RECOMMENDED ACTION:

Staff recommends awarding the Raw Water Transmission Project to Civil Resources, LLC.

SUGGESTED MOTIONS:

For Approval: I move to approve awarding the design services to Civil Resources, LLC as presented for a total not to exceed \$652,000.00 with access to a 20% contingency for additional design services with authorization from the Town Manager.

For Denial: I move that Council denies awarding this design contract and staff is to solicit more bids for the Raw Water Transmission Project.

Reviewed and Approved for Presentation,



Town Manager



REQUEST FOR PROPOSALS

TITLE: Raw Water Transmission Project **Town of Johnstown, Colorado**

ISSUED ON: **5/20/2022**

PROPOSALS DUE: **6/16/2022**

TENTATIVE AWARD DATE: 7/18/2022

**COMPLETE PROPOSAL CAN BE FOUND ON
<https://johnstown.colorado.gov>**

Address:

450 South Parish Ave
Johnstown, CO 80534

RFP Contact: Doug Gossett, Civil Engineer II
Email Address: DGossett@johnstownco.gov
Telephone Number: 970-829-7878

RFP - SOLICITATION
Raw Water Transmission Project

The Town of Johnstown, Colorado is requesting proposals from consulting firms with demonstrated experience in raw water and distribution projects involving modeling, capacity analysis, and land acquisition. This RFP is for the design, land acquisition, bidding and construction phase engineering and observation services for an approximately 11 mile 24”- 48” diameter Raw Water Transmission Main to expand the Town’s current raw water supply to the Water Treatment Plant. All proposals in response to this RFP will be due no later than June 16, 2022 at 3:00 pm. Services to be provided are detailed in the Scope of Services and include:

- 1. Task 1 – Conceptual Planning Phase**
- 2. Task 2 – Design Phase**
- 3. Task 3 – Bidding Phase**
- 4. Task 4 – Construction Phase Engineering and Observation**

This Request for Proposals (“RFP”) outlines the existing program, provides a general description of services anticipated, specifies submittal requirements, identifies selection criteria, and explains the selection process. A response to this RFP (a “Proposal”) should serve as a complete and detailed approach to providing the required services (the “Services”). The RFP and resulting agreement are intended to be comprehensive (i.e., separate proposals for any single portion of the Services will not be considered).

The objective is for entities responding to this RFP (“Respondents”) to submit sufficient information to allow the Town to select a consultant to enter into a contract with full service commencing July 31,2022. Proposals should serve as a complete and detailed approach to the management and delivery of the Services.

Questions

Questions regarding RFP requirements are due to Doug Gossett, Civil Engineer II, in writing at DGossett@johnstownco.gov by **3:00pm MT on 6/8/2022**. Responses to questions, and any other addenda, will be posted on the Town’s website and on the Rocky Mountain E-Purchasing System (RMEPS).

Proposals must be received electronically in the Rocky Mountain E-Purchasing System no later than 6/16/2022 prior to 3:00pm MT. Proposals will be time-stamped by the Rocky Mountain E-Purchasing System upon receipt. The Town will only accept proposals submitted in the Rocky Mountain E-Purchasing System and will not accept hardcopy proposals, or proposals submitted by any other means. If you have questions or need assistance, contact BidNet support at 800-835-4603. After uploading proposal documents, you must click the SUBMIT button. The Town will not accept uploads that are “saved” but not “submitted”. To verify that your proposal was submitted successfully, you may contact BidNet Support or verify via the Bid Management tab in your account that the documents are not in “Draft” status.

Schedule of Events (subject to change)

All times are given in local Colorado time

- RFP Issued: 5/20/2022
- Question Deadline: 6/8/2022 at 3:00pm MT
- Proposal Deadline: 6/16/2022 at 3:00pm MT
- Notice of Award (tentative): 7/18/2022
- Start of Service Term: 8/1/2022

The Town reserves the right to modify or waive any deadline under this schedule as needed. All dates after the RFP response deadline are estimates.

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Section I. Background, Overview, and Goals

A. Background

The Town of Johnstown, Colorado (“Town”) is currently under a design contract with Burns & McDonnell to expand the existing 6.2 million gallons per day (MGD) capacity Water Treatment Plant (WTP) to 12.5 MGD while also planning for a final build out of 21 MGD. The existing WTP is a traditional filter plant with a dissolved air flotation (DAF) pretreatment process. The WTP is supplied raw water through the Home Supply Ditch from 2 locations; Johnstown Reservoir and Lone Tree Reservoir.

The two reservoir systems consist of two separate raw water systems. The raw water system at Johnstown Reservoir consists of a pump station and a ¾ mile 18” AC transmission main that is located in an easement through the Carlson Farms and Corbett Glen subdivisions. The raw water system from Lone Tree Reservoir consists of a pump station and an 11 mile 16” ductile iron transmission main located in a permanent easement that was installed from Lone Tree Reservoir to the Water Treatment Plant in the late 1990’s. As part of the State Highway (SH)287 construction project the raw water transmission main was required to be lowered and encased with a 30” pipe. Conversations with the Contractor that constructed the SH287 lowering indicate there may be potential for the Town to collaborate with Berthoud to utilize a number of casing installation that were a minimum of 24” in size as part of the project.

The transmission lines and the pump stations limit the capacity of the Town’s raw water supply systems which restricts the Town’s water treatment capacity. The most important goal of this project is to construct a new pipeline and the associated systems to meet and deliver the future raw water needs of the community to the WTP. Figure 1 shows a general location of the existing raw water line from Lonetree Reservoir to the Towns Water Treatment Plant.

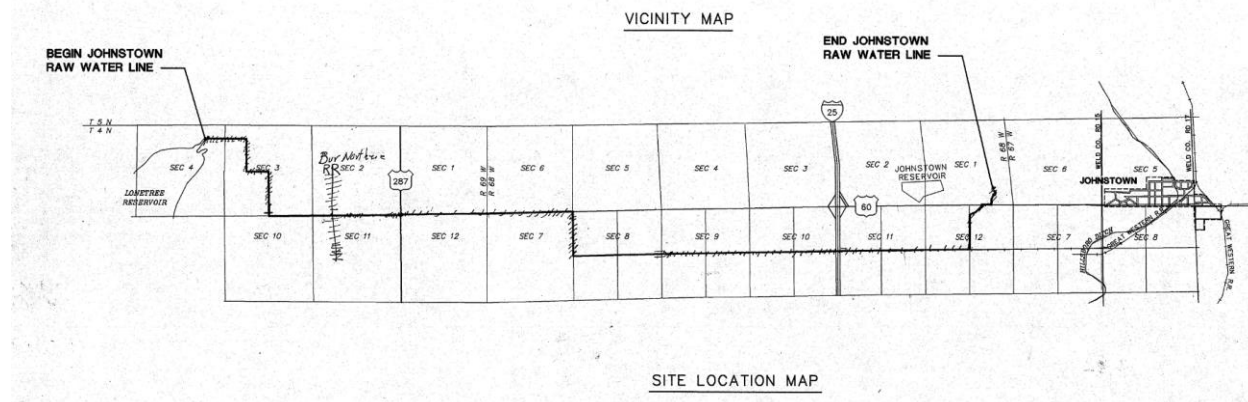


Figure 1: Vicinity Map

The Town has recently upgraded the existing pump station at Lone Tree Reservoir and those plans will be provided to the awarded bidder. The Town anticipates that additional modifications will be required to upgrade the existing pumps to meet the needs of the Town as it continues to grow.

B. Overview

The Town is requesting proposals from consulting firms with demonstrated experience in raw water and distribution projects involving modeling, capacity analysis, and land acquisition. This RFP is for the design, land acquisition, bidding and construction phase engineering and observation services for an approximately 11 mile 24" - 48" diameter Raw Water Transmission Main to expand the Town's current raw water supply to the Water Treatment Plant. All proposals in response to this RFP will be due no later than June 9, 2022 at 2:00 pm. Services to be provided are detailed in the Scope of Services and include:

- 1. Task 1 – Conceptual Planning Phase**
- 2. Task 2 – Design Phase**
- 3. Task 3 – Bidding Phase**
- 4. Task 4 – Construction Phase Engineering and Observation**

C. Goals

The Town's goal of this project is to increase the capacity of the Town's existing raw water supply from its various sources to the existing water treatment plant to meet the treated water demand.

Section II. Scope and Requirements

A. Scope of Services

Task 1 – Conceptual Planning Phase

- Survey and provide to the Town a digital file GIS and KMZ file and report of the Town's existing raw water pipeline from Lone Tree Reservoir to the current WTP. The report should include observations of any structures or impediments within the Town's permanent easement, including parcel number and County location (Larimer or Weld).
- Consultant shall conduct a condition and capacity assessment of the Town's current raw water system to determine the limitations and needs of the existing system. The following are the components that require evaluation:
 - Lone Tree Reservoir available capacity
 - Lone Tree Reservoir Intake and Pump Station
 - Lone Tree Reservoir Ditch Diversion
 - 16" Transmission Main from Lone Tree Reservoir to the WTP
 - Johnstown Reservoir Intake and Pump Station
 - Johnstown Reservoir available capacity
 - 18" Transmission Main from Johnstown Reservoir (Town Lake) to the WTP
 - Chapman Reservoir Bathymetric Survey
- Determine capacity and sizing needs for a new raw water line to supply the new water treatment plant with water for full build out of the new water treatment plant of 21 MGD
- Provide conceptual layout options for the location of the raw water transmission line evaluating the best alignment focusing on minimizing installation, ditch and infrastructure crossings, and land acquisition costs evaluating the following options:
 - A. Second raw water transmission main from Lone Tree Reservoir
 - B. Installation of a raw water transmission main from Chapman Reservoir
 - C. Combination of options A & B
 - D. Utilization of the existing raw water pipeline easement for a second pipeline
 - E. Other options not identified based on Town's raw water portfolio
- Evaluate best option to bring the raw water to the new Water Treatment plant based on condition and capacity assessment and collaboration with the Town's WTP design engineer.

- Task 1 Services shall be divided into the following general tasks. Please note additional tasks may be necessary to execute the project successfully and shall be clearly defined in scope section of submitted proposal:
 1. Project Initiation
 - a. Coordinate meeting(s) to review recommendations/requirements of the project to arrive at a mutual understanding of the proposed project scope
 - b. Perform research and data collection as needed for conceptual layouts
 - c. Kick-off meeting
 - d. One (1) site meeting, prior to development of Conceptual Drawings
 - e. Coordination meetings with Water Resources and Water Treatment Plant design team
 2. Conceptual Planning Phase
 - a. Prepare Conceptual Raw Water Transmission Layout Options including scope of design work required for each option.
 - b. Provide a high level of probable construction cost for each layout including an appropriate contingency.
 - c. One (1) review meeting with Town Staff after submittal of Conceptual Raw Water Transmission Layouts to receive comments and discuss design progress, schedule, and costs.

Task 2 – Design Phase

- The Consultant shall provide design services for the selected raw water transmission alignment and configuration that includes any supplemental infrastructure to control and transmit the water including but not limited to pump stations, back-up generators, surge analysis and modifications to the existing system.
- The Consultant shall provide land acquisition information for the project including but not limited to ROE, survey work, title searches, legal descriptions and exhibits for the new pipeline alignment for required temporary and permanent easements and crossing agreements (CDOT, railroad, Ditch Companies, etc.)
- Providing engineering services to submit and obtain required project permits including but not limited to 1041 permits, 404 permits, Larimer and Weld County Permits. Collaboration with State Dam Engineers office as needed for any Reservoir Dam impacts.
- The Consultant shall prepare plans, specifications, and related contractual documents (Construction Documents) for bidding and construction of the project and as determined through discussions with the Town of Johnstown.
- Consultant shall generate formal minutes for all meetings and distribute to the Town and all parties involved.
- Task 2 Services shall be divided into the following general tasks. Please note additional tasks may be necessary to execute the project successfully and shall be clearly defined in scope section of submitted proposal:

3. Project Initiation
 - a. Coordinate meeting(s) to review recommendations/requirements of the project to arrive at a mutual understanding of the proposed project scope
 - b. Kick-off meeting
 - c. One (1) site meeting, prior to development of Design Drawings
4. 30% Design Phase
 - a. Perform Title Work and ROE Survey for Land Acquisition
 - b. Prepare Design Drawings (30%), Specifications and Costs shall be of sufficient detail to permit review and comment.
 - c. Provide a detailed estimate of probable construction cost for the project including an appropriate contingency.
 - d. One (1) review meeting with after submittal of 30% design drawings to receive comments and discuss design progress, schedule, and costs.
5. 60% Design Phase
 - a. Review and incorporate 30% comments and revisions into Design and Construction Documents.
 - b. Prepare Design Drawings (60%), Specifications and Costs shall be of sufficient detail to permit review and comment.
 - c. Provide a detailed estimate of probable construction cost for the project including an appropriate contingency.
 - d. Draft Basis of Design (BOD) Report
 - e. Draft Permitting Documents
 - f. Draft Legal Descriptions and Exhibits for Land Acquisition
 - g. One (1) review meeting with MVWA after submittal of 60% design drawings to receive comments and discuss design progress, schedule, and costs.
6. 90% Design Phase
 - a. Review and incorporate comments and revisions into the Design and Construction Documents.
 - b. Submit Draft Final Construction Documents and BOD report for approval
 - c. Final Permitting Documents
 - d. Provide a final detailed estimate of probable construction cost for the project by the work included in each Bid Package.
7. Final Design Phase
 - a. Review and incorporate comments and revisions in the Final Design and Construction Documents to be used for Bidding

Task 3 - Bidding Phase Services

1. Provide the following services related to bidding and award of the contract(s):
 - a. Consultant shall provide an electronic copy and one set of reproducible for the Bid Package.
 - b. Assist in the bidding process by attending pre-bid conferences, answering questions submitted by contractors and prepare addendums when necessary.

- c. Review bids submitted by contractors. Prepare bid tab, check references, and forward recommendation to the Town for award.

Task 4 - Construction Phase Engineering & Observation

1. The Consultant shall provide the following Engineering services:
 - a. Coordinate and preside over the pre-construction meetings. Prepare a Project Directory and meeting minutes. Coordinate subsequent project meetings and prepare the minutes of these as needed.
 - b. Coordinate, track, and review all contractor submittals. The Town will be provided digital copies of submittals for record-keeping purposes.
 - c. Answer and respond in writing to contractor questions.
 - d. Review payment requests and make recommendations for payment by the Town.
2. The Consultant shall provide the following on-site construction services:
 - a. Procure, coordinate and review for approval project materials testing.
 - b. Provide daily construction reports.
 - c. Coordinate weekly/monthly construction meetings.
 - d. Observe contractor's daily activities.
 - e. Organize and maintain project files.
 - f. Review contractor Payment Requests against actual construction progress.
 - g. Take daily construction progress photos.
 - h. Confirm and Record Contractor field measurements.
 - i. Communicate with Town regarding contractor tasks and site schedule.
 - j. Create a set of As built/Record drawings for the Town. Provide one electronic and one full sized paper copy to the Town. Provide a GIS and KMZ file of the as-builts for the Town's records.
 - k. Provide a list of assets for the Town's asset management system. The Town will provide the format required for implementation into the Town's asset management system.

B. Period of Award

The effective date and schedule will be outlined in the executed professional services agreement.

C. Minimum Mandatory Qualifications of Proposer

The Town is requesting proposals from consulting firms with demonstrated experience in raw water and distribution projects involving modeling, capacity analysis, and land acquisition. The firm shall demonstrate that they have successfully completed a minimum of five similar projects of which at least one must be in the state of Colorado.

Section III. Proposal Response Format

Following are the response requirements for this RFP. Proposers shall submit the proposal fully and in the order listed in this section. All specific response format items represent the minimum information Proposers must submit. At the Town's discretion, deletions or incomplete responses in terms of content or aberrations in form may render a proposal non-responsive.

Proposal submission will include:

- One Original version of proposal, saved as a single .pdf file.
- If desired: One Public Viewing version of the proposal identified "FOR PUBLIC VIEWING", in accordance with the procedure in Section IV, M of this RFP, saved as a single .pdf file.

Proposals that are at a variance with these submission requirements may not be accepted.

Response Format

The following items must be included in your proposal in the order listed. Deviation may render your proposal non-responsive. Ensure that the proposal is conveyed in a concise, clear, and condensed manor.

1. **Cover Letter** Include a cover letter introducing your company, summarizing your qualifications, and detailing:
 - a. Principal contact person for this RFP, including address, telephone number, email, and website address.
2. **Contractual Exceptions** Any exceptions to this RFP or the Sample Agreement (Attachment A), no matter how slight, must be detailed and provided in the RFP response. Significant exceptions may make your proposal nonresponsive. If variations are not stated in your proposal, it shall be construed that the proposal fully complies with the specifications, terms and conditions, solicitation documents, and attached Sample Agreement. Notwithstanding the above, it is agreed and understood that the Town reserves the right to reject these exceptions if they do not meet its requirements.
3. **Use of Subcontractors/Partners** There may be areas for use of subcontractors or partners in this project. If you are using this approach, your proposal must list:
 - a. The subcontractors/partners.
 - b. Their area(s) of expertise.
 - c. All other applicable information herein requested for each subcontractor/partner.

The Town will contract solely with your company; therefore, subcontractors/partners remain your sole responsibility.

4. **Minimum Mandatory Qualifications** include an itemized description of how your company meets each of the minimum mandatory qualifications outlined in Section II, C. Failure to meet or exceed these requirements will disqualify your response.
5. **Company Information**

- a. Provide the following information: Company Name, Address, Phone Number, and Names of Principals.
 - b. Identify the year in which your company was established and began providing the services specified in this RFP.
 - c. If you have ever done business with the Town, list the project name, project manager, and project dates.
 - d. Provide a comprehensive listing of all the services you provide.
 - e. Describe any pending plans to sell or merge your company.
 - f. Identify any lawsuits or litigation, past or present, that your firm has been a party to.
- 6. Evaluation Criterion #1 – Approach to Scope**
- a. Discuss your approach, methodology and techniques to complete the work as specified herein. This should be specific, logical and organized. Address your capability to communicate findings and recommendations clearly and succinctly.
 - b. Describe any project approaches or ideas that you feel enhance the quality of your services.
 - c. Describe your proposed timeline/schedule for the work plan, the time of major events and activities, and a description of deliverables.
 - d. Discuss your ability to manage the work plan effectively and assure the successful fulfillment of its duties. Describe how your team will handle quality control.
- 7. Evaluation Criterion #2 – Company and Personnel Qualifications**
- a. Specify the professional staff that you would assign to the Town of Longmont’s account by name, title, and work location. Attach brief professional experience and qualifications for each. Identify each individual’s roles and responsibilities.
 - b. An organizational staffing chart listing the specific staff employees who will be assigned to manage the Program
 - c. Identify the person who would be the day-to-day contact for the Town.
 - d. How long has your company performed the services requested herein?
 - e. Provide information for at least three accounts of similar scope. Include, at a minimum: 1) company name, 2) contact name, 3) phone number, 5) email address, 6) brief description of project scope and value, 7) status of project.

The Town reserves the right to contact the references provided in your proposal as well as other references without prior notification to you.
 - f. Describe the company’s disaster recovery plan as it relates to the equipment, software, and personnel that would be used to provide the services described in this RFP.
- 8. Evaluation Criterion #3 – Value/Cost of Efforts**
- a. Provide a cost for the services and products broken down per task listed under the Scope of Services. Show a breakdown of all reimbursable expenses required to complete the work, if applicable.

- b. If using subcontractors or partners, list subcontractor or partner costs as separate items.
- c. Provide hourly rates for your company and all subcontractors or partners. These rates will be valid throughout the term of the contract.

Section IV. Evaluation and Selection Process

The Town will conduct the selection process. All Proposals will be reviewed and evaluated by a Selection Committee named by the Department Head responsible for overseeing the bid. Outside agencies may participate in the review process as well. The Selection Committee will contact references provided with the Proposal. The Town reserves the right to request clarification or additional information from individual Proposers.

The Selection Committee will select the Proposal and Proposer deemed to be the best value for the Town, in the Town's sole discretion. In addition to the criteria stated here, the Town's determination may consider, without limitation, the Bidder's financial resources, ability to comply with all legal and regulatory requirements, ability to perform the work and complete the project on time, history of performance, reputation, ability to obtain necessary equipment, data, and facilities, and any other factor deemed important by the Town, including location within the Town.

Proposal will be evaluated based on the information provided to meet the evaluation criteria provided in Section III.

The Selection Committee may select a short list of finalists to present their concepts to the Selection Committee. As part of the evaluation process, the Town may interview some, but not necessarily all, of the Proposers. The Selection Committee may present proposals and make recommendations to the Town Council (including without identifying the Proposer). Presentations from Proposers directly to the Town Council are not anticipated.

With input from the Town Council, the Selection Committee will select the Proposal determined to be the best value by the Town in its sole discretion and commence negotiation with the selected Proposer. Selection of any Proposer and execution of the Agreement is dependent on approval in accordance with applicable Town laws and policies, including approval by the Town Council, and the Town's receipt of any required Certificates of Insurance and applicable endorsements. If an agreement cannot be reached with the selected Proposer, the Town may initiate negotiations with another Proposer, cancel the RFP, or take any other action available.

Section V. Administrative Information

A. Process Subject to Purchasing Policy

The Request for Proposal process shall be conducted subject to the Purchasing Policies section of the Financial Policies published April 2022.

B. Issuing Department

The Towns Civil Engineer, Doug Gossett is to be the sole point of contact concerning this RFP. Proposers shall not directly contact other personnel regarding matters concerning this RFP or to arrange meetings related to such.

C. Governing Laws and Policies.

Procurements are governed by state law and the Town's Purchasing Policies further establish requirements for the Town's purchasing activities. Proposer shall familiarize themselves with the provisions of the laws of the State of Colorado and the Federal Government, and with all local laws and all regulations made which are pertinent to the proposed work and shall comply with the same.

D. Equal Opportunity

Proposer will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, or national origin, or other reason prohibited by applicable federal, state or local law, ordinance or regulation. Proposer shall abide by all federal laws in effect during the Agreement period which govern Equal Opportunity Employment.

E. Conflict of Interest

No officer, employee or official of the Town shall participate in a transaction, contract, activity, or service of the Town which has a direct or predictable effect on their financial interests or the financial interests of an immediate family member. This also applies to subcontracts with the Town. Soliciting or accepting any gift, gratuity favor, entertainment, kickback or any items of monetary value from any person who has or is seeking to do business with the Town of Johnstown is prohibited.

F. Official Means of Communication

All official communication from the Town to Proposers will be via postings on an electronic solicitation notification system, the Town's website and/or Rocky Mountain E-Purchasing System (RMEPS), bidnetdirect.com/. The department head responsible for overseeing the RFP will post notices that will include, but not be limited to, any modifications to administrative or performance requirements, answers to inquiries received, clarifications to requirements, and the announcement of award. It is incumbent upon Proposers to carefully and regularly monitor the RMEPS for any such postings. In addition, the Town may send communications to attendees of the pre-bid conference via email.

Inquiries

Prospective Proposers may make written inquiries by email before the written question deadline concerning this RFP to obtain clarification of requirements. The Town will not accept inquiries after the deadline. Send inquiries regarding this RFP to:

Email: DGossett@johnstownco.gov

Subject Line: RFP-Raw Water Transmission Project

The Town will publish responses to Proposers' inquiries as an addendum on RMEPS in a timely manner. Proposers cannot rely on any other statements that clarify or alter any specification or other term or condition of the RFP.

Should any interested proposer, sales representative, or manufacturer find any part of the listed specifications, terms and conditions to be discrepant, incomplete, or otherwise questionable in any respect, it shall be the responsibility of the concerned party to notify the department head responsible for overseeing the RFP of such matters immediately upon discovery.

G. Local Purchasing Preference

If a local bidder is within five (5%) percent of the lowest bid from an out of town bidder on a construction or other formally bid project from \$0.00 - \$4,999.99, two (2%) percent on such project(s) from \$5,000.00 up to \$999,999.99, and within one percent on such project(s) from \$1,000,000.00 up to \$5,000,000.00, then the local bidder will be awarded the bid unless otherwise provided in this section.

The local purchasing preference policy shall not apply in the following instances:

1. When purchases and/or contracts are funded in whole or in part by federal funds;
2. When purchases are more than \$5,000,000.00;
3. When purchases are not required to be formally bid, such as sole source procurements, emergency procurements and any other such procurements as defined in the Town procurement policy or the Town emergency management policy;
4. When professional services are procured through the issuance of requests for qualifications and/or requests for proposals, including design-build contracts; or,
5. When such preference is in conflict with any applicable state or federal laws, rules or regulations.

The local purchasing preference policy shall not apply to private construction projects financed with public assistance, including, but not limited to, tax increment financing, redevelopment projects and enterprise zone redevelopment.

"Local" is defined as a business operating within the corporate limits of the Town of Johnstown, with the majority of its primary business operations, including, but not necessarily limited to, production, operation, purchasing, billing, marketing, management, administration and ownership, occurring within the town limits. "Local" shall not include the following:

1. Those businesses with only a local Johnstown post office box;
2. Those businesses with a sales presence in the Town, but no physical business location within the Town limits.

Home based businesses that merely take orders for products shipped from out of town to their customers. Exceptions will be considered on a case-by-case basis when a written request is submitted to the Town Manager.

Notwithstanding the foregoing, the local bidder must otherwise meet all qualifications and procurement policy requirements of the Town, including, but not limited to, the "best bid" requirements, in order to be awarded a bid under this section.

H. Insurance

The awarded proposer will be required to, at its own cost, secure and continuously maintain through the term of the Agreement the minimum insurance coverages listed below, with forms and insurers acceptable to the Town. In addition, the awarded proposer will be required to maintain such coverages for the insurance listed in paragraphs 1, 2, 3 and 4 below for two additional years.

1. General liability. The selected Proposer shall maintain including contractual liability, of at least \$1,000,000 per each occurrence plus an additional amount adequate to pay related attorney's fees and defense cost. Coverage shall include bodily injury including accidental death, property damage, personal injury, and contractual liability.
2. Comprehensive Automobile Liability with minimum limits for bodily injury and property damage coverage of at least \$1,000,000 per each occurrence plus an additional amount adequate to pay related attorneys' fees and defense costs, for each of awarded Proposers owned, hired or non-owned vehicles assigned to or used in performance of the Agreement.
3. Professional Liability/Errors and Omissions. The selected Proposer shall maintain errors and omissions insurance in the amount of \$1,000,000.
4. Workers' Compensation & Employer's Liability: The selected Proposer shall maintain the following during the life of the Agreement for all employees engages in services performed under the agreement
 - a) Workers' Compensation insurance with statutory limits as required by the Workers' Compensation Act of the State of Colorado.
 - b) Employer's Liability insurance with limits of \$100,000 per accident, \$500,000 disease aggregate, and \$100,000 disease each employee.

The Town, its officers, agents and employees shall be named as additional insureds on the selected Proposers general liability and comprehensive automobile liability insurance policies to ensure coverage on any claims arising out of services performed under an Agreement. The required professional liability and workers' compensation policies or coverages shall not contain endorsements including the Town, its officers or employees as additional insureds.

As evidence of the insurance coverages required by the Agreement, before beginning work under the Agreement, the awarded proposer shall furnish certificates of insurance certifying that at least the minimum coverages required here are in effect and specifying the liability coverages. The certificates of insurance shall show the type, amount, class of operations covered, effective dates and date of expiration of policies, and containing substantially the following statement: "The insurance evidenced by this Certificate will not reduce coverage or limits and will not be cancelled, except after thirty (30) days written notice has been received by the Town of Johnstown."

Only insurance written by insurance companies authorized to do business in Colorado complies. If awarded proposer is self-insured under the laws of the State of Colorado, awarded proposer shall provide appropriate declarations and evidence of coverage.

Awarded proposer shall not cancel, change, or fail to renew required insurance coverages. Awarded proposer shall notify Town of any reduction or exhaustion of aggregate limits, which the Town may deem to be a breach of the Agreement.

In case of the breach of any provision of the Insurance Requirements, the Town, at its option, may take out and maintain, at the expense of the Proposer, such insurance as the Town may deem proper and may deduct the cost of such insurance from any monies which may be due or become due the Proposer under an Agreement.

In the event any work is performed by a subcontractor, the selected Proposer shall be responsible for any liability directly or indirectly arising out of the services performed under an Agreement by a subcontractor, which liability is not covered by the subcontractor's insurance.

I. Confidential/Proprietary Information

The Town of Johnstown is subject to public information laws, which permit access to most records and documents. The Town neither requests nor encourages the submission of confidential/proprietary information in response to this RFP. All proposals will be confidential until the Town awards and fully executes an Agreement with the successful Proposer. At that time, all proposals and documents pertaining to the proposals will be open for public inspection, except for the material that is proprietary or confidential.

Proposers can make a request for confidentiality to the Department Head responsible for overseeing bids if the submission is in accordance with the following procedure. This is the *sole responsibility* of the proposer. The Department Head is not required to attempt to cure any information that is at a variance with this procedure, and the Town may not give the proposer an opportunity to cure any variances after proposal submission. **The Town will not consider a proposal in its entirety nor proposal price information to be confidential/proprietary.** Proposers with questions about the application of this procedure should direct inquiries to the Department Head listed in this RFP.

Procedure for Submitting Proprietary or Confidential Information:

1. The proposer will submit one additional complete proposal clearly marked "FOR PUBLIC VIEWING." In this version of the proposal, the proposer will black out all text and/or data that it wishes the Town to consider confidential and denote the information as "proprietary" or "confidential".
2. A written description will accompany the "FOR PUBLIC VIEWING" copy of the proposal identifying the material that the proposer considers proprietary or confidential. Specific reasoning for why each item is to remain confidential, other than recitation of a specific state or federal statute, is required.
3. When a proposer submits a "FOR PUBLIC VIEWING" version of their proposal, that version will be open to the public while the Town will maintain the original version of the Proposers proposal as confidential material.

The Department Head may declare a proposal that is at variance with this procedure non-responsive and such proposal may not be considered.

J. Addenda

Any explanations or corrections shall be made as Addenda to the documents and shall be published on RMEPS for all prospective Proposers. Oral explanations and interpretations made prior to the Proposal Due Date and Time will not be binding.

K. Modification or Withdrawal of Proposals

Proposals may be modified or withdrawn by the proposer prior to the established due date and time.

L. Acceptance of RFP Terms

A proposal submitted in response to this RFP shall constitute a binding offer. The autographic signature of a person legally authorized to execute contractual obligations on behalf of the proposer shall indicate acknowledgment of this condition. A proposal in response to this RFP acknowledges acceptance by the proposer of all terms and conditions as set forth herein. The proposer shall identify clearly and thoroughly any variations between its proposal and the RFP in the cover letter. The Town will deem a failure to waive any rights to subsequently modify the terms of performance, except as outlined or specified in the RFP.

M. Acceptance of Proposal Content

The contents of the proposal (including persons specified to implement the project) of the awarded proposer shall become contractual obligations into the Agreement award. Failure of the awarded proposer to perform in accordance with these obligations may result in cancellation of the award and the Town may remove such proposer from future solicitations.

N. RFP Cancellation

The Town reserves the right to cancel this RFP at any time, without penalty.

O. Negotiation of Award

In the event that the Town only receives one responsive proposal, the Town reserves the right to negotiate the award for the services with the proposer in lieu of accepting the proposal as is.

P. Agreement

A sample copy of the Agreement the Town will use for the services specified in this RFP is included as Attachment A for your review. The Agreement is only a sample and Proposers are not to complete it at this time. Please note in your proposal any requests for exceptions and modifications to the Agreement. Significant exceptions or modifications to the Agreement may be reason for considering a proposal nonresponsive.

Q. Proposals

1. **Irregular Proposals:** Proposals may be rejected if they show any omission, alteration of form, additions not called for, conditional Alternates, or irregularities of any kind which, in the opinion of the Town, tend to make the proposal indefinite or ambiguous. The Town will reject proposals with prices which are obviously unbalanced as determined by the Department Head responsible for overseeing the bid. Agreements will be awarded only to responsible Proposers capable of performing the class of work contemplated.

2. **Collusion:** Proposals will be rejected if there is reason for believing that collusion exists among the Proposers.

3. **Qualification of Proposers:** For certain projects, the Town may require potential Proposers to submit information regarding the Proposers qualifications in addition to the information provided in the Proposal Submittal documents. The requirement for such information will be identified in the Request for Proposal or elsewhere in the Proposal Documents. Any information requested by or on file with the Town may be used to qualify or disqualify potential Proposers.

R. Standard of Conduct

The awarded Proposer shall be responsible for maintaining satisfactory standards of employees' competency, conduct, courtesy, appearance, honesty, and integrity, and shall be responsible for taking such disciplinary action with respect to any employee, as may be necessary.

The Town may request that the awarded Proposer immediately remove from this assignment any employee found unfit to perform duties due to one or more of the following reasons:

1. Neglect of duty.
2. Disorderly conduct, use of abusive or offensive language, quarreling, intimidation by words or actions or fighting.
3. Theft, vandalism, immoral conduct or any other criminal action.
4. Selling, consuming, possessing, or being under the influence of intoxicants, including alcohol, or illegal substances while on assignment for the Town.

Agents and employees of the awarded Proposer working in Town facilities shall present a clean and neat appearance. The Town reserves the right to require each employee of the awarded proposer working in a Town facility to wear an ID badge or uniform identifying: the company by name, the first name of the employee, and a photograph of the employee if using an ID badge. In these instances, each employee shall wear or attach the ID badge to the outer garments at all times.

ATTACHMENT A
TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this 4 day of November, 2021 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and __, (“Contractor”) (collectively, the “Parties”).

WHEREAS, the Town desires to engage the services of Contractor and Contractor wishes to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), for the Town; and

WHEREAS, the Parties wish to memorialize their contractual relationship.

NOW, THEREFORE, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

SECTION 1: PARTIES

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor has the background, expertise and education to provide the Services. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with the terms hereof and any and all applicable federal, state, and municipal laws, regulations and orders.

SECTION 2: SERVICES, TERM AND COMPENSATION

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through Month XX, 20XX, and shall not extend beyond that date absent the written approval of the Town.

2.03 Duties and Compensation. The Contractor’s duties and compensation shall be as set forth on Exhibit A. In the event of a conflict between the provisions in this Agreement and Exhibit A, the provisions in this Agreement shall control. Payment for Services shall be provided to Contractor within thirty (30) days of Contractor providing a detailed invoice to the Town.

2.04 Background Check. The Town may, in its sole discretion, conduct a background check of Contractor. Contractor agrees to execute any forms necessary to facilitate the background check.

SECTION 3: OPERATIONS

3.01 Expenses: Contractor shall not incur any expense or debt on behalf of the Town without the Town's prior written authorization.

3.02 Federal, State, and Municipal Laws and Regulations. Contractor agrees to abide by all applicable federal, state, and municipal laws and regulations and rules.

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance. Contractor shall maintain and keep in force during the term of this Agreement one or more policies of liability insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado, which will include protecting and indemnifying the Town in the following amounts:

- a) Comprehensive General Liability - \$1,000,000 combined aggregate
- b) Workers Compensation – as required by law

Contractor shall furnish to the Town appropriate certificates of coverage for such insurance. The Town shall be included as an additional insured on the contractor's liability policy. The insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. Any required deductible or co-insurance amount shall be paid by the Contractor.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities under by this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement.

