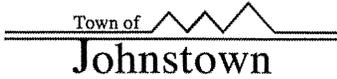


TOWN COUNCIL

MEETING

PACKET

June 4, 2018



Town Council

Agenda
Monday, June 4, 2018
Town Hall, Council Chambers
450 So. Parish Avenue
7:00 PM



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

Members of the audience are invited to speak at the Council meeting. Public Comment (item No. 5) is reserved for citizen comments on items not contained on the printed agenda. Citizen comments are limited to three (3) minutes per speaker. When several people wish to speak on the same position on a given item, they are requested to select a spokesperson to state that position. If you wish to speak at the Town Council meeting, please fill out a sign-up sheet and present it to the Town Clerk.

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

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

- 6) **CONSENT AGENDA**
 - A) Town Council Meeting –May 21, 2018
 - B) Resolution No. 2018-08, Approving the Final Plat for Thompson River Ranch Filing No. 9
 - C) Resolution No. 2018-07, Approving the Consolidated Service Plan for Johnstown Village Metropolitan District Nos. 1-5
 - D) Order Granting Retail Liquor Store License for Johnstown Plaza Liquors, LLC
- 7) **STAFF REPORTS**
- 8) **OLD BUSINESS**
- 9) **NEW BUSINESS**
 - A) Consider Public Improvements Development Agreement – Johnstown Heights, Amended Filing No. 3
 - B) Consider Resolution No. 2018-09, A Resolution Finding Substantial Compliance for Initiating Annexation Proceedings for the US Engineering Annexation
 - C) Consider Award of Contract for Greeley Avenue Resurfacing Project – Coulson Excavating Co., Inc.
- 10) **COUNCIL REPORTS AND COMMENTS**
- 11) **MAYOR'S COMMENTS**
- 12) **ADJOURN**

WORK SESSION

- 1) Johnstown Community Recreation Center Update – Perkins & Will Architects



NOTICE OF ACCOMODATION

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

AGENDA ITEMS 6A-D

CONSENT

AGENDA

- **Council Minutes – May 21, 2018**
 - **Resolution No. 2018-08**
(Approving Final Plat)
(Thompson River Ranch Filing No. 9)
 - **Resolution No. 2018-07**
(Approving Consolidated Service Plan)
(Johnstown Village Metropolitan District
Nos. 1-5)
- **Granting Retail Liquor Store License**
(Johnstown Plaza Liquors, LLC)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 4, 2018

ITEM NUMBER: 6A-C

SUBJECT: Consent Agenda

ACTION PROPOSED: Approve Consent Agenda

PRESENTED BY: Town Clerk

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

- A) Council Meeting Minutes – May 21, 2018
- B) *Resolution No. 2018-08, Approving the Final Plat for Thompson River Ranch Filing No. 9
- C) ** Resolution No. 2018-07, Approving the Consolidated Service Plan for Johnstown Village Metropolitan District Nos. 1-5
- D) ***Order Granting Retail Liquor Store License for Johnstown Plaza Liquors, LLC

*The attached resolution memorializes the decision of the Town Council that was approved on May 7, 2018.

** The attached revised resolution memorializes the decision of the Town Council that was approved on May 21, 2018.

*** The Local Licensing Authority conducted a public hearing on a retail liquor store license for Johnstown Liquors, LLC on May 21, 2018. Following the public hearing the Authority found the Applicant is entitled to hold a retail liquor license. The attached Order grants a retail liquor store license for Johnstown Plaza Liquors, LLC.

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

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: Approve Consent Agenda

SUGGESTED MOTION:

For Approval: I move to approve the Consent Agenda.

For Denial:

Reviewed:


Town Manager

**COUNCIL
MINUTES**

The Town Council of the Town of Johnstown met on Monday, May 21, 2018 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor James led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Lebsack, Lemasters, Mellon, Tallent and Young

Those absent were: Councilmember Molinar Jr.

Also present: Avi Rocklin, Town Attorney, Roy Lauricello, Town Manager, John Franklin, Town Planner, Brian Phillips, Police Chief and Diana Seele, Town Clerk/Treasurer

Agenda Approval

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

Consent Agenda

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

- May 7, 2018 Council Meeting Minutes
- Payment of Bills
- April Financial Statements

Motion carried with a unanimous vote.

New Business

A. Public Hearing – Johnstown Village (Massey) Preliminary Plat – The applicant Johnstown Village, LLC submitted a request for approval of Johnstown Village (Massey) Preliminary Plat for a 120 acre parcel of land. The zoning for the property is Planned Unit Development-Mixed Use. There are 263 single family lots, in addition 13.82 acres single family attached and 12.97 acres multi-family residential being proposed on the property.

Mayor James opened the public hearing at 7:04 p.m. The applicant, Mr. Bob Quinette, and his representatives spoke to the council and provided additional information and answered council's questions. The following individuals were in favor of the preliminary plat, Mr. David Moore of Alliance Consulting and Mr. Eric Keto, neighboring property owner. After receiving no further comments Mayor James closed the Public Hearing at 7:36 p.m.

Councilmember Lebsack made a motion seconded by Councilmember Lemasters to approve the Johnstown Village Preliminary Plat subject to the Planning and Zoning conditions being met. Motion carried with a unanimous vote.

B. Public Hearing - Johnstown Village (Massey) Preliminary Development Plan – The Preliminary Development Plan identifies development issues, and to determine means to resolve these issues, ahead of the major effort and expense of final platting and engineering.

Mayor James opened the Public Hearing at 7:37 p.m. and having no public comment closed the hearing at 7:39 p.m.

Councilmember Mellon made a motion seconded by Councilmember Tallent to approve the Johnstown Preliminary Plan. Motion carried with a unanimous vote.