SECTION 5: TERMINATION

5.01 Termination. The Town or Contractor may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to Contractor. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

SECTION 6: INDEPENDENT CONTRACTOR

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON

MONEYS PAID PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

SECTION 7: NOTICE

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

TO THE TOWN:
Town of Johnstown
Attn: Town Clerk
450 S. Parish Avenue
Johnstown, CO 80534
Email: dseele@townofjohnstown.com

TO CONTRACTOR:
Attn:
Company:
Address:
Email:

The addresses for notices may be changed by written notice given to the other Party in the manner provided above. Notice may also be sent via e-mail delivery and shall be effective upon confirmation of receipt of the email.

SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

8.03 Worker Without Authorization. Contractor shall comply with the statutory provisions prohibiting employment of workers without authorization, as set forth on Exhibit B, attached hereto and incorporated herein by such reference.

8.04 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

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

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the

event any state or federal governmental agency or court authoritatively determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

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

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

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of injunctive relief as set forth in Paragraph 8.11, the Parties shall submit the matter to mediation prior to commencing legal action and shall equally share the cost of the mediation.

8.11 Right to Injunction. The Parties hereto acknowledge that the services to be rendered by the Contractor under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by the Contractor of any of the provisions of this Agreement may cause the Town irreparable injury and damage. The Contractor agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor.

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

8.13 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations, representations and agreements, whether written or oral.

8.14 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town.

8.15 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.

8.16 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

[Remainder of page intentionally left blank.]

EXHIBIT A

EXHIBIT B**REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES
PROHIBITING EMPLOYMENT OF WORKERS WITHOUT AUTHORIZATION**

Contractor shall not:

1. Knowingly employ or contract with a worker without authorization to perform work under this public contract for services; or
2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with a worker without authorization to perform work under this public contract for services.

Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the Department of Labor and Employment program.

Contractor is prohibited from using either the e-verify program or the Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with a worker without authorization, the Contractor shall be required to:

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with a worker without authorization; and
2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph 1 of this subparagraph the subcontractor does not stop employing or contracting with a worker without authorization; except that the Contractor shall not terminate the contract with the subcontractor if during such three days that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with a worker without authorization.

Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to the authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes.

IF CONTRACTOR VIOLATES ANY OF THE AFOREMENTIONED REQUIREMENTS, THE TOWN MAY TERMINATE THE CONTRACT FOR BREACH OF CONTRACT. IF THIS CONTRACT IS SO TERMINATED, CONTRACTOR SHALL BE LIABLE FOR ACTUAL AND CONSEQUENTIAL DAMAGES TO THE TOWN OF JOHNSTOWN.



Utilities Department
Town of Johnstown – Raw Water Transmission Project
450 S. Parish Ave, Johnstown, CO 80534

June 3, 2022

Addendum #1 - Engineers Responses to Questions and Comments
Raw Water Transmission Project
RFP-TOJ-4

This addendum to the Invitation for Bids for the above reference project supersedes all contrary and conflicting information which is hereby supplemented or revised in certain particulars as follows:

Questions, Clarifications, or Revisions:

- The Town has received several questions in regard to the viability of providing an accurate bid based on the current scope of work provided in the RFP. The main concern appears to be pricing for Task 3 and Task 4 without having a design completed.
 - **Clarification: The Town is hereby asking all proposers to exclude pricing for tasks 3 and 4 within their bids. When submitting proposals, the proposers shall only include costs for tasks 1 and 2. Tasks 3 and 4 will be subject to negotiations after tasks 1 and 2 have been completed or are nearing completion.**
 - **Clarification: The cost for Task 2 shall assume design of a new pump station for both the new and existing 16" line at Lone Tree Reservoir and approximately 11 miles of 48 inch diameter raw water transmission main to expand the Town's current raw water supply to the Water Treatment Plant. All of the subtasks within Task 2 remain the same. Use the assumption that all new easements and land acquisition will be required to install the new line and will follow the same alignment as the original pipe line for comparison.**

- Question: The Town received a question in regards to whether or not geotechnical services will be procured separately by the Town or as part of this RFP.
Response: The Town's expectation is that the prospects include costs for all geotechnical services necessary to complete the design of a new raw water transmission main.

- Question: Are union bids required?
Response: No, union bids are not required.

- Question: Can the Town provide estimated construction costs?
Response: The Town is not providing estimated construction costs for this project.

- Question: We respectfully request an additional 10 days to prepare a compliant proposal. The extra time is requested to develop the project scope, the basis of the proposal and assemble a complete fee with all required subconsultant fees.
Response: Currently the Town is not considering extending the RFP deadline date. After reviewing this addendum, proposers may make another request to extend the due date and it will be reconsidered.

- Question: Can the width of the existing permanent easements be provided?
Response: The Town has clarified that all proposals should assume that new easements will need to be obtained as part of Task 2.

- Question: Would the Town consider selecting the consultant based on project scope, approach, qualifications, and evaluating the proponent's not-to-exceed costs for Task 1 (Conceptual Planning Phase) only? The consultant will develop engineering fees for Task 2 to 4 services for the Town's budgeting purposes as part of their Task 1 services.

Response: The Town has added additional clarification that the bids will be evaluated based on the cost of tasks 1 and 2. In addition the RFP, Section IV discusses the Evaluation and Selection Process. The Town will be using the evaluation criteria within the RFP which is not limited to just costs.

- Question: Please provide the quantity of utility potholes to include as part of the fee. This will set a baseline for all consultants.

Response: All proposers shall assume 100 utility potholes during task 2. In addition, provide a price per pothole. The proposers will need to provide a SUE level analysis of the entire 11-mile design.

- Question: Shall the consultant assume that an engineered cathodic protection system is required for this project?

Response: The Consultant shall assume that cathodic protection system(s) will need to be designed for the project. Assume cathodic protection at all road crossings, ditch crossings, and railroad crossings.

Please note that all addenda must be acknowledged in the bid documents. Bids will be rejected if they do not follow the instructions provided.

All remaining requirements of the Invitation for Bids remain unchanged.

Provided By:

Douglas Gossett
Doug Gossett
Civil Engineer II
Town of Johnstown



Utilities Department
Town of Johnstown – Raw Water Transmission Project
450 S. Parish Ave, Johnstown, CO 80534

June 9, 2022

Addendum #1 - Engineers Responses to Questions and Comments
Raw Water Transmission Project
RFP-TOJ-4

This addendum to the Invitation for Bids for the above reference project supersedes all contrary and conflicting information which is hereby supplemented or revised in certain particulars as follows:

Questions, Clarifications, or Revisions:

- The Town has received several requests to extend the RFP Proposal Due Date.
 - **Clarification: The Town is hereby extending the proposal Due Date from June 16, 2022 at 3:00pm MT to June 30th, 2022 at 3:00pm MT.**
 - **Clarification: The Town is hereby extending the Tentative Award Date to July 28, 2022.**

Please note that all addenda must be acknowledged in the bid documents. Bids will be rejected if they do not follow the instructions provided.

All remaining requirements of the Invitation for Bids remain unchanged.

Provided By:

Douglas Gossett
Doug Gossett
Civil Engineer II
Town of Johnstown

**TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT**

THIS PROFESSIONAL SERVICES AGREEMENT (the “Agreement”) is made and entered into this ___ day of September, 2022 (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and Civil Resources, LLC, a Colorado limited liability company (“Contractor”) (collectively, the “Parties”).

WHEREAS, the Town desires to engage the services of Contractor and Contractor wishes to provide those services more fully described on Exhibit A, attached hereto and incorporated herein by reference (“Services”), for the Town; and

WHEREAS, the Parties wish to memorialize their contractual relationship.

NOW, THEREFORE, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

SECTION 1: PARTIES

1.01 Town. The Town is a home-rule municipal corporation located in Johnstown, Colorado.

1.02 Contractor. Contractor has the background, expertise and education to provide the Services. Contractor is a private, independent business entity who will exercise discretion and judgment of an independent contractor in the performance and exercise of its rights and obligations under this Agreement. Contractor shall use its own judgment and skills in determining the method, means and manner of performing this Agreement. Contractor shall be responsible for the proper performance of this Agreement in accordance with the terms hereof and any and all applicable federal, state, and municipal laws, regulations and orders.

SECTION 2: SERVICES, TERM AND COMPENSATION

2.01 Services. Contractor agrees to perform the Services for the Town.

2.02 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through December 31, 2023, and shall not extend beyond that date absent the written approval of the Town.

2.03 Duties and Compensation. The Contractor’s duties and compensation shall be as set forth on Exhibit A. In the event of a conflict between the provisions in this Agreement and

Exhibit A, the provisions in this Agreement shall control. Payment for Services shall be provided to Contractor within thirty (30) days of Contractor providing a detailed invoice to the Town.

2.04 Background Check. The Town may, in its sole discretion, conduct a background check of Contractor. Contractor agrees to execute any forms necessary to facilitate the background check.

SECTION 3: OPERATIONS

3.01 Expenses: Contractor shall not incur any expense or debt on behalf of the Town without the Town's prior written authorization.

3.02 Federal, State, and Municipal Laws and Regulations. Contractor agrees to abide by all applicable federal, state, and municipal laws and regulations and rules.

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance. Contractor shall maintain and keep in force during the term of this Agreement one or more policies of liability insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado, which will include protecting and indemnifying the Town in the following amounts:

- a) Comprehensive General Liability - \$1,000,000 combined aggregate
- b) Workers Compensation – as required by law

Contractor shall furnish to the Town appropriate certificates of coverage for such insurance. The Town shall be included as an additional insured on the contractor's liability policy. The insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. Any required deductible or co-insurance amount shall be paid by the Contractor.

4.02 Damage and Indemnity. Contractor assumes full responsibility for any and all damages caused by Contractor's exercise of its activities under this Agreement. Contractor agrees that it will at all times protect, defend and indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons resulting in any manner from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor, whether brought by any of such persons or any other person arising from Contractor's activities as authorized by this Agreement. Notwithstanding the foregoing, Contractor shall not be liable for the negligent acts or omissions of the Town and shall only be liable to the extent the liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees) arise from or relate to loss or damage to property or injury to or death to any persons from the actions or failure to act of Contractor or any invitees, guests, agents, employees or subcontractors of Contractor.

SECTION 5: TERMINATION

5.01 Termination. The Town or Contractor may terminate this Agreement, with or

without cause, by providing thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to Contractor effective immediately.

SECTION 6: INDEPENDENT CONTRACTOR

6.01 Independent Contractor. Contractor understands and agrees that Contractor is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to Contractor. The Town shall not be responsible for withholding any portion of Contractor’s compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers’ compensation, or other taxes or benefits. **CONTRACTOR IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT.** As long as there is not a conflict of interest with the Town, Contractor may engage in any other lawful business activities during the term of this Agreement.

SECTION 7: NOTICE

7.01 Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered, sent via email delivery (on the condition that the intended recipient acknowledges receipt of the email) or mailed postage prepaid, certified mail, return receipt requested as follows:

TO THE TOWN:
Town of Johnstown
Attn: Town Clerk
450 S. Parish Avenue
Johnstown, CO 80534
Email: hhill@johnstownco.gov

TO CONTRACTOR:
Civil Resources, LLC
Attn: Brad L. Hagen
Address: 8308 Colorado Blvd., Suite 200
Firestone, CO 80504
Email: brad@civilresources.com

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

SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

8.03 Assignment; Third Party Rights. Contractor may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

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

8.05 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect, except that, in the event any state or federal governmental agency or court authoritatively determines that the relationship between the Town and Contractor is one of employment rather than independent contractor, this Agreement shall become null and void in its entirety.

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

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

8.08 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.09 Mediation. In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action and shall equally share the cost of the mediation.

8.10 Costs and Attorney's Fees. To the extent permitted by law, if any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the prevailing party shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.11 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and the Contractor and supersede all prior negotiations,

representations and agreements, whether written or oral.

8.12 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town.

8.13 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.

8.14 Headings. The headings in this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

[Remainder of page intentionally left blank.]

EXHIBIT A
SERVICES

SECTION IV: PROPOSED SCOPE & FEES

SCOPE OF WORK / PROPOSED FEES Civil Resources proposes the following fee structure.

Task 1: Conceptual Planning Phase

Phase 1a: Project Initiation

- Base Map (publicly avail. Lidar data, 811 utility, sfc. features) \$ 43,000
- Existing 16" Pipeline (Title Research/Exhibit)
- Visual Assessment of Existing System & Intakes

Phase 1b: Design & Permitting

- Pipeline \$ 28,000
 - Provide Plan & Profiles - Alternative Routes
 - Major crossings (bores of roads, RR, ditches & wetlands)
 - Detailed Hydraulic Analysis to Size Pipes
 - Alternative Route Evaluation - Tech Memo & Exhibits
 - 1041 Documentation (Weld & Larimer / Municipal) - Draft
- Pump Station - Conceptual Design \$ 25,000
 - Ex. Pump Station & Intake Review/Evaluation—Tech Memo
 - New Pump Evaluation—Tech Memo
 - Pump Station Floor Plan—Concept
 - Operations & Controls Plan—Tech Memo & Diagrams
- Opinion of Construction Cost - Alternative Comparison \$ 3,000

Task 1 Total Estimated Fee: \$ 99,000

Task 2: Design Phase

Phase 2a: Field Work

- Detailed Survey of Alignment & Pump Station Site \$ 95,000
- Private Utility Locates \$ 14,000
- SUE: Potholing (100 utility crossings @\$1,200 ea) \$ 120,000
- Geotechnical Investigation / Lab Testing \$ 48,000

Phase 2b: Final Design & Permitting

- Pump Station & Intake Pipe \$ 140,000
 - Hydraulic Design & Pump System
 - Mechanical / Electrical (subconsultant)
 - SCADA / Telemetry design (subconsultant)
 - Structural Design (vault, foundation)
 - Technical Specifications

SECTION IV: PROPOSED SCOPE & FEES

- Pipeline & Appurtenances \$ 132,000
 - USACE Nation Wide Permit Request / USFWS Submittal
 - 1041 Documentation (Weld & Larimer / Municipal) - Final
 - Pressure / Air Relief Facilities
 - Corrosivity Evaluation & Protection Design
 - Easement Legals (20 legal descr. Assumed @\$550 ea)
 - Directional Bore & Ditch Co. Design (s)
 - Permitting/Coordination for Crossings
 - Technical Specifications

- Opinion of Construction Cost - Final Design \$ 4,000

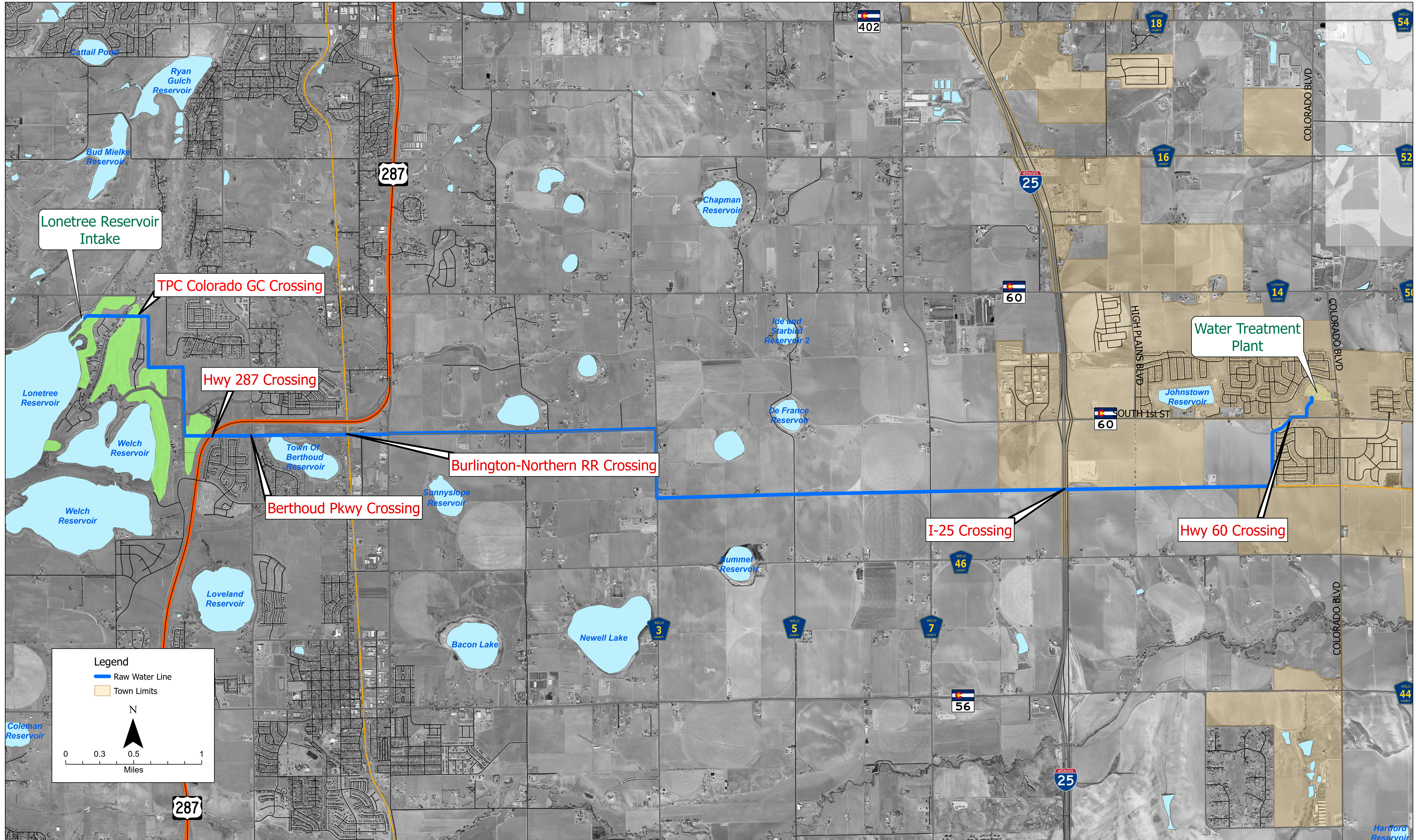
Task 2 Total Estimated Fee: \$ 553,000

TOTAL PROJECT (TASK 1/2) ESTIMATED FEE: \$652,000

Notes:

1. Civil Resources proposes to employ a pre-engineered building for the pump station facility. Any architectural costs or custom building will be require additional cost. The design will be coordinated with Johnstown and will include access to pull and remove pumps, house the SCADA/telemetry and climate control features.
2. Cathodic protection design fees are limited to crossings with casing pipe. If more extensive cathodic design is necessary due to especially reactive soils and/or selected pipe material is steel or DIP, additional fees may be required.
3. Civil Resources is able to offer these design services on an estimated not-to exceed basis or lump sum if the Johnstown prefers.
4. Refer to attached fee schedule for our hourly rates.
5. The survey cost includes a maximum of twenty (20) legals for easements. Additional legals will be \$600 each.
6. Civil Resources has extensive experience in design of dams and associated appurtenances and will provide additional scope of work and cost if modifications to the existing outlet or a new outlet is required that require State Engineer's Office approval.
7. Civil Resources is a local company with employees who live near the project making us more efficient and cost effective in providing Construction Services including:
 - Respond to Contractor RFI's, Prepare Bid Package, Review Bids
 - Contract Administration and Construction Documentation
8. Traffic control, permit application fees from public entities, utility owners and ditch companies are specifically excluded. Civil Resources will pay the fees and receive direct reimbursement with monthly invoicing.

Town of Johnstown - Raw Waterline Project





Town of Johnstown

Building Permit Statistics

June 2022

Single Family Residential		Commercial	
Issued ytd	204	*New Building Issued ytd	24

Other Residential (basements/alterations/additions)		Other Commercial * (tenant finish/alterations/additions)	
Issued ytd	120	Issued ytd	13

Fees collected at permit issuance	Residential YTD	Commercial YTD
Construction Valuation	(\$61,539,488)	(\$129,836,580)
Building permit fees	\$524,058	\$691,196
F&F or <u>F&F Credit</u>	\$0	\$0
Paving	\$0	\$0
Water Upgrade	\$0	\$0
Water & Sewer Reimbursement	\$0	\$0
Raw Water Development Fee	\$1,075,158	\$380,639
Water Meter	\$100,980	\$14,261
Water Tap	\$994,201	\$344,809
Sewer Tap	\$902,233	\$105,188
Regional Sewer Development fees	\$1,368,000	\$275,500
Sewer Inspection Fee	\$20,400	\$1,000
Park	\$102,000	\$2,500
Use Tax	\$1,049,687	\$1,101,41
Larimer Use Tax	\$45,211	\$231,688
Open Space Impact Fee	\$248,296	\$0
Library Impact Fee	\$231,399	\$0
Public Facilities Impact Fee	\$330,177	\$452,103
Police Facilities Impact Fee	\$150,596	\$200,109
Transportation Facilities Impact Fee	\$577,009	\$857,534
402 Interchange Fee	\$5,660	\$0
School District Fee	(\$127,512)	N/A
TOTAL FEES (YTD)	\$7,725,065	\$4,647,869

The Community That Cares

www.TownofJohnstown.com

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

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	184	15.33
1996	145	12.00		2022	204	34.00
1997	143	11.92				
1998	175	14.58				
1999	145	12.08		TOTAL	5494	
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				

The Community That Cares

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



Town of Johnstown

September 5, 2022

Memo RE: Uncle Benny’s storage of construction materials related to the construction of their permanent facility/retail front

The following is an inclusive list of the allowed materials on site at the proposed location of Uncle Benny’s in Johnstown. The allowed materials to be stored on site are related to the construction of Uncle Benny’s permanent facility and store front. The storage site will be located directly north of the existing temporary outdoor staging and storage area. Changes to the list must be administratively approved by Town Staff prior to Uncle Benny’s adding new materials or items on site for storage.

At no time may Uncle Benny’s store merchandise or items not related to the construction of their permanent facility outside of the allowed temporary staging and storage area as previously approved in the Economic Incentive Agreement Between the Town of Johnstown and Uncle Benny’s Building Supplies.

Allowed Items List:

Material Type	Purpose
Ethylene Propylene Diene Monomer (EPDM)	Insulation/Roofing
Polyiso	Insulation
Skylight	Roofing, window
Propanel 26 Gauge	Roofing panels
Steel Stud	Metal framing & accessories
Traffic Arms	Access control device
Construction Fence Panel	Temporary fencing; security and safety
Light Post Exterior	Exterior building lighting
Beams	Roofing support for shed construction
Entrance Gates	Access control & device
Box Car	Front façade dressing material
Semi-Trailer (2X 40’)	Storage of interior finishings
Pallet Racking	Interior display racks
Cantilever Racks	Utilize as fencing on east boundary of storing area
Barn Wood (8 units)	Front façade dressing material
Iron Building Kits	Siding material/panels
Awning	Exterior overhang panels

The Community That Cares

johnstown.colorado.gov

P: 970.587.4664 | 450 S. Parish Ave, Johnstown CO 80534 | F: 970.587.0141

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE TOWN OF JOHNSTOWN AND UNCLE BENNY'S BUILDING SUPPLIES**

This Economic Incentive Agreement ("Agreement") is made and entered into on this 16th day of May, 2022 ("Effective Date"), by and between the Town of Johnstown, a home rule municipality and political subdivision of the State of Colorado ("Town"), and Uncle Benny's Building Supplies, LLC, a Colorado limited liability company ("Uncle Benny's").

RECITALS

1. Uncle Benny's owns approximately 5.03 acres of property located within the boundaries of the Town on the east side of U.S. Interstate 25 at or near Marketplace Drive, described on the map attached hereto and incorporated herein by reference as Exhibit A ("Property").

2. Uncle Benny's desires to construct a building supply store, known as Uncle Benny's Building Supplies, consisting of at least 9,600 square feet of retail use on the Property (the "Project").

3. To facilitate the development of the Project, Uncle Benny's has requested that the Town provide certain economic incentives. As a part thereof, because construction of the Project has not commenced and will not be complete until a subsequent date, Uncle Benny's requests authorization to construct and operate a temporary storage and staging area on a portion of the Property to allow Uncle Benny's employees to access materials and merchandise for offsite sales to customers.

4. Colorado municipalities are entitled to encourage new and expanded retail development through inducements and incentives.

5. The Town has determined the Project will serve a public use and promote the health, safety, prosperity, security and general welfare of the citizens of the Town.

6. Based on the foregoing, including the anticipated economic benefits, the additional employment opportunities and the opportunity presented by the location of the Project in the Town, the Town desires to accommodate Uncle Benny's request and provide economic incentives to Uncle Benny's pursuant to the terms and conditions set forth in this Agreement.

7. The Town finds that this Agreement is in the best interests of the citizens of the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Uncle Benny's agrees as follows:

1. Recitals. The Recitals are incorporated as if set forth fully herein.
2. Town's Commitments. In furtherance of the development, construction and operation of the Project, and based on Uncle Benny's commitments set forth herein, the Town agrees as follows:

(a) Sales Tax Rebate. To share one percent (1%) of the sales tax revenue generated and collected from sales transactions at the Project with Uncle Benny's for a period of ten (10) years commencing on July 1, 2023, and ceasing on June 30, 2033 ("Sales Tax Rebate").

(i) The Sales Tax Rebate shall be payable by the Town to Uncle Benny's for each fiscal quarter, consisting of the following time periods: (i) January 1 through March 31, (ii) April 1 through June 30, (iii) July 1 through September 30, and (iv) October 1 through December 31 (each, a "Fiscal Quarter"). The Town shall submit the Sales Tax Rebate to Uncle Benny's on or before the last day of the second month following the end of a Fiscal Quarter, or, stated differently, on or before May 31, August 31, November 30 and February 28 (or 29) of each calendar for each respective Fiscal Quarter.

(ii) The Town's agreement to provide the Sales Tax Rebate is contingent on Uncle Benny's compliance with the Town-approved Site Development Plan for the Project (not yet approved as of the Effective Date of this Agreement), the Johnstown Municipal Code ("Code") and the Town rules and regulations and Section 3 of this Agreement. If the Town, at its discretion, determines that Uncle Benny's is not in compliance with the foregoing, the Town may, upon written notice to Uncle Benny's, cease payment of the Sales Tax Rebate until Uncle Benny's comes into compliance, as determined by the Town. The cessation of payment of the Sales Tax Rebate shall not cause an incremental increase in the duration of the time-period in which Uncle Benny's is entitled to receive the Sales Tax Rebate.

(b) Temporary Storage and Staging Area. To permit the construction and operation of a temporary storage and staging area on the portion of the Property shown on Exhibit B, attached hereto and incorporated herein by reference ("Temporary Storage and Staging Area"), to allow Uncle Benny's employees to access materials and merchandise for offsite sales to customers, subject to the following conditions:

(i) Uncle Benny's shall utilize Conex trailers on crushed concrete surfaces for on-site storage of materials and merchandise;

(ii) The maximum height of the Temporary Storage and Staging Area shall not exceed eight (8) feet;

(iii) Employees shall not remain on the premise including picking up and accepting delivery of materials and merchandise from the Temporary Storage and Staging Area for a period exceeding four (4) hours in any twenty-four (24) hour period;

(iv) Customers shall not be permitted to visit the Temporary Storage and Staging Area. No point of sale shall occur at the Temporary Storage and Staging Area. All business shall be conducted off-site in the form of deliveries by Uncle Benny's employees to customers;

(v) One (1) portable restroom shall be allowed at the Temporary Storage and Staging Area;

(vi) Uncle Benny's shall cease all operations at, and all use of, the Temporary Storage and Staging Area when the Project opens for retail business to the public or by April 5, 2023, whichever occurs first. The foregoing time period may be extended, at the Town's discretion, upon request of Uncle Benny's and written approval of the Town;

(vii) Uncle Benny's shall disassemble the Temporary Storage and Staging Area, in full, within thirty (30) days of the cessation of the right to use and conduct business at the Temporary Storage and Staging Area, as provided in Paragraph 2(b)(vii) above; and

(viii) Uncle Benny's shall remain in compliance with this Agreement, the Code and the Town's rules and regulations.

(c) Construction Office Trailer. Upon approval of the Site Development Plan for the Project, Uncle Benny's may park a construction office trailer on the Property during: (i) construction of public improvements on the Property or (ii) construction on Lot 1 of the Property, as such Lot is shown on Exhibit A.

3. Uncle Benny's Commitments. In furtherance of the development, construction and operation of the Project, and based on the Town's commitments set forth herein, Uncle Benny's agrees as follows:

(a) To operate the Project for a minimum period of ten (10) years and, if it fails to do so, reimburse the Town for the Sales Tax Rebates paid;

(b) To construct a "Makerspace" within two (2) years of the Effective Date of this Agreement, providing a collaborative workspace for members of the public; and

(c) To comply with, and remain in compliance with during operation of the Project, the Town-approved Site Development Plan for the Property, the Code and the Town's rules and regulations.

4. Assignment. Uncle Benny's may not assign its rights or duties under this Agreement without receiving the prior written consent of the Town.

5. No Third-Party Beneficiaries. This Agreement, including the incentives provided herein, is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.

6. Notices. All notices, consents or other instruments provided for under this Agreement shall be deemed properly given when: (1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (3) sent by electronic mail return receipt requested and received. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO UNCLE BENNY'S:

Uncle Benny's Colorado, LLC
Attention:

TO TOWN:

Town of Johnstown
Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

7. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and the Code. Venue for any claim, proceeding or action arising out of this Agreement shall be in the County of Weld, State of Colorado.

8. Dispute Resolution. In the event of default by either party hereunder, the non-defaulting party shall notify the defaulting party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting party desires to seek recourse, the parties shall participate in mediation, the costs of which shall be shared equally by the parties. If mediation is not successful after ninety (90) days, either party may then commence an action and be entitled to such remedies as are provided by law.

9. 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.

10. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

**ECONOMIC INCENTIVE AGREEMENT BETWEEN
THE TOWN OF JOHNSTOWN AND UNCLE BENNY'S BUILDING SUPPLIES**

This Economic Incentive Agreement ("Agreement") is made and entered into on this ____ day of _____, 2022 ("Effective Date"), by and between the Town of Johnstown, a home rule municipality and political subdivision of the State of Colorado ("Town"), and Uncle Benny's Building Supplies, LLC, a Colorado limited liability company ("Uncle Benny's").

RECITALS

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5. The Town has determined the Project will serve a public use and promote the health, safety, prosperity, security and general welfare of the citizens of the Town.

6. Based on the foregoing, including the anticipated economic benefits, the additional employment opportunities and the opportunity presented by the location of the Project in the Town, the Town desires to accommodate Uncle Benny's request and provide economic incentives to Uncle Benny's pursuant to the terms and conditions set forth in this Agreement.

7. The Town finds that this Agreement is in the best interests of the citizens of the Town.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Uncle Benny's agrees as follows:

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TO UNCLE BENNY'S:

Uncle Benny's Colorado, LLC
Attention:

TO TOWN:

Town of Johnstown
Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstowntown.com

7. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and the Code. Venue for any claim, proceeding or action arising out of this Agreement shall be in the County of Weld, State of Colorado.

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10. Entire Agreement and Amendments. This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

Witness my hand and official seal.

My commission expires: May 20, 2023



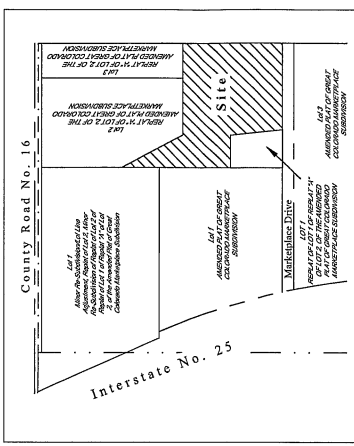
Notary Public

MATTHEW BARBER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20084024668
COMMISSION EXPIRES MAY 20, 2023

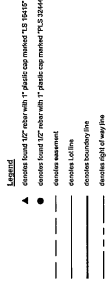
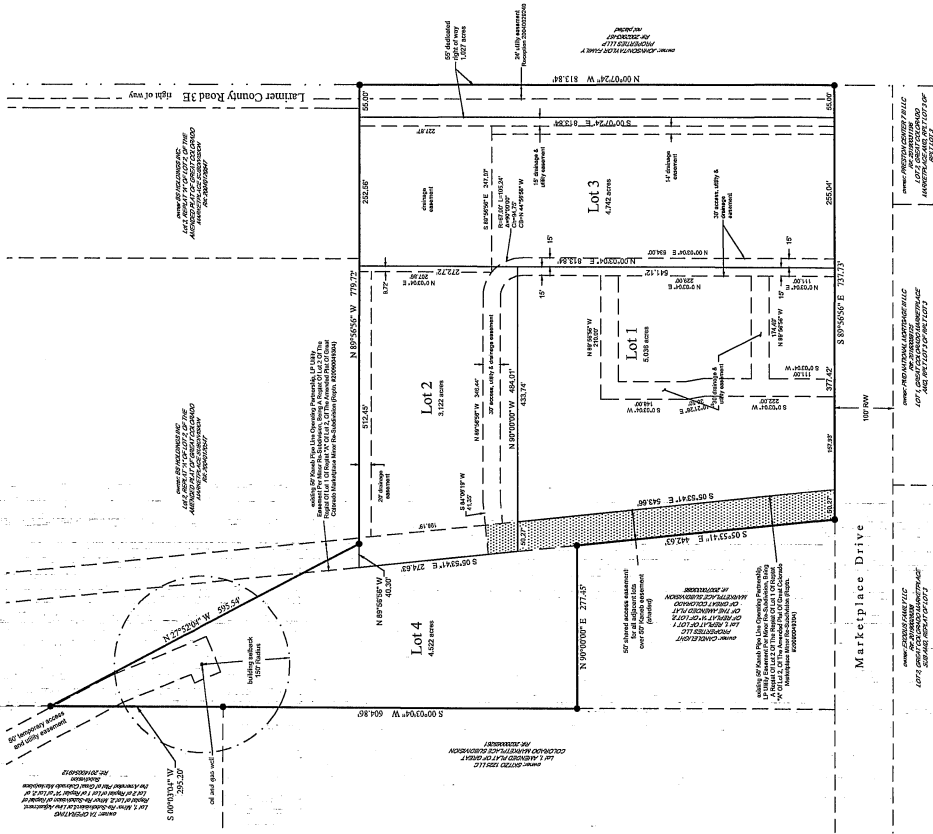
EXHIBIT A
Property

UNCLE BENNY'S MARKETPLACE RE-SUBDIVISION

Being a Replat of
 LOT 1, MINOR RE-SUBDIVISION, REPLAT OF LOT 2 OF THE REPLAT OF LOT
 1 OF REPLAT "A" OF LOT 2, OF THE AMENDED PLAT OF GREAT COLORADO
 MARKETPLACE MINOR RE-SUBDIVISION
 and
 LOT 2, MINOR RE-SUBDIVISION, LOT 1 ADJUSTMENT, REPLAT OF LOT 2, MINOR
 RE-SUBDIVISION OF REPLAT OF LOT 2 OF REPLAT "A" OF LOT 1 OF LOT 2
 RE-SUBDIVISION OF GREAT COLORADO MARKETPLACE SUBDIVISION,
 2, OF THE AMENDED PLAT OF GREAT COLORADO MARKETPLACE SUBDIVISION.
 Located in the Northwest 1/4 of Section 35, Township 5 North, Range 68 West of the 6th
 Principal Meridian, Town of Johnstown, Larimer County, Colorado



Neighborhood
 1" = 500'



SURVEYOR'S STATEMENT

L.M. Shay Show, a Colorado Registered Professional Land Surveyor, do hereby state that this Minor Re-Subdivision was surveyed and prepared in accordance with the rules and regulations of the Board of Professional Land Surveyors of the State of Colorado, and that the same was surveyed by me or under my direct supervision.