C. Public Hearing – Resolution No. 2018-07, Approving the Consolidated Service Plan for Johnstown Village Metropolitan District Nos. 1-5 – This is an application for approval of a Consolidated Service Plan and according to state law, the Town Council must approve the Service Plan before the Districts are formed and entitled to operate. The Service Plan for Johnstown Village Metropolitan Districts Nos. 1-5, is mostly consistent with the Model Service Plan adopted by Town Council, with the exception that, if the Districts undertake construction of the offsite improvements – the “Regional Improvements” the maximum debt mill levy is increased from 40 mills to 50 mills. Also, the Developer is requesting the Town Council approve a revision to the Model Service Plan to permit the Districts to exercise their statutory power of eminent domain to condemn the property associated with the offsite public improvements if the property owners do not agree to provide easements.

Mayor James opened the Public Hearing at 7:40 p.m. The Developer’s representatives, presented the information for Council’s consideration. The neighboring property owners Eric Keto and Scott Lewis expressed concerns in reference to the eminent domain and requested council remove this portion from the Service Plan. After having no further public comments the public hearing closed at 8:39 p.m. Councilmember Lebsack made a motion seconded by Councilmember Lemasters to reopen the Public Hearing to hear additional information from the applicant’s attorney. The hearing closed at 8:48 p.m.

Councilmember Mellon made a motion seconded by Councilmember Tallent to approve Resolution No. 2018-07, a Resolution Approving the Consolidated Service Plan for Johnstown Metropolitan Districts Nos. 1-5, on the condition that the Resolution be modified to contain a new Section 4(f) providing as follows:

(f) Section V.A.21 of the Service Plan, entitled Eminent Domain Limitation, shall be revised to read as follows: “Absent the prior written approval of the Town, the Districts shall not exercise their statutory power of eminent domain or dominant eminent domain for the purpose of condemning property outside of the Service Area. Additional approval from the Town shall not be required prior to the Districts’ exercise of their statutory power of eminent domain or dominant eminent domain with respect to property within the Service Area. In no event shall the Districts exercise their statutory power of eminent domain to condemn property owned by the Town, whether within or outside of the Service Area.” The same change shall be made to

Section 21 of the form IGA in Exhibit D to the Service Plan, and the easement maps shall be removed from Exhibit E-1 to the Service Plan. Such changes shall be made prior to the Town Clerk's provision of a certified copy of this resolution to the proponents." and direct the Town Attorney to revise the Service Plan accordingly. Motion carried with a unanimous vote.

D. Public Hearing – Johnstown Plaza Liquors, LLC – New Liquor Store License – This is a public hearing to receive comments regarding the proposed new Liquor Store License for Johnstown Plaza Liquors, LLC located at 4915 and 4919 Thompson Parkway #A-6 and A-7.

Mayor James opened the Public Hearing at 9:03 p.m. The applicant Mr. Sharel Sawaqed and Mr. Mallory Smith along with their attorney, Ms. Hoeltgen presented their information. After hearing input from "parties in interest" Mayor James closed the public hearing at 10:51 p.m.

Councilmember Mellon made a motion seconded by Councilmember Lebsack to approve the Retail Liquor Store License Application for Johnstown Plaza Liquors, LLC. The motion passed with 5 votes in favor, Councilmember Lemasters voted no.

There being no further business to come before the Council the meeting adjourned at 11:04 p.m.

Mayor

Town Clerk/Treasurer

RESOLUTION

No. 2018-08

TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2018-08

APPROVING THE FINAL PLAT FOR THOMPSON RIVER RANCH FILING NO. 9, A SUBDIVISION LOCATED IN LOT 1, BLOCK 1, LOT 1 AND 2, BLOCK 8, LOT 4, BLOCK 8 AND LOT 2, BLOCK 14 IN FIRST AMENDMENT TO THOMPSON RIVER RANCH FILING NO. 1 BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF LARIMER, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 21.21 ACRES.

WHEREAS, Clayton Properties Group II, a Colorado corporation, submitted an application to the Town of Johnstown for approval of a Final Plat for Thompson River Ranch Filing No. 9, a subdivision of certain lands located in in Lot 1, Block 1, Lot 1 and 2, Block 8, Lot 4, Block 8 and Lot 2, Block 14 in First Amendment to Thompson River Ranch Filing No. 1 being located in the Northeast Quarter of Section 22, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, consisting of approximately 21.21 acres; and

WHEREAS, on November 8, 2017, the Planning and Zoning Commission held a hearing and reviewed the request and recommended that the Town Council approve the Final Plat for Thompson River Ranch Filing No. 9 with certain conditions, which conditions have been satisfied; and

WHEREAS, on May 7, 2018, the Town Council held a hearing concerning approval of the Final Plat and, after considering the Planning Commission recommendations, reviewing the file, and conducting such hearing, finds as follows with regard to the Final Plat:

1. The data requirements, design standards and required improvements meet the requirements of the Johnstown Municipal Code Subdivision Regulations.
2. The Final Plat, as submitted, conforms substantially with the Preliminary Plat as approved.

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

Section 1. Final Plat Approval: The Final Plat for Thompson River Ranch Filing No. 9, a subdivision of certain lands located in in Lot 1, Block 1, Lot 1 and 2, Block 8, Lot 4, Block 8 and Lot 2, Block 14 in First Amendment to Thompson River Ranch Filing No. 1 being located in the Northeast Quarter of Section 22, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, consisting of approximately 21.21 acres, is hereby approved.

Section 2. Recording: The Town Clerk is hereby directed to obtain the appropriate signatures for the Final Plat and to have it properly recorded at the Office of the Larimer County Clerk and Recorder.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS ___ day of _____, 2018.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

RESOLUTION

No. 2018-07

TOWN OF JOHNSTOWN, COLORADO

RESOLUTION NO. 2018-07

**A RESOLUTION
APPROVING THE CONSOLIDATED SERVICE PLAN FOR
JOHNSTOWN VILLAGE METROPOLITAN DISTRICT NOS. 1-5**

WHEREAS, pursuant to Section 32-1-204.5, C.R.S., Johnstown Village, LLC, a Colorado limited liability company, submitted a Consolidated Service Plan (the “Service Plan”) for Johnstown Village Metropolitan Districts Nos. 1-5 (collectively, the “Districts”), a copy of which is attached hereto and incorporated herein by reference as Exhibit A, to the Town Council of the Town of Johnstown for approval; and

WHEREAS, Johnstown Village, LLC is under contract to purchase the property within the proposed boundaries of the Districts from Massey Farms, LLLP, a Colorado limited liability limited partnership; and

WHEREAS, pursuant to the provisions of Title 32, Article 1, Part 2, C.R.S. as amended, the Town Council, following due notice, held a public hearing on the proposed Service Plan on May 21, 2018; and

WHEREAS, the Town Council considered the Service Plan and all other testimony and evidence presented at the hearing; and

WHEREAS, based upon the testimony and evidence presented at the hearing, Town Council finds that the Service Plan for Johnstown Village Metropolitan Districts Nos. 1-5 should be approved, subject to certain conditions set forth below, in accordance with Section 32-1-204.5(1)(c), C.R.S.

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

1. **Satisfaction of Statutory Requirements as to Filing and Notice.** The Town Council, as the governing body of the Town of Johnstown, Colorado, does hereby determine, based on representations by and on behalf of the proponent of the Districts and other evidence presented at the public hearing, that all of the requirements of Title 32, Article 1, Part 2, C.R.S., as amended, relating to the filing of the proposed Consolidated Service Plan for Johnstown Village Metropolitan Districts Nos. 1-5 have been fulfilled and that notice of the hearing was given.

2. **Jurisdiction.** Based on representations by and on behalf of the proponent of the Districts, the Town Council of the Town of Johnstown, Colorado, has jurisdiction over the subject matter of the proposed Service Plan pursuant to Title 32, Article 1, Part 2, C.R.S., as amended.

3. **Findings.** Pursuant to Section 32-1-204.5, C.R.S., Section 32-1-202(2), C.R.S., and Section 32-1-203(2), C.R.S., the Town Council of the Town of Johnstown, Colorado, does hereby find and determine, based on the Service Plan, the representations by and on behalf of the proponent of the Districts and other evidence presented at the public hearing, that:

- (a) There is sufficient existing and projected need for organized service in the area to be serviced by the Districts;
- (b) The existing service in the area to be served by the Districts is inadequate for present and projected needs;
- (c) The Districts are capable of providing economical and sufficient service to the area within their proposed boundaries;
- (d) The area to be included in the Districts has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis;
- (e) Adequate service is not, and will not be, available to the area through the Town or County or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;
- (f) The facility and service standards of the Districts are compatible with the facility and service standards of the Town;
- (g) The proposal is in substantial compliance the Johnstown Area Comprehensive Plan;
- (h) The proposal is in compliance with any duly adopted Town, regional or state long-range water quality management plan for the area;
- (i) The creation of the Districts is in the best interests of the area proposed to be served;
- (j) The creation of the Districts is in the best interests of the residents and future residents of the area proposed to be served; and
- (k) The proposal will not foster urban development that is remote or incapable of being integrated with existing urban areas, and will not place a burden on the Town or adjacent jurisdictions to provide urban services to residents of the Districts.

4. **Service Plan Approved; Conditions and Limitations.** The Town Council hereby approves the Consolidated Service Plan for the Johnstown Village Metropolitan Districts Nos. 1-5, attached as Exhibit A, as may be amended, if at all, as set forth below. This approval is given specifically subject to the following conditions and limitations pursuant to Section 32-1-204.5(1)(c), C.R.S.:

- (a) The Town's approval of the Service Plan shall not relieve Johnstown Village, LLC, the developer of the property within the boundaries of the Districts or any other owner of property in the Districts of any requirement, under the annexation agreement pertaining to the property within the Districts' boundaries or otherwise, to provide financial guarantees for construction of, and dedicate to the Town, all required public improvements.
- (b) Once the Districts have been duly organized, any material modification of the Service Plan shall require an amendment to the Service Plan, which must be approved by the Town.
- (c) At its first meeting after the effective date of this Resolution and in no event later than sixty days after the formation election of the Districts, the Board of Directors of each of the Districts shall execute the Intergovernmental Agreement with the Town ("IGA") and the Districts' Indemnity Letter in the forms set forth as Exhibits to the Service Plan presented to the Town Council at its May 21, 2018 hearing, or in forms otherwise acceptable to the Town Attorney, and shall deliver the fully executed originals of the IGA and Indemnity Letter to the Town.
- (d) The conditions set forth in this Resolution are not intended and shall not be construed to enlarge, diminish or otherwise affect any of the requirements, limitations or other provisions of the Service Plan or IGA.
- (e) The Service Plan, attached as Exhibit A, shall be amended, if at all, pursuant to direction of Town Council at the May 21, 2018 hearing. If so directed, the Town Attorney shall modify the Service Plan and provide the finalized version of the Service Plan to the Town Clerk for filing with the records of the Town and to the owners of the property within the proposed boundaries of the Districts for, among other purposes, filing with the Weld County District Court.
- (f) Section V.A.21 of the Service Plan, entitled Eminent Domain Limitation, shall be revised to read as follows: "Absent the prior written approval of the Town, the Districts shall not exercise their statutory power of eminent domain or dominant eminent domain for the purpose of condemning property outside of the Service Area. Additional approval from the Town shall not be required prior to the Districts' exercise of their statutory power of eminent domain or dominant eminent domain with respect to property within the Service Area. In no event shall the Districts exercise their statutory power of eminent domain to condemn property owned by the Town, whether within or outside of the Service Area." The same change shall be made to Section 21 of the form IGA in Exhibit D to the Service Plan, and the easement maps shall be removed from Exhibit E-1 to the Service Plan. Such changes shall be made prior to the Town Clerk's provision of a certified copy of this resolution to the proponents.