Colorado Registered Land Surveyor 155444

Owners and Declaration:
 I, the undersigned, being the owner, within the meaning of the laws of the State of Colorado, of the land shown in the plat above and being the owner of the land shown in the plat above, do hereby certify that the information given in this plat is true and correct and that I have no interest in the land shown in the plat above other than that shown in this plat and that I have no interest in the land shown in the plat above other than that shown in this plat.

Witness: _____
 Notary Public

This plat is to be known as UNCLE BENNY'S MARKETPLACE MINOR RE-SUBDIVISION, is approved and accepted by the Town of Johnstown, Larimer County, Colorado, as shown on the final plat of the Town of Johnstown, Colorado held on this _____ day of _____, 20____.

By: _____ Mayor
 _____ Absent Town Clerk

This plat is to be known as UNCLE BENNY'S MARKETPLACE MINOR RE-SUBDIVISION, is approved and accepted by the Town of Johnstown, Larimer County, Colorado, as shown on the final plat of the Town of Johnstown, Colorado held on this _____ day of _____, 20____.

Notes:

- Distances shown are in U.S. Survey Feet
- The total area contains 18,450 acres, more or less.
- No construction drawings have been reviewed or approved by the Town in regards to this subdivision. These lots will be considered unsuitable until such a time as construction drawings have been reviewed and approved by the Town for any proposed development.
- Requirements for plat at each time are self development is proposed.

OWNER: Johnson + Taylor Family Properties, LLP
 State of Colorado
 County of Larimer

This plat is to be known as UNCLE BENNY'S MARKETPLACE MINOR RE-SUBDIVISION, is approved and accepted by the Town of Johnstown, Larimer County, Colorado, as shown on the final plat of the Town of Johnstown, Colorado held on this _____ day of _____, 20____.

By: _____ Mayor
 _____ Absent Town Clerk

DEED: _____
 Date: _____
 Book: _____

Final Date: _____
 Final Price: _____
 Final Price: _____

PROJECT NO. 13046.009
 SHEET NO. 1
 Item #13.

Final Subdivision Plat - Minor Re-Subdivision
 UNCLE BENNY'S MARKETPLACE
 Section 35, Township 5 North, Range 68 West, 6th P. M., Larimer County, Colorado

PI & S Corporation
 630 West 86th Street, Loveland, Colorado 80538
 Phone: 970.668.2100 - info@piscorporation.com

EXHIBIT B
Temporary Storage and Staging Area

DEVELOPER CONTRIBUTION AGREEMENT

THIS DEVELOPER CONTRIBUTION AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2022 (“Effective Date”), by and between LEDGE ROCK CENTER, LLC, a Kansas limited liability company (“Developer”), and THE TOWN OF JOHNSTOWN, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as “the Parties.”

RECITALS

WHEREAS, the Developer is the owner of land known as Lot 8 and Tract F, East Ledge Rock Center Subdivision Filing No. 2, situated in the Northeast Quarter of Section 11, Township 4 North, Range 68 West of the 6th Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, containing approximately 23.856 acres, more particularly described on Exhibit A attached hereto and incorporated herein by this reference (“Property”); and

WHEREAS, the Developer is developing the Property as the Ledge Rock Center Multifamily South development, which is anticipated to contain, subject to final development approvals, apartment buildings and a clubhouse; and

WHEREAS, the Ledge Rock Center Multifamily South development is part of a larger project, known collectively as the Ledge Rock Center, which is generally depicted on Exhibit B, attached hereto and incorporated herein, and anticipated to contain a destination retail shopping center with approximately 836,5785,000 square feet of new retail uses, known as Ledge Rock Center Commercial (“Commercial Project”); and

WHEREAS, the Town obtained an analysis from Economic & Planning Systems, Inc., a California corporation, projecting that the Commercial Project will provide substantial economic benefits to the Town, including but not limited to, increased sales tax revenues and new employment opportunities; and

WHEREAS, to facilitate the development of the Ledge Rock Center and subject to the terms of a Water and Sewer Service Agreement executed by the Parties contemporaneously herewith, the Developer has requested that the Town permit the Developer to use water from the Town’s share of water supplies at the fair market value to serve the Property; and

WHEREAS, the Town has an available supply of water to serve the Property; and

WHEREAS, in consideration of the Town’s agreement to sell the Developer raw water, the Developer agrees to contribute funds toward the construction and completion of the Commercial Project; and

WHEREAS, the Town, the Developer and Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (“District”), have executed that certain Second Amended and Restated Development and

Reimbursement Agreement for Ledge Rock Center (“Development Agreement”), defining the Developer Shortfall Funding Advance; and

WHEREAS, the Town, the Developer and the District have executed that certain Amended and Restated Escrow Agreement (2022 Limited Tax General Obligation Bonds Ledge Rock Center Commercial District) (“Escrow Agreement”), which is anticipated to be executed by the escrow agent, UMB Bank, N.A., a national banking association, when the District issues bonds; and

WHEREAS, the Escrow Agreement anticipates the creation of the Developer Funds Account (defined therein) for the purpose of depositing funds to secure the construction and completion of the Private Improvements (defined in the Development Agreement) associated with the Commercial Project; and

WHEREAS, to memorialize the foregoing, the Parties desires to enter into this Agreement.

AGREEMENT

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

1. **Recitals.** The Recitals are incorporated into the Agreement as if fully set forth herein.
2. **Water Rights Purchase.** To facilitate development of the Ledge Rock Center, the Town agrees to allow the Developer to use nineteen and six-tenths (19.6) shares of the Consolidated Home Supply Ditch and Reservoir Company (“Water Shares”) from the shares owned by the Town for the in-building and irrigation water needs of the Property. The Developer agrees to pay the fair market value for the Water Shares.
3. **Contribution to Commercial Project.** In consideration of the Town’s agreement to sell the Water Shares to the Developer, and for other good and valuable consideration, the Developer agrees to contribute the Developer Shortfall Funding Advance into the Developer Funds Account (“Developer Contribution”) on or before the earlier to occur of the following: (i) the sale of the Property or any portion thereof to a third-party; (ii) the refinancing of the Property; or (iii) June 1, 2023. Upon deposit of the Developer Contribution, the funds shall be released from the Developer Funds Account as provided in the Escrow Agreement.
4. **Covenants.** As security for the Developer Contribution, upon the execution of this Agreement, the Developer agrees that the Covenants Securing Funding Commitment, attached hereto and incorporated herein by reference as Exhibit C (“Covenants”), shall be recorded against the Property in the office of the Clerk and Recorder of Weld County, Colorado. The Covenants shall thereafter run with the Property and be binding upon and inure to the benefit of the Parties, their respective heirs, personal representatives, successors and assignees.

5. **Remedy for Failure to Deposit Developer Contribution.** If the Developer fails to deposit the Developer Contribution as provided in Paragraph 3, in addition to any other remedies available to the Town, the Town shall be entitled to withhold the issuance of building permits for the Property.

6. **Notice:** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, sent by messenger service, or forwarded by electronic mail delivery, but only upon confirmation of receipt of such electronic mail; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested. Such notices or communications will be given to the Parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534
mlecerf@townofjohnstown.com

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue #330
Loveland, CO 80538
avi@rocklinlaw.com

and

MaryAnn M. McGeady
Erica Montague
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
legalnotices@specialdistrictlaw.com

If to the Developer:

Ledge Rock Center LLC
c/o Michael Schlup
13725 Metcalf Ave.
Overland Park, KS 66223
mikeschlup@corbinparkop.com

With a copy to:

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd PL.
Spring Hill, KS 66083
allen.schlup@adschluplaw.com

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

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

8. **Attorney's Fees and Costs.** If any judicial proceedings may hereafter be brought to enforce or defend 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. **Waiver.** The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

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

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

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

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

14. **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.

15. **Findings.** The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the laws, regulations and policies of the Town.

[The remainder of the page intentionally left blank.]

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

LEDGE ROCK CENTER, LLC

By: _____
Michel L. Schlup, Authorized Member

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2022,
by Michel L. Schlup, as the authorized member of Ledge Rock Center, LLC.

WITNESS my hand and official seal.

Notary Public

My commission expires:

Address

ATTEST:

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Hannah Hill, Town Clerk

By: _____
Gary Lebsack, Mayor

EXHIBIT A
Property

SHEET INDEX:

- SHEET 1: COVER & SUBDIVISION NOTES
- SHEET 2: SUBDIVISION NORTH PORTION
- SHEET 3: SUBDIVISION SOUTH PORTION

EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 2

A SUBDIVISION OF

LOTS 1-5 AND TRACTS A & B OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1 AND SUBDIVISION EXEMPTION 665, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO

SHEET 1 OF 3

PURPOSE STATEMENT

THIS PLAT SUBDIVIDES LOTS 1-5 AND TRACTS A & B OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1 AND SUBDIVISION EXEMPTION 665, DEDICATES RIGHT OF WAY, AND VACATES CERTAIN LEGAL EXTENTS.

LEGAL DESCRIPTION:

A PARCEL OF LAND BEING LOTS 1-5 AND TRACTS A & B OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1 AND THAT OF SUBDIVISION EXEMPTION 665, RECEPTION NUMBER 2585001, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO;
CONTAINING 6,693,037 SQUARE FEET OR 153.651 ACRES, MORE OR LESS.

GENERAL PLAT NOTES:

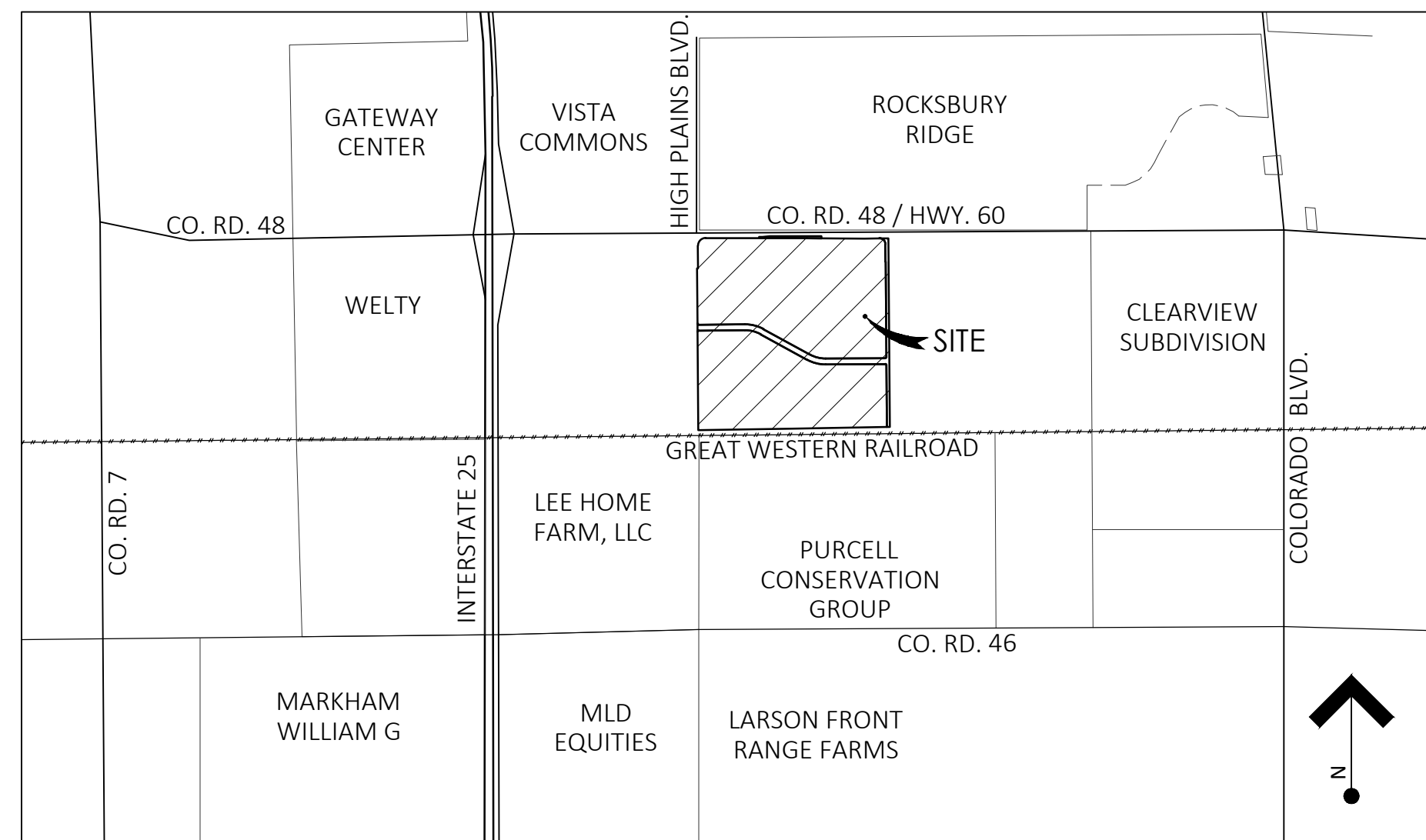
- FINAL TOWN-APPROVED DEVELOPMENT PLANS AND CONSTRUCTION DOCUMENTS ARE REQUIRED PRIOR TO ANY CONSTRUCTION OR DEVELOPMENT OCCURRING ON SITE.
- TRACTS MUST BE REPLATTED WITH THE TOWN OF JOHNSTOWN PRIOR TO ANY CONSTRUCTION OR DEVELOPMENT OCCURRING.
- LOTS 1, 2, 3, 4, AND 5 REPRESENT BUILDING FOOTPRINTS THAT MAY BE REPLATTED TO FINAL FOUNDATION FOOTPRINT, BASED UPON FINAL JOHNSTOWN-APPROVED DEVELOPMENT PLANS AND MAY BE SUBJECT TO MINOR MODIFICATION OF SIZE AND LOCATION AT THE TIME OF REPLAT.
- LOTS 6, 7, AND 8 SHALL BE FURTHER SUBDIVIDED FOR MULTIFAMILY DWELLINGS, ACCOMMODATIONS, AND RIGHT OF WAYS ON A FUTURE SUBDIVISION FILING.
- TRACT A WILL BE OWNED BY THE APPROPRIATE METRO DISTRICT OR OWNERS ASSOCIATION AS A TRACT FOR LANDSCAPING, COMMON AMENITIES, ACCESS, UTILITIES, AND DRAINAGE.
- TRACT B SHALL BE FURTHER SUBDIVIDED FOR COMMERCIAL OCCUPANCY, ACCOMMODATIONS, AND RIGHT OF WAYS ON A FUTURE SUBDIVISION FILING.
- TRACTS C, E, AND F WILL BE DIRECTOR'S PARCELS FOR METROPOLITAN DISTRICTS AND WILL BE OWNED BY THE APPROPRIATE DISTRICT BOARD OF DIRECTORS AS A TRACT FOR LANDSCAPING, COMMON AMENITIES, ACCESS, UTILITIES, AND DRAINAGE.
- TRACTS D AND G SHALL BE FURTHER SUBDIVIDED FOR SINGLE FAMILY DWELLINGS, ACCOMMODATIONS, AND RIGHT OF WAYS ON A FUTURE SUBDIVISION FILING.
- OUTLOT A WILL BE OWNED BY THE APPROPRIATE METROPOLITAN DISTRICT OR OWNERS ASSOCIATION AS A TRACT FOR LANDSCAPING, COMMON AMENITIES, UTILITIES, AND DRAINAGE.
- THE EASEMENT ALONG THE SOUTH BOUNDARY LINE OF THIS SUBDIVISION, BEING A 30' PIPELINE EASEMENT, RECEPTION NUMBER 2426224, IS VACATED BY THIS PLAT AS IT HAS BEEN ABANDONED AND OUT OF SERVICE FOR THE LENGTH OF A CALENDAR YEAR, RECEPTION NUMBER 4765956.
- THE EASEMENTS ACROSS THE NORTHERN PORTION OF THIS SUBDIVISION RELATED TO THE CONSOLIDATED HOME SUPPLY DITCH AND RESERVOIR COMPANY DITCH, BEING A 12' PRESCRIPTIVE EASEMENT AND AN ASSOCIATED 20' DITCH ACCESS ROAD EASEMENT, RECEPTION NUMBER 1602319, IS TO BE VACATED BY SEPARATE DOCUMENT AS CONSTRUCTION COMMENCES FOR THE ALTERNATE ROUTE OF THE WATER WAY.
- THE 30' UTILITY EASEMENT ACROSS THE NORTHERN PORTION OF THIS SUBDIVISION DEDICATED BY THIS PLAT COINCIDES WITH THE TWO (2) 30' UTILITY EASEMENTS DEDICATED PREVIOUSLY BY EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1.

ADDITIONAL PLAT NOTES:

- MAINTENANCE NOTE:** MAINTENANCE ACCESS SHALL BE PROVIDED TO ALL STORM DRAINAGE FACILITIES TO ASSURE CONTINUOUS OPERATIONAL CAPABILITY OF THE SYSTEM. THE PROPERTY OWNER SHALL BE RESPONSIBLE FOR THE MAINTENANCE OF ALL DRAINAGE FACILITIES INCLUDING INLETS, PIPES, CULVERTS, CHANNELS, DITCHES, HYDRAULIC STRUCTURES, AND DETENTION BASINS LOCATED ON THEIR LAND UNLESS MODIFIED BY THE DEVELOPMENT AGREEMENT. SHOULD THE OWNER FAIL TO ADEQUATELY MAINTAIN SAID FACILITIES, THE TOWN OF JOHNSTOWN SHALL HAVE THE RIGHT TO ENTER SAID LAND FOR THE PURPOSES OF OPERATIONS AND MAINTENANCE. ALL SUCH MAINTENANCE COSTS INCURRED BY THE TOWN WILL BE ASSESSED TO THE PROPERTY OWNER.
- GENERAL OVERLOT DRAINAGE NOTE:** LOTS AND TRACTS AS PLATTED MAY BE REQUIRED TO CONVEY SURFACE DRAINAGE FROM OTHER LOTS AND TRACTS IN THIS FILING, IN ACCORDANCE WITH TOWN OF JOHNSTOWN REQUIREMENTS AND THE APPROVED DRAINAGE PLAN FOR THIS FILING. NO ALTERATIONS TO THE GRADING OF THE LOTS AND TRACTS MAY BE MADE THAT WOULD DISRUPT THE APPROVED DRAINAGE PLAN, WITHOUT PRIOR APPROVAL FROM THE TOWN OF JOHNSTOWN. ALL NATURAL AND IMPROVED DRAINAGE WAYS OR DRAINAGE SYSTEMS IN SAID LOTS AND TRACTS SHALL BE MAINTAINED BY THE LOT OR TRACT OWNER. SHOULD THE OWNER FAIL TO ADEQUATELY MAINTAIN SAID FACILITIES, THE TOWN OF JOHNSTOWN SHALL HAVE THE RIGHT TO ENTER SAID LAND FOR THE PURPOSES OF OPERATIONS AND MAINTENANCE OF THE DRAINAGE WAYS OR DRAINAGE SYSTEMS. ALL SUCH MAINTENANCE COSTS INCURRED BY THE TOWN WILL BE ASSESSED TO THE PROPERTY OWNER.

SURVEYOR'S NOTES:

- ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
- THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY POINT CONSULTING, LLC. FOR INFORMATION REGARDING BOUNDARY, EASEMENTS AND TITLE, POINT CONSULTING, LLC RELIED UPON THE FOLLOWING TWO (2) TITLE COMMITMENTS - OLD REPUBLIC NATIONAL TITLE INSURANCE COMPANY: ORDER NO. FCC25186901-3, EFFECTIVE DATE OF MAY 25, 2021 AT 5:00 P.M.
- CHICAGO TITLE OF COLORADO: ORDER NO. C2070545-100-1EM-CPF, EFFECTIVE DATE OF MARCH 18, 2022.
- PUBLISHED PROPERTY ADDRESS:
VACANT LAND, CO;
4822 W. SOUTH 1ST STREET, JOHNSTOWN, CO 80534.
- THE SUBJECT PROPERTY CONTAINS 6,693,037 SQUARE FEET OR 153.651 ACRES, MORE OR LESS.
- UNIT OF MEASURE: DISTANCES SHOWN HEREON ARE U.S. SURVEY FOOT.
- BASIS OF BEARINGS: BEING THE WEST SECTION LINE OF THE NORTHEAST ONE-QUARTER SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN AS MEASURED BETWEEN THE MONUMENTS FOUND AND SHOWN HEREON AS N00°26'18"W.
- FLOOD ZONE DESIGNATION: ACCORDING TO FLOOD INSURANCE RATE MAP (F.I.R.M.) NUMBER 08069C1405G, WITH AN EFFECTIVE DATE OF JANUARY 15, 2021, THE ENTIRE PROPERTY LIES ENTIRELY WITHIN THE FOLLOWING ZONE DESIGNATION: ZONE X - AREAS DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN.



VICINITY MAP
Scale 1" = 2,000'

MAP LEGEND:

- SET 24" #5 REBAR & ALUMINUM CAP "LS 38570"
- SET NAIL & ALUMINUM TAG "SURVEY LS 38570"
- ⦿ FOUND GOVERNMENT CORNER
- ✦ FOUND CHISELED CROSS / CUT X
- ⊙ FOUND NAIL & TAG
- FOUND IRON PIPE
- FOUND REBAR

ABBREVIATIONS:

SEC.	SECTION
COR.	CORNER
R.O.W.	RIGHT OF WAY
REC. NO.	RECEPTION NUMBER
N	NORTH
E	EAST
S	SOUTH
W	WEST
FT.	U.S. SURVEY FOOT
SQ. FT.	SQUARE FOOT
AC.	ACRE
R	RADIUS
Δ	DELTA ANGLE
L	ARC LENGTH
CHB	CHORD BEARING
CHL	CHORD LENGTH

---	SECTION LINE
---	BOUNDARY LINE
---	LOT LINE
---	ADJACENT BOUNDARY LINE
---	ACCESS EASEMENT CENTERLINE
---	EASEMENT LINE

ACREAGE TABLE	
PARCEL IDENTIFIER	AREA
LOT 1	0.627
LOT 2	0.627
LOT 3	0.627
LOT 4	0.627
LOT 5	5.317
LOT 6	10.258
LOT 7	12.600
LOT 8	23.123
TRACT A	22.439
TRACT B	9.607
TRACT C	0.908
TRACT D	18.175
TRACT E	0.715
TRACT F	0.733
TRACT G	30.897
OUTLOT A	8.552
R.O.W. DEDICATION	7.305
HWY. 60 DEDICATION	0.512

OWNER'S CERTIFICATE AND DEDICATION:

KNOW ALL PERSON BY THESE PRESENT THAT LEDGE ROCK CENTER, LLC . . . BEING THE OWNER OF THE PROPERTY DESCRIBED AS FOLLOWS:
A PARCEL OF LAND BEING LOTS 1-5 AND TRACTS A & B OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1 AND THAT OF SUBDIVISION EXEMPTION 665, RECEPTION NUMBER 2585001, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO.
CONTAINING 6,693,037 SQUARE FEET OR 153.651 ACRES, MORE OR LESS.
HAS SURVEYED, LAID OUT, SUBDIVIDED, AND PLATTED THE SAME INTO RIGHT-OF-WAY, TRACTS, BLOCKS, LOTS AND OUTLOTS, AS SHOWN ON THIS PLAT, UNDER THE NAME AND STYLE OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 2, AND DO HEREBY DEDICATE TO THE PUBLIC ALL WAYS AND OTHER PUBLIC RIGHTS-OF-WAY AND EASEMENTS FOR PURPOSES SHOWN HEREON.

EXECUTED THIS _____ DAY OF _____, 20__.

LEDGE ROCK CENTER, LLC

BY: _____
MICHEL SCHLUP, MEMBER

NOTARIAL:

STATE OF _____ }
COUNTY OF _____ } SS

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS ___ DAY OF _____, 20__ A.D.

BY _____ AS _____ OF

WITNESS MY HAND AND OFFICIAL SEAL:

NOTARY PUBLIC _____

MY COMMISSION EXPIRES: _____



POINT CONSULTING, LLC
8460 W KEN CARYL AVE #101
LITTLETON, CO 80128
720-258-6836
www.pnt-llc.com
PLANNING
CIVIL ENGINEERING
LANDSCAPE ARCHITECTURE
LAND SURVEYING

SUBDIVISION PLAT
EAST LEDGE ROCK CENTER
SUBDIVISION FILING NO. 2
JOHNSTOWN, COLORADO

COVER SHEET
JOB NO. 21.022
SHEET 1/3

DATE	DESCRIPTION
06.03.2022	ORIGINAL PREPARATION
06.14.2022	CITY COMMENTS

TOWN APPROVAL:

THIS PLAT, TO BE KNOWN AS EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 2, IS APPROVED AND ACCEPTED BY THE TOWN OF JOHNSTOWN, BY RESOLUTION NUMBER _____, PASSED AND ADOPTED ON FINAL READING AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO HELD ON THE _____ DAY OF _____, 20__.

BY: _____ ATTEST: _____
MAYOR TOWN CLERK

SURVEYING CERTIFICATE:

I, ADAM R. ZETTMLOYER, BEING A REGISTERED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THE PLAT OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 2 BEING A SUBDIVISION OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1 AND THAT OF SUBDIVISION EXEMPTION 665 WAS MADE BY ME OR UNDER MY SUPERVISION.

DATED THIS _____ DAY OF _____, 2022.

ADAM R. ZETTMLOYER, PLS
COLORADO LICENSE NUMBER 38570
FOR AND ON BEHALF OF
POINT CONSULTING, LLC
8460 W KEN CARYL AVE
LITTLETON, CO 80128
(702) 258-6836
azettlemoyer@pnt-llc.com

EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 2

A SUBDIVISION OF

LOTS 1-5 AND TRACTS A & B OF EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 1 AND SUBDIVISION EXEMPTION 665, SITUATED IN THE NORTHEAST ONE-QUARTER OF SECTION 11, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO

PAGE 2 OF 3

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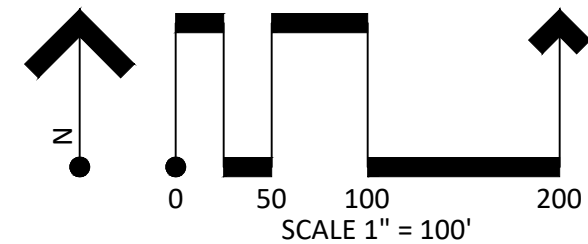
**EAST LEDGE ROCK CENTER
 SUBDIVISION FILING NO. 2**

DATE	DESCRIPTION
06.03.2022	ORIGINAL PREPARATION
06.14.2022	CITY COMMENTS

PLAT EXHIBIT - NORTH PORTION

ABBREVIATIONS:

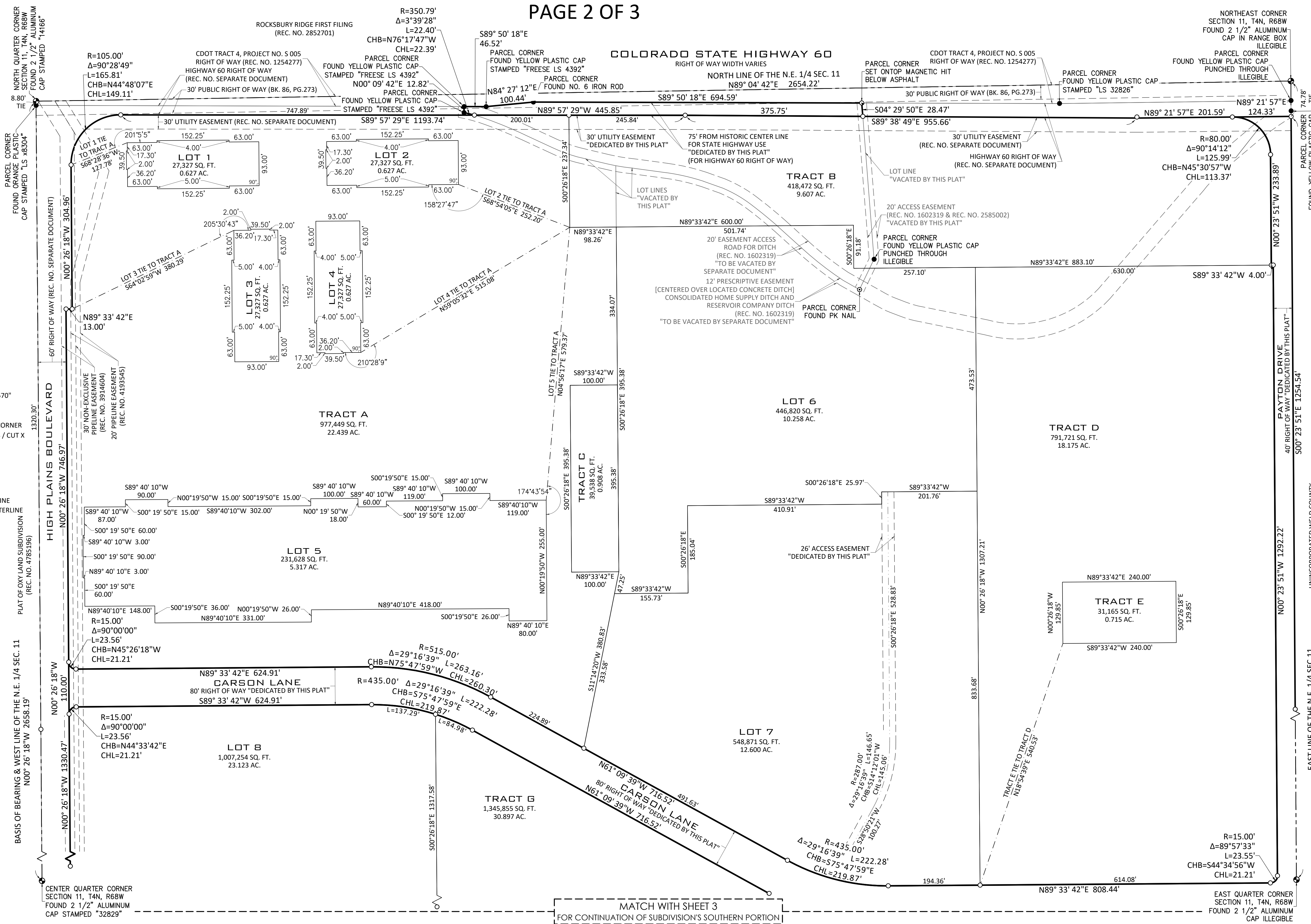
- SEC. SECTION
- COR. CORNER
- R.O.W. RIGHT OF WAY
- REC. NO. RECEPTION NUMBER
- N NORTH
- E EAST
- S SOUTH
- W WEST
- FT. U.S. SURVEY FOOT
- SQ. FT. SQUARE FOOT
- AC. ACRE
- R RADIUS
- Δ DELTA ANGLE
- L ARC LENGTH
- CHB CHORD BEARING
- CHL CHORD LENGTH



MAP LEGEND:

- SET 24" #5 REBAR & ALUMINUM CAP "LS 38570"
- SET NAIL & ALUMINUM TAG "SURVEY LS 38570"
- ⊕ FOUND GOVERNMENT CORNER
- ⊕ FOUND CHISELED CROSS / CUT X
- ⊕ FOUND NAIL & TAG
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- FOUND REBAR
- SECTION LINE
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MATCH WITH SHEET 3 FOR CONTINUATION OF SUBDIVISION'S SOUTHERN PORTION

UNINCORPORATED WELD COUNTY ZONING "A"

EAST LINE OF THE N.E. 1/4 SEC. 11 500' 23' 51" E 2658.65'

EAST QUARTER CORNER SECTION 11, T4N, R68W FOUND 2 1/2" ALUMINUM CAP ILLEGIBLE

CENTER QUARTER CORNER SECTION 11, T4N, R68W FOUND 2 1/2" ALUMINUM CAP STAMPED "32829"

PLAT OF OXY LAND SUBDIVISION (REC. NO. 4785196)

BASIS OF BEARING & WEST LINE OF THE N.E. 1/4 SEC. 11 N00° 26' 18" W 2658.19'

HIGH PLAINS BOULEVARD N00° 26' 18" W 746.97'

60' RIGHT OF WAY (REC. NO. SEPARATE DOCUMENT) N00° 26' 18" W 304.96'

30' NON-EXCLUSIVE PIPELINE EASEMENT (REC. NO. 3914604)

20' PIPELINE EASEMENT (REC. NO. 4139345)

30' UTILITY EASEMENT (REC. NO. SEPARATE DOCUMENT)

30' PUBLIC RIGHT OF WAY (BK. 86, PG. 273)

NORTH QUARTER CORNER SECTION 11, T4N, R68W FOUND 2 1/2" ALUMINUM CAP STAMPED "14166"

NORTHEAST CORNER SECTION 11, T4N, R68W FOUND 2 1/2" ALUMINUM CAP IN RANGE BOX ILLEGIBLE

EAST LEDGE ROCK CENTER SUBDIVISION FILING NO. 2

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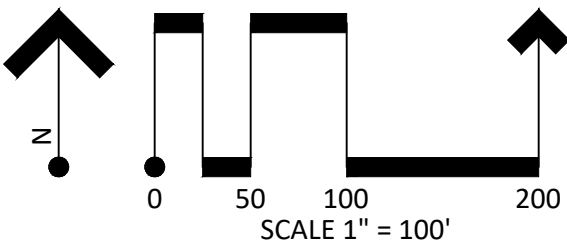
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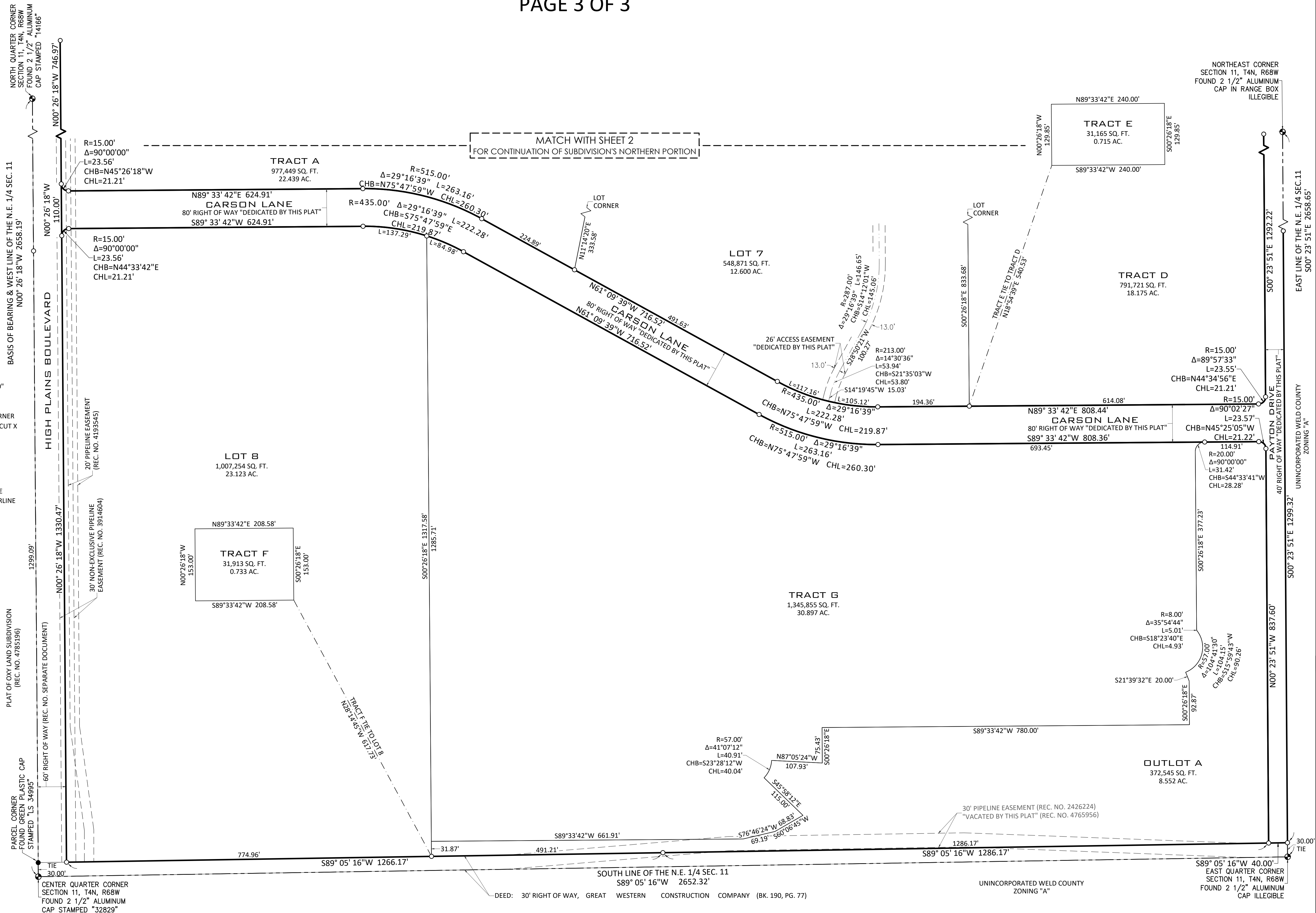
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TRACT F	0.733
TRACT G	30.897
OUTLOT A	8.552
R.O.W. DEDICATION	7.305
HWY. 60 DEDICATION	0.512