5. **Execution of Town IGA.** The IGA referred to in Section 4(c), above, is hereby approved in essentially the same form as the copy of such IGA set forth as Exhibit D to the Service Plan presented to the Town Council at its May 21, 2018 hearing. The Mayor and Town

Clerk are hereby authorized to execute the IGA on behalf of the Town provided the same has first been executed by the Districts.

6. ***Filing of Resolution.*** A certified copy of this Resolution, with the attached Service Plan, as may be amended, shall be filed in the records of the Town and submitted to the owners of the property within the proposed boundaries of the Johnstown Village Metropolitan Districts Nos. 1-5 for the purpose of filing in the Weld County District Court.

PASSED, SIGNED, APPROVED, AND ADOPTED this ___ day of _____, 2018.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

ORDER

TOWN OF JOHNSTOWN LIQUOR LICENSING AUTHORITY 450 S. Parish Avenue Johnstown, CO 80534 Phone No. (970) 587-4664	<hr/> Δ AUTHORITY USE ONLY Δ <hr/>
IN THE MATTER OF: JOHNSTOWN PLAZA LIQUORS, LLC 4915 and 4919 Thompson Parkway Nos. A6 & A7 Johnstown, CO 80534	
ORDER GRANTING RETAIL LIQUOR STORE LICENSE FOR JOHNSTOWN PLAZA LIQUORS, LLC	

THIS MATTER came before the Town of Johnstown Liquor Licensing Authority (“Authority”) on Johnstown Plaza Liquors, LLC’s (“Applicant”) Application for a Retail Liquor Store License dated February 2, 2018, for a premises located at 4915 and 4919 Thompson Parkway Nos. A6 and A7, Town of Johnstown, State of Colorado (“Application”).

The Authority conducted a Public Hearing on May 21, 2018, reviewed the Application and considered the evidence adduced by its investigation and the evidence presented by the Applicant and the parties in interest, as the term is defined in C.R.S. §12-47-311(5)(b), including, but not limited to, the following:

1. Notice of the hearing was posted at 4915 and 4919 Thompson Parkway Nos. A6 and A7, Town of Johnstown, State of Colorado on May 10, 2018 and published in the *Johnstown Breeze* on May 10, 2018;
2. The appropriate fees were paid;
3. The report prepared by the Johnstown Police Department found no concerns with the moral character of the Applicant based on a background check conducted through the Colorado Bureau of Investigation and recommended approval of the retail liquor store license;
4. The Applicant’s testimony that he intends to train his employees to follow the liquor laws of the State of Colorado;
5. The Applicant’s survey of the designated neighborhood conducted by Oedipus, Inc., containing, of the total 168 signatures, 157 signatures (93.45%) in favor of the issuance of the liquor license, 5 signatures (2.98%) opposing the issuance based on the needs and desires of the neighborhood, 4 signatures (2.38%) opposing the

issuance based on an abhorrence of alcohol and 2 signatures (1.19%) opposing the issuance based on usage objections; and

6. Testimony by parties in interest opposing the issuance of the license based primarily on the lack of a need due to the existence of a second retail liquor store located approximately 1900 feet from the Applicant's premises.

Based on the foregoing, the Authority hereby:

FINDS that, pursuant to the Colorado Liquor Code, C.R.S. § 12-47-101 *et seq.*, the Applicant is entitled to hold a liquor license, the reasonable requirements of the designated neighborhood, the desires of the adult inhabitants and the number, type and availability of alcoholic beverage outlets support the issuance of the license and the statutory requirements are satisfied with respect to the Application; and

ORDERS that the Application is GRANTED.

Done and dated this ___ day of June, 2018.

BY THE AUTHORITY:

Scott James
Mayor, Town of Johnstown
Chairperson, Liquor Licensing Authority

AGENDA ITEM 9A

**PUBLIC
IMPROVEMENTS
DEVELOPMENT
AGREEMENT
(Johnstown Heights)
(Amended Filing No. 3)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 4, 2018

ITEM NUMBER: 9A

SUBJECT: Consider Public Improvements Development Agreement – Johnstown Heights, Amended Filing No. 3

ACTION PROPOSED: Consider Approval of Public Improvements Development Agreement for Johnstown Heights, Amended Filing No. 3

PRESENTED BY: Avi Rocklin, Town Attorney and John Franklin, Town Planner

AGENDA ITEM DESCRIPTION: The Final Plat for Johnstown Heights, Amended was approved on January 17, 2018. The Agreement requires the Developer to develop the property in accordance with the amended subdivision plat that was approved previously by the Council. The Agreement requires the Developer to install public and private improvements at the Developer's cost in accordance with the Town's specifications. The provision for the emergency access from N. 2nd St. to West Park Ave. is included.

LEGAL ADVICE: The Town Attorney drafted the attached public improvements development agreement.

FINANCIAL ADVICE: N/A

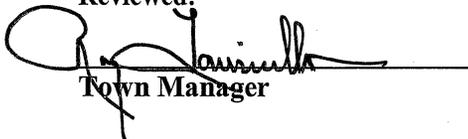
RECOMMENDED ACTION: Consider approval of the public improvements development agreement.

SUGGESTED MOTIONS:

For Approval: I move to approve the public improvements development agreement for Johnstown Heights, Amended Filing No. 3 (with conditions...).

For Denial: I move to deny approval of the public improvements development agreement for Johnstown Heights, Amended Filing No. 3

Reviewed:


Town Manager

AGREEMENT

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(Johnstown Heights, Amended Filing No. 3)**

This Subdivision Development and Improvement Agreement (“Agreement”), made and entered into by and between the **Town of Johnstown, Colorado**, a municipal corporation (the “Town”) and Jan Telep Rogers (the “Developer”).

WITNESSETH:

WHEREAS, Developer is the owner of a parcel of land situated in the Town of Johnstown, County of Weld, State of Colorado, the description of which is set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, the Property is located in an existing subdivision known as Johnstown Heights; and

WHEREAS, Developer seeks to develop the Property and to designate such development as Johnstown Heights, Amended Filing No. 3 (“Development”); and

WHEREAS, Developer has submitted an amended final plat of Lot 1 Block 4; Lots 1 & 2 Block 5; Lots 1 & 2 Block 6; Lot 1 thru Lot 4; and Outlot “A” Block 7 of Johnstown Heights Third Filing depicting the Development, which final plat is attached hereto as **Exhibit B-1** and incorporated herein by this reference (“Final Plat”); and

WHEREAS, the Town Council approved, or will approve, the Final Plat by passage of Resolution _____, containing terms and conditions of approval of the Final Plat, which Resolution is, or will be, attached hereto as **Exhibit B-2** and incorporated herein by this reference (“Resolution”); and

WHEREAS, Developer understands and agrees that, as a further condition of approval of the Final Plat, Developer is required to construct certain subdivision improvements to the Property, that Developer is responsible for the costs and expenses of those subdivision improvements unless otherwise provided herein, and that the subdivision improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

WHEREAS, Developer agrees to undertake and complete the Development in accordance with this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations.

NOW, THEREFORE, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

DEFINITIONS

For the purposes of this Agreement, the following words and terms shall be defined as follows:

1.1 **"Approved Plans"** shall mean: (1) with respect to the Public Improvements, the approved "Civil Engineering Construction Plans" related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved "the Site Development Plan" related to the Development and on file with Town.

1.2 **"Developer"** shall mean the owner(s) of the Property described in **Exhibit A** and any heirs, successors, assigns or transferees of any of the Property described in **Exhibit A**.

1.3 **"Civil Engineering Construction Plans"** shall mean the approved engineering plans for construction, installation and improvement of the Public Improvements.

1.4 **"Development"** shall mean all the Property, property rights and subdivision improvements within the legal description in **Exhibit A**.

1.5 **"Dry Utilities"** shall mean electricity, natural gas, cable and telephone.

1.6 **"Maintenance Guarantee"** shall mean a guarantee that the Subdivision Improvements constructed shall be free from defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

1.7 **"Private Improvements"** shall mean, without limitation, the construction, installation and improvement of privately owned and maintained common improvements including, but not limited to, stormwater improvements, landscaping, irrigation, fencing, entry signs, street signs and posts, street lighting, parks and open space, trails, postal service boxes and school bus stop shelters.

1.8 **"Public Improvements"** shall mean, without limitation, the construction, installation, improvement and dedication of public improvements, including, but not limited to public

thoroughfares and streets, sanitary sewer facilities, water line facilities, drainage facilities, irrigation structures and other public facilities and improvements to serve the Development.

1.9 “**Site Development Plan**” shall mean the approved plans for the construction, installation and improvement of the Private Improvements.

1.10 “**Subdivision Improvements**” shall mean the Public Improvements, Private Improvements and Dry-Utilities.

1.11 “**Town**” shall mean the Town of Johnstown, Colorado.

1.12 “**Town Engineer**” shall mean the professional engineer designated by the Town Manager to perform the obligations set forth in this Agreement.

1.13 “**Town Manager**” shall include the Town Manager and his authorized designees.

1.14 “**Town Official**” shall include the Town Manager, Town Attorney, Town Treasurer, Town Engineer, Town Planner and their authorized designees.

SUBDIVISION IMPROVEMENTS

2. Public Improvements

2.1 Pre- Construction

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements, Developer shall submit the Civil Engineering Construction Plans to the Town Engineer for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any

claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer's written objection.

c. **Rights-of-Way, Easements, Permits and Use Tax:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances, on all lands and facilities, if any, traversed by the proposed Public Improvements. All such rights-of-way and easements shall be conveyed to the Town and the documents of conveyance shall be furnished to the Town Manager for recording. At the Town's request, Developer shall provide at its sole expense a policy of title insurance insuring title in the Town, free and clear of all liens and encumbrances, for all land, property and easements dedicated or conveyed to the Town or for public use. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

2.2 ***Construction of Public Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 2.1, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the Final Plat, the Resolution, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be new and both workmanship and materials shall be of good quality.

2.3 ***Construction Schedule:*** Developer shall construct the Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference ("Schedule of Public Improvements"). Once construction begins, Developer shall keep the Town Manager informed by weekly status reports of the progress of the work and a projection of when the Public Improvements will be completed as well as the cost of such Public Improvements.

2.4 ***Testing and Inspection:*** Developer shall employ, at its own expense, a qualified independent testing company, approved by the Town Engineer, to perform all testing of materials or construction that may be reasonably required by the Town. Developer shall furnish certified copies of test results to the Town Engineer. At all times during construction of the Public Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Civil Engineering Construction Plans. Any material or work not conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town Engineer.

2.5 ***Completion of Construction:*** Developer shall complete construction of the Public Improvements no later than eighteen (18) months from the commencement of the construction, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town Manager's written consent to the extension.

2.6 ***Performance Guarantee:*** If Developer seeks, and the Town authorizes the issuance of, building permits prior to the completion of certain of the Public Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary (“Performance Guarantee”) in an amount equal to 110% of the cost of such uncompleted improvements, which cost shall be certified by Developer’s professional engineer, licensed in the State of Colorado and approved by the Town Engineer, to secure the installation, improvement and completion of the improvements. The Performance Guarantee shall be released after Initial Acceptance of such improvements.