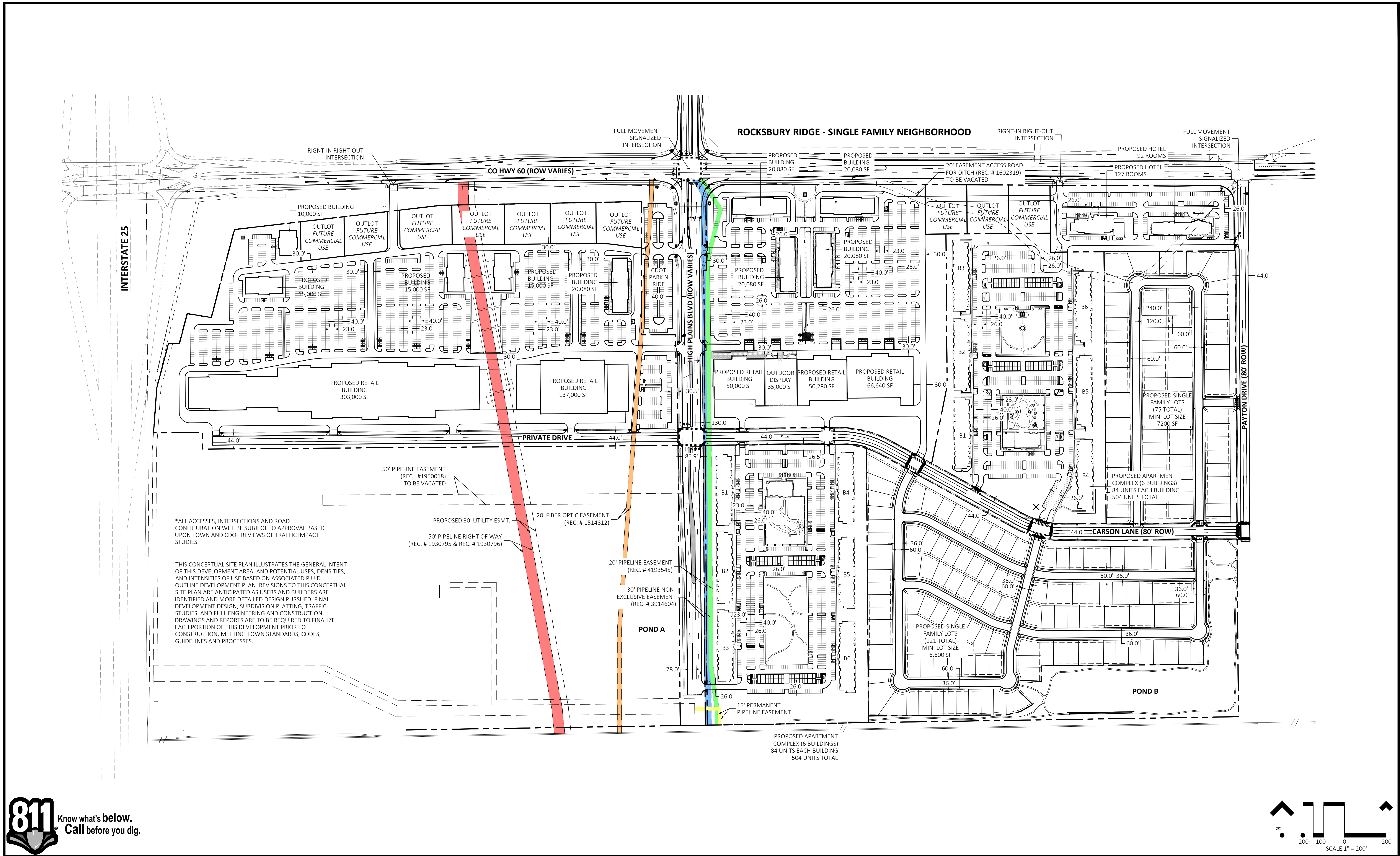


POINT CONSULTING, LLC
 8460 W. KEN CARYL AVE #101
 LITTLETON, CO 80128
 720-268-6636
 www.pnt-llc.com
 CIVIL ENGINEERING
 PLANNING
 LANDSCAPE ARCHITECTURE
 LAND SURVEYING

**EAST LEDGE ROCK CENTER
 SUBDIVISION FILING NO. 2**
 JOHNSTOWN, COLORADO
 SUBDIVISION PLAT
 JOB NO. 21.022

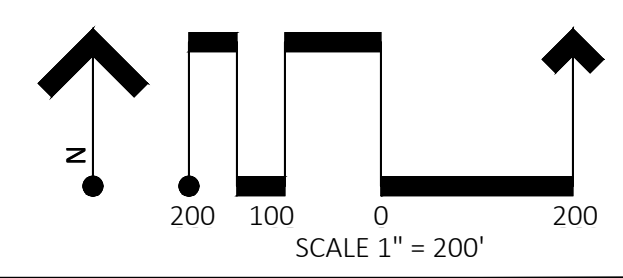
DATE	DESCRIPTION
06.03.2022	ORIGINAL PREPARATION
06.14.2022	CITY COMMENTS

EXHIBIT B
Ledge Rock Center Depiction



*ALL ACCESSES, INTERSECTIONS AND ROAD CONFIGURATION WILL BE SUBJECT TO APPROVAL BASED UPON TOWN AND CDOT REVIEWS OF TRAFFIC IMPACT STUDIES.

THIS CONCEPTUAL SITE PLAN ILLUSTRATES THE GENERAL INTENT OF THIS DEVELOPMENT AREA, AND POTENTIAL USES, DENSITIES, AND INTENSITIES OF USE BASED ON ASSOCIATED P.U.D. OUTLINE DEVELOPMENT PLAN. REVISIONS TO THIS CONCEPTUAL SITE PLAN ARE ANTICIPATED AS USERS AND BUILDERS ARE IDENTIFIED AND MORE DETAILED DESIGN PURSUED. FINAL DEVELOPMENT DESIGN, SUBDIVISION PLATTING, TRAFFIC STUDIES, AND FULL ENGINEERING AND CONSTRUCTION DRAWINGS AND REPORTS ARE TO BE REQUIRED TO FINALIZE EACH PORTION OF THIS DEVELOPMENT PRIOR TO CONSTRUCTION, MEETING TOWN STANDARDS, CODES, GUIDELINES AND PROCESSES.



DATE	DESCRIPTION
2022.05.06	2ND PDP SUBMITTAL
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.	.
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LEDGE ROCK CENTER CONCEPTUAL SITE PLAN - FOR ILLUSTRATIVE PURPOSES ONLY

JOHNSTOWN, COLORADO

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LAND SURVEYING



EXHIBIT C
Covenants

COVENANTS SECURING FUNDING COMMITMENT

1.0 **PARTIES.** These covenants (the “Covenants”) are made and entered into as of ~~September 12~~~~August 29~~, 2022, by and between LEDGE ROCK CENTER, LLC, a Kansas limited liability company (the “Developer”), and the TOWN OF JOHNSTOWN, COLORADO, a home rule municipality of the Counties of Larimer and Weld, State of Colorado (the “Town”). The Developer and the Town are referred to herein collectively as the “Parties” and individually as a “Party.”

2.0 **RECITALS.** The following recitals are incorporated into and made a part of these Covenants.

2.1 **The Multi-Family Parcel.** The Developer owns certain real property described as the “Multi-Family Parcel,” known as Lot 8 and Tract F, East Ledge Rock Center Subdivision Filing No. 2, situated in the Northeast Quarter of Section 11, Township 4 North, Range 68 West of the 6th Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, containing approximately 23.856 acres.

2.2 **The Development and Reimbursement Agreement.** The Parties and the Ledge Rock Center Commercial Metropolitan District, a political subdivision of the State of Colorado (the “District”), entered into that certain Second Amended Development and Reimbursement Agreement dated as of August 29, 2022 (and as may be further amended, the “DRA”). The role of the District is to finance and facilitate the design and construction of public improvements that will serve the health, safety, prosperity, security and general welfare of the citizens of the Town.

2.3 **The Developer Contribution Agreement.** The Parties entered into that certain Developer Contribution Agreement dated ~~on or about September 12~~~~August 29~~, 2022, wherein the Developer agreed to deposit the Developer Shortfall Funding Advance (as defined in the DRA) into the Developer Funds Account, as such term is defined in the Amended and Restated Escrow Agreement by and among the Parties, the District, and UMB Bank n.a. (the “Escrow Agent”), executed by the Parties of even date herewith and anticipated to be executed by the Escrow Agent when the District issues bond (the “Escrow Agreement”).

2.4 **Public Purpose.** The public purpose of these Covenants is to assist and facilitate the provision of such public improvements for the benefit of taxpayers and occupants of the District and the Town and further to encourage new and expanded retail development in the Town while protecting and securing performance of the covenants of the Developer described in Sections 4.0 and 4.1, below.

3.0 **CONSIDERATION.** In consideration of the Recitals and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree to the following provisions set forth in these Covenants.

4.0 WATER SHARES. Pursuant to the Developer Contribution Agreement and related agreements, the Town has agreed to sell and transfer to the Developer 19.6 shares of water (the “Water Shares”) for \$550,000 per share in return for the Developer’s deposit of the Developer Shortfall Funding Advance into the Developer Funds Account described in the Escrow Agreement. The Water Shares shall be used exclusively for the benefit of the Multi-Family Parcel and shall not (a) be used by the Developer for any other use, and (b) shall not be sold, assigned, or otherwise transferred by Developer without the prior written consent of the Town while these Covenants are in place.

4.1 Timing. The Developer shall deposit the Developer Shortfall Funding Advance in the Developer Funds Account described in the Escrow Agreement on or before the first to occur of the following: (a) at the time of any sale or refinance of any part of the Multi-Family Parcel by the Developer; (b) at the time of issuance of a building permit for construction of any improvements on the Multi-Family Parcel; or (c) June 1, 2023. For the purposes of this Agreement, the Developer Shortfall Funding Advance shall be confirmed in writing by the Escrow Agent.

4.2 Subordinate Lien. The lien created by these Covenants shall run with the title to the Multi-Family Parcel but shall in all respects be subordinate to the lien of any purchase money mortgage or deed of trust imposed as a first lien pursuant to Developer’s purchase of such Multi-Family Parcel.

5.0 COVENANTS BURDENING THE LAND. These Covenants shall be construed as covenants and not as conditions affecting the Multi-Family Parcel. To the fullest extent legally possible, each such covenant shall run with title to the Multi-Family Parcel and any portion of it.

6.0 SATISFACTION AND RELEASE. Within thirty (30) days after receipt of written confirmation from the Escrow Agent that the Developer has deposited the full amount of the Developer Shortfall Funding Advance in the Developer Funds Account in accordance with Section 4.1, above, the Town will deliver the Release (the “Release”) in the form attached hereto and made part of these Covenants as Exhibit 1, which Release shall be a conclusive satisfaction of the obligations of the Developer with respect to the Developer Shortfall Funding Advance as required by these Covenants. The Release shall operate as a full and complete release of any lien or other burden on the Multi-Family Parcel with respect to the obligations of the Developer recited in these Covenants and may be relied upon as such for all purposes.

7.0 ENFORCEMENT. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town’s ordinances. These Covenants will be governed by, and enforced in accordance with, the laws of the State of Colorado and venue shall be exclusively in the District Court in and for Weld County, Colorado.

8.0 NO THIRD-PARTY BENEFICIARIES. Enforcement of the terms and conditions of these Covenants, and all rights of action relating to such enforcement, shall be strictly reserved to the

Town and nothing contained in these Covenants shall give or allow any such claim or right of action by any other party.

9.0 PROVISIONS NOT MERGED WITH DEED. None of the provisions of these Covenants are intended to or shall be merged by reason of any deed transferring possession or title to the Multi-Family Parcel to any successor in interest, and such deed shall not be deemed to affect or impair the provisions of these Covenants.

IN WITNESS WHEREOF, the Parties have executed these Covenants as of the date first set forth above.

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

ATTEST:

Gary Lebsack, Mayor

Hannah Hill, Town Clerk

LEDGE ROCK CENTER, LLC, a Kansas limited liability company

, Member/Manager

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this ___ day of _____, 2022, by _____ as a Member of Ledge Rock Center, LLC.

Witness my hand and official seal.
My commission expires _____.

[SEAL]

Notary Public

EXHIBIT 1

RELEASE

THE TOWN OF JOHNSTOWN, a home-rule municipality of the State of Colorado (the “Town”) hereby certifies that LEDGEROCK CENTER, LLC, a Kansas limited liability company (the “Developer”) has fully complied with the requirements set forth in the Covenants dated as of ~~September 12~~~~August 29~~, 2022, recorded _____, 2022 in the records of the Clerk and Recorder of Weld County, Colorado at reception no: _____ (the “Covenants”).

This Release shall be conclusive evidence that the Developer Shortfall Funding Advance required by the Covenants has been made and by the Developer and that the lien of the Declaration is hereby released by the Town.

This Release is specific and applies only to the obligations of the Developer under the Covenants and shall not relieve the Developer from complying with duties and covenants made under other documents.

Signed and delivered as of _____, 202_

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

ATTEST:

Matthew LeCerf, Town Manager

Hannah Hill, Town Clerk

**AMENDED AND RESTATED AGREEMENT CONCERNING PURCHASE AND SALE
OF REAL PROPERTY FOR LEDGE ROCK CENTER COMMERCIAL**

THIS AMENDED AND RESTATED AGREEMENT CONCERNING PURCHASE AND SALE OF REAL PROPERTY FOR LEDGE ROCK CENTER COMMERCIAL (“Amended Agreement”) is made and entered into on this ___ day of _____, 2022, by and among THE TOWN OF JOHNSTOWN, COLORADO, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“Town”), LEDGE ROCK CENTER, LLC, a Kansas limited liability company (“Developer”), and LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”) (collectively, the “Parties”).

RECITALS

WHEREAS, the Town is the owner of a parcel of land situated in the Northwest ¼, Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, and recorded at Reception Number 4838311, on June 28, 2022 in the Weld County Clerk and Recorder’s Office, consisting of approximately 33.22 acres, ~~more particularly described on [Exhibit A attached hereto and incorporated herein by reference](#)~~ (“Property”); and

WHEREAS, the District and Developer intend to develop the Property, along with other real property, as a commercial retail center to be known as the Ledge Rock Center containing approximately 785,000 square feet of new retail uses (“Project”); and

WHEREAS, on or about February 23, 2022, the Parties entered into that certain Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial and, on or about June 20, 2022, the Parties entered into that certain First Amendment to Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial (collectively, the “Agreement”); and

WHEREAS, pursuant to the Agreement, the Town agreed to convey the Property to the Developer upon terms and conditions set forth therein; and

WHEREAS, based on the development trajectory, due to changes in the bond market, and for the reasons set forth herein, the Parties desire to enter into a new agreement, this Amended Agreement, that will supersede and replace the Agreement and set forth the Parties’ agreement that, upon the first issuance of Bonds, the Town will only convey a portion of the Property to the Developer and will convey the remaining portion of the Property at a subsequent date; and

WHEREAS, the District is developing the Project in two phases; and

WHEREAS, the first phase of the Project includes development of the portion of the Property known as Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, situated in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 7.835 acres (“First Phase Property”); and

WHEREAS, the second phase of the Project includes development of the remaining portion of the Property known as Lot 1, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, situated in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 25.385 acres (“Second Phase Property”); and

WHEREAS, the Town desires to convey the Property to the Developer in two separate transactions; and

WHEREAS, this Amended Agreement relates to conveyance of the First Phase Property and contemplates that the Town will convey the Second Phase Property at a subsequent date upon terms and conditions substantially consistent as those set forth herein, except as may be modified by the Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial executed contemporaneously herewith by and among the Parties; and

WHEREAS, in consideration of the Developer’s agreement to convey the First Phase Property, excepting the portions of the First Phase Property upon which Private Improvements will be constructed, to the District at no cost to the District, and to facilitate the development of the Project, the Developer has requested that the Town convey the First Phase Property to the Developer for nominal consideration; and

WHEREAS, Colorado municipalities are entitled to encourage new and expanded retail development through inducements and incentives; and

WHEREAS, the Town has determined the Project will serve a public use and promote the health, safety, prosperity, security and general welfare of the citizens of the Town; and

WHEREAS, in furtherance of the development of the Project, on or about January 3, 2022, the Town, the District and the Developer entered into that certain Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado (“Development Agreement”); and

WHEREAS, pursuant to the Development Agreement, and the District’s and Developer’s representations made therein regarding the construction and installation of the Project on the Property, the Town agreed to negotiate a purchase and sale agreement with the Developer and the District regarding conveyance of the Property; and

WHEREAS, based on the foregoing, including the anticipated economic benefits and additional employment opportunities presented by the location of the Project in the Town, the Town desires to accommodate the Developer’s request for conveyance of the First Phase Property to the Developer for nominal consideration; and

WHEREAS, pursuant to C.R.S. § 29-1-203, the Parties are authorized to enter into cooperative agreements and contracts for certain specified purposes, and intend that, as between the Town and the District, this Amended Agreement constitute such an intergovernmental agreement with respect to the conveyance of the First Phase Property; and

WHEREAS, capitalized terms used herein not otherwise defined shall have the meaning set forth in the Development Agreement; and

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

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Amended Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Conveyance. Based upon the terms and conditions set forth herein, contemporaneously with the District's first issuance of Bonds, the Town shall convey the First Phase Property to the Developer by special warranty deed, in substantially the same form as attached hereto and incorporated herein by reference as Exhibit A ("Conveyance Date"). If the District has not issued Bonds by October 31, 2022, then, unless the Town consents to an extension of time, this Amended Agreement shall terminate and the Town shall not be obligated to convey the Property to the District.
3. Completion of Public Improvements. As a material term of this Amended Agreement, the District and Developer agree to complete construction of the Public Improvements required for commercial use of the First Phase Property, the scope of which shall be agreed upon by the Parties, within five (5) years of the Conveyance Date. If, after due diligence, the District and Developer anticipate that they will not be able to complete the Public Improvements within the five (5) year period, within at least three and one-half years (3.5) from the Conveyance Date, the District and Developer may submit a written request to the Town for an extension of time to complete the Public Improvements along with an explanation of the reason for the request. The Town shall review the request and, if agreeable, at the Town's discretion, provide written consent to the extension of time in the form of an amendment to this Amended Agreement. If the request is based on good cause, as determined by the Town, the Town's approval shall not be unreasonably withheld, delayed or conditioned.
4. Conveyance of First Phase Property to District. As a material term of this Amended Agreement, the Developer agrees to convey the First Phase Property to the District, excepting the portions of the First Phase Property upon which Private Improvements will be constructed, within four (4) months of the Conveyance Date. The Developer further agrees to convey the First Phase Property to the District at no cost.
5. Restrictive Covenants. Absent written consent of the Town in the form of an amendment to this Amended Agreement recorded in the Weld County Clerk and Recorder's Office, except as otherwise set forth herein, the Developer and the District shall not:
 - a. Convey the First Phase Property to a third-party, except that the Developer may convey the First Phase Property to the District as set forth herein;

- b. Secure any financing for Public Improvements with a mortgage or other encumbrance on the First Phase Property except for any PILOT which may exist on the First Phase Property; or
- c. Secure any financing for Private Improvements with a mortgage or other encumbrance on the First Phase Property except for (i) financing by a third-party who purchases portions of the First Phase Property pursuant Paragraph 6; or (ii) financing approved by the Town pursuant to Paragraph 7. Without limiting the Town's rights, the Town commits and affirms that, if the Town determines that the Developer is making substantial progress toward development of the First Phase Property, upon the written request of the Developer, the Town would be inclined to agree to release the foregoing restriction with respect to the Private Property.

6. Conveyance of Portions of the First Phase Property to Third-Party Retailers. Notwithstanding the foregoing, the Town understands and agrees that, as the Project develops, the Developer may desire to convey portions of the First Phase Property proposed for pad sites to third-parties for Private Improvements and the construction of buildings for commercial use. Such conveyance shall be subject to the following:

- a. Conditions of Sale. The Developer shall only be entitled to convey portions of the First Phase Property proposed for pad sites on the condition that the purchase and sale agreement between the Developer and the third-party purchaser contain provisions requiring that the third-party purchaser submit an application to the Town for a building permit within six (6) months of the acquisition of the property and commence construction of the Private improvements within three (3) months of the issuance of a building permit, except that, for good cause, the purchaser may provide a written request for an extension of either of the deadlines to the Town Manager at least thirty (30) days before the expiration of such deadline and the Town Manager may, at the Town Manager's discretion, extend the deadline upon a finding of good cause, which consent shall not be unreasonably withheld, delayed or conditioned if the request is based on good cause. If those conditions are not satisfied, the purchase and sale agreement shall provide that the third-party purchaser be required to reconvey the property to the Developer and that the Developer be required to accept reconveyance of the property from the third-party. The Developer shall also prohibit the third-party purchaser from selling the property to a different purchaser absent the Developer's consent and the new purchaser's assumption of the development obligations set forth above. Prior to the sale of the property by the Developer to a third-party, the Developer shall provide the portions of the purchase and sale agreement containing the above-conditions to the Town for review and approval.
- b. Developer Funds. Upon the sale of property to a third-party, the Developer shall not be entitled to Developer Funds, as defined in the Escrow Agreement, for such portion of the First Phase Property absent written approval of the Town Manager, at the Town Manager's discretion. To determine whether to allow

disbursement of Developer Funds, the Town Manager may request, among other information, documentation evidencing: (i) the identity of the purchaser of the property and the anticipated retail use; (ii) the anticipated construction schedule and date by which the purchaser intends to be open for retail business; and (iii) as between the Developer and the third-purchaser, the financial terms of the construction of the Private Improvements.

7. Encumbrance on Private Property.

- a. Pad Sites. Notwithstanding the foregoing, as provided in this Paragraph 7, the Developer may mortgage or encumber portions of the First Phase Property proposed for pad sites for Private Improvements when the Developer is prepared to commence construction of the Private Improvements on such pad site(s). In such case, the Developer shall provide written notice to the Town Manager. The Town Manager shall review and, if acceptable, at the Town Manager's discretion, provide written consent to the mortgage or encumbrance. The Town Manager's approval shall not be unreasonably withheld, delayed or conditioned.
- b. Consent to Encumber Lots 2, 3, 4 and 5. Developer has indicated that, as of the effective date of this Amended Agreement, Developer intends to commence construction of the Public Improvements and thereafter the Private Improvements associated with Lots 2, 3, 4, and 5 (~~“Lots”~~), ~~as such Lots are preliminarily shown and depicted on Exhibit A attached hereto and incorporated herein by reference.~~ of the First Phase Property (“Lots”). The Town hereby provides consent for the mortgage or encumbrance of those Lots.

8. Consent to Transfer. Upon the conveyance of the First Phase Property from the Developer to the District, the District shall not be entitled to transfer or convey the First Phase Property to the Developer or to a third party absent the written consent of the Town.

9. Remedy. If the Developer and/or the District fail to comply with any term or conditions of this Amended Agreement, the Developer and/or the District, as the case may be, shall be liable to the Town for the fair market value of the First Phase Property at the time of such failure, determined by an independent appraisal obtained at the Developer's expense. The Town shall be entitled to any and all other remedies available, including the right, at its discretion, to seek to rescission of the conveyance and transfer of the First Phase Property in violation of the terms of this Amended Agreement. The Parties acknowledge that the Escrow Agreement will contain a cross default provision that will suspend the distribution of any Developer Funds until such time as any default by the Developer or the District under this Amended Agreement has been cured.

10. References to First Phase Property. Each and every reference herein to the “First Phase Property” shall mean and include the whole of the First Phase Property or portions thereof.

11. Consent of the Town. Except as otherwise provided herein, the requirement to obtain the consent of the Town shall mean the consent of the Town Council of the Town of Johnstown.

12. Mediation. If a dispute arises under this Amended Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the non-breaching Party shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in construction-related matters. If the Parties are unable to agree upon a mediator, either Party may apply to the Judicial Arbitrator Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties.

13. Governing Law and Venue. This Amended Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Amended Agreement shall be in the County of Weld, State of Colorado.

14. Severability. If any term, provision, covenant or condition of this Amended Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Amended Agreement shall continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining or substantially deprive such Party of the benefit of its bargain under this Amended Agreement. The Parties shall cooperate in reforming this Amended Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition.

15. Recordation. This Amended Agreement shall be recorded in the Weld County Clerk and Recorder's Office.

16. Runs with the Land. The terms and provisions of this Amended Agreement shall constitute covenants running with the land (the First Phase Property) and shall be binding upon and inure to the benefit of the respective successors, assigns, transferees, personal representatives and heirs of the Parties hereto.

17. Costs and Attorneys' Fees. If the Developer or the District breaches this Amended Agreement, the Developer or the District, as the case may be, shall pay the Town's reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Amended Agreement.

18. Entire Agreement. This Amended Agreement constitutes the entire agreement and understanding between the Parties related to the subject matter contained herein and supersedes all prior agreements or understandings.

19. No Presumption. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Amended Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Amended Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

20. Findings. The Town hereby finds and determines that execution of this Amended Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town. The District hereby finds that this Amended Agreement is in the best interests of the District.

21. Further Assurances. Each Party shall execute and deliver to the others all such other further instruments and documents as may be reasonably necessary or requested by another Party to confirm or clarify the intent of the provisions of this Amended Agreement, and to carry out and effectuate this Amended Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Amended Agreement.

22. Authority. The signatories to this Amended Agreement affirm and warrant that they are fully authorized to enter into and execute this Amended Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Amended Agreement have been made.

23. Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Amended Agreement.

24. Counterparts. This Amended Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

25. Effect of Amended Agreement. This Amended Agreement shall supersede and replace the Agreement. The Agreement shall no longer be of any force or effect.

26. Second Phase Property. The Town affirms that it intends to convey the Second Phase Property at a subsequent date upon terms and conditions substantially consistent as those set forth herein, except as such terms are modified by the Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial (“Second DRA”) executed contemporaneously herewith by and among the Parties. In addition, the Town intends to acquire Oxy Parcel No. 2, referenced in the Second DRA and known as Lot 4 on the Plat of Oxy Land Subdivision, located in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 25.15 acres, and recorded at Reception Number 4785196 on December 15, 2021 in Weld County Clerk and Recorder’s Office. Once Oxy Parcel No. 2 is acquired by the Town: (i) the Parties intend to negotiate and execute a purchase and sale agreement wherein the Town will convey such parcel to the Developer upon mutually agreeable terms and (ii) the definition of Second Phase Property for the purposes of this Amended Agreement will include Oxy Parcel No. 2, but be subject to the terms of the subsequent purchase and sale agreement. For the avoidance of doubt, unless otherwise agreed by the Town in a written agreement, the Town shall not be obligated to convey the Second Phase Property to the Developer unless and until the Developer purchases the Oxy Parcel No. 2.

27. Effective Date. This Amended Agreement shall be effective on the date set forth above in the opening paragraph.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties have executed this Amended Agreement as of the set forth above.

LEDGE ROCK CENTER, LLC, a Kansas limited liability company

By: _____
Its: President
Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Amended Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
SPECIAL WARRANTY DEED

THIS DEED, made this ___ day of _____, 2022, between the TOWN OF JOHNSTOWN, a Colorado home rule municipality located in County of Weld, State of Colorado (“**Grantor**”), and LEDGE ROCK CENTER, LLC, a Kansas limited liability company (“**Grantee**”):

GRANTOR, for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by these presents does grant, bargain, sell, convey and confirm unto Grantee, its heirs and assigns forever, all the real property together with improvements, if any, situate, lying and being in the County of Weld, State of Colorado, described as follows:

Tract A and Lots 2-5, West Ledge Rock Center Subdivision Filing No. 1, a subdivision of Lot 2 of Plat of Oxy Land Subdivision, located in the Northwest Quarter of Section 11, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 7.835 acres.

TOGETHER with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof; and all the estate, right, title, interest, claim and demand whatsoever of the Grantor, either in law or equity, of, in and to the above bargained premises, with the hereditaments and appurtenances;

TO HAVE AND TO HOLD the said premises above bargained and described with the appurtenances, unto the Grantee, its heirs and assigns forever. The Grantor, for itself, its heirs and personal representatives or successors, does covenant and agree that it will WARRANT AND FOREVER DEFEND the above-bargained premises in the quiet and peaceable possession of the Grantee, its heirs and assigns, against all and every person or persons claiming the whole or any part thereof, by, through or under the Grantor. Said warranty is subject to rights-of-way, easements, covenants, plats, agreements and other restrictions of record as of the date of this Deed and any other exceptions or exclusions or rights of third parties not shown by the public records of which Grantee has actual knowledge, and subject to the inclusions of the property within any special taxing district. The singular shall include the plural and the plural the singular and the use of any gender shall be applicable to all genders.

IN WITNESS WHEREOF, Grantor has executed this Deed on the date set forth above.

TOWN OF JOHNSTOWN

By: _____
Title: Gary Lebsack, Mayor

STATE OF COLORADO)
)ss.
COUNTY OF WELD)

The foregoing instrument was acknowledged before me by Gary Lebsack, Mayor of the Town of Johnstown this _____ day of _____, 2022.

Witness my hand and official seal.
My commission expires_____.

Notary Public

**SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT
AGREEMENT**

LEDGE ROCK CENTER COMMERCIAL

JOHNSTOWN, COLORADO

DATE: _____, 2022

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- EXHIBIT D List of Public Improvements
- EXHIBIT E Form of Amended and Restated Escrow Agreement
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**SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT
AGREEMENT
FOR
LEDGE ROCK CENTER COMMERCIAL
JOHNSTOWN, COLORADO**

THIS SECOND AMENDED AND RESTATED DEVELOPMENT AND REIMBURSEMENT AGREEMENT FOR LEDGE ROCK CENTER COMMERCIAL, JOHNSTOWN, COLORADO (this “**Agreement**”) is made and entered into as of the Effective Date by and between **THE TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), **LEDGE ROCK CENTER, LLC**, a Kansas limited liability company (“**Developer**”), and **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”).

RECITALS

1. Unless a different meaning is clearly indicated, capitalized terms used in this Agreement have the meanings set forth in these Recitals or in Article 1 of this Agreement.
2. The District was organized pursuant to an Amended and Restated Service Plan approved by the Town on June 6, 2022 (the “**Service Plan**”) to finance, design, construct and operate and maintain the public improvements needed to serve the proposed Ledge Rock Center Commercial development.
3. The Parties previously entered into that certain Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado, effective February 18, 2022 (the “**Development and Reimbursement Agreement**”), as amended by that certain First Amendment to Development and Reimbursement Agreement Ledge Rock Center Commercial Johnstown, Colorado, dated April 18, 2022 (the “**First Amendment**”) collectively the Development and Reimbursement Agreement and the First Amendment will be referred to herein as the “**Original Agreement**”).
4. At the time of execution of the Development and Reimbursement Agreement it was anticipated the District would issue Bonds in 2022, ~~however, based.~~ Based on changes in construction costs and in the estimated net proceeds of the Bonds anticipated to be issued by the District in 2022 the Parties desire to amend and restate the Original Agreement in its entirety as indicated herein.
5. The Developer has executed, or shall execute, agreements to purchase approximately 94.~~217~~227 acres of property located within the boundaries of the Town and the service area of the District at the southeast corner of U.S. Interstate 25 and U.S. Highway 60, generally described on the map attached hereto and incorporated herein by reference as **Exhibit A** and the legal descriptions set forth in **Exhibits B-1, B-2, B-3, and B-4** which the Developer intends to develop as a commercial and retail shopping center (the “**Property**”). The Developer may purchase additional property not referenced herein which may, subsequent to purchase and

inclusion in the District, be subject to this Agreement pursuant to an amendment as provided in Section 7.1.

6. The Developer has purchased from a private party approximately 35.857 acres of the Property more specifically described in the legal description attached hereto as Exhibit B-1 (the “**Anderson Parcel**”).

7. Approximately 7.835 acres of the Property, more specifically described in the legal description attached here to as **Exhibit B-2** (“**Oxy Parcel No. 1, Lots 2-5 and Tract A**”), is to be acquired by the Developer from the Town pursuant to that certain Amended and Restated Agreement Concerning Purchase and Sale of Real Property for Ledge Rock Center Commercial of even date herewith (the (“**Amended PSA**”) and will be a part of Phase I of the Project, defined below, (“**First Phase Property**”).

8. The Developer will acquire the First Phase Property from the Town coincident with the issuance of the District’s Limited General Obligation Bonds, Series 2022 (the “**2022 Bonds**”).

9. Phase II of the Project is to be located on property that includes the property that is approximately 50.535 acres, more specifically described in the legal description attached hereto as Exhibit B-43 (“**Oxy Parcel No. 2**”) and Exhibit B-34 (the “**Oxy Parcel No. 1, Lot 1,**” and “**Oxy Parcel No. 2**” also to be.”), collectively referred to herein as the “**Second Phase Property**”) ~~which the.~~ Developer will have an option to purchase the Second Phase Property as described herein and, in the Amended PSA. (For the avoidance of doubt, the Amended PSA contemplates the terms of the conveyance of Oxy Parcel No. 1, Lot 1 from the Town to the Developer and recognizes that the Town and Developer will execute a subsequent purchase and sale agreement to address conveyance of Oxy Parcel No. 2).

10. It is the intention of the District to issue Bonds to fund the public improvements related to the development of the Second Phase Property coincident with the beginning of the development of the Second Phase Property anticipated to occur in 2025 (the “**2025 Bonds**”).

11. Subject to the terms and conditions for acquisition of the Second Phase Property set forth herein, the Developer will acquire the Second Phase Property from the Town coincident with the issuance of the 2025 Bonds.

12. The Town received conveyance of the First Phase Property for nominal consideration and the Town has determined it to be in the best interests of the Town to convey the First Phase Property to the Developer to become a part of Ledge Rock Center so long as the District and Developer initiate and, in good faith, commit to complete the Project, defined below and convey to the Town any part of the First Phase Property that is required to be Dedicated or used for Public Spaces both as defined below.

13. The Developer intends to construct a retail shopping center containing approximately 785,000,836,500 square feet of new retail uses and two hotels (“**Project**”).