3. **Private Improvements**

3.1 ***Pre- Construction:*** Prior to commencing construction of the Private Improvements, Developer shall submit a Site Development Plan to the Town. The Site Development Plan shall contain the proposed Private Improvements for the Development, including, if required by the Town, a plan for stormwater improvements, an irrigation system, landscaping, fencing, entry-way signage, street signs and posts, street lighting, postal service boxes and school bus stop shelters. Landscaping and fencing shall be designed in accordance with the Town’s landscape guidelines. Construction of the Private Improvements shall not commence until the Town provides written notice of approval of the Site Development Plan, with the exception of approval of the school bus shelters, which must be approved by the school district. Developer shall not thereafter modify the approved Site Development Plan without the written approval of the Town. The Town’s review and approval of the Site Development Plan shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Private Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer’s written objection. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Private Improvements. Developer shall also pay all applicable use tax due and owing to the Town.

3.2 ***Construction of Private Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 3.1, Developer shall construct the Private Improvements at its own expense in accordance with the terms of this Agreement, the Final Plat, the Resolution, the Site Development Plan, the Town’s ordinances, resolutions and regulations and all other applicable laws and regulations. All landscaping services shall be performed by a professional landscape architect or engineer. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

3.3 ***Inspection:*** At all times during construction and installation of the Private Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer’s cost. All materials and work must conform to the Site Development Plan. Any

material or work not conforming to the Site Development Plan shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town.

3.4 ***Completion of Private Improvements:*** Unless otherwise agreed in writing by the Town Manager, the Private Improvements shall be completed no later than the date that the Public Improvements are completed, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town Manager's written consent to the extension. The Town may, in its discretion, allow Developer to defer completion of the landscaping services between December 1 and March 1 of any given year provided that sufficient surety in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary is provided to the Town.

3.5 ***Replacement of Private Improvements:*** As replacement of the improvements is necessary and warranted over time, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

4. **Dry-Utilities**

4.1 ***Utilities:*** Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of contracts for such services, no later than the date that the Public Improvements are completed.

4.2 ***Easements:*** All easements approved by the utility companies shall be submitted to the Town.

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.1 ***Initial Acceptance:*** Developer shall make written application to the Town Manager for initial acceptance of the Public Improvements ("Initial Acceptance"), and for final review of the Private Improvements, within thirty (30) days of the completion date of the Subdivision Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete. With respect to the Public Improvements, the written application shall include one set of reproducible "as built" drawings and an affidavit executed by Developer affirming that the Public Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town Manager requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements. If the Subdivision Improvements are not satisfactory, the Town shall prepare a detailed written description of all Subdivision Improvements which are not in compliance with the Approved Plans, subject to any changes that have been approved by the Town and any changes that have been required by the Town as a result of any unforeseen engineering design issues. Such report shall be delivered to Developer. After curing the defects, Developer shall make a renewed written application to the Town for re-inspection of the Subdivision Improvements, which written application shall contain the items set forth above. The Town shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to Initial Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

5.2 ***Maintenance Guarantee.*** Prior to Initial Acceptance of the Public Improvements, Developer shall provide the Town with a maintenance guarantee in the form of a cash escrow deposited with the Town or an irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary ("Maintenance Guarantee"). The Maintenance Guarantee shall equal fifteen percent (15%) of the total cost of the Public Improvements. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs and replacements of the Public Improvements until Final Acceptance. The Maintenance Guarantee shall be released after Final Acceptance of all of the Public Improvements.

5.3 ***Delivery of Initial Acceptance.*** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. The Town may issue written notice of Initial Acceptance of the Public Improvements and written approval of the Private Improvements prior to completion of certain of the less critical improvements, as determined and agreed-upon by the Town in its sole discretion. In which case, the Developer may be entitled to obtain building permits prior to completion of all the Subdivision Improvements, assuming satisfaction of the remaining terms of this Agreement and based on conditions otherwise set forth herein.

5.4 ***Maintenance, Repair and Replacement:*** Until Final Acceptance of the Public Improvements, Developer shall promptly perform all maintenance and make all repairs and replacements of all defects or failures of the Public Improvements at Developer's expense. If, within ten (10) days after Developer's receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have undertaken with due diligence to make the same, the Town may make such maintenance, repairs or replacements at Developer's expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter or the Town may charge Developer for the costs thereof. In case of emergency,

as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee. Notwithstanding the foregoing, upon Initial Acceptance, the Town shall be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.) and the Developer shall be responsible for all maintenance, repairs and replacement of the Private Improvements.

5.5 ***Final Acceptance:*** Two (2) years after the Town's Initial Acceptance of the Public Improvements, which time period may be extended in the Town's discretion due to remedial or repair work that may be necessary in the first two (2) years by providing written notice to Developer, Developer shall make a written request to the Town Manager for a final inspection of the Public Improvements ("Final Acceptance"). If the Town Engineer determines that the Public Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required, the Town Manager shall provide a written certification of completion and Final Acceptance. If the Town Engineer determines that the Public Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required, the Town Manager shall issue a written notice of non-compliance specifying the defects. Developer shall take such action as is necessary to cure the noncompliance and, upon curing the same, provide a new written request to the Town Manager for a final inspection of the Public Improvements. Failure of the Developer to make a timely request for Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize or operate the Public Improvements as the Town deems appropriate.

5.6 ***Dedication and Maintenance of Subdivision Improvements:*** Upon Final Acceptance of the Subdivision Improvements: (1) the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained, as appropriate and otherwise authorized and approved by the Town, by the Developer or the homeowner's association; and (3) the Dry-Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the homeowner's association or the appropriate public utility company.

WATER AND SEWER SERVICE

6.1 The Town and Developer shall enter into a Water and Sewer Service Agreement setting forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a commitment by the Town for water and sewer service to the Development. The Water and Sewer Service Agreement, whenever executed, shall be incorporated into this Agreement and made a part hereof.

BUILDING PERMITS

7.1 The Town shall not issue building permits or install water meters for the Development until: (1) the Final Plat has been recorded with the Weld County Clerk and Recorder; (2) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town,

including but not limited to water and tap fees, impact fees and storm drainage fees; (3) Developer has received written notice of Initial Acceptance of the Public Improvements and written notice of approval of the Private Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete; (4) meter and curb stop pass inspection; (5) the parties have entered into a Water and Sewer Service Agreement; (6) all terms of this Agreement have been faithfully kept by Developer.