14. The Developer intends to construct the Project over a nine (9) year period from initiation of construction in 2022 to completion and occupancy of all of the anticipated retail spaces in the

locations depicted on the conceptual development shown on **Exhibit C** (the “**Conceptual Development Plan.**”)

15. The Developer estimates that the total private and public construction costs of the Project will be approximately Three Hundred and Fifty Million Dollars (\$350,000,000).

16. Pursuant to the First Amendment, the Developer contributed approximately Five Million Eight Hundred Eighty Eight Thousand Six Hundred Fifty Nine Dollars (\$5,888,659) to the District toward the cost of the Ledge Rock Water and Sewer Pipeline Work, as defined in the First Amendment, from funds reimbursed to an affiliate of the Developer by the Johnstown Plaza Metropolitan District as part of the Johnstown Plaza Metropolitan District \$99,449,000 Limited Tax General Obligation Refunding & Improvement Bonds, Series 2022 (the “**JP Developer Contribution**”).

17. Under no circumstances will the District reimburse the Developer for the JP Developer Contribution.

18. The 2022 Bonds and the 2025 Bonds, together with ~~Bonds anticipated to be issued in 2027 to: (i) refund the 2022 Bonds, (ii) to refund the 2025 Bonds, and (iii) to reimburse the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance (defined below) (the “2027 Bonds”, and collectively with the 2022 Bonds and the 2025 Bonds, the “Bonds”)~~Refunding Bonds, will fund the public improvements generally described on **Exhibit D** attached hereto and incorporated herein by this reference (the “Public Improvements”) to net \$150,000,~~0000000~~ (minus the JP Developer Contribution) in Bond proceeds to fund the Public Improvements. The Parties anticipate that the 2022 Bonds, as well as the 2025 Bonds, potentially, will be refinanced in 2027 to: (i) refund the 2022 Bonds, (ii) refund the 2025 Bonds, if at all, (iii) reimburse the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance (defined below), and (iv) if funds are available, fund the District Cost Sharing Contribution (the “2027 Bonds”).

19. The Developer intends, as the Declarant, to record on the commercial portions of the Property that it owns at the time of issuance of the 2022 Bonds, and again prior to the issuance of the 2025 Bonds against any additional portions of the Property that it owns, a covenant that requires the payment in lieu of taxes for any uses which are exempt from property taxation under Colorado law prior to the issuance of the Bonds in a form approved by the Town and the District prior to recording and as amended from time to time only with the prior written approval of the Town and the District (“**PILOT Covenant**”).

20. The payment in lieu of taxes made pursuant to the PILOT Covenant shall be known as the “**PILOT Payment.**”

21. The District is authorized pursuant to its Service Plan to finance, design, plan, construct, install and/or complete public improvements, including, but not limited to, streets, parking lots, safety protection, water, sanitation, park and recreation, mosquito control, and transportation improvements, and other facilities and services, together with all necessary and appropriate appurtenances thereto more specifically described below and defined as the Public

Improvements, to enter into contracts for the provision thereof, to maintain the Public Improvements and to pay for such improvements from the proceeds of Bonds.

22. The Parties anticipate that the Bonds will be paid by Credit PIF Revenues, Add-On PIF Revenues, PILOT Payment Debt Revenues and a debt mill levy of no less than 5 mills imposed by the District (the “**Debt Mill Levy**”). The Bonds may also be secured by other revenues as allowed by the Service Plan.

23. At the time the District was organized, it was anticipated that the 2022 Bonds, when issued, would net Seventy Four Million Dollars (\$74,000,000) in Project Funds (the “**Original Project Funds**”). The revenue to be pledged was five (5) mills as the Debt Mill Levy, a 2.5% Add-On PIF, and a 2% credit PIF (the “**Original Pledged Revenues**”).

24. The 2022 Bonds, based on the Original Pledged Revenues, are currently anticipated to net Fifty One Million Dollars (\$51,000,000) in Project Funds (the “**New Project Funds**”).

25. With an increase in the credit PIF to 2.75% for the 2022 Bonds, together with the District pledge of five (5) mills and the 2.5% Add-On PIF (the “**Increased Pledged Revenues**”), the 2022 Bonds are anticipated to net approximately ~~SixtyFifty Seven~~ Million ~~SixSeven~~ Hundred ~~Ninety Eight~~ Thousand ~~Two Hundred Seventy Two~~ Dollars (~~\$60,600,000~~57,798,272) in Project Funds (the “**Increased Project Funds**”). The difference between the Original Project Funds and the Increased Project Funds ~~still~~ leaves a deficit of approximately ~~Thirteen~~Sixteen Million ~~FourTwo~~ Hundred One Thousand Seven Hundred Twenty Seven Dollars (~~\$13,400,000~~16,201,727) that still requires funding, with such amount to be adjusted based on the actual amount of Project Funds at the time of closing on the issuance of the 2022 Bonds (the “**Bond Proceeds Shortfall**”).

26. The Developer has agreed to remit funds to the District in an amount equal to the Bond Proceeds Shortfall (the “**Developer Shortfall Funding Advance**”). The Developer Shortfall Funding Advance will not accrue interest and will not be reimbursed to the Developer by either the Town or the District.

27. The District shall provide funding to the Town for the Town’s use for any lawful purpose an amount equal to the increase of ~~credit~~Credit PIF collected from 2% to 2.75% change in the ~~credit~~Credit PIF for the 2022 Bonds as indicated in Section 4.7 below (the “**District Cost Sharing Contribution**”).

28. The Developer has agreed to ~~make~~deposit the Developer Shortfall Funding Advance ~~to be deposited in~~into the Developer FundFunds Account established under the Amended and Restated Escrow Agreement to be used for construction of vertical improvements no later than the first to occur of the following: the date of sale or refinance of the southern portion of the multi-family parcel more specifically described in Exhibit H attached hereto and incorporated herein by this reference, within the Project (the “**Multi-Family Parcel**”), the issuance of a building permit on the Multi-Family Parcel or June 1, 2023.

29. The District intends to issue the Bonds as an “on-behalf of” issuer of the Town.

30. The District intends to design, construct, install and/or complete the Public Improvements required for the Project.

31. The Developer intends to design, construct, install and/or complete the retail development in the Project and to advance funds, as needed, to assure the District can complete the Public Improvements in reliance on the District’s commitment to reimburse the Developer for such advances.

32. The Parties desire to enter into this Agreement for the purpose of setting forth the terms and conditions relating to the development, design and maintenance of the Project, the Private Improvements and Public Improvements to the Property, the collection, payment, use and duration of the Credit PIF and the Add-On PIF, the Developer Shortfall Funding Advance, the District Cost Sharing Contribution, and other matters related to the Project.

33. The Parties wish to adopt a comprehensive approach to the orderly and planned development of the Property and to cooperate in the funding of the Public Improvements. The Parties intend for development of the Project to occur under a unified development plan and Comprehensive Funding Plan as more specifically set forth in this Agreement.

34. The legislature of the State of Colorado has adopted C.R.S. § 29-1-203 in order to authorize and enable local governments of the State of Colorado to enter into cooperative agreements, or contracts for certain specified purposes. The Parties intend this Agreement to constitute such an intergovernmental agreement as between the Town and the District, and with respect to the financing and construction of the Public Improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

ARTICLE I DEFINITIONS

1.1 Definitions. For purposes of this Agreement, the following terms have the meanings indicated below.

- (a) 2022 Bonds. As defined in Recital 8.
- (b) 2025 Bonds. As defined in Recital 10.
- (c) 2027 Bonds. As defined in Recital 18.
- (d) 30 Day Submittal. As defined in Section 4.5(a)(ix).
- (e) Additional Refunding and New Money Bonds. As defined in Section 4.7(b)(ii).

(f) Add-On PIF. The component of the PIF which is set at the rate of two and one-half percent (2.5%) in accordance with the terms and conditions of the PIF Covenant, and which is applied to Taxable Transactions before the calculation of applicable sales taxes.

(g) Add-On PIF Revenue Fund. As defined in Section 4.4(d)(iii) of this Agreement.

(h) Add-On PIF Revenues. The revenues generated from imposition of the Add-On PIF, net of the costs of collection, which are to be utilized by the District during the Credit PIF Period for the purpose of funding, financing or refinancing the Verified Eligible Costs, and after the Credit PIF Period, for any legal purpose, as further described in this Agreement and the Service Plan.

(i) Advance Reimbursement and Payment Agreement. An agreement to be entered into between the District and the Developer, pursuant to which the Developer will advance funds to the District for the Public Improvements as further described in Section 3.3(c)(ii).

(j) Amended and Restated Escrow Agreement. An amended and restated escrow agreement to be executed by the District, the Town and the Developer prior to the issuance of the 2022 Bonds, in a form substantially similar to the form attached hereto as Exhibit E.

(k) Amended PSA. As defined in Recital 7.

(l) Anderson Parcel. As defined in Recital 6.

(m) Agreement. This Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado, and any amendments hereto.

(n) Bond Proceeds Shortfall. As defined in Recital 25.

(o) Bonds. Bonds, notes, contracts or other multiple fiscal year financial obligations issued by the District that are (i) payable from the Credit PIF Revenues, the Add-On PIF Revenues and the PILOT Payment Debt Revenues; (ii) issued within the Credit PIF Period; and (iii) issued for the purposes of (a) funding Verified Eligible Costs, which net proceeds that pay for Verified Eligible Costs together with the portion of the principal amount of any Developer Bonds spent on Verified Eligible Costs, are not in excess of the Cap Amount or (b) refunding any outstanding Bonds or Developer Bonds. Bonds can be senior or subordinate obligations. Bonds must be fully amortized to a date on or before, the later of: (i) thirty (30) years from the date of issuance or (ii) ~~April~~December 1, 2052. Bonds include Developer Bonds but do not include Other Obligations. Developer Bonds shall not be amortized to be repaid with Credit PIF beyond December 1, ~~2047~~2051.

(p) Bond Participants. As defined in Section 4.8 of this Agreement.

(q) Bond Trustee. A state or national bank or trust company in good standing located in or incorporated under the laws of the State of Colorado that is authorized to exercise trust powers, which is selected by the District, with the written approval of the Town, to serve as bond trustee in connection with the issuance of one or more series of Bonds.

(r) Cap Amount. The Cap Amount is \$150,000,000 (minus the JP Developer Contribution) being the maximum amount of net proceeds of the Bonds together with the portion of the principal amount of any Developer Bonds available to the District for the payment, reimbursement or financing of Verified Eligible Costs. The following amounts are not counted in the Cap Amount: (i) interest costs referenced in Section 4.10(b)(i); reserve funds and the costs traditionally associated with the issuance of public debt; (ii) increases in principal amount of Bonds necessary to issue Refunding Bonds; (iii) interest earning on the investment of proceeds of Bonds; (iv) proceeds of Other Obligations; and (v) bonds or other obligations issued after the Credit PIF Period.

(s) Code. The Johnstown Municipal Code, as well as the ordinances of the Town of Johnstown, including but not limited to land use regulations, zoning regulations, subdivision regulations, the public works standards and specifications, parks and recreation park and open space standards and commercial site planning and site design standards, and any additional rules, regulations and master plans that may be promulgated under any of the foregoing, as amended from time to time, unless expressly stated otherwise. If there are any conflicts in the provisions of the above elements of the Code, the more restrictive provision shall apply.

(t) Comprehensive Funding Plan. Article IV of this Agreement.

(u) Comprehensive Plan. The Johnstown Area Comprehensive Plan, adopted November 1, 2021, as may be amended time to time.

(v) Conceptual Development Plan. The conceptual development plan for the Project attached as Exhibit C to this Agreement, which describes the Parties' intent with respect to the uses and other development matters affecting the Project and which is intended to establish a general conceptual framework within which the Site Development Plan and plats for the Project will be formulated, processed, adopted and implemented.

(w) Cost Certifier. As defined in Section 4.10(b).

(x) Credit PIF. The component of the PIF that will be:

(i) Imposed at the rate of two and seventy-five hundredths percent (2.75%) pursuant to the PIF Covenant for the repayment of the 2022 Bonds that will be applied to Taxable Transactions before the calculation of sales taxes occurring during the Credit PIF Period and as otherwise provided in Section 4.4. of this Agreement; and

(ii) Imposed at the rate of two hundredths percent (2.00%) pursuant to the PIF Covenant for the repayment of the First Refunding and New Money Bonds and Additional Refunding and New Money Bonds, if any, the 2025 Bonds, and other Bonds as approved by the Town, that will be applied to Taxable Transactions before the calculation of

sales taxes occurring during the Credit PIF Period and as otherwise provided in Section 4.4. of this Agreement.

(y) Credit PIF Period. As defined and more specifically set forth in Section 4.4(e) of this Agreement.

(z) Credit PIF Revenues. The revenues generated from the Credit PIF, which are to be utilized by the District during the Credit PIF Period for the purpose of funding, financing, or refinancing the Verified Eligible Costs, as further described in this Agreement.

(aa) Credit PIF Revenue Fund. The Credit PIF Revenue Fund is the fund by that name defined in Section 4.4(d)(iii).

(bb) Debt Service Fund. As defined in Section 4.4(d)(iv) of this Agreement.

(cc) Dedicate or Dedication. The conveyance to the Town, after acquisition by the District or the Developer, of real property (excluding the dedication of water or water rights), free and clear of all monetary liens and those non-monetary encumbrances that are consistent with the public purpose for Dedication. Dedication can be accomplished either by Recordation of a plat, acceptance by the Town, or by execution and delivery of a special warranty deed or easement, as determined by the Town.

(dd) Developer Bonds. Developer Bonds means Bonds, promissory notes, contracts or other multiple fiscal year financial obligations issued by the District to the Developer that will be subject to the following limitations: (i) be payable from Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Debt Revenues; (ii) the pledge of Credit PIF Revenues to terminate on the earlier of December 1, 2047 or the date all of the principal and interest on Developer Bonds has been paid in full; (iii) be payable, at the District's discretion, from other revenues legally available to the District; (iv) accrue interest at the Developer Bond Interest Rate; and (v) be issued for the purposes of funding Verified Eligible Costs, which, together with the proceeds of all other Bonds, shall not fund Verified Eligible Costs in excess of the Cap Amount. However, Developer Bonds specifically do not include the Developer Shortfall Funding Advance.

(ee) Developer Bond Interest Rate. Developer Bond Interest Rate shall be a market interest rate as certified by an External Financial Advisor at the time of the issuance of Developer Bonds, for bonds having comparable risks, terms and maturities as Developer Bonds being issued; provided, however, that the Developer Bond Interest Rate shall not exceed 7.0% simple interest.

(ff) Developer Contribution Agreement. As defined in Section 4.6(b).

(gg) Developer Shortfall Funding Advance. As defined in Recital 26.

(hh) District. Ledge Rock Center Commercial Metropolitan District.

(ii) District Accountant. The qualified person or firm engaged by the District to perform governmental accounting services for the District.

(jj) District Cost Sharing Contribution. As defined in Recital 27.

(kk) District Fees. Such fees, rates, tolls, penalties or charges for services, programs or facilities furnished by the District as the District may fix and, from time to time, increase or decrease pursuant to Colorado law.

(ll) District Public Improvement(s). The improvements generally described in **Exhibit D** that will be owned and maintained by the District.

(mm) District Streets. The streets that will be constructed as a part of the Public Improvements that will not be Dedicated.

(nn) Effective Date. The date that this Agreement is fully executed by all the Parties, which shall be the date the Agreement is executed by the District.

(oo) Eligible Costs. The reasonable and necessary costs of the Public Improvements as actually expended for such improvements, including the cost of acquisition of the land and easements necessary for the construction and location of the Public Improvements and the design, permitting, construction, general contractor fees, construction management fees, project development fees, legal fees, engineering costs and accounting costs related thereto. Eligible Costs also include all reasonable and necessary costs, fees and, expenses of organizing the District and establishing the PIF Covenant and the District's operation and maintenance expenses and other reasonable and necessary soft costs.

(pp) Escrow Agreement. An escrow agreement in a form substantially similar to the form attached hereto as **Exhibit F** and incorporated herein by this reference and with mutually acceptable terms to the Parties, to be executed by the Trustee, the District, the Town and the Developer prior to the issuance of the 2025 Bonds, the 2027 Bonds and any other Bonds except the 2022 Bonds. The Amended and Restated Escrow Agreement in the form attached hereto as **Exhibit E** will be executed by the Trustee, the District and the Town prior to the issuance of the 2022 Bonds.

(qq) Exhibits. The following Exhibits to this Agreement, all of which are incorporated by reference into and made a part of this Agreement.

- EXHIBIT A Map of the Property
- EXHIBIT B-1 Legal Description: Anderson Parcel Property
- EXHIBIT B-2 Legal Description: Oxy Parcel No. 1, Lots 2-5 and Tract A Property
- EXHIBIT B-3 Legal Description: Oxy Parcel No. 2 Property
- EXHIBIT B-4 Legal Description: Oxy Parcel No. 1, Lot 1 Property
- EXHIBIT C Conceptual Development Plan
- EXHIBIT D List of Public Improvements
- EXHIBIT E Form of Amended and Restated Escrow Agreement
- EXHIBIT F Form of Escrow Agreement

EXHIBIT G Form of Subdivision Development and
Improvement Agreement
EXHIBIT H The Multi-Family Parcel

(rr) Feasibility Analysis. As defined in Section 4.5(a)(ix)(5) of this Agreement.

(ss) Final Allocation of Proceeds. As defined in Section 4.4(d)(ii) of this Agreement.

(tt) Final Plat. A cadastral map, drawn to scape, showing the division of the Property or portions thereof.

(uu) First Amendment. As defined in Recital 3.

(vv) First Phase Property. As defined in Recital 7.

(ww) First Refunding and New Money Bonds. As defined in Section 4.7(b)(i).

(xx) Increased Pledged Revenues. As defined in Recital 25.

(yy) Increased Project Funds. As defined in Recital 25.

(zz) Indemnitees. As defined in Section 3.5.

(aaa) Indenture. As defined in Section 4.4(c) of this Agreement.

(bbb) Independent Engineer. An Engineer, such as Ranger Engineering, LLC, a Colorado limited liability company, or a consultant with similar expertise, who has not worked for the Developer on any project, is approved by the Town and will review and provide a certification of the Verified Eligible Costs.

(ccc) JP Developer Contribution. As defined in Recital 16.

(ddd) Land Acquisition Costs. The cost of the acquisition of the easements or right of way for the Public Spaces and the land to be subject to Dedication, including reasonable transaction costs. This definition does not include payment for any real estate interests or access to the Public Spaces or the land to be subject of Dedication located in the Oxy Parcel No. 1 as it is the intent of the Parties that no payment or reimbursement is to be made to the Developer for such interests under any circumstances.

(eee) Intentionally Omitted.

(fff) Intentionally Omitted.

(ggg) Ledge Rock Water and Sewer Pipeline Escrow Agreement. As defined in Section 4.13.

(hhh) Market Analyst. As defined in Section 4.5(a)(ix)(5) of this Agreement.

(iii) Multi-Family Parcel. As defined in Recital 28.

(jjj) New Project Funds. As defined in Recital 24.

(kkk) Operations and Maintenance Intergovernmental Agreement. The Intergovernmental Agreement between the Town and the District establishing the rights and responsibilities of the District and the Town regarding the maintenance of the Public Spaces and the pledge of the District of PILOT Payment General Fund Revenues to the funding of operations and maintenance expenses.

(lll) Original Agreement. As defined in Recital 3.

(mmm) Original Pledged Revenues. As defined in Recital 23.

(nnn) Original Project Funds. As defined in Recital 23.

(ooo) Other Obligations. Debt instruments, bonds and other obligations that may be issued or entered into by the District including agreements between the District and the Developer or other third parties for reimbursement of sums advanced or paid for Verified Eligible Costs, provided that no Credit PIF Revenues may be used to repay the Other Obligations and, during the Credit PIF Period, no Add-On PIF Revenues may be used to repay the Other Obligations and, all revenue pledged to repay the Other Obligations will also be pledged by the District to repay the Bonds and the Developer Bonds and the obligations of the District to pay on the Other Obligations will be subordinate in all ways to the Bonds and the Developer Bonds. Other Obligations specifically do not include the Developer Shortfall Funding Advance.

(ppp) Oxy Parcel No. 1. Oxy Parcel No. 1, Lot 1 and Oxy Parcel No. 1, Lots 2-5 and Tract A.

(qqq) Oxy Parcel No. 1, Lot 1. As defined in Recital 79.

(rrr) Oxy Parcel No. 1, Lots 2-5 and Tract A. As defined in Recital 7.

(sss) Oxy Parcel No. 2. As defined in Recital 9.

(ttt) Party(ies). Individually, or collectively, as the context dictates, the Town, the District, and the Developer and their respective successors in interest as designated pursuant to Section 7.14.

(uuu) Pedestrian Walkways and Trails. The sidewalks, walkways and trails to be constructed as a part of the Public Improvements that will not be Dedicated.

(vvv) Phase I. As defined in Section 3.2.

(www) Phase I Credit PIF. The Credit PIF derived from Taxable Transactions on Phase I of the Project in the amount of 2.75% as modified to 2.00% as provided in this Agreement.

(xxx) Phase II. As defined in Section 3.2.

(yyy) Phase II Credit PIF. The Credit PIF derived from Taxable Transactions on Phase II of the Project in the amount of 2.00%.

(zzz) PIF. Collectively, the Credit PIF and the Add-On PIF, which are public improvement fees imposed by the Developer through Recordation of the PIF Covenant, the purpose of which is to contribute to the financing of the Public Improvements.

(aaaa) PIF Collecting Agent. The collecting agent for the Credit PIF Revenues and the Add-On PIF Revenues pursuant to a PIF Collection Services Agreement as in effect from time to time as defined in the PIF Covenant.

(bbbb) PIF Collection Services Agreement. An agreement pursuant to which the District will contract with a PIF Collecting Agent for collection of the PIF Revenues in accordance with the terms and conditions of this Agreement.

(cccc) PIF Covenant. That certain privately imposed Declaration of Covenants Imposing and Implementing the PIF, recorded on the Phase I Property and on the Phase II Property, as amended or re-recorded from time to time in accordance with its terms.

(dddd) PIF Property. The property that is subject to the PIF Covenant.

(eeee) PIF Revenues. The combined Credit PIF Revenues and Add-On PIF Revenues.

(ffff) PIF Trustee. A state or national bank or trust company in good standing and incorporated under the laws of the State of Colorado authorized to exercise trust powers that is selected by the District, and approved by the Town, and authorized to undertake the duties of the PIF Trustee as described in Section 4.4(c) of this Agreement.

(gggg) PIF Trustee Agreement. As defined in Section 4.4(c) of this Agreement.

(hhhh) PILOT Covenant. As defined in Recital ~~15~~19.

(iiii) PILOT Payment. As defined in Recital ~~16~~20.

(jjjj) PILOT Payment - Debt. The PILOT Payment determined pursuant to the PILOT Covenant by application of the District mill levy for payment of Debt.

(kkkk) PILOT Payment Debt Revenues. Revenues received from the PILOT Payment - Debt.

(llll) PILOT Payment - General Fund. The portion of the PILOT Payment determined pursuant to the PILOT Covenant by application of the District mill levy for the payment of general fund expenses.

(mmmm) PILOT Payment General Fund Revenues. Revenues received from the PILOT Payment - General Fund.

(nnnn) PILOT Payment Revenues. Revenues received from the PILOT Payment Debt Revenues and the PILOT Payment General Fund Revenues.

(oooo) PILOT Revenue Fund. The fund defined in Section 4.4(d)(iii).

(pppp) Private Improvements. Private Improvements shall mean, without limitation, the construction and installation of all improvements that are not otherwise designated as Public Improvements.

(qqqq) Project. The retail project to be known as “**Ledge Rock Center**” and developed on the Property as generally described in Recital 13 and more particularly described or to be described in the Site Development Plan or plat for any Sites.

(rrrr) Project Fund. As defined in Section 4.4(d)(i) of this Agreement.

(ssss) Property. Collectively, the Property legally described in **Exhibits B-1, B-2, B-3, and B-34** and depicted on **Exhibit A**.

(tttt) Public Art. The art located in Public Spaces that will be acquired and installed as a part of the Public Improvements that will not be Dedicated and as approved by the Town in writing as set forth in Section 4.5(a)(ix)(4).

(uuuu) Public Improvements. The District Public Improvements and the Town Public Improvements.

(vvvv) Public Landscape Areas. The landscaping that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(wwww) Public Parking Facilities. The parking lots and structures that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(xxxx) Public Plazas. The plazas that will be constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that will not be Dedicated.

(yyyy) Public Spaces. The property upon which the Public Art, Public Parking Facilities, Public Plazas, Public Streets and Pedestrian Walkways and Trails are to be located.

(zzzz) Recital(s). Individually, one of the Recitals numbered 1 through 34 above, and, collectively, each of the Recitals set forth above.

(aaaaa) Record/Recordation. The filing of an instrument in the office of the Weld County, Colorado, Clerk and Recorder.

(bbbbb) Refunding and New Money Bonds. As defined in Section 4.7(b).

(ccccc) Refunding Bonds. Bonds issued to refund Bonds and Developer Bonds.

(ddddd) Review Period. As defined in Section 4.5(a)(ix)(6).

(eeeee) Revenue Fund. As defined in Section 4.4(d)(iii) of this Agreement.

(fffff) Sales Tax. The tax obligation on the sale of tangible personal property at retail or the furnishing of services as more fully described in Article IV of Chapter 4 of the Johnstown Municipal Code.

(ggggg) Sales Tax Credit. The two and seventy-five hundredths percent (2.75%) credit against sales tax obligations on Taxable Transactions for payment on the 2022 Bonds and the two percent credit (2.0%) for payment on the First Refunding and New Money Bonds, Additional Refunding and New Money Bonds, the 2025 Bonds, the 2027 Bonds and other Bonds as approved by the Town, which the Town will implement in accordance with Section 4.4 of this Agreement, the rate of which will be equivalent at all times during the Credit PIF Period to the rate of the Credit PIF.

(hhhhh) Second Phase Property. As defined in Recital 9.

(iiiiii) Service Plan. The Amended and Restated Service Plan for the Ledge Rock Center Commercial Metropolitan District approved by Town Council by resolution on June 6, 2022, and, if further amended, then as amended.

(jjjjj) Site. One or more lot(s) or other tract(s) or parcel(s) of real property within the Project intended for development.

(kkkkk) Site Development Plan. The plans approved by the Town for the construction, installation and improvements of the Private Improvements.

(lllll) State. The State of Colorado.

(mmmmm) Street Standards. The technical standards and specifications for Dedication, design and construction of streets and rights-of-way as required by the Town.

(nnnnn) Subdivision Development and Improvement Agreement. The Subdivision Development and Improvement Agreement that relates to development of the Property or any portion thereof in the form attached hereto and incorporated herein by reference at **Exhibit G.**

(ooooo) Taxable Transaction. The sale or provision of goods or services which are subject to Town sales taxes.

(ppppp) Town. The Town of Johnstown, Colorado, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado.

(qqqqq) Town Council. The governing body of the Town.

(rrrrr) Town Engineer. The professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

(sssss) Town Fees. The fees lawfully assessed by the Town in relation to the development of real property within the Town in the amount and for the purposes determined by Town Council from time to time, including but not limited to impact fees, water and sewer tap fees and storm water utility fees, as set forth in the Code, together with applicable or additional fees, or modifications or amendments thereto, which are adopted by the Town and applied on a uniform and non-discriminatory basis within the Town. The amount of Town Fees will be as existing at the time payment is made.

(ttttt) Town Manager. The Town Manager and his or her authorized designees.

(uuuuu) Town Official(s). The Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their authorized designees.

(vvvvv) Town Public Improvements. Improvements that will be Dedicated to the Town.

(wwwww) Verified Eligible Costs. Eligible Costs that have been reviewed and certified as being costs incurred for the Public Improvements, and as being reasonable and comparable for similar projects as constructed or incurred in the Denver Metropolitan Area by the Independent Engineer or the District Accountant, as further discussed in Section 4.10. For purposes of acquisition of rights-of-way, easements or other land pursuant to Section 4.10, the appraisal, presented and processed pursuant to Section 4.10, shall be deemed to have verified the cost to be paid for the interest in land being acquired.

(xxxxx) Vested Property Rights Statute. Sections 24-68-101, et seq., of the Colorado Revised Statutes.

ARTICLE II GENERAL PROVISIONS

2.1 Covenants. The provisions of this Agreement constitute covenants or servitudes that will, upon Recordation, touch, attach to and run with the land comprising the Property. The burdens and benefits of this Agreement will bind and inure to the benefit of all Parties hereto and all successors in interest to the Parties to this Agreement, except as otherwise provided in Section 7.14 of this Agreement.

2.2 Recitals. The Recitals are incorporated into this Agreement as if fully set forth herein.

2.3 Original Agreement Superseded. The Original Agreement is hereby superseded and replaced in its entirety by this Agreement.

ARTICLE III DEVELOPMENT AGREEMENT

3.1 Allocation of Development Obligations. Subject to the terms and conditions of this Agreement, the Service Plan and any additional agreements that may be executed, including but not limited to the Operations and Maintenance Intergovernmental Agreement, any Escrow Agreements and the Amended and Restated Escrow Agreement, and in consideration of the Developer's performance and the Town's performance of its obligations under this Agreement, the District agrees to finance the design, construction, maintenance and operation, as applicable, of the Public Improvements as and when reasonably needed to support development of the Project and further subject to the availability of funds therefor. References to the Developer or the District in the context of the Public Improvement obligations addressed in this Agreement shall be construed to include by reference the other party to the extent such other party has assumed the obligations of the District with respect to the Public Improvements pursuant to the terms of this Agreement or otherwise.

3.2 The Project. The Parties recognize and agree that the issuance of Bonds by the District and the payment of Eligible Costs are related to the construction of the Project. The Project, as generally set out on the Conceptual Development Plan, **Exhibit C**, contains an estimated total of 785,000 square feet of commercial and retail development. Phase I of the Project contains approximately 385,000 square feet of retail and a 90-unit hotel, and will be developed on the Anderson Parcel and the Oxy Parcel No. 1, Lots 2-5 and Tract A Property ("Phase I of the Project"). Phase II of the Project contains an estimated total of 451,500,000 square feet of retail and one 90-unit hotel and will be developed on Oxy Parcel No. 1, Lot 1, and Oxy Parcel No. 2 ("Phase II of the Project"). The Parties recognize and agree that the final development may differ based upon final approved development plans and changes approved by the Town. The Project includes the anticipated construction of Public Improvements and Private Improvements. Unless otherwise agreed in writing, Bonds, including Developer Bonds and Other Obligations may only be issued in accordance with this Agreement.

3.3 Construction of the Project.

(a) Subdivision Development and Improvement Agreement. The Parties recognize and agree that, at the time of execution of this Agreement, some of the Property is not subject to a Final Plat. On or before approval of a Final Plat by the Town Council, or at such time as required by the Town, the District and the Developer shall enter into a Subdivision Development and Improvement Agreement in substantially the same form as attached hereto as **Exhibit G**. This Agreement and the Subdivision Development and Improvement Agreement shall be read harmoniously. To the extent of a conflict between a provision of the agreements, the more restrictive provision shall control.

(b) Compliance with Law and Town Policies. The Project shall be designed, constructed and inspected in compliance with all applicable provisions of the law, including, but not limited to the Code, the Town's policies, procedures and regulations related to land development and, unless subsequently amended, revoked or terminated, all outstanding

agreements, covenants, restrictions and similar items that are recorded against or binding upon the Property. The Town Public Improvements shall be dedicated as required in this Agreement and pursuant to Town Code and the Town’s policies, procedures and regulations.

(c) Public Bidding. In addition to the provisions contained in the Subdivision Development and Improvement Agreement, the District shall follow all statutory procurement procedures applicable to the District, including the public bidding of the construction of the Public Improvements. In addition, the District will:

(i) Secure Public bids for the Public Improvements before work begins on the Project;

(ii) Prior to the award of a construction contract, enter into an Advance Reimbursement and Payment Agreement;

(iii) Advance funds on a monthly basis for payment of the contractor;

(iv) Have the Cost Certifier provide a report on the amount of the monthly costs that are Verified Eligible Costs;

(v) Agree that the Bond Trustee will deposit, pursuant to the Amended and Restated Escrow Agreement, the reimbursement amounts due to the Developer to be released to the Developer in accordance with the provisions of the Amended and Restated Escrow Agreement;

(vi) Award the construction contracts for the Public Improvements to the lowest reasonable and responsive bidder;

(vii) Advertise formal bid purchases or formal contracts for construction of Public Improvements as follows:

(1) All notices and solicitations of bids shall state the time and place of the bid opening. The request for bids will be published online and in hard copies of the Daily Journal and the Johnstown Breeze and, if the District has a website, posted on the District’s website at least ten (10) days prior to the bid deadline. The request shall include an adequate description of the scope of work to be completed, any specifics which may be required of the vendor, including the amount of any bid bond, all contractual terms, and conditions applicable to the public project;

(2) Notices and solicitations of bids shall include information that these are sealed bids and that they should be so identified on the envelope;

(3) Notices and solicitations of bids shall plainly state to whom the sealed bid(s) should be addressed;

(4) All available means for advertising the invitation to bid shall be used to the extent possible, to encourage full and open competition; and

(5) General contractor fees are anticipated to be included in the public bid and shall not exceed the industry standard amount;

(viii) Provide the form of invitation to bid and the bid documents to the Town prior to the District publishing the invitation to bid;

(ix) Provide the bid tab sheets to the Town for all bids submitted;

(x) Award all service agreements related to construction and all construction contracts at a regular or special District Board meeting; and

(xi) If the District does not choose the most responsive and lowest numerical bidder, provide the basis for the decision to the Town allowing the Town an opportunity to object.

3.4 Project Management Fees. Project management fees to be paid by the District on the Public Improvement costs will be negotiated between the Parties and will not exceed the amount certified by the Cost Certifier to be reasonable for the services provided.

3.5 Contractor Indemnity. To the fullest extent permitted by Colorado law, the District shall cause contractor(s) to indemnify, defend and hold the District and the Town and its affiliated entities or other persons or entities designated by the District and the Town and their respective directors, trustees, officers, members, managers, agents and employees (collectively, for purposes of this Section, the “**Indemnitees**”), harmless from any and all claims, demands, damages, losses, liabilities, actions, lawsuits and expenses, including, but not limited to, the reimbursement of attorneys’ fees and costs, arising out of death or bodily injury to persons or damage to property in such amount that is represented by the degree or percentage of negligence or fault attributable to the contractor and/or its agents, representatives, subcontractors, suppliers or any person for whom the contractor is responsible. In addition, the District shall cause the contractor(s) to indemnify, defend and hold the Indemnitees harmless from any and all claims, demands, damages, losses, liabilities, actions, lawsuits and expenses, including, but not limited to, the reimbursement of attorneys’ fees and costs when the same, in whole or in part, results from or arises out of (i) any claimed failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to fully perform each and every provision of this contract; or (ii) any failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to pay for all labor, materials services, suppliers and equipment, which failure of payment results in any lien, encumbrance, demand or claim being made or asserted against the Project, the work or against the Indemnitees or any surety on the Project. The foregoing indemnification shall include, without limitation, any losses suffered by the Indemnitees resulting from a failure of the contractor, its subcontractors, suppliers or any person for whom the contractor is responsible to comply with local, State or federal laws and regulations.