7.2 Notwithstanding the foregoing, the Town may, in its sole discretion, issue building permits prior to completion of certain of the less critical Subdivision Improvements, as determined by the Town in its sole discretion, on the condition that such improvements be completed prior to the issuance of certificates of occupancy.

7.3 If at any time the Town determines that Developer is not in compliance with this Agreement, the Final Plat, the Resolution or the Approved Plans, the Town may withhold the issuance of building permits.

OPERATION STANDARDS

8.1 The operation of construction equipment outside an enclosed structure shall be prohibited between the hours of 8:00 p.m. and, on weekdays, the hour of 7:00 a.m. or, on weekends and legal holidays, the hour of 8:00 a.m. The Town Manager may, upon written application, alter the hours of operation for good cause by providing written notice to Developer.

8.2 The operation of construction equipment for the purpose of grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. The Town Manager may, upon written application, alter the hours of operation for good cause by providing written notice to Developer.

8.3 Developer agrees to control all weeds growing within the Development. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development.

8.4 Developer shall, at all times, keep the public right-of-way free from accumulation of waste material, rubbish, dirt and mud caused by Developer's operation. Developer shall remove such waste material, rubbish, dirt and mud no less than weekly and, at the completion of the work, shall promptly remove all debris waste materials, rubbish, dirt, mud, tools, construction equipment, machinery, building materials, trash containers, and portable toilets from the public right-of-way.

8.5 When the Town Engineer provides written notice that erosion, by wind or water, is likely to be an issue, Developer shall install temporary or permanent erosion control into the Development at the earliest practicable time. By way of explanation and without limitation, said

control may consist of seeding of approved grasses, temporary dikes, gabions or other similar devices.

8.6 In the event that Developer fails to perform the work specified in Paragraphs 8.3, 8.4 or 8.5 within a reasonable time period after receiving written notice from the Town, not to exceed ten (10) days for the work specified in Paragraphs 8.3 and 8.4, the Town may, in addition to other remedies, including those set forth in Paragraph 7.3, perform the work required and charge Developer for said cost. Developer shall pay the Town for all costs incurred by the Town in the performance of the above said service within ten (10) days of the Town submitting an invoice for said services. If Developer does not remit the costs, in addition to other remedies, the Town may draw on the Maintenance Guarantee.

8.7 Developer hereby ensures that Developer's subcontractors shall cooperate with the Town's construction inspectors in all manners, including, but not limited to, by ceasing operations when winds are of sufficient velocity to create blowing dust which the Town, in its discretion, determines is hazardous to the public health and welfare.

8.8 Developer shall take all steps necessary to prevent its construction activities from damaging adjacent properties.

DEVELOPMENT STANDARDS

9.1 Developer shall comply with the requirements contained in the Annexation Agreement related to the Property, except as specifically amended by this Agreement.

9.2 Except as otherwise provided in this Agreement, the Final Plat, the Resolution or Approved Plans, Developer shall comply with Johnstown's municipal code, zoning ordinances, subdivision regulations, landscape guidelines and, if operative with respect to the Development, the approved design guidelines.

9.3 Appropriate design standards must be met including, but not limited to, the following:

- A. Developer shall submit detailed elevations showing architectural features of the proposed dwelling units. Architectural features, elevations and home sites shall have prior approval of the Town. Such approvals shall not be unreasonably withheld.
- B. All proposed multi-family areas and all other areas not planned for detached single family units must be the subject of a Site Development Plan to be reviewed and approved by the Town prior to any construction being performed.

- C. All off-street parking structures or pads shall be provided to the rear of the front setback. Driveways leading to the off-street parking may be constructed within the front setback and may also be used for parking.
- D. In areas built with single family homes, no individual unit shall be built with the same elevation within three (3) of itself on both sides of the street and all units shall have at least a two-car garage, except the multi-family homes.
- E. In areas built with single family homes, at least twenty-five percent (25%) of the facade of each dwelling unit, excluding windows, doors, and garage doors, shall be of masonry, stone, brick, or an equivalent. All roofs shall have thirty (30) year architectural style shingles. Any shingle type or style other than architectural style shingles shall be submitted to the Town for prior approval, but three-tab conventional asphalt shingle roofing shall not be permitted.
- F. All trails within the Development must be a minimum of ten (10) feet wide and six (6) inches thick and constructed of concrete. Interior sidewalks shall be a minimum of five (5) feet wide, four (4) inches thick and constructed of concrete.
- G. To provide for emergency vehicular access, no structure shall be located in excess of one hundred and fifty feet (150'), excluding cul-de-sacs, from a single point of vehicular access unless an approved temporary second point of vehicular access is provided.
- H. Current Municipal Code required setbacks must be met, including, but not limited to, setback requirements for oil and gas facilities.
- I. A thirty-foot landscape buffer and a ten-foot meandering sidewalk, which shall be six inches thick, shall be constructed along any proposed arterial roads. The landscape buffer shall be landscaped with deciduous trees and evergreens along with deciduous shrub beds and bluegrass in accordance with the Town's approved landscape plan. Curb and gutter shall be provided in the same locations as the before mentioned sidewalks and landscape buffers. All local streets shall have five-foot attached sidewalks and collector streets shall have five-foot detached sidewalks and shall be landscaped with trees and grass.

9.4 All Final Plat and construction drawings shall be submitted in mylar, print, and digital form, which must conform to the Town's format and content requirements.