3.6 Performance and Payment Assurances. The District shall cause the contractor(s) to furnish, prior to commencement of the work and at its sole cost and expense, performance and payment bonds, letter of credit, security or other assurance in a form reasonably acceptable to the Town. The purpose of such assurance is to provide a warranty on all improvements to be owned

by the Town or the District based upon the requirements of the Town, contained in the Code or otherwise, and to assure prompt payment of all amounts lawfully due to all persons supplying or furnishing such person or such person’s subcontractors with labor, laborers, materials, rental machinery, tools, or equipment used or performed in the prosecution of work on the Public Improvements. Any assurance related to the warranty shall remain in effect until two (2) years after the date of final payment or, if Dedicated, until final acceptance by the Town as provided in the Subdivision Development and Improvement Agreement. All bonds shall be executed by sureties authorized to do business in the State of Colorado as listed in the current list of “Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies” as published in Circular 570 (amended) by the Audit Staff Bureau of Accounts, U.S. Treasury Department. Each bond, security or assurance shall be accompanied by a “Power of Attorney” authorizing the attorney-in-fact to bind the Surety and certified to include the date of the Bond. If the Surety on any bond furnished by contractor is declared bankrupt or becomes insolvent, or its right to do business is terminated in Colorado, contractor shall, within five (5) days thereafter, substitute another bond and Surety acceptable to the District. Notwithstanding the foregoing, the Developer may provide such other security, reasonably acceptable to the Town as it is authorized by C.R.S. § 38-26-106.

3.7 Insurance Requirements. Unless otherwise expressly modified in the Subdivision Development and Improvement Agreement, the District shall comply with the insurance requirements contained herein.

(a) The District shall cause contractor(s) to purchase and maintain during the entire term of its contract(s), including any extensions of time resulting from change orders, such commercial general liability and other insurance as will provide protection from claims set forth below which may arise out of or result from contractor’s performance of the work and contractor’s other obligations under the contract, whether such performance is by contractor, by any subcontractor, by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

(i) Claims under workers’ or workmen’s compensation, disability benefits and other similar employee benefit acts;

(ii) Claims for damages because of bodily injury, occupational sickness or disease, or death of contractor’s employees;

(iii) Claims for damages because of bodily injury, sickness or disease, or death of any person other than contractor’s employees;

(iv) Claims for damages insured by personal injury liability coverage which are sustained by any person other than an employee of the contractor;

(v) Claims for damages, other than to the work itself, because of injury to or destruction of tangible property, including loss of use resulting therefrom;

(vi) Claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance or use of any motor vehicle;

(vii) Claims for bodily injury or property damage arising out of completed operations; and

(viii) Claims involving tort liability assumed in this contract, to the extent granted in an unendorsed industry standard (“ISO”) Commercial General Liability policy, or broader.

(b) The insurance required of the contractor(s) shall include the specific coverages and corresponding limits of liability provided herein, or as required by law, whichever is greater, shall meet all requirements specified herein and shall be placed with insurance companies rated at least “A:XIII” by A.M. Best Company, or as otherwise accepted by the Town and the District. All coverages shall be underwritten by carriers authorized to do business in Colorado and acceptable to the District and the Town. All such insurance shall contain a provision that the coverage afforded will not be canceled or renewal refused until at least thirty (30) days’ prior written notice has been given to the contractor, or until at least ten (10) days’ prior written notice has been given where there has been a non-payment of premiums. To the extent that the insurance company provides such notice of cancellation or non-renewal, contractor shall immediately provide the District with a copy of such notice. All such insurance shall remain in effect until final payment and at all times thereafter when contractor may be correcting, removing or replacing defective work. In addition, contractor shall maintain the Products and Completed Operations insurance as shown herein for at least two (2) years after final payment and furnish the District with evidence of continuation of such insurance at final payment and one (1) year thereafter.

(c) Contractor(s) shall obtain and maintain insurance coverage as provided herein, including the following:

(i) Worker’s Compensation and Employers’ Liability

(1) State: Statutory

(2) Employers’ Liability

a) \$500,000 Each Accident

b) \$500,000 Disease, Policy Limit

c) \$500,000 Disease, Each Employee

(3) A Waiver of Subrogation in favor of the District, its directors, officers and employees shall be attached to the policy as a separate endorsement.

(ii) Commercial General Liability (Occurrence Form):

(1) Combined Bodily Injury and Property Damage:

a) \$1,000,000 each occurrence

- b) \$1,000,000 Personal and Advertising Injury
- c) \$2,000,000 General Aggregate
- d) \$2,000,000 Products/Completed Operations

Aggregate

(2) The policy shall be written on an ISO Commercial General Liability form (CG0001), or an acceptable equivalent, which shall include, but not limited to, the following coverages:

- a) Premises and Operations Liability
- b) Liability for Acts of Independent Contractors
- c) Explosion and Collapse Hazard
- d) Underground Hazard
- e) Contractual, to the extent insurance is available
- f) Broad Form Property Damage
- g) Personal/Advertising Injury
- h) General Aggregate Limit per Project (applies to

each project)

i) Products and Completed Operations Insurance shall be maintained by the contractor for a minimum of two (2) years after final payment, and the contractor shall continue to provide evidence of such coverage to the District on an annual basis during the aforementioned period. The District and engineer shall also be named as Additional Insureds.

j) Subcontractors shall comply with all provision of this Section.

k) A waiver of subrogation endorsement in favor of the District, its directors, officers and employees shall be attached to the policy as a separate endorsement.

- l) Deletion of the subsidence exclusion.

(3) Automobile Liability:

- a) Combined Single Limit Bodily Injury and Property

Damage:

- i) \$1,000,000 each Accident

b) The following automobiles must be included:

i) Owned automobiles

ii) Non-owned and hired automobiles

(4) Umbrella Liability, to apply over all coverages required herein:

a) \$6,000,000

(5) Builder's Risk Insurance:

a) The builder's risk insurance policy shall be on an "all risk" basis for the entire project and shall include (i) coverage for any loss from faulty workmanship, defective materials, and omission or deficiency in design or specifications; (ii) coverage against damage or loss caused by earthquake, flood, fire, hail, lightning, wind, explosion, smoke, water damage, theft, vandalism and malicious mischief, and machinery accidents and operational testing; (iii) coverage for removal of debris, and insuring the buildings, structures, machinery, equipment, facilities, fixtures and all other properties constituting a part of the project; (iv) transit coverage, with sub-limits sufficient to insure the full replacement value of any equipment item; and (v) coverage with sub-limits sufficient to insure the full replacement value of any property or equipment stored either on or off the site. The policy shall provide for coverage in the event an occupancy or use permit is issued for any portion or portions of the work prior to substantial completion of the work. Builder's risk insurance shall be written in completed value form and shall protect the contractor, subcontractors, the Town and the District. It shall also include soft costs in amounts satisfactory to the contractor, subcontractors, the Town and the District.

b) Builder's risk insurance shall provide for losses to be payable to contractor, subcontractors, the Town and the District as their interests may appear. The policy shall contain a provision that in the event of payment for any loss under the coverage provided the insurance company shall have no rights of recovery against the contractor, the Town or the District.

c) To the extent that contractor's work, or work under its direction, may require blasting, explosive conditions, or underground operations, the commercial general liability coverage shall contain no exclusion relative to blasting, explosion, collapse of buildings, or damage to underground property.

d) Insured losses under policies of insurance which include the District's interests shall be adjusted with the District and made payable to the District as trustee for the insureds, as their interests may appear, subject to the requirements of any applicable mortgage clause. The District as trustee shall have the right to adjust and settle losses with the insurers. The District shall have no liability for damages caused by fire or other perils.

(6) Insurance Certificates/Policy. Prior to the commencement of any work, the contractor(s) shall furnish to the District and the Town proof of liability

coverage on ACORD Form 25, and proof of coverage under any property policies on ACORD Form 27 or the equivalents, and copies of the applicable insurance policies and policy endorsements to prove that all required insurance is in force. Insurance obtained by the contractor(s) shall be subject to approval by the District and the Town for adequacy of protection. Neither approval by the District or the Town of any insurance supplied by contractor, nor failure to disapprove such insurance shall relieve the contractor of its obligation to maintain in full force during the life of the contract documents all required insurance as set forth herein.

(d) Additional Requirements.

(i) No insurance coverages required to be obtained by contractor(s) pursuant to the requirements of this Agreement shall have a deductible greater than \$5,000 or as reasonably approved by the District and the Town. The contractor(s) is solely responsible for the payment of the deductible(s).

(ii) If any policy required is a claims made policy, the policy shall provide the contractor the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than one (1) year. The District shall require the contractor(s) to purchase such an extended reporting period. The contractor's failure to purchase such an extended reporting period as required by this Section shall not relieve it of any liability under its contract. If the policy is a claims made policy, the retroactive date of any such renewal of such policy shall be not later than the date any contract is executed by the contractor and the District. If the contractor(s) purchases a subsequent claims made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the contract is executed by the contract and the District.

(iii) The District shall require the contractor(s) to provide for the District and the Town and their respective directors, officers, agents and employees to be designated as Additional Insureds on the contractor's commercial general liability insurance and as Insureds under the automobile liability insurance, and the same shall be clearly indicated on the applicable certificates of insurance provided to comply with these requirements.

(iv) The District shall require the contractor(s) to provide for any claims related to the provision of services by the contractor, contractor's insurance to be the primary insurance with respect to the District and the Town and their respective directors, officers, employees and agents. Any insurance maintained by the District or the Town (or their respective directors, officers, employees and agents) shall be in excess of contractor's insurance and shall not contribute with it.

(v) The District shall require the contractor's insurance apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(vi) The District shall require any failure on the part of the contractor(s) to comply with reporting provisions or other conditions of the policies shall not affect the obligation of the contractor to provide the required coverage to the District and the Town and their respective directors, officers, employees and agents.

ARTICLE IV COMPREHENSIVE FUNDING PLAN

4.1 Credit PIF Revenues. In consideration of the Developer's agreement to impose the Credit PIF on Taxable Transactions pursuant to the PIF Covenant and of the Developer's agreement to impose the Add-On PIF on Taxable Transactions and to assign the PIF Revenues to the District, and in further consideration of the District's agreement to utilize Credit PIF Revenues, the Add-On PIF Revenues, the PILOT Payment Debt Revenues, the Debt Mill Levy and other of the District's revenues to finance the design and construction of the Public Improvements, the Town will grant the Sales Tax Credit to retailers who are subject to and actually pay the Credit PIF to the PIF Collecting Agent during the Credit PIF Period in accordance with the terms and conditions of this Agreement.

4.2 Add-On PIF Revenues. The Add-On-PIF may extend beyond the Credit PIF Period. The Developer and the District agree to collect the Add-On PIF during the entire Credit PIF Period and further agree not to reduce the rate of the Add-On PIF during the Credit PIF Period; provided the Sales Tax Credit is also in effect. While any Bonds payable from PIF Revenues remain outstanding, the District agrees to deposit all PIF Revenues net of collection costs with the Bond Trustee in accordance with Section 4.4(d)(iii) hereof unless otherwise provided in the Bond Documents.

4.3 PILOT Payment Revenues. The Developer agrees to record the PILOT Covenant on the commercial portions of the Property owned by the Developer, in a form acceptable to the Town, prior to the issuance of the 2022 Bonds, the 2025 Bonds, the First New Money and Refunding Bonds, Additional New Money and Refunding Bonds and any other Bonds and not to amend or release the PILOT Covenant during the entire Credit PIF Period. The District agrees to collect the PILOT Payment Revenues during the entire Credit PIF Period. While any Bonds payable from the PILOT Payment Debt Revenues remain outstanding, the District agrees to deposit all PILOT Payment Debt Revenues, net of collection costs, with the Bond Trustee in accordance with Section 4.4(d)(iii).

4.4 Implementation of Sales Tax Credit.

(a) Approval of Sales Tax Credit Ordinance. In order to implement the Town's obligation under this Agreement with respect to the Sales Tax Credit, the Town Council shall consider and, if appropriate, adopt an ordinance amending the Code provisions regarding municipal sales tax to provide for and implement the Sales Tax Credit. Such Sales Tax Credit shall be automatic and will take effect immediately upon the applicable retailer's first Taxable Transaction and payment of the Credit PIF Revenues to the PIF Collecting Agent. During the Credit PIF Period, the Town will coordinate with the District, the Developer and the State of Colorado Department of Revenue (i) to endeavor to assure that each retailer liable to collect and pay Sales Tax to the Town on Taxable Transactions within the Property, that collects and pays the Credit PIF to the PIF Collecting Agent, will receive the Sales Tax Credit against such Sales Tax in the amount and at the rate of the Sales Tax Credit; (ii) to make any necessary modifications to the Sales Tax reporting forms for reporting with respect to the Taxable Transactions by all retailers within the PIF Property during the Credit PIF Period; and (iii) to appropriate and remit to the District any Sales Tax collections of the Town that should have been part of the Sales Tax Credit, but were not collected by the PIF Collecting Agent due

to the Department of Revenue's timing of implementation of the Sales Tax rate change for any retailer or any other reason. The transaction and payments supporting the Sales Tax Credit for any given period will nevertheless be subject to audit to the same extent, for the same limitations periods and in the same manner as the items which are required to be reported on the taxpayer's return relating to the period in which the transaction occurs.

(b) Cap Amount. The Town has established the Cap Amount based upon a review of the estimated Verified Eligible Costs that are representative of the costs of those improvements. The Cap Amount may only be amended by an amendment of this Agreement pursuant to Section 7.1.

(c) PIF Trustee and Bond Trustee. The District, with the consent of the Town, will appoint a PIF Trustee (the "**PIF Trustee**") who will perform the duties set forth in this Agreement and in an agreement (the "**PIF Trustee Agreement**") that will be executed by the PIF Trustee and the District, and approved by the Town. After the issuance of any Bonds or Developer Bonds payable from the PIF Revenues, the PIF Trustee shall serve as Bond Trustee for such Bonds and any Developer Bonds, or the District may appoint a different entity to serve as Bond Trustee, with the consent of the Town. The Bond Trustee's duties shall be set forth in an indenture (the "**Indenture**") executed by the Bond Trustee and the District, which Indenture shall contain the provisions required in this Agreement and shall be subject to approval by the Town in accordance with the provisions of this Agreement. The PIF Trustee Agreement shall provide, without limitation, the following minimum provisions, unless any such provisions are waived in writing by both the District and the Town:

(i) Prior to the issuance of any Bonds or any Developer Bonds, the PIF Trustee shall receive all PIF Revenues from the PIF Collecting Agent net of collection costs and PILOT Payment Debt Revenues, if any, and shall hold all PIF Revenues and PILOT Payment Debt Revenues in a segregated account;

(ii) The PIF Revenues and PILOT Payment Debt Revenues shall be invested by the PIF Trustee as directed by the District and in accordance with applicable law;

(iii) The PIF Trustee shall keep accurate books and records of all deposits of all Credit PIF and Add-on PIF Revenues and PILOT Payment Debt Revenues and investment earnings thereon, which books and records shall be available for inspection during regular business hours by the District and the Town;

(iv) The PIF Trustee Agreement shall not be amended with respect to the duties of the PIF Trustee's administration of the Credit PIF Revenues without the prior written consent of the Town; and

(v) Upon the issuance of Bonds payable in whole or in part from PIF Revenues and PILOT Payment Debt Revenues and all moneys on deposit with the PIF Trustee shall be transferred to the Bond Trustee, if a different entity than the PIF Trustee, in accordance with the terms and provisions of the Indenture. Thereafter, all PIF Revenues and PILOT Payment Debt Revenues shall be deposited with the Bond Trustee during the PIF Period and shall be disbursed in accordance with the terms and provisions of the Indenture.

(d) Indenture Provisions. Each Indenture authorizing the issuance of Bonds and Developer Bonds shall provide, without limitation, the following minimum provisions, unless such provisions are waived in writing by the District and the Town:

(i) The net proceeds from all Bonds and Developer Bonds, except Refunding Bonds, (after paying costs of issuance, satisfying required deposits to debt service reserve funds, etc.) shall be deposited in a project fund, or similar fund established under the Indenture (hereinafter referred to as the “**Project Fund**”), and disbursed by the Bond Trustee upon proper requisitions received by the Bond Trustee from the District in accordance with the Amended and Restated Escrow Agreement. Such requisitions shall set forth, at a minimum, the amount of District Bond proceeds being expended on Public Improvements;

(ii) After all of the moneys on deposit in the Project Fund have been disbursed in accordance with the Indenture, the Bond Trustee shall determine, based solely on the requisitions received from the District, the actual amount of Bond proceeds spent on Verified Eligible Costs, without including any investment earnings thereon, or any of the costs identified in Section 1.1(r)(i) through (v) (the “**Final Allocation of Proceeds**”). The Bond Trustee shall submit a written copy of the Final Allocation of Proceeds to the District and to the Town, which Final Allocation of Proceeds shall be used, in part, to confirm that the distribution of Bond proceeds used for Verified Eligible Costs did not exceed the Cap Amount;

(iii) All Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Debt Revenues shall be deposited by the Bond Trustee in revenue funds or similar funds created under the Indenture (hereinafter referred to as the “**Credit PIF Revenue Fund**” the “**Add-On PIF Revenue Fund**” and the “**PILOT Revenue Fund**” (collectively the “**Revenue Fund**”);

(iv) The Indenture shall create or establish a debt service fund or similar fund (hereinafter referred to as the “**Debt Service Fund**”) to be used to make debt service payments on outstanding Bonds as the same become due;

(v) On or prior to each debt service payment date, the Bond Trustee shall determine the amount required to be transferred from the Revenue Fund to the Debt Service Fund to make the debt service payments on Bonds. The Bond Trustee shall transfer from the Credit PIF Revenue Fund, the Add-On PIF Revenue Fund, the PILOT Revenue Fund and other revenues pledged by the District, if any, to the Debt Service Fund an amount necessary to pay the debt service requirements, together with the revenue from the Debt Mill Levy, on Bonds then coming due as provided in the Indenture;

(vi) After moneys on deposit in the Revenue Fund have been used for the payment of debt service requirements on outstanding Bonds that have a senior lien on the Revenue Fund, the Indenture shall provide how remaining moneys on deposit in such Revenue Funds may be spent and shall set forth a priority of expenditures. By way of example, the Indenture shall provide, at minimum, for (i) the replenishment of a reserve fund created for the security of Bonds; (ii) the funding of a surplus reserve fund, if any; (iii) the payment of debt service on any subordinate Bonds; (iv) the prepayment of senior Bonds or subordinate Bonds until such Bonds are repaid; (v) the payment of various fees and expenses; and (vi) the

repayment of the Developer for Verified Eligible Expenses in an amount equal to the Shortfall Funding Advance; (v) payment of the District Cost Sharing Contribution and (vi) the payment of principal and interest on Developer Bonds;

(vii) The Indenture shall provide that the sections thereof implementing the terms of this Agreement may not be amended in a manner materially inconsistent with the terms of this Agreement without the prior written approval of the Town, which approval shall not be unreasonably withheld, conditioned or delayed;

(viii) The Indenture shall provide that no additional Bonds may be issued unless the District is in substantial compliance with all indentures authorizing the issuance of additional Bonds; and

(ix) The Indenture shall provide that the District and the Town have the right to inspect the books and records of the Bond Trustee during regular business hours.

(e) Duration of Credit PIF Period. The Credit PIF Period will commence for the Phase I Credit PIF and the Phase II Credit PIF on the date that the Sales Tax Credit becomes effective. The Credit PIF will continue until the earliest to occur of: (i) December 1, 2051; or (ii) the District's repayment in full of all of Bonds issued for the purpose of financing, refinancing or reimbursing the Verified Eligible Costs, including any re-financing or re-issue thereof, which net proceeds do not exceed the Cap Amount. The occurrence of subpart (ii) above shall be promptly certified by the District in a written supplement to the PIF Covenant recorded in the office of the Clerk and Recorder for Weld County, terminating the Credit PIF. At the time of issuance of any Bonds, the District may request an extension of the Credit PIF Period if an extension of the Credit PIF Period is anticipated to result in a lower interest or other favorable terms for issuance of Bonds. The Town will thereafter consider, but not be obligated to approve, an extension of the Credit PIF Period. No extension of the Credit PIF Period shall be effective unless approved by the Town Council, and any such permitted extension of the Credit PIF Period will be memorialized by the recording of a supplement to the PIF Covenant in the office of the Clerk and Recorder for Weld County, extending the duration of the Credit PIF.

(i) Adjustment of Credit PIF. The Credit PIF related to the 2022 Bonds will be reduced from 2.75% to 2% from the date of issuance of the Refunding and New Money Bonds and thereafter to the termination date of the Credit PIF.

(f) Disposition of Funds at the Termination of the Credit PIF Period. At the termination of the Credit PIF Period and after all Bonds are no longer outstanding under the terms of their respective indentures, if there are Credit PIF Revenues remaining on deposit with the Bond Trustee, the Bond Trustee shall remit all remaining Credit PIF Revenues to the Town. The Bond Trustee shall remit all remaining Add-On PIF Revenues, PILOT Payment Debt Revenues and any other pledged District funds to the District.

(g) Collection of PIF Revenues. The PIF Covenant requires the engagement of a PIF Collecting Agent. As more particularly set forth in a PIF Collection Services Agreement, the PIF Collecting Agent will be designated to receive the PIF Revenues and

PILOT Payment Revenues on behalf of the District, to collect the PIF Revenues from retailers within the Project and remit all of the PIF Revenues, less an agreed upon administrative fee and any PILOT Payment Debt Revenues to the PIF Trustee (prior to the issuance of Bonds) or to the Bond Trustee (while any Bonds payable from PIF Revenues remain outstanding). Following the Town's adoption of a Sales Tax Credit ordinance as contemplated in Section 4.4 of this Agreement, the District and the PIF Collecting Agent will enter into a PIF Collection Services Agreement in a form mutually acceptable to the Parties. The PIF Collecting Agent will remit all of the PILOT Payment Revenues – General Fund, less an agreed upon administration fee, to the District.

(h) The District's Use of PIF Revenues. The District will construct the Public Improvements prior to expiration of the Credit PIF Period using net Bond proceeds and net proceeds from Developer Bonds and the Developer Shortfall Funding Advance up to the Cap Amount and funds available from Other Obligations, if any. Subject to and pursuant to the provisions of this Agreement, the District may use Credit PIF Revenues and Add-On PIF Revenues for costs related to the issuance of Bonds and repayment of Bonds, as set forth in the indentures or agreements, as applicable, authorizing the issuance of and the security for Bonds, and for cash disbursements associated with and directly related to the design and construction of Public Improvements and payment or repayment of Verified Eligible Costs up to the Cap Amount. In addition to the purposes set forth above, the Add-On-PIF Revenues may be used for any purpose permitted by law after the expiration of the Credit PIF Period.

(i) Audits. Within thirty (30) days of completion, but not later than August 15 of each year during the Credit PIF Period, the District will provide to the Town copies of its annual audit reports, year-end financial reports for the preceding fiscal year and budget for the current fiscal year, and will provide such other and additional information as reasonably requested by the Town regarding the use of the PIF Revenues. Upon reasonable notice, the Town will have the right at its own expense to audit the District's books and records and the PIF Trustee's and Bond Trustee's books and records, and the District will have the right at its own expense to audit the Town's books and records and the Bond Trustee's books and records, related to their respective obligations under this Comprehensive Funding Plan, including, but not limited to, the Public Improvements, the Sales Tax Credit and the PIF Revenues, other District debt obligations and the District's use of the PIF Revenues and the PILOT Payment Revenues. Nothing herein or elsewhere, however, shall obligate the Town to furnish to the District confidential information that the Town has obtained from the State or elsewhere.

(j) Audit of Retailers; Enforcement. Pursuant to the PIF Covenant, any person or entity who engages in a Taxable Transaction is subject to audit by the Town or the District regarding Taxable Transactions that are subject to the PIF. The Town and the District acknowledge that it is their intent to minimize their respective administrative costs and the administrative burdens imposed upon retailers within the Project and agree that, in the event one of the Parties exercises its right to audit the Taxable Transactions of a retailer within the Project, it will provide the other party with the opportunity to cooperatively participate in such audit upon payment of fifty-percent (50%) of the audit costs, provided that such retailer provides its written consent to such cooperative audit to the extent such consent is required under the terms and conditions of the PIF Covenant or applicable law.

If the PIF Collecting Agent is unable to collect all or any portion of the Credit PIF due to delinquency, deficiency or failure to file, such that the Sales Tax Credit is not received for any Taxable Transaction, the PIF Collecting Agent will notify the District of such fact. Upon receipt of any such notice, the District may, in addition to exercising all of its remedies under the PIF Covenant or otherwise, notify the Town in writing and the Town may institute the procedures authorized under the Code to enforce and collect the corresponding Sales Tax, together with any applicable interest, penalties and/or costs. The Town will then remit any such collected tax revenues to the District, subject to annual appropriation by the Town and subject to the further following conditions: (i) the Town will be entitled to retain an amount equal to its costs incurred in enforcing its collection of taxes under the Code, as well as an administrative fee equal to ten percent (10%) of any tax and one hundred percent (100%) of any penalty and/or interest actually collected; (ii) the Town will have no responsibility to collect any Add-On PIF amounts that may be due and unpaid; (iii) the Town does not guarantee or ensure that it will be able to collect any delinquent or deficient Credit PIF amounts; and (iv) under no circumstances will the Town be subject to any legal liability to the District, the Developer, or any Bond Participant on account of the Town's failure to collect some or all of the delinquent or deficient Credit PIF obligations on behalf of the District or any Bond Participant. If the person or entity who failed to timely pay such Credit PIF subsequently remits the Credit PIF, such payment will result in the application of the Sales Tax Credit against such person or entity's tax obligation, which Sales Tax Credit will fully satisfy any corresponding liability to the Town for unpaid sales or use tax. In such circumstances, the Town will nevertheless be entitled to recover its administrative fee and any costs incurred in the enforcement and recovery of such Credit PIF Revenues.

(k) On an ongoing basis, the Town, Bond Trustee, the District and the Developer will reasonably cooperate to implement the terms of this Comprehensive Funding Plan as they relate to application of the PIF, the Sales Tax Credit or otherwise implementing the Credit PIF Revenues and Add-On PIF Revenues commitment with respect to internet sales, mail order sales, and other similar transactions occurring within the Property (i.e., transactions deemed to have occurred within the Property because delivery is made within the Property) and which otherwise would be subject to the Town's Sales Tax, including implementation of a means of the Town accounting for the occurrence of such transactions and Sales Tax receipts derived therefrom, to the extent possible, it being understood that such transactions are a growing trend and that the means for adequately identifying, tracking and collecting Sales Tax and PIF Revenues from such transactions may not presently be adequate but are expected to improve over time.

4.5 Bonds. It is anticipated that Bonds will be issued in more than one series to finance Verified Eligible Costs. It is currently anticipated that there will be three issuances of Bonds, the 2022 Bonds, the 2025 Bonds and the 2027 Bonds. It is anticipated that the 2027 Bonds will be issued as the First Refunding and New Money Bonds. Prior to the issuance of any Bonds, the following conditions must occur unless such condition is specifically waived by the Town in writing or is specifically modified in writing by the Town, the District and the Developer.

(a) Conditions Precedent to Bond Issuance. Prior to the issuance of Bonds by the District, the following conditions precedent shall be satisfied, unless specifically waived

by the Town or modified by the Town with the written consent of the District and the Developer:

(i) Service Plan Amendment. Confirmation by the Town that no Service Plan Amendment is necessary prior to the issuance of any Bonds;

(ii) Preliminary Plat. The Town Council, by resolution, shall have approved a preliminary plat for the Property or the portion thereof that is subject to the construction of Public Improvements from the Bonds;

(iii) Advance Reimbursement and Payment Agreement. The District shall provide for the Town’s review and comment, the Advance Reimbursement and Payment Agreement. The District and the Developer shall have executed the Advance Reimbursement and Payment Agreement;

(iv) Sales Tax Ordinance. The Town Council shall have, by ordinance, adopted the Sales Tax Credit;

(v) PIF Covenant. The Developer shall have recorded the PIF Covenant against the portion of the Property it owns.

(vi) PILOT Covenant. ~~The~~The Developer shall have recorded the PILOT Covenant against the portion of the Property it owns;

(vii) Escrow Agreement. Prior to the issuance:

(1) Of the 2022 Bonds, the Parties shall have executed the Amended and Restated Escrow Agreement, with completed terms that are mutually acceptable to the Parties and the Trustee, in substantially the form attached hereto as **Exhibit E**; and

(2) Of the 2025 Bonds, the 2027 Bonds, ~~or~~and any other Bonds, the Parties shall have executed the Escrow Agreement if determined by the Town to be required, with completed terms that are mutually acceptable to the Parties and the Trustee, in substantially the form attached hereto as **Exhibit F**.

(viii) Operations and Maintenance Agreement. The Parties acknowledge that the Operations and Maintenance Intergovernmental Agreement has been executed, as required; and

(ix) Thirty (30) Day Submittals. No less than thirty (30) days prior to the issuance of any Bonds or any Developer Bonds, the District shall have submitted to the Town the following (“**30 Day Submittal**”):

(1) The financing plan for the proposed issuance which shall include the build out assumptions and revenue assumptions for the repayment of Bonds, including Developer Bonds, together with any other outstanding Bonds and outstanding Developer Bonds to be repaid from the same pledged revenues, the estimated amortization schedule and summary of all of the terms related to the issuance of Bonds and Developer Bonds,

including the estimated or assumed interest rate, call protection provisions, description of pledged revenues and flow of funds to be included in the Indenture. Bonds shall not be amortized to be repaid beyond the end of the Credit PIF Period without the written consent of the Town. Developer Bonds shall not be amortized to be repaid for a Credit PIF beyond December 1, 2047;

(2) Unless satisfied or otherwise established through the Feasibility Analysis (defined below), written documentation evidencing or otherwise confirming the tenant commitments supporting the build out assumptions and revenue assumptions. To the extent permitted by law, the Town agrees that all such documentation shall be delivered directly to legal counsel for the Town, kept confidential and not subject to release to the general public and agrees to cooperate with the Developer and the District with respect to achieving such confidentiality;

(3) The schedule for the proposed issuance;

(4) The anticipated use of proceeds for the issuance, including the specific Public Improvements to be funded with the net Bond proceeds and the net Developer Bond proceeds and including the description of the Public Art to be included in the Public Improvements to be funded from the Bonds, the cost of which shall be at least 1.0% of the total Project Fund. The location, scope and specifications for the Public Art shall be submitted in writing and approved in writing by the Town prior to installation;

(5) A feasibility analysis, or if a feasibility analysis was previously issued, an update to the feasibility analysis, from a third party market research firm or a market research analyst that has been engaged in analyzing commercial market conditions for at least five (5) years (the “**Market Analyst**”), stating that it has developed the financial projections utilized in sizing the proposed Bond issuance including, but not limited to, absorption rates, valuation, growth and inflation rates and has evaluated the same in comparison to current and projected market conditions for such areas as deemed by such Market Analyst to be comparable, and that such financial projections are reasonable (the “**Feasibility Analysis**”). Provided, however, the District shall not be obligated to provide a Feasibility Analysis for the repayment of Developer Bonds, unless the District has otherwise had a Feasibility Analysis prepared for Developer Bonds; and

(6) No less than fifteen (15) days prior to the issuance of any Bonds or Developer Bonds, the District shall submit all material updates to the information provided in the 30-Day Submittal and shall also submit the following documentation in draft form: (i) the Indenture; (ii) the offering document, if any, for the issuance of Bonds and Developer Bonds, if any; and (iii) form of enforceability and tax-exempt opinion anticipated to be provided at the time of issuance of Bonds and Developer Bonds, if any.

Understanding that time is of the essence, the Town agrees to endeavor to expeditiously review the 30-Day Submittal within 30 days of receipt by the Town (the “**Review Period**”). If the 30-Day Submittal materials are submitted in full, there are no material modifications to the terms of this Agreement and the analysis contained therein supports the issuance of Bonds, the Town Manager may, in his or her discretion, approve the 30-Day Submittal in writing and the District

may proceed to issue the applicable Bonds substantially on the terms provided in the 30-Day Submittal.

(b) Limitation on Time. Upon the satisfaction of all the conditions set forth in Section 4.5(a) above and the delivery of all the information required by Section 4.5(a)(ix) above, the District shall notify the Town in writing of the commencement of the 30-Day Submittal period. If the Town does not object to the 30-Day Submittal within thirty (30) days of receipt, the 30-Day Submittal shall be deemed approved and the District may proceed to issue the applicable Bonds and Developer Bonds substantially on the terms provided in the 30-Day Submittal.

(c) Limit on Amount of Issuance Costs. The issuance costs for any issuance of the Bonds shall not exceed four (4%) percent of the aggregate par value of the Bonds.

(d) Developer Bonds. Developer Bonds may only be issued in accordance with the provisions and limitations of this Agreement and the Service Plan. The Developer shall use commercially reasonable, best efforts to work with the Town and District to refinance any Developer Bonds with Refunding Bonds as soon as practicable after issuance.

(i) The obligation of the District to make payment of Land Acquisition Costs to the Developer will be documented in a Developer Bond unless otherwise approved in writing by the Town.

(e) Other Obligations. The District intends to issue Bonds and Developer Bonds with proceeds in amounts sufficient to equal the Cap Amount, but the Cap Amount is not expected to cover all of the Verified Eligible Costs of the Project. The parties to this Agreement acknowledge that the District may issue Other Obligations with proceeds sufficient to net an amount not to exceed the difference between the Cap Amount and the total Verified Eligible Costs. The District and the Developer acknowledge any revenue pledged to repay the Other Obligations shall also be pledged to pay the Bonds, the repayment of the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance, the payment of the District Cost Sharing Contribution and Developer Bonds. Therefore, any pledge to repay the Other Obligations shall be fully subordinated to the Bonds, the repayment of the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance, the payment of the District Cost Sharing Contribution, and the Developer Bonds, in that priority.

(f) Condition Precedent to Release of Bond Proceeds. Prior to the release of any funds from the Bond Proceeds Account, as defined in the Amended and Restated Escrow Agreement (“**Bond Proceeds Account**”), the Subdivision Development and Improvement Agreement, in substantially the form attached hereto as **Exhibit G**, shall be executed. The Parties acknowledge that they have entered into the Subdivision Development and Improvement Agreement for Town of Johnstown (Ledge Rock Center Commercial) for Phase I of the Project.

(g) First Requisition from the Bond Proceeds Account for Payment of Verified Eligible Costs. The first requisition from the Bond Proceeds Account for each Bond

issuance shall be used to fund a specific amount of Land Acquisition Costs, Verified Eligible Costs related to soft costs incurred prior to that Bond issuance or other Verified Eligible Costs as agreed upon by the Parties, which shall be deposited in the Developer Fund Account, as defined in the Amended and Restated Escrow Agreement (“**Developer Funds Account**”), prior to the requisition of any other amounts from the Bond Proceeds for payment of any other Verified Eligible Costs. As the provisions related to the first requisition from the Bond Proceeds Account and the deposit and release of funds from the Developer Fund Account will be determined prior to every Bond issuance and will be set forth in the Amended and Restated Escrow Agreement, in the event there is a conflict between the provisions of the Amended and Restated Escrow Agreement and this Section 4.5(g), the provisions of the Amended and Restated Escrow Agreement shall control.

4.6 Shortfall Funding.

(a) The Developer will advance funds to the District for the Developer Shortfall Funding Advance, which will not be repaid by the District. The District anticipates reimbursing the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance on a subordinate basis to the 2022 Bonds, the 2025 Bonds and any other Bonds issued to complete the Public Improvements required for Phase I of the Project and Phase II of the Project. In no event will the District be obligated to pay, and the District shall not pay, to the Developer any interest on the Developer Shortfall Funding Advance. It is anticipated the Developer will be reimbursed for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance from the issuance of the First Refunding and New Money Bonds and Additional Refunding and New Money Bonds. The Developer Shortfall Funding Advance shall be deposited upon receipt into the Developer Funds Account established under the Amended and Restated Escrow Agreement.