9.5 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free

of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 **Indemnification:** Developer hereby agrees to indemnify and hold the Town, Town Officials, its employees, agents, representatives, insurers and self insurance pool harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees and expenses, including attorney's fees, resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by gross negligence or willful misconduct of the Town. Developer shall promptly investigate, handle, respond to, and provide defense for and defend against any such liability, claims or demands at the sole expense of Developer. Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 **Insurance:** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Subdivision Improvements maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability and sufficient public liability insurance as will protect the Town, Town Officials, its employees, agents and representatives against any and all potential liability, claims, damage, demands, losses, and expenses which may be incurred or asserted pursuant to Paragraph 10.1 above. Liability insurance shall be in the minimum amount of three hundred fifty thousand dollars (\$350,000.00) for injury to one person, or nine hundred, ninety thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended. Whenever requested by the Town Manager, Developer agrees to promptly submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and which show the Town, Town Officials, its employees, agents and representatives as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.3 **Drainage Liability:** Developer shall indemnify and hold the Town harmless from any liability the Town may have on account of any change in the nature, direction, quantity, or quality of drainage flow resulting from the Development. In addition, Developer shall reimburse the Town for any and all costs, fees, and expenses, including attorney's fees, which the Town incurs in acquiring any rights-of-way or easements which the Town is required to acquire or condemn or which the

Town is held to have acquired or condemned for drainage as a result of this Development. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 **Tax Liability:** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town prior to or at the time of such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town. Any use tax due for construction materials shall be paid prior to construction of any improvements on the Property.

10.5 **Cost Reimbursement to Town:** Developer shall reimburse the Town for professional consultants, including, but not limited to engineers, testing companies and attorneys, engaged by the Town to process and complete the Development.

10.6 **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.

DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the Final Plat, the Resolution, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. In the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have ten (10) days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such ten (10) day period, Developer may provide written notice to the Town within such period that it is actively and diligently pursuing such cure and Developer shall thereafter have a reasonable time to cure the default, provided that Developer is at all times within that extended period actively and diligently pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance or Performance Guarantee.

11.2 If the default arises subsequent to Initial Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the Town may draw on the Performance Guarantee. In addition, and without limitation, if the default is not timely cured, the Town may withhold approval of any or all building permits, certificates of occupancy, water meters or tap hook-ups for any area within the Development. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default in any obligation under this Agreement, the Town may, in its discretion, complete such Subdivision Improvements at Developer's expense. The Town shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property, such lien to have priority over all liens except general taxes and prior special assessments and to be placed upon the tax list for the current year to be collected in the same manner as taxes are collected. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

SPECIAL PROVISIONS

12.1 The Additional Terms, Conditions or Provisions relating to this Development are set forth in **Exhibit B-3**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

12.2 As set forth in Paragraph 3.5 above, Developer or the homeowner's association, as appropriate, shall be responsible for replacement of decorative light fixtures, decorative street signs and all other decorative amenities in the Development when replacement is necessary and warranted over time.

MISCELLANEOUS

13.1 **No Waiver:** Delays in enforcement or the waiver of any one or more breaches of this Agreement by the Town shall not constitute a waiver of any of the remaining terms or obligations.

13.2 **Severability:** If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

13.3 **Recording of Agreement:** A Notice of this Agreement substantially in the form as shown on **Exhibit E** is to be recorded with the approved Final Plat and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording such Notice and the Final Plat.

13.4 **Binding Effect:** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**, with the exception of a bona fide residential home buyer of a completed owner-occupied home.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, except to a bona fide residential home buyer of a completed owner-occupied home, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town Council.

13.6 **Title and Authority:** Developer expressly warrants and represents to the Town that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 **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, when sent by messenger service, or when forwarded by facsimile or email-delivery, but only upon confirmation of receipt of such facsimile or email; (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, postage prepaid and addressed as follows:

TO DEVELOPER:

JAN TELEP ROGERS

TO TOWN:

TOWN OF JOHNSTOWN
Attention: TOWN MANAGER
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Facsimile: (970) 587-0141
Email: rcello@townofjohnstown.com

Avi S. Rocklin, Esq.
Law Office of Avi S. Rocklin, LLC
1437 N. Denver Avenue, No. 330
Loveland, CO 80538
Facsimile: (970) 797-1806
Email: avi@rocklinlaw.com

13.8 **Costs and Attorney Fees.** If the Developer breaches this Agreement, the Developer 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 Agreement. Nothing herein shall be construed to prevent or interfere with the Town's rights and remedies specified elsewhere in the Agreement.

13.9 **Vested Right.** The Final Plat shall have vested rights pursuant to §§ 24-68-101, *et seq.*, C.R.S. for a period of three (3) years from the date of this Agreement.

13.10 **Warranty of Developer:** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, the Resolution, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

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

13.12 **No Presumption.** Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. 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.

13.13 **Entire Agreement.** 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.

13.14 **Compliance with the Law.** Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

13.15 **No Third Party Beneficiaries.** No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements.

13.16 **Force Majeure.** Neither party shall be liable for a failure to perform hereunder if such failure is the result of force majeure, which shall mean causes beyond the reasonable control of a party such as acts of God, labor strikes, war, terrorism, fire or action or inaction of government authorities.

13.17 **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.

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this 23rd day of October, 2017.

GILLAM DEVELOPMENT CORPORATION, OWNER

By: *Bruce W. Gillam, Pres.*

(SEAL)

STATE OF COLORADO)
) ss.
COUNTY OF Weld)

SUBSCRIBED AND SWORN to before me this 23rd day of October, 2017, by Bruce Gillam.

WITNESS my hand and official seal.

My commission expires: 9/30/19

STEPHEN AMEND
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20154034457
MY COMMISSION EXPIRES SEPTEMBER 30, 2019

Stephen Amend
Notary Public

TOWN OF JOHNSTOWN, COLORADO
A Municipal Corporation

By: _____
Mayor

ATTEST:

By: _____
Town Clerk

**SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN
(Johnstown Heights, Amended Filing No. 3)**

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A:	Legal Description of Subject Property
EXHIBIT B-1:	Copy of Final Plat
EXHIBIT B-2:	Town