(b) The Developer has committed to the make the Developer Shortfall Funding Advance in exchange for the commitment of the Town to sell the Developer up to ~~twenty two (22)~~ nineteen and six-tenths (19.6) shares of water at Five Hundred Fifty Thousand Dollars (\$550,000) per share (the “**Water Shares**”) for the Multi-Family Parcels to be memorialized in an agreement between the Town and the Developer (the “**Developer Contribution Agreement**”). Developer’s payment of the Developer Shortfall Funding Advance shall be deposited in the Developer Funds Account established under the Amended and Restated Escrow Agreement and the purchasing of the Water Shares shall close on or before the earlier to occur of the following:

- (i) the conveyance of any interest of the Developer in any portion of the Multi-Family Parcel; ~~or~~
- (ii) the refinancing of the loan secured by the deed of trust currently recorded against the Multi-Family Parcel; or
- (iii) June 1, 2023.

(c) The Covenants Securing Funding Commitment attached to the Developer Contribution Agreement ~~and the related declaration of covenants will~~ shall be recorded against the Multi-Family Parcel.

(d) The sale of a portion of the Multi-Family Parcel together with the payment of the Developer Shortfall Funding Advance is currently anticipated to close February 2023. The Parties agree that the Developer Shortfall Funding Advance shall be deposited by the Developer in the Developer Fund under the Escrow Agreement no later than June 1, 2023.

(e) The sum of the Developer Shortfall Funding Advance deposited into the Developer Funds Account may be released upon request pursuant to leases and/or construction progression as detailed in the Amended and Restated Escrow Agreement.

(f) The payment to the Town of the District Cost Sharing Contribution shall be made on a subordinated basis to the reimbursement by the District to the Developer for Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance.

4.7 District Cost Sharing Contribution: The District shall provide funding to the Town for the Town's use for any lawful purpose an amount equal to the increase collected in the Credit PIF from 2% to 2.75% for the 2022 Bonds with no interest accrual included in the calculation (the "**District Cost Sharing Contribution**") upon the earlier to occur of the following ~~(the "**Second Phase Property Purchase Option Expiration Date**")~~:

(a) Simultaneously with the acquisition of the first to occur of the acquisition by the Developer of either the Oxy Parcel No. 1, Lot 1, the Oxy 2 Parcel, or both; or

(b) Simultaneously with the issuance of Bonds in an amount sufficient to refund the 2022 Bonds, pay Verified Eligible Costs in an amount equal to the Developer Shortfall Advance and ~~to~~ fund the District Cost Sharing Contribution (the "**Refunding and New Money Bonds**").

(i) The District shall have the obligation to issue the first of the Refunding and New Money Bonds when it can achieve a net present value savings for the portion of the Refunding and New Money Bonds issued to redeem the 2022 Bonds, including transaction costs, while having sufficient capacity to repay a part or all of Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and a part or all of the District Cost Sharing Contribution with the Original Pledged Revenues (the "**First Refunding and New Money Bonds**"). The Credit PIF will be reduced from 2.75% to 2% from the date of issuance of the First Refunding and New Money Bonds and thereafter to the termination date of the Credit PIF.

(ii) In the event the First Refunding and New Money Bonds is not in an amount sufficient to pay all of the Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and the District Cost Sharing Contribution, the District may issue the Refunding and New Money Bonds in an amount that will repay all or a portion of Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and not any or all of the District Cost Sharing Contribution. In these circumstances, the District shall be

obligated to issue Additional Refunding and New Money Bonds to pay first any remaining amount due to repay Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance and to pay all of the District Cost Sharing Contribution as soon as it has capacity to do so (“**Additional Refunding and New Money Bonds**”). Any Verified Eligible Costs advanced by the Developer in excess of an amount equal to the Developer Shortfall Funding Advance cannot be refunded or reimbursed by the District until Verified Eligible Costs in an amount equal to the Developer Shortfall Funding Advance has been fully repaid and the District Cost Sharing Contribution has been made to the Town.

(iii) The District will seek the input of an underwriter or municipal financial advisor at least once a year after the date of issuance of the 2022 Bonds to access its ability to issue the Refunding and New Money Bonds, and any Additional Refunding and New Money Bonds, as needed to fulfill its commitment to pay the District Cost Sharing Contribution.

~~(iv) ——— The Developer acknowledges that its rights to acquire the Second Phase Property under the Amended PSA is:~~

~~(v)(iv) ——— Conditioned on the issuance by the District is conditioned on the District’s payment of the full amount of the District Cost Sharing Contribution by and through the purchase of the Second Phase Property, or a portion thereof, or the District’s reissuance of the Refunding and New Money Bonds in an amount sufficient for payment by the District to the Town of the full amount of the District Cost Sharing Contribution; and, whichever occurs first. If the District does not provide the District Cost Sharing Contribution to the Town as provided herein, unless otherwise agreed by the Town in the form of an amendment to this Agreement, the Developer shall not be entitled to purchase the Second Phase Property.~~

~~(vi) ——— Will expire on the Second Phase Property Purchase Option Expiration Date unless the Developer, the District and the Town have executed an amendment to this Agreement to extend that date.~~

4.8 Legal Opinions. The District shall issue Bonds and Developer Bonds and the District, the District counsel, and the Bond Trustee (“**Bond Participants**”) will rely on the Town’s commitments regarding the Credit PIF Revenues as set forth herein in connection with issuance and marketing of Bonds and the issuance of the Developer Bonds. Accordingly, each Party affirms and warrants for the benefit of the other Parties and the Bond Participants that it is fully authorized to enter into and execute this Agreement, that all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize its execution of this Agreement have been made, and that this Agreement is enforceable against such Party in accordance with its terms and conditions. Each of the Parties hereby covenants that it will not assert in any context that the performance of its obligations hereunder is not fully enforceable. On or prior to the seventh day after the Effective Date, the District and the Developer will deliver an opinion of their respective outside counsel addressed to the other Parties to this Agreement, solely with respect to this Agreement, which opinion will state in substance that, assuming this Agreement has been duly authorized, executed and delivered by the other Parties hereto, the Comprehensive Funding Plan constitutes a valid and binding agreement of such Party enforceable according to its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law affecting the enforcement of creditors’ rights generally and

subject to the application of general principles of equity. The Developer's counsel will provide a similar opinion concerning the PIF Covenant at the time the PIF Covenant is recorded. Such opinions may also contain additional exceptions or qualifications as are agreed to in writing by the Town and the District. With at least thirty (30) days' written notice by the District, outside counsel to the Town will provide the District with a similar opinion letter concerning the Comprehensive Funding Plan and the ordinance authorizing the Sales Tax Credit at the time of the issuance of any Bonds at the District's cost and expense. From time to time, a Party to this Agreement may otherwise request a new opinion from the other Parties' outside counsel at such requesting Party's cost and expense.

4.9 Third Party Beneficiary; Assignment. The Parties hereby express their intent and agreement that the Bond Participants will be made third-party beneficiaries of the Town's obligations under this Comprehensive Funding Agreement with respect to implementation of the Sales Tax Credit and the District's right to receive the Credit PIF Revenues. Additionally, the District will be entitled to assign its rights to receive the Credit PIF Revenues, the Add-On PIF Revenues and the PILOT Payment Debt Revenues to the Bond Trustee in connection with the issuance of Bonds and Developer Bonds to finance Public Improvements. The District will provide prompt written notice to the Town of any such assignment upon execution and delivery thereof.

4.10 Payment of Verified Eligible Costs.

(a) Land Acquisition. It is anticipated the District will acquire the rights of way and easements necessary for the Public Improvements. The District shall secure an appraisal that will establish that the District is not paying more than fair market value for the interests to be acquired and shall provide a copy of the appraisal or appraisals to the Town prior to District closing on the acquisition of any interest in real estate for more than nominal monetary consideration. The Town shall have fifteen (15) days from the date of receipt of the appraisal to object to the appraisal. If the Town does not respond, the Town will be deemed to have no objection. As the Town has conveyed the Oxy Parcel No. 1, Lots 2-5 and Tract A to the District for nominal consideration, under no circumstances will the District pay for the acquisition or dedication of Public Spaces or interests in real estate to be Dedicated on the Oxy Parcel No. 1, Lots 2-5 and Tract A.

(b) Verification of Incurred Costs.

(i) Developer Incurred Costs. The Developer has incurred Eligible Costs prior to the organization of the District in anticipation of this Agreement and may continue to incur Eligible Costs in anticipation of the future issuance of Bonds and Developer Bonds by the District. The Developer may be reimbursed from the proceeds of Bonds and Developer Bonds so long as the Eligible Costs have been verified by the District Accountant, Independent Engineer or other independent third party reviewer approved by the Town and the District (collectively, the "**Cost Certifier**") as Verified Eligible Costs. The Developer shall provide to the District as built drawings for any completed Public Improvements; lien waivers and indemnifications from each contractor verifying that all amounts due to contractors, subcontractors, material providers or suppliers have been paid in full, in a form acceptable to the District; copies of all contracts, pay requests, change orders, invoices, the final AIA payment

form (or similar form) approved by the Independent Engineer, canceled checks and any other requested documentation to verify the amount requested; and an executed Bill of Sale conveying the Public Improvements to the District or to the Town, in form acceptable to the District and, if applicable, the Town. The District shall work with the District Accountant, the Independent Engineer or other Cost Certifier to have prepared a certification of the Verified Eligible Costs. The District's obligation to repay the Verified Eligible Costs shall include interest thereon to be accrued at the Developer Bond Interest Rate from the date of expenditure through the date of repayment. The payment of interest shall not count against the Cap Amount as it is a cost of financing to be paid in addition to the Cap Amount.

(ii) District Incurred Eligible Costs.

(1) The District shall incur Eligible Costs and shall receive funding for Verified Eligible Costs from the net proceeds of Bonds or Developer Bonds in an amount, together with the Verified Eligible Costs reimbursed to the Developer pursuant to an Advance Reimbursement and Payment Agreement, which shall not exceed the Cap Amount.

(2) The District acknowledges that the total amount of Verified Eligible Costs to be paid from Credit PIF Revenues and Add-On PIF Revenues collected during the Credit PIF Period shall not exceed the Cap Amount. Therefore, the District shall provide an accounting of all Verified Eligible Costs paid directly from Credit PIF Revenues, from Add-On PIF Revenues collected during the Credit PIF Period, from the PILOT Payment Revenues and from the net proceeds of Bonds or the portion of the principal amount of any Developer Bonds spent on Verified Eligible Costs. The District shall provide the Town, upon the Town's written request, the complete reports, reports related to the Verified Eligible Costs and all backup documentation related to the Verified Eligible Costs paid from Credit PIF Revenues, Add-On PIF Revenues and PILOT Payment Revenues collected during the Credit PIF Period. The District shall retain all reports and documentation related to the Verified Eligible Costs until the end of the Credit PIF Period. The District shall also be obligated to provide an accounting of Verified Eligible Costs paid for or evidenced by Other Obligations.

4.11 Oxy Parcel No. 1 Restriction. Under no circumstances will the Developer secure any financing for the Public Improvements with a mortgage or other encumbrance on any part of the Oxy Parcel No. 1.

4.12 Mortgage Restriction. Under no circumstances will the District secure any financing for the Public Improvements on any of the Property with a mortgage or any encumbrance beyond the pledge of revenues from the Credit PIF Revenues, the Add On PIF Revenues, the PILOT Payment Revenues and the ad valorem mill levy of the District.

4.13 Developer Contribution Initial Deposit. The Developer will remit the JP Developer Contribution to the District prior to the closing on the 2022 Bonds and the District will provide written notice of the receipt of such remittance to the Town prior to the closing on the 2022 Bonds. The JP Developer Contribution shall be deposited into the Ledge Rock Water and Sewer Pipeline Escrow Agreement established pursuant to the Ledge Rock Water and Sewer Pipeline Escrow Agreement, and thereafter disbursed to the Developer as set forth in the Ledge Rock Water and Sewer Pipeline Escrow Agreement. The Developer and the District

acknowledge that the JP Developer Contribution is, under no circumstances, either directly or indirectly, to be reimbursed to the Developer, or any other party, from any revenues of the Town or the District or from the proceeds of any of the Bonds or Other Obligations.

4.14 Developer Contribution Restriction. The District will use the JP Developer Contribution for the payment of Public Improvement costs and will not use the JP Developer Contribution for any other purposes, including, but not limited to, the payment of the costs of issuance of the Bonds.

ARTICLE V DEFAULT; REMEDIES; TERMINATION

5.1 Default by Town. A “breach” or “default” by the Town under this Agreement will be defined as the Town’s failure to fulfill or perform any express material obligation of the Town stated in this Agreement.

5.2 Default by the Developer and the District; No Cross-Defaults. A “breach” or “default” by the Developer or the District will be defined as such Party’s failure to fulfill or perform any express material obligation of that Party stated in this Agreement. No default or breach by the Developer or the District of any obligation of that Party under this Agreement will be construed as or constitute a default or breach of any other Party or constitute a basis for the Town to assert or enforce any remedy against any Party other than the particular Party whose action or failure to act constitutes or gives rise to the default or breach. No default or breach by the Developer or the District of any obligation of that Party arising under any agreement other than this Agreement will be construed as or constitute a default or breach of this Agreement or constitute a basis for the Town or the Town to assert or enforce any remedy against any Party under the terms of this Agreement. No default by any Party to this Agreement in the performance of any obligation of that Party under this Agreement will constitute or be deemed to constitute a default of any obligation of that Party under any other agreement or to excuse the performance by any other Party under any other agreement to which that Party is a party.

5.3 Notices of Default. In the event of a default by any Party under this Agreement, the non-defaulting Party will deliver written notice to the defaulting Party of the default, at the address specified in this Agreement (as may be amended from time to time), and the defaulting Party will have thirty (30) days from and after receipt of the notice to cure the default without liability for the default. If the default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party within such thirty (30) day period that it is actively and diligently pursuing a cure, the defaulting Party will have a reasonable period of time given the nature of the default following the end of the 30-day period to cure the default, provided that the defaulting Party is at all times within the additional time period actively and diligently pursuing the cure. Any claim for breach of this Agreement brought before the expiration of the applicable cure period will not be prosecuted by the non-defaulting party until the expiration of the applicable cure period and will be dismissed by the non-defaulting party if the default is cured in accordance with this Section 5.3.

5.4 Remedies. If any default under this Agreement is not cured as described in Section 5.3 of this Agreement, the non-defaulting Party will have the right to enforce the defaulting Party’s obligations hereunder by an action for injunction or specific performance. In

no event may the Town interfere with, terminate or suspend the PIF Trustee's or the Bond Trustee's receipt of the Credit PIF Revenues or the Sales Tax Revenues or the Town's obligations under the Comprehensive Funding Plan, including, but not limited to, its obligations with respect to the Credit PIF Revenues, the Sales Tax Revenues, the Sales Tax Credit or the Credit PIF during the Credit PIF Period.

ARTICLE VI DEVELOPER AND DISTRICT INDEMNITY

6.1 Developer Indemnity. The Developer shall defend, indemnify, assume all responsibility for and hold the Town and District, its members of its governing body, officers, agents, and employees, collectively the "Indemnified Parties" or singularly, each an "Indemnified Party") harmless, including without limitation, for attorney's fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the Developer's activities undertaken pursuant to this Agreement or the Developer's activities regarding the financing, development, improvement, redevelopment, construction, repair, maintenance, management, acquisition, leasing, sale, disposition or other conduct or activities, related to the Project, whether such activities are undertaken by the Developer or anyone directly or indirectly employed by or under contract to the Developer or contractor of the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement. The Developer's obligations under this Section 6.1 shall not apply to losses, damages or claims arising from acts or omission of the Indemnified Parties.

(a) If any claim relating to the matters indemnified against pursuant to this Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Agreement, then the Indemnified Party shall promptly give notice of such claim to the Developer.

(b) Upon receipt of such notice, the Developer shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.

(c) The Indemnified Party shall cooperate with the Developer in such defense at the Developer's expense and provide the Developer with all information and assistance reasonably necessary to permit the Developer to settle and/or defend any such claim.

(d) The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but the Developer shall be entitled to control the defense unless the Indemnified Party has relieved the Developer from liability with respect to the particular matter.

(e) If the Developer elects to undertake such defense by its own counsel or representatives, the Developer shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

(f) If the Developer does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense

thereof by counsel or other representatives designated by it, such defense to be at the expense of the Developer.

(g) The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the Developer.

(h) Notwithstanding the foregoing, the Town may, at its sole discretion, assume the defense of any claims asserted against it. Such defense shall in no way affect the indemnification obligations of the Developer.

6.2 District Indemnity. To the extent permitted by law, if any, and without waiving or limiting the application of governmental immunity, the District shall defend, indemnify, assume all responsibility for and hold the Town, its Council members, officers, agents, and employees, (collectively the “Indemnified Parties” or singularly, each an “Indemnified Party”) harmless, including without limitation, for attorney’s fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the District’s activities undertaken pursuant to this Agreement or the District’s activities regarding the financing, development, improvement, redevelopment, construction, repair, maintenance, management, acquisition, disposition or other conduct or activities, including use of Bond proceeds or the Developer Bond proceeds, of the District related to the Project, whether such activities are undertaken by the District or anyone directly or indirectly employed by or under contract to the District or contractor of the District and whether such damage shall accrue or be discovered before or after termination of this Agreement. The District’s obligations under this Section 6.2 shall not apply to losses, damages or claims arising from acts or omission of the Indemnified Parties.

(a) If any claim relating to the matters indemnified against pursuant to this Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Agreement, then the Indemnified Party shall promptly give notice of such claim to the District.

(b) Upon receipt of such notice, the District shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.

(c) The Indemnified Party shall cooperate with the District in such defense at the District’s expense and provide the District with all information and assistance reasonably necessary to permit the District to settle and/or defend any such claim.

(d) The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but the District shall be entitled to control the defense unless the Indemnified Party has relieved the District from liability with respect to the particular matter.

(e) If the District elects to undertake such defense by its own counsel or representatives, the District shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

(f) If the District does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of the District.

(g) The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the District.

(h) Notwithstanding the foregoing, the Town may, at its sole discretion, assume the defense of any claims asserted against it. Such defense shall in no way affect the indemnification obligations of the District.

6.3 Litigation. To the extent not otherwise provided herein, the District and the Developer will cooperate with the Town in taking reasonable actions to defend against any litigation brought by a third party against the Town concerning the Project, the Public Improvements or this Agreement.

ARTICLE VII MISCELLANEOUS

7.1 Amendment of this Agreement.

(a) Written Amendment Required. Except as otherwise set forth in this Agreement, this Agreement may only be amended, terminated or superseded by mutual consent in writing of each of the Parties hereto.

(b) Effectiveness and Recordation. Any such written amendment will be effective upon the later to occur of (i) execution by all required Parties or (ii) the effective date of the District's resolution approving such amendment. Promptly after any amendment to this Agreement becomes effective, the Town will cause it to be Recorded as deemed necessary by the Town. As between the Parties, the validity or enforceability of such an amendment will not be affected by any delay in or failure to Record the amendment as provided herein.

7.2 Recordation of Agreement. This Agreement will be Recorded promptly after execution by all the Parties hereto, and passage of resolution by the District authorizing such execution.

7.3 Attorneys' Fees. In the event any litigation or legal proceeding arises between the Parties out of this Agreement and is prosecuted to final judgment, then if the Town or the District is a prevailing party against the Developer, the District and the Town will be entitled to recover from the Developer all of its costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees. If the Developer is the prevailing party, it shall bear its own costs. If the Town is the prevailing party in a legal proceeding involving the District, to the extent permitted by law, the District shall pay the Town's costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees.

7.4 No Joint Venture or Partnership. No form of joint venture or partnership exists between the Parties hereto, and nothing contained in this Agreement will be construed as making the Parties joint venturers or partners.

7.5 Colorado Governmental Immunity Act. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, Town Officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended. Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the District, District Officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended.

7.6 Reimbursement of Town Costs. The Developer and the District shall be jointly and severally responsible for reimbursement of any and all reasonable and necessary costs incurred by the Town in the preparation of this Agreement and in the processing of any applications, review of documentation related to the issuance of Bonds, the Developer Bonds, the preparation of the Subdivision Development and Improvement Agreement, the preparation of the Operations and Maintenance Intergovernmental Agreement, the preparation of the Amended and Restated Escrow Agreement and any other actions to be taken by the Town or its outside consultants to exercise its responsibilities or protect its rights under this Agreement.

7.7 Waiver. No waiver of one or more of the terms of this Agreement will constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance will constitute a waiver of such provision in other instances.

7.8 Findings. The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety, and general welfare of the citizens of the Town and the provisions of this Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the Town. The District Board finds that this Agreement is in the best interests of the District.

7.9 Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining or substantially deprive such Party of the benefit of its bargain under this Agreement. The Parties will cooperate in reforming this Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition.

7.10 Further Assurances. Each Party will execute and deliver to the others all such other further instruments and documents as may be reasonably necessary or requested by another Party to confirm or clarify the intent of the provisions of this Agreement, and to carry out and effectuate this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Agreement.

7.11 Authority. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices,

meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

7.12 Notices. Any notice or communication required under this Agreement between the Parties must be in writing, and may be given either personally by registered or certified mail, return receipt requested, or by electronic mail on the condition that the intended recipient of the electronic mail acknowledges receipt thereof. If personally delivered, a notice will be deemed to have been given when delivered to the party to whom it is addressed. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by electronic mail, the same will be deemed to have been given and received upon acknowledgement by the intended recipient. Any Party may at any time, by giving written notice to the other Parties hereto as provided in this Section, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534
mlecerf@townofjohnstown.com

With a copy to:

Avi Rocklin, Town Attorney
1437 N. Denver Avenue #330
Loveland, CO 80538
avi@rocklinlaw.com

and

MaryAnn M. McGeady
Erica Montague
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
legalnotices@specialdistrictlaw.com

If to the District:

Ledge Rock Center Commercial
Metropolitan District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

With a copy to:

David O’Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203
doleary@spencerfane.com

If to the Developer:

Ledge Rock Center LLC

With a copy to:

Allen D. Schlup, Esq.

c/o Michael Schlup
 13725 Metcalf Ave.
 Overland Park, KS 66223
 mikeschlup@corbinparkop.com

A.D. Schlup Law, LLC
 10950 W. 192nd PL.
 Spring Hill, KS 66083
 allen.schlup@adschluplaw.com

7.13 Consent. Where any of the Parties to this Agreement have the right of approval or consent, such consent shall not be unreasonably withheld, conditioned or delayed.

7.14 Assignment; Binding Effect. This Agreement will be binding upon and, except as otherwise provided in this Agreement, will inure to the benefit of the successors in interest or the legal representatives of the Parties hereto. The Developer, upon the delivery of written notice to the Town of the Developer's intent, will have the right to assign or transfer all or any portion of its respective interests, rights or obligations under this Agreement to the District or to third parties acquiring an interest or estate in all or any part of the Property, including, but not limited to, joint venture partners, purchasers or long term ground lessees of individual lots, parcels, or of any improvements now or hereafter located within the Property; provided that to the extent the Developer assigns any of its respective obligations under this Agreement, the assignee of such obligations shall expressly assume the obligations contained in this Agreement. Unless further consented to by the Town as set forth below, any such assignee shall be jointly and severally liable with the Developer under this Agreement. Any assignment by the Developer of the Developer's interests, rights or obligations under this Agreement, without provision of written notice to the Town, shall not be effective or enforceable. Subject to the Town's prior written consent, the express assumption of any of the Developer's obligations under this Agreement by an assignee or transferee will, in the Town's discretion, relieve the Developer of any further obligations under this Agreement and release the other Parties from further obligation to the Developer with respect to the matter so assigned and assumed. If the Town does not provide such written consent, the Developer shall remain liable for the obligations under this Agreement. Subject to the Town's prior written consent, the District may, in the Town's discretion, assign its obligation under this Agreement with respect to design, construction and financing of the Public Improvements; provided, however, that the District's assignment of its right to receive the Credit PIF Revenues will be governed by Section 4.4 of this Agreement.

7.15 Venue and Choice of Law; Waiver of Trial by Jury; Construction. This Agreement will be construed and enforced according to the laws of the State of Colorado. Venue will be in Weld County, Colorado. To reduce the cost of and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement. In the event of ambiguity in this Agreement, any rule of construction which favors one Parties' interpretation as a non-drafting party will not be applied, and the ambiguous provision will be interpreted as though neither Party was the drafter.

7.16 Compliance with the Law. The Developer and the District shall comply with all federal, State and local laws and regulations in the performance of the obligations under this Agreement.

7.17 Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

7.18 Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[The Remainder of this Page Intentionally Left Blank]

LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

By: _____
Its: President
Date: _____

Attest:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado was acknowledged before me this ____ day of _____, 2022, by _____, as President and Secretary Ledge Rock Center Metropolitan District, a quasi-municipal corporation of the state of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

LEDGE ROCK CENTER, LLC, a Kansas
limited liability company

By: _____
Its: President
Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Development and Reimbursement Agreement for Ledge Rock Center Commercial, Johnstown, Colorado was acknowledged before me this ____ day of _____, 20____, by _____, as _____ of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

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

By: _____
Gary Lebsack, Mayor

Date: _____

Attest:

Hannah Hill, Town Clerk

**AMENDED AND RESTATED ESCROW AGREEMENT
(2022 LIMITED TAX GENERAL OBLIGATION BONDS LEDGE ROCK CENTER
COMMERCIAL METROPOLITAN DISTRICT)**

This **AMENDED AND RESTATED ESCROW AGREEMENT** (the “**Agreement**”) is made and entered into as of the ____ day of _____, 2022 by and among the **TOWN OF JOHNSTOWN, COLORADO**, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), **LEDGE ROCK CENTER, LLC** a Kansas limited liability company (“**Developer**”), **LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT**, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”) and **UMB BANK, N.A.**, a national banking association as escrow agent (“**Escrow Agent**”). Town, Developer, District and Escrow Agent are sometimes individually referred to as a “**Party**” and collectively as the “**Parties**.”

RECITALS

WHEREAS, the Town, the Developer, and the District entered into the Development and Reimbursement Agreement for Ledge Rock Center on January 3, 2022, the First Amendment to Development and Reimbursement Agreement for Ledge Rock Center on or about April 18, 2022, and the Second Amended and Restated Development and Reimbursement Agreement for Ledge Rock Center on or about ~~August 29~~September 12, 2022 (together, the “**Development Agreement**”) for the purpose of establishing the terms and conditions of the overall development of the Project; and

WHEREAS, the Parties previously entered into that certain Escrow Agreement (2022 Special Revenue Series A and Series B Bonds Ledge Rock Center Commercial Metropolitan District) dated May 31, 2022 (the “**Original Escrow Agreement**”); and

WHEREAS, based on changes in the estimated net proceeds of the 2022 Bonds (as defined below) anticipated to be issued by the District and pursuant to the Development Agreement this Amended and Restated Escrow Agreement is to be executed prior to the issuance of the 2022 Bonds; and

WHEREAS, the District is organized pursuant to and in accordance with the provisions of §§ 32-1-101, *et seq.*, C.R.S. for the purpose of constructing, financing, operating and maintaining certain public improvements for itself, its taxpayers, residents and users; and

WHEREAS, the Town approved the Service Plan for the District on September 8, 2021 and subsequently approved an Amended and Restated Service Plan for the District on June 6, 2022 (the “**Service Plan**”); and

WHEREAS, the District is authorized to finance and provide public improvements needed for the Ledge Rock Center commercial development project (the “**Project**”); and

WHEREAS, pursuant to the Development Agreement, the District is required to submit documents required for the Town’s review prior to the issuance of the 2022 Bonds; and

WHEREAS, the District anticipates the issuance of its 2022 Limited Tax General Obligation Bonds (the “**2022 Bonds**”) and the Town, the District and the Developer have agreed to the deposit and release of the proceeds of the 2022 Bonds in accordance with the provisions set forth in this Agreement; and

WHEREAS, at the time the District was organized, it was anticipated that the 2022 Bonds, when issued, would net Seventy Four Million Dollars (\$74,000,000) in Project Funds (the “**Original Project Funds**”). The revenue to be pledged was five (5) mills in District property taxes, a 2.5% Add-On PIF, and a 2% credit PIF (the “**Original Pledged Revenues**”); and

WHEREAS, the 2022 Bonds, based on the Original Pledged Revenues, are currently anticipated to net Fifty One Million Dollars (\$51,000,000) in Project Funds (the “**New Project Funds**”); and

WHEREAS, with an increase in the credit PIF to 2.75%, together with the District pledge of five (5) mills and the 2.5% Add-On PIF (the “**Increased Pledged Revenues**”), the Bonds are anticipated to net approximately ~~Sixty~~Sixty ~~Fifty~~Fifty ~~Seven~~Seven Million ~~Six~~Six ~~Seven~~Seven Hundred ~~Ninety~~Ninety ~~Eight~~Eight Thousand ~~Two~~Two ~~Hundred~~Hundred ~~Seventy~~Seventy ~~Two~~Two Dollars (~~\$60,600,000~~\$57,798,272) in Project Funds (the “**Increased Project Funds**”). The difference between the Original Project Funds and the Increased Project Funds still leaves a deficit of approximately ~~Thirteen~~Thirteen ~~Sixteen~~Sixteen Million ~~Four~~Four ~~Two~~Two Hundred ~~One~~One Thousand ~~Seventy~~Seventy ~~Hundred~~Hundred ~~Twenty~~Twenty ~~Seven~~Seven Dollars (~~\$13,400,000~~\$16,201,727) that still requires funding, with such amount to be adjusted based on the actual amount of Project Funds at the time of closing on the issuance of the 2022 Bonds (the “**Bond Proceeds Shortfall**”); and

WHEREAS, the Developer has agreed to advance funds to the District in an amount equal to the Bond Proceeds Shortfall (the “**Developer Shortfall Funding Advance**”); and

WHEREAS, the Developer Shortfall Funding Advance is to be deposited in the Developer ~~Fund~~Funds ~~Account~~ under this Agreement and used for construction of vertical improvements; and

WHEREAS, the Developer Shortfall Funding Advance will not accrue interest and will not be reimbursed to the Developer by either the Town or the District; and

WHEREAS, future issuances of Bonds are anticipated to occur as development occurs to include at least one additional bond issuance; and

WHEREAS, the Project will be constructed with the use of various revenue sources of the Developer and the District, including, but not necessarily limited to, the proceeds deposited hereunder pursuant to the Indenture of Trust for the 2022 Bonds (the “**2022 Bonds Indenture**”) between the District and UMB Bank, n.a., as trustee (the “**Bond Trustee**”) for the 2022 Bonds to be spent on Verified Eligible Costs, and funds for Private Improvements constructed by the Developer from the reimbursements made to the Developer under the Advance Reimbursement and Payment Agreement (the “**Reimbursement Agreement**”); and

WHEREAS, as set out in the Budget attached hereto on **Exhibits A-1** through **Exhibit A-3** (the “**Budget**”), Verified Eligible Costs are to be funded with the proceeds of the 2022 Bonds and the Private Improvements are to be paid from various sources other than Bond proceeds in order to acquire, construct and install the Project; and

WHEREAS, the Parties hereto desire to set forth the terms and conditions by which the Escrow Agent shall manage and disburse the escrow established hereunder.

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

COVENANTS AND AGREEMENTS

(Capitalized terms used but not defined herein shall have the meaning set forth in the 2022 Bonds Indenture and the Development Agreement, as amended.)

1. Appointment of Escrow Agent and Establishment of Escrow Accounts. The Developer, the District and the Town hereby appoint the Escrow Agent and the Escrow Agent hereby accepts such appointment pursuant to the terms and conditions of this Agreement. The Escrow Agent shall establish the following accounts for the purpose of holding the Bond proceeds referenced in this Agreement and all interest earned (the “**Escrow Funds**”): (1) the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Account (the “**Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Account**” or the “**Bond Proceeds Account**”) and (2) the Developer Funds Account (the “**Developer Funds Account**”). The two separate accounts shall collectively be referred to as the “**Accounts**.” Monies in the Accounts shall be distributed by the Escrow Agent pursuant to the provisions of this Agreement, and all deposits made into the Accounts shall be treated in all respects as escrowed funds with no portion thereof subject to any claims of the Escrow Agent’s general creditors. A description of the Accounts is as follows:

(a) The Bond Proceeds Account: Amounts released pursuant to the terms of the 2022 Bonds Indenture by the Bond Trustee from the net proceeds of the 2022 Bonds that were issued on a tax exempt basis (the “**Tax Exempt Bond Proceeds**” or “**Bond Proceeds**”) shall be deposited by the Bond Trustee directly into the Bond Proceeds Account. All references in this Agreement to “Tax Exempt Bond Proceeds” are deemed to include any interest earned on the Tax Exempt Bond Proceeds while being held pursuant to this Agreement. Tax Exempt Bond Proceeds shall be invested in legal investments as may be directed by the District.

(b) The Developer Funds Account: Bond Proceeds utilized: (i) to fund reimbursement of Verified Eligible Costs incurred by the Developer for soft costs prior to the issuance of the 2022 Bonds under the Reimbursement Agreement, and (ii) to fund the purchase of interests in land by the District from the Developer pursuant to those certain real estate contracts or other instruments entered into between the District and the Developer, ~~including but not limited to the shall be~~ “**Developer Funds.**” The Developer Shortfall Funding Advance shall be “also constitute Developer Funds.” Developer Funds shall be deposited into the Developer Funds Account for purposes of securing and completing the Private Improvements. Developer Funds may also, at the sole discretion of the Town, be used to fund or reimburse the Developer for

Verified Eligible Costs incurred after the issuance of the 2022 Bonds. Prior to the release of any Bond Proceeds from the Bond Proceeds Account for the payment of any other Verified Eligible Costs, Bond Proceeds in the amount of up to Twenty FiveSeven Million Six Hundred Thousand Dollars (\$2527,600,000), exclusive of the Developer Shortfall Funding Advance, shall be released for payment of a portion of the purchase price for the land together with the Verified Eligible Costs related to soft costs incurred prior to the closing on the issuance of the 2022 Bonds conditioned upon the verification of the amount needed for the Bond Proceeds Account for Public Improvements (the “**First Disbursement**”). The First Disbursement shall be directly deposited in the Developer Funds Account (the “**Developer Fund Deposit**”). All references in this Agreement to Developer Funds are deemed to include any interest earned on the Developer Funds while being held pursuant to this Agreement that are not required to be paid to the federal government pursuant to the Internal Revenue Code of 1986, as amended. The Developer Funds shall be invested as may be directed by the Developer.

(i) The Developer Shortfall Funding Advance shall also be deposited into the Developer Funds Account, however, no repayment of any amounts equal to the Developer Shortfall Funding Advance shall be made pursuant to this Agreement, rather, any such repayment of amounts equal to the Developer Shortfall Funding Advance shall be made pursuant to a separate escrow agreement to be entered into by the Parties in connection with the refinancing of the 2022 Bonds.

(c) Investment of Funds in Accounts: The Escrow Agent may conclusively rely upon the District’s or Developer’s written instruction as to both the suitability and legality of the directed investments regarding their respective accounts. If the District or Developer fails to provide written directions concerning investment of moneys held by the Escrow Agent in their respective accounts, the Escrow Agent may invest in a money market fund that qualifies as a legal investment and matures or is subject to redemption prior to the date such funds will be needed. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Escrow Agent to the District or Developer for their respective accounts shall confirm that the investment transactions identified therein accurately reflect the investment directions of the District or Developer, unless the District or Developer notifies the Escrow Agent in writing to the contrary within thirty (30) days of the date of such statement. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees, and it is specifically provided herein that the Escrow Agent may purchase or invest in shares of any investment company that (i) is registered under the Investment Company Act of 1940, as amended (including both corporations and Massachusetts business trusts, and including companies for which the Escrow Agent may provide advisory, administrative, custodial, or other services for compensation), (ii) invests substantially all of its assets in short-term high-quality money-market instruments, limited to obligations issued or guaranteed by the United States, and (iii) maintains a constant asset value per share, and, the Escrow Agent may implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income earned on investments.

2. Accounts.

(a) Use of Funds.

(i) Bond Proceeds Account. The Escrow Funds deposited into the Bond Proceeds Account shall be used to: (i) fund Verified Eligible Costs related to the acquisition, construction and installation of the public facilities which qualify as District Public Improvements or Town Public Improvements as defined within the Development Agreement, as may be amended from time to time, within or benefiting the Project (collectively the “**Public Improvements**”) by the District; and (ii) fund the District’s purchase of public land as permitted in the Development Agreement, in an amount not to exceed the fair market value as established by an appraisal as set forth herein.

(ii) Developer Funds Account. Once released from the Bond Proceeds Account and deposited into the Developer Funds Account, such Bond Proceeds, Developer Shortfall Funding Advance, unless otherwise agreed by the Town, shall be used to fund the Private Improvements in the manner set forth in this Agreement.

(iii) Not a Bond Payment Pledge. Moneys on deposit in the Accounts are not pledged to the payment of the Bonds and shall not secure the payment thereof.

(b) Tax Covenants.

(i) The District shall at all times do and perform all acts and things necessary or desirable in order to assure that interest paid on the 2022 Bonds shall, for the purposes of federal income taxation, be excludable from the gross income of the recipients thereof and exempt from such taxation.

(ii) The District shall not permit the use of any proceeds of the 2022 Bonds or any funds of the District held under this Agreement, directly or indirectly, to acquire any securities or obligations, and shall not take or permit to be taken any action or actions with regard to the investment of any proceeds of the 2022 Bonds, which would cause any 2022 Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code or “federally guaranteed” within the meaning of Section 149(b) of the Code and any such applicable requirements promulgated from time to time thereunder and under Section 103(b) of the Code, and the District shall observe and not violate the requirements of Section 148 of the Code and any such applicable regulations. The District shall comply with all requirements of Sections 148 and 149(d) of the Code to the extent applicable to the 2022 Bonds. In the event that at any time the District is of the opinion that for purposes of this paragraph it is necessary to restrict or to limit the yield on the investment of any moneys held by the Escrow Agent under the Escrow Agreement, the District shall so restrict or limit the yield on such investment or shall so instruct the Escrow Agent in a detailed certificate, and the Escrow Agent shall take such action as may be necessary in accordance with such instructions.

(iii) The District specifically covenants to comply with the provisions and procedures of the Tax Certificate and with all tax matters and covenants of the District contained in the Escrow Agreement.

3. Requests to Release Funds from the Accounts. The District or the Developer, as appropriate, may submit requests for the release of Escrow Funds as follows:

(a) Disbursement Requests from the Bond Proceeds Account. The District may submit written requests to the Town for the payment of Verified Eligible Costs from the Bond Proceeds Account based broadly and generally on the costs set out in the Budget attached hereto on Exhibits A-1 and A-2 (“**Disbursement Request**”). The Parties acknowledge the first Disbursement Request shall be for the First Disbursement and shall be directly deposited in the Developer Funds Account as the Developer Fund Deposit. No other Disbursement Request will be processed until the full amount of the First Disbursement constituting the Developer Fund Deposit has been made. The Parties acknowledge that the Budget contains preliminary estimates and shall not limit the specific amounts or timing of a requisition as long as the amount to be requisitioned reasonably reflects the work performed and is properly certified. The written request shall be in the form of a Requisition from Bond Proceeds Account as set forth on Exhibit B-1 attached hereto and incorporated herein by reference (a “**Bond Proceeds Requisition**”). Upon receipt of an executed Bond Proceeds Requisition from the District, the Town shall approve or object to all, or a portion of, the Disbursement Request. Each Bond Proceeds Requisition shall be provided by the twentieth (20th) day of each month, or on the first business day thereafter. Under an administrative approval process, the Town shall have seventeen (17) days, or on the first business day thereafter, to approve or object to all, or a portion of, the Disbursement Request, as more specifically set forth in this Agreement. Each Bond Proceeds Requisition shall contain the information set out in Exhibit C attached hereto, and incorporated herein by reference (alternatively, the information may be contained in the District’s Engineer’s Certification of Verified Eligible Costs), and, include, at a minimum, the following information:

(i) Reference to the underlying construction contract of the District or basis for payment and a description of the work performed for which payment is being requested;

(ii) The total amount of the requested funds;

(iii) Detail of the total amount of progress payments on the construction and other applicable contracts executed by District, all payments made toward the same prior to the date of the Disbursement Request, including copies of lien waivers and the amount that will be outstanding after payment of the requisition;

(iv) Certification by the Cost Certifier that all costs to be paid pursuant to the Disbursement Request constitute Verified Eligible Costs and estimates of the percentage of total completion of the Public Improvements, including the public site work, and the cost to complete the work that is the subject of the Disbursement Request. The Cost Certifier shall be an independent licensed engineer experienced in the design and construction of public improvements in the Johnstown or Denver metropolitan area. As of the date hereof, Ranger Engineering, LLC, a Colorado limited liability company, is the Cost Certifier. The District may select a different engineering firm meeting the requirements set forth herein and in the Development Agreement to serve as the Cost Certifier upon written notice to and approval of the Town, which approval may be provided by the Town Manager and shall not be unreasonably withheld, conditioned, or delayed. In lieu of certification by the Cost Certifier, certain costs contained within a Disbursement Request may be certified by the District’s independent accountant as Verified Eligible Costs, if so permitted by and in a manner consistent with the Development Agreement, which shall also contain an estimates of the percentage of completion of the work and the cost to complete the work;

(v) If the request is for expenses related to the District’s purchase of public land from the Developer, which shall not include interest paid by the Developer, the District shall provide an appraisal from an independent appraiser of its choosing evidencing the fair market value of the real property or any part thereof. The appraisal must be publicly available and kept by the District for as long as the 2022 Bonds are outstanding. The District shall provide written notice of the name and other professional information of the independent appraiser for review and approval by the Town, which approval may be provided by the Town Manager and shall not be unreasonably withheld, conditioned, or delayed. If the Town Manager takes no action within fifteen (15) business days, the appraiser shall be deemed approved by the Town;

(vi) The Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Accounts from which payment should be made, and how much from each account; and

(vii) Any other information reasonably requested by the Town.

For the avoidance of doubt, notwithstanding any provision to the contrary in this Agreement, ~~\$2527~~,600,000 of the 2022 Bond Proceeds are required to be deposited into the Developer Funds Account for disbursement pursuant to Section 3(b) below. The \$27,600,000 is exclusive of the Developer Shortfall Funding Advance.

(b) Disbursement Requests from the Developer Funds Account. The Developer shall be entitled to make a written request for payment from the Developer Funds Account (each, also a “**Disbursement Request**”) to the Town. At the sole discretion of the Town Manager, the Disbursement Request may be based on the Lease Verification methodology (defined below) or the Construction Progression methodology (defined below).

(i) Lease Verification. To use the Lease Verification methodology, when a lease with a tenant for Ledge Rock Center has been fully executed, the Developer shall provide the executed lease to the Town for review. Developer may redact certain confidential information from the lease, but must, at a minimum, provide the building for which the lease is executed, the name of the tenant, the square footage, the date by which the tenant is anticipated to occupy the premises, the obligations of the Developer to the tenant to be fulfilled with the amount to be released from the Developer Funds Account and any other information reasonably requested by the Town. The Town Manager, at the Town Manager’s sole discretion, shall determine whether to allow a Developer Funds Disbursement Request based on the Lease Verification methodology. If the Town Manager approves the methodology, the Developer may submit a Developer Funds Requisition (defined below) based upon:

- (1) An initial release of \$160.00 per square foot; and
- (2) Upon the earlier of the tenant opening for business or the issuance of a final Certificate of Occupancy, the release of \$40.00 per square foot.

(ii) Construction Progression. To use the Construction Progression methodology, Developer shall provide Disbursement Requests based on the following milestones:

(1) Private Site Work. When a building permit for a building shell has been issued by the Town to the Developer, the Developer may submit a Disbursement Request for reimbursement of the private site work associated with the private site work costs and private site improvements and related soft costs associated with such building (“**Private Site Work Costs**”) based upon \$40.00 per square foot. The Private Site Work Costs are to be paid solely from the Developer Funds Account.

(2) Private Building Shell. When a building shell has received a conditional certificate of occupancy for tenant improvements from the Town (a “**CCO**”), the Developer may submit a Disbursement Request for reimbursement of the building shell costs and the Private Building soft costs associated with that building (“**Private Building Shell Costs**”) based upon \$75.00 per square foot. The Private Building Shell Costs are to be paid solely from the Developer Funds Account. A CCO is issued when the building is fit for occupancy except for the completion of interior improvements, including tenant improvements, and the building permit is thus closed.

(3) Tenant Improvement Allowance. When a permit for tenant improvements has been issued by the Town, the Developer may submit a Disbursement Request for tenant improvements based upon \$65.00 per square foot to be used for the hard costs associated with the tenant improvements. Upon issuance of a final Certificate of Occupancy, Developer may submit a Disbursement Request for the payment of soft costs based upon \$20.00 per square foot. Tenant improvement costs are to be paid solely from the Developer Funds Account. A final Certificate of Occupancy is issued when the tenant improvements are complete and the tenant improvement permit is thus closed.

(iii) Requisition Forms for Developer Funds Account.

(1) Lease Verification Form. For the Lease Verification methodology, the written request shall be in the form of a Requisition from Developer Funds Account as set forth on **Exhibit B-2**, attached hereto and incorporated herein by reference (a “**Developer Funds Requisition**”), and shall be accompanied by the executed lease, with, at Developer’s discretion, confidential information redacted, but containing, at a minimum, the building for which the lease is executed, the name of the tenant, the square footage, the date by which the tenant is anticipated to occupy the premises, the obligations of the Developer to the tenant to be fulfilled with the amount to be released from the Developer Funds Account and any other information reasonably requested by the Town.

(2) Construction Progression Form. For the Construction Progression methodology, the written request shall also be in the form of a Requisition from Developer Funds Account as set forth on **Exhibit B-2** (also, a “**Developer Funds Requisition**”), and shall be accompanied by documentation containing, at a minimum, the following information:

- a) The category of cost set out in the Budget;
- b) The total amount of the requested funds and the calculation supporting the request;

c) If the request is for Private Site Work Costs, at a minimum, the building permit number, the building for which the permit is issues, and the square footage;

d) If the request is for Private Building Shell Costs, at a minimum, the building permit number, the building for which the permit is issues, the conditional certificate of occupancy number and the square footage;

e) If the request is for the hard costs associated with tenants improvements, at a minimum, the permit number(s) for the tenant improvements and the square footage;

f) If the request is for the soft costs associated with tenant improvements, at a minimum, the final certificate of occupancy number and the square footage;

g) Any additional relevant information; and

h) Any additional information required by the Town.

(iv) Timing of Town Review of Developer Funds Disbursement. After receipt of a Developer Funds Requisition from Developer to the Town, the Town shall have seventeen (17) days, or on the first business day thereafter, to approve or object to all, or a portion of, the Disbursement Request as set forth herein.

(c) Town Review of Disbursement Requests and Approval or Denial. Upon receipt, the Town shall review the Disbursement Request(s) and, if satisfied that the request appears to be consistent with the terms of this Agreement, shall approve and sign the Bond Proceeds Requisition or Developer Funds Requisition, as applicable. The Town’s review of the Disbursement Request and approval of the Bond Proceeds Requisition or Developer Funds Requisition shall not be unreasonably conditioned, delayed, or withheld.

The Town may object to all or any portion of a Disbursement Request by providing written notice to the District or the Developer (the “**Town Objection**”). A Town Objection shall specify all, or the specific portions of the Disbursement Request, to which there is an objection and the specific reasons for the objection. The Town and the District or the Developer, as appropriate, shall work together in good faith to resolve any Town Objection consistent with the intent of the Development Agreement and this Agreement. If the parties are not able to reach a resolution, the parties shall participate in mediation as set forth in Section 18. If the Town provides a Town Objection to a portion, but not all, of the Disbursement Request, the Town shall indicate on the Requisition the amount of Escrow Funds that are authorized to be released.

The Town Manager may approve and execute a Bond Proceeds Requisition or Developer Funds Requisition on behalf of the Town. The Town Manager, in the Town Manager’s sole discretion, in order to expedite construction and assist the Developer in expediting the completion of construction, may waive in writing any and all of the non-substantive requirements of this

Agreement as it relates to Town's approval of a Bond Proceeds Requisition or Developer Funds Requisition.

The Town's review of a Disbursement Request and approval of a Bond Proceeds Requisition or Developer Funds Requisition is solely administrative and shall not limit or waive any rights the Town may have nor shall it affect the District or the Developer's responsibility and liability for the design, construction and installation of, and payments for, the Public Improvements and Private Improvements. The Town shall be entitled to rely upon the contents of the Disbursement Request without a corresponding obligation to independently verify the same.

(d) Disbursement by the Escrow Agent. Upon receipt of a Bond Proceeds Requisition or Developer Funds Requisition signed by the Town, the Escrow Agent shall make disbursement of the authorized amount of Escrow Funds to the District or the Developer, as appropriate, within two (2) business days. Upon receipt of a Bond Proceeds Requisition or Developer Funds Requisition that is not signed by the Town and a certification by the District and the Developer attesting to the delivery of the Bond Proceeds Requisition or Developer Funds Requisition to the Town and the Town's failure to respond within thirty (30) days of delivery ("**Certification**"), which Certification shall also be provided to the Town, and the proof of such delivery provided to the Escrow Agent, the Escrow Agent shall make disbursement to District or the Developer, as appropriate, of the full amount of the Bond Proceeds Requisition or Developer Funds Requisition after two (2) business days but less than four (4) business days, to provide an adequate opportunity for the Town to comment and, if it so desires, object to the Disbursement Request. If there is a Town Objection, the Escrow Agent shall release funds for any undisputed portion of the Requisition to District or the Developer, as appropriate, within two (2) business days. The Escrow Agent may conclusively rely as to the completeness and accuracy of all statements in a Bond Proceeds Requisition or Developer Funds Requisition or Certification if executed by the proper parties and the Escrow Agent, in good faith, believes the Bond Proceeds Requisition or Developer Funds Requisition or Certification is genuine. The Escrow Agent shall not be required to make any independent investigation in connection therewith.

4. Duties of Escrow Agent. The duties of the Escrow Agent shall be as follows:

(a) During the term of this Agreement, the Escrow Agent shall hold and disburse the Escrow Funds in accordance with the terms and provisions of this Agreement.

(b) If a dispute shall develop concerning the release of Escrow Funds, then in any such event, the Escrow Agent shall deliver the Escrow Funds in accordance with joint written instructions of Parties hereto if received by the Escrow Agent within ten (10) days after the Escrow Agent has issued a written request for instructions. The Escrow Agent shall have the right to pay the Escrow Funds into a court of competent jurisdiction and interplead the Parties, after which the Escrow Agent shall be discharged from any obligation in connection with this Agreement.

(c) The Escrow Agent may act in reliance upon any written instrument or signature which it, in good faith, believes to be genuine, and may assume the validity and accuracy of any statement or assertion contained in such written instrument.

(d) The Escrow Agent shall execute and deliver all forms required by federal, state and other governmental agencies relative to the Escrow Funds.

(e) Notwithstanding the foregoing or any provisions to the contrary contained herein, the Escrow Agent shall not remit any moneys on deposit in the Bond Proceeds Accounts to the District except (1) to pay or reimburse Verified Eligible Costs and upon compliance with the requisition process set forth in this Agreement or (2) in any manner that the District reasonably deems necessary to maintain the tax-exempt status of interest on the 2022 Bonds referred to in the 2022 Bonds Indenture, as stated in a written opinion of Bond Counsel.

(f) Final Allocation of Proceeds. The Escrow Agent shall determine the actual amount of proceeds of the 2022 Bonds spent on Verified Eligible Costs, without including any investment earnings thereon or any of the costs identified in Section 1.1(r)(i-v) of the Development Agreement (the “**Final Allocation of Proceeds**”). Such determination of the Final Allocation of Proceeds shall be performed in accordance with the terms of the Development Agreement, which Final Allocation of Proceeds shall be used, in part, to confirm that the distribution of proceeds of the 2022 Bonds used for Verified Eligible Costs did not exceed the Cap Amount. Such determination shall be based solely on representations made to the Escrow Agent by the other Parties to this Agreement in Exhibits B-1, B-2 or C and approvals of such Exhibits. The Parties hereby confirm that the Escrow Agent is not a party to the Development Agreement and has no obligation or responsibility to determine whether a payment requested from any of the Accounts does or does not qualify as a Verified Eligible Cost.

5. Audit and Records. Any Party shall have the right, at its expense and at reasonable times, to conduct or to cause to be conducted an audit of the Accounts and all disbursements therefrom. Any Party may request a statement of the Accounts, to include, among other details, the balance of the Accounts and disbursements therefrom, from the Escrow Agent.

6. Expenses and Compensation Relating to Escrow. The Escrow Agent shall receive from District an annual fee of \$2,000 for its services in connection with this Agreement and shall invoice the District for the same on a quarterly basis in the amount of \$500.00 in arrears (the “**Compensation**”). The Escrow Agent shall also receive from the District a one-time acceptance fee at the time of closing of the issuance of the 2022 Bonds. The Escrow Agent expressly waives any lien upon or claim against any other moneys and investments in the Escrow Fund. The Escrow Agent shall further be entitled to reimbursement in full, for all costs, expenses, charges, fees, or other payments (“**Fees and Expenses**”) made or to be made by Escrow Agent in the performance of the Escrow Agent’s duties and obligations under this Agreement. Such Fees and Expenses shall be paid by the District and shall not be paid or reimbursed with moneys on deposit in the Accounts.

7. Non-liability of Escrow Agent. The Escrow Agent shall not be liable for any mistakes of fact, or errors of judgment, or for acts or omissions of any kind unless caused by the willful misconduct or gross negligence of the Escrow Agent. The District and the Developer shall, on a separate (and not joint and several basis) indemnify and hold harmless the Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorney's fees and disbursements, arising out of and in connection with this Agreement. The Escrow Agent may conclusively rely and act upon any instrument or other writing it, in good faith, believes to be genuine and to be signed and presented

by the proper person. The Escrow Agent may, at any time, ask for written confirmation from the Town and/or the District/Developer concerning the propriety of a proposed disbursement of the Escrow Funds or other action or refusal to act by the Escrow Agent. The Escrow Agent shall not be liable for any taxes, assessments or other governmental charges that may be levied or assessed upon the escrow or any part thereof, or upon the income therefrom. The Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its negligence or willful misconduct or breach of this Agreement) in the investment or reinvestment of the Escrow Funds, or any loss of interest incident to any such delays. Each of the District and Developer agree that it shall be responsible for all required tax reporting, if any, with respect to the Bond Proceeds Account and the Developer Funds Account.

8. Advice of Counsel. The Escrow Agent may act in good faith pursuant to the advice of counsel retained or consulted by the Escrow Agent with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted in accordance with such advice.

9. Patriot Act. The Escrow Agent is serving as escrow holder only and has no interest in the Escrow Funds deposited hereunder. Any payments of income from this Agreement shall be subject to withholding of any applicable taxes. The District and/or Developer will provide completed Forms W-9 (or Forms W-8, in the case of non-U.S. persons) and other forms and documents that the Escrow Agent may reasonably request (collectively, “**Tax Reporting Documentation**”) at the time of execution of this Agreement and any information reasonably requested by the Escrow Agent to comply with the USA Patriot Act of 2001, as amended from time to time. The Parties hereto understand that if such Tax Reporting Documentation is not so certified to the Escrow Agent, the Escrow Agent may be required by the Internal Revenue Code, as it may be amended from time to time, to withhold a portion of any interest or other income earned on the investment of monies or other property held by the Escrow Agent (the “**Escrow Income**”) pursuant to this Agreement.

10. Resignation or Termination of Escrow Agent. Upon a thirty (30) day written joint notice of the Town, the District and the Developer, the Escrow Agent may be terminated and a new escrow agent appointed under such notice. The Escrow Agent may resign under this Agreement by giving written notice to the Town, the District and the Developer, effective thirty (30) days after the date of said notice. The Escrow Agent may petition a court of competent jurisdiction to appoint a successor in the event no such successor shall have been appointed within the 30 days. In the event of termination or resignation of the Escrow Agent, and upon the appointment by the Town the District and the Developer of a new escrow agent or custodian, or upon their mutual written instructions to the Escrow Agent providing for other disposition of the escrow, the Escrow Agent must deliver the Escrow Funds within a reasonable period of time as so directed to the new escrow agent, and thereafter will be relieved of any and all liability under this Agreement.

11. Termination of Escrow.

(a) Termination Conditions. It is anticipated that approximately 785,000 square feet of retail development and 90 hotel rooms are forecasted to support the repayment of the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bonds. This

Agreement shall terminate when all of the 2022 Bond Proceeds have been released from the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Accounts and all Developer Funds have been released from the Developer Funds Account.

(b) Termination upon Satisfaction of Conditions. Upon receipt of a written notice signed by the Town, the District and the Developer stating that the termination conditions set forth above have been satisfied (the “**Termination Notice**”), the Escrow Agent shall, not later than two (2) business days after receipt of the Termination Notice, release the funds remaining in the Developer Funds Account to the Developer.

(c) Termination upon Failure to Satisfy Conditions.

(i) Bond Proceeds Account. If funds remain on deposit in the Ledge Rock Center Commercial Metropolitan District 2022 Tax Exempt Bond Proceeds Account five (5) years from the date of the execution of this Agreement, or at such earlier date that the Project is deemed by the Town to have been abandoned by the Developer, then the District and the Town shall agree on how the remaining 2022 Bond Proceeds shall be spent. If the District and the Town are not able to reach an agreement within sixty (60) days thereafter, the funds shall be returned to the 2022 Bond Trustee and used to repay the 2022 Bonds.

(ii) Developer Funds Account. The Developer Funds Account shall not terminate until the termination conditions are satisfied and all the Developer Funds have been released pursuant to this Agreement. Escrow funds deposited therein shall be used to pay for Private Improvements for the Project as set forth in this Agreement.

12. Notices.

(a) Simple Notice Procedure. Except for notices to the Escrow Agent, any notification or objection set forth in Section 3, shall be given by use of the procedure set forth in this Section 12(a) Notice shall be provided in writing and personally delivered or sent by an electronic mail (effective on acknowledgement of receipt by the intended recipient) as follows:

If to Town: Matt LeCerf, Town Manager
mlecerf@townofjohnstown.com

With a copy to: Avi Rocklin, Town Attorney
avi@rocklinlaw.com

and

MaryAnn McGeady
Erica Montague
legalnotices@specialdistrictlaw.com

If to the District: CliftonLarsonAllen LLP, District Manager
Lisa.Johnson@CLAconnect.com

With a copy to: David O’Leary
doleary@spencerfane.com

If to the Developer: Michael Schlup
mikeschlup@corbinparkop.com

With a copy to: Allen Schlup, Esq.
Allen.schlup@adschluplaw.com

(b) Complex Notice Procedure.

(i) Any Notice to the Escrow Agent, including the delivery of a Requisition as set forth in Section 3(d), must be given in accordance with this Section 12(b) hereof unless waived in writing by Escrow Agent.

(ii) Any notice or communication required under this Agreement not described in Section 12(a) must be in writing, and may be given personally, sent via nationally recognized overnight carrier service, or by registered or certified mail, return receipt requested. If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of: (i) actual receipt by any of the addressees designated below as the party to whom notices are to be sent; or (ii) three days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If personally delivered or sent via nationally recognized overnight carrier service, a notice will be deemed to have been given and received on the first to occur of: (i) one business day after being deposited with a nationally recognized overnight air courier service; or (ii) delivery to the party to whom it is addressed. Any party hereto may at any time, by giving written notice to the other party hereto as provided herein designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534

With a copy to:

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

and

McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
Phone: 303-592-4380
Email: legalnotices@specialdistrictlaw.com

If to the District:

With a copy to:

Ledge Rock Center Commercial
Metropolitan District
c/o CliftonLarsonAllen LLP
8390 East Crescent Pkwy., Suite 300
Greenwood Village, CO 80111

David O’Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203

If to the Developer:

With a copy to:

Ledge Rock Center, LLC
c/o Michael Schlup
13725 Metcalf Ave.
Overland Park, KS 66223

Allen D. Schlup, Esq.
A.D. Schlup Law, LLC
10950 W. 192nd PL.
Spring Hill, KS 66083

and

If to the Escrow Agent:

UMB Bank, n.a.
Corporate Trust & Escrow Services
1670 Broadway
Denver, CO 80210

13. Amendment. This Agreement may not be amended, supplemented or discharged, and no provision of this Agreement may be modified or waived, except by a written instrument signed by all of the Parties hereto. No waiver of any provision of this Agreement by any Party will be deemed a continuing waiver of any matter by such Party.

14. Third Party Beneficiaries. Notwithstanding anything contained herein to the contrary, including, without limitation the Recitals, the Parties to this Agreement shall be the District, the Developer, the Town and the Escrow Agent. This Agreement is not intended to give any benefits, rights, privileges, actions or remedies to any person, partnership, firm or corporation, as a third party beneficiary or otherwise under any theory of law.

15. Binding Agreement. This Agreement shall inure to and be binding on the heirs, executor, administrators, successors, and assigns of the Parties hereto.

16. Severability. Any provision of this Agreement which is declared by a court of competent jurisdiction to be illegal, invalid, prohibited or unenforceable will be ineffective to the extent of such illegality, invalidity, prohibition or unenforceability without invalidating the remaining provisions of this Agreement.

17. Attorneys’ Fees. In the event any litigation or legal proceeding arises between the Parties out of this Agreement and is prosecuted to final judgment, then if the Town or the District is a prevailing party against the Developer, the District and the Town will be entitled to recover from the Developer all of its costs and expenses incurred in connection with such litigation, including reasonable attorneys’ fees. If the Developer is the prevailing party, it shall bear its own

costs. If the Town is the prevailing party in a legal proceeding involving the District, to the extent permitted by law, the District shall pay the Town's costs and expenses incurred in connection with such litigation, including reasonable attorneys' fees.

18. Mediation. If a dispute arises under this Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the Parties shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in construction-related matters. If the Parties are unable to agree upon a mediator, any Party may apply to the Judicial Arbitrator Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties. Unless the dispute involves the Escrow Agent, the Escrow Agent shall not be obligated to comply with this Section 18.

19. Governing Law. This Agreement and all claims or controversies arising out of or relating to this Agreement shall be governed and construed in accordance with the law of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this Agreement shall be in the District Court in and for Weld County. To reduce the cost and to expedite the resolution of disputes under this Agreement, the Parties hereby waive any and all right either may have to request a jury trial in any civil action relating primarily to the enforcement of this Agreement.

20. Governmental Immunity. Nothing in this Agreement shall be construed to waive, limit, or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Town or to the District, their respective officials, employees, contractors, or agents, or any other person acting on behalf of the Town or the District and, in particular, governmental immunity afforded or available to the Town and the District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S.

21. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against another merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being acknowledged that each Party has contributed substantially and materially to the preparation of this Agreement.

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

23. Counterparts; Facsimile Signatures. This Agreement may be executed in several counterparts, each of which may be deemed an original, but all of which together shall constitute one and the same instrument. Executed copies hereof may be delivered by facsimile or email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the signatories hereto, and shall have the full force and effect of the original for all purposes, including the rules of evidence applicable to court proceedings.

24. Electronic Execution and Storage. The Parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means.

Copies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

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

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

LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

By: _____
Its: President
Date: _____

Attest:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, as President and Secretary of Ledge Rock Center Commercial Metropolitan District, a quasi-municipal corporation of the State of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

DEVELOPER:

LEDGE ROCK CENTER, LLC, a Kansas limited liability company

By: _____
Its: Member
Date: _____

STATE OF KANSAS)
) ss.
COUNTY OF JOHNSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, as Member of Ledge Rock Center, LLC, a Kansas limited liability company.

Witness my hand and official seal.

My commission expires: _____

Notary Public

TOWN:

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

By: _____
Gary Lebsack, Mayor

Date: _____

Attest:

Diana Seele, Town Clerk

ESCROW AGENT:

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

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022, by _____, as the _____ of UMB Bank, n.a., Escrow Agent.

Witness my hand and official seal.

My commission expires: _____

Notary Public

**EXHIBIT A-1
FIRST REQUISITION BUDGET**

- 1. Estimate of Soft Costs
Incurred Prior to 2022 Bond Issuance \$

- 2. Estimate of Land Acquisition Costs
To be paid from Bond Proceeds \$

TOTAL \$ _____

**EXHIBIT A-2
PUBLIC IMPROVEMENTS BUDGET**

(In Addition to First Requisition Budget)

Roads	\$__ 12,000,000_____
Water	\$__ 3,000,000_____
Sewer	\$__ 5,000,000_____
Storm Drainage	\$__ 4,000,000_____
Parking	\$__ 3,000,000_____
Landscaping	\$__ 3,000,000_____
Other	\$__ 5,000,000_____
	TOTAL \$_35,000,000_____

**EXHIBIT A-3
PRIVATE IMPROVEMENTS BUDGET**

Site Work Cost Estimate	\$_ 8,200,000_____
Building Shell Cost Estimate	\$_ 15,375,000_____
Tenant Improvement Allowance Cost Estimate	\$_ 13,325,000_____
Other Tenant Incentives Cost Estimate	\$_ 4,100,000_____
	TOTAL \$_ 41,000,000_____

**EXHIBIT B-1
FORM OF ESCROW ACCOUNT REQUISITION
LEDGE ROCK CENTER COMMERCIAL METROPOLITAN DISTRICT 2022 BOND
PROCEEDS ACCOUNT**

Requisition No. _____

Ledge Rock Center Commercial Metropolitan District
(in the Town of Johnstown, Colorado)

\$ _____
2022 Limited Tax General Obligation
Bonds

The undersigned certifies that s/he is a District Representative under that certain Amended and Restated Escrow Agreement dated as of _____, 2022 (the “**Escrow Agreement**”) among Ledge Rock Center Commercial Metropolitan District, Town of Johnstown, Colorado (the “**District**”), Town of Johnstown, Colorado (“**Town**”), Ledge Rock Center, LLC (“**Developer**”) and UMB Bank, n.a. (the “**Escrow Agent**”). All capitalized terms used in this certificate shall have the respective meanings assigned in the Escrow Agreement.

The Town hereby approves a Requisition in the amount of \$_____ from the Ledge Rock Center Commercial Metropolitan District 2022 Bond Proceeds Account.

[**Alternatively**] The Requisition shall be deposited into the Developer Funds Account OR The Requisition shall be made to the Ledge Rock Center Commercial Metropolitan District.:

The above payment obligations have been or will be properly incurred, is or will be a proper charge against the Ledge Rock Center Commercial Metropolitan District 2022 Bond Proceeds Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
20_____.

By: _____
District Representative

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the amount of \$_____ from the Ledge Rock Center Commercial Metropolitan District 2022 Bond Proceeds Account.

By: _____
Matt LeCerf, Town Manager

EXHIBIT B-2
FORM OF ESCROW ACCOUNT REQUISITION
DEVELOPER FUNDS ACCOUNT

Requisition No. _____

Ledge Rock Center, LLC
(in the Town of Johnstown, Colorado)

The undersigned certifies that s/he is a Developer Representative under that certain Amended and Restated Escrow Agreement dated as of _____, 2022 (the “**Escrow Agreement**”) among Ledge Rock Center Commercial Metropolitan District, Town of Johnstown, Colorado (the “**District**”), Town of Johnstown, Colorado (“**Town**”), Ledge Rock Center, LLC (“**Developer**”) and UMB Bank, n.a. (the “**Escrow Agent**”). All capitalized terms used in this certificate shall have the respective meanings assigned in the Escrow Agreement.

The Town hereby approves a Requisition in the amount of \$_____, and the Escrow Agent is authorized to make such Requisition from the Developer Funds Account.

The name and address of the person, firm, or corporation to whom payment is due or has been made is as follows:

The above payment obligations have been properly incurred, are a proper charge against the Developer Funds Account, and have not been the basis of any previous withdrawal. The disbursement requested herein will be used solely for the payment of Project Costs.

Disbursement instructions are attached hereto.

IN WITNESS WHEREOF, I have hereunto set my hand this ____ day of _____,
20____

By: _____
Developer Representative

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$_____ from the Developer Funds Account.

By: _____
Matt LeCerf, Town Manager

**EXHIBIT C
FORM OF DISBURSEMENT REQUEST
FOR PUBLIC IMPROVEMENTS**

Requisition No. ____

The _____ (District or Developer) hereby requests a Requisition from the Ledge Rock Center Commercial Metropolitan District 2022 Bonds Proceeds Account.

The request for funds is based on the following information required by Section 3 of the Escrow Agreement:

1. The amount sought to be requisitioned is \$_____, which amount is hereby allocated to the electoral authorization of the District as follows:

Infrastructure Category	Requested Disbursement Amount	Total Amount Previously Disbursed (not including this requisition)	Total Amount of Electoral Authorization Applied (including this requisition)	Total Amount of Electoral Authorization Remaining
Water				
Sanitation				
Streets				
Traffic and Safety				
Parks and Recreation				
Transportation				
TV Relay and Translation				
Mosquito Control				
Security				
Fire Protection and Emergency Medical				
Total				

2. The construction contract for which payment is sought and a description of the work performed:

3. The total amount of progress payments on the construction and other applicable contracts is as follows:

4. All payments made toward the construction and other applicable contracts to date is as follows:

5. An estimate of the percentage of total completion of the Public Improvements is as follows:

6. An estimate of cost to complete the work that is the subject of this Requisition is as follows:

7. If the Requisition is for the cost of the District's purchase of public land from the Developer, the fair market value of the public land is as follows:

8. Funds in the amount of \$_____ are requested to be paid from the Bond Proceeds Account and \$ _____ are requested to be paid from the Developer Funds Account.

9. Certification that any lien waivers required have been obtained and shall be certified by the District Engineer in accordance with the requirements of the Development Agreement and the Verified Eligible Cost requirements.

10. An independent appraisal of the fair market value of the public land is (circle one) attached/not attached. If an appraisal is not attached, the reason is as follows:

11. Payment shall be made to the _____ (District or Developer) as follows:

12. Any additional relevant information is as follows:

I have hereunto set my hand this ____ day of _____, 20____.

By: _____
District Representative

I, _____, with _____, the District Engineer hereby certify that that all costs to be paid for Requisition No. _____ constitute Verified Eligible Costs and that Requisition No. _____ contains an estimate of the percentage of total completion of the Public Improvements and the cost to complete the public work that is the subject of said Requisition.

By: _____
District Engineer

TOWN APPROVAL

I, Matt LeCerf, the Town Manager for the Town of Johnstown, have reviewed Requisition No. _____. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$_____ from the Bonds Proceeds Account. The Town hereby approves and authorize the Escrow Agent to release funds in the total amount of \$_____ from the Developer Funds Account.

By: _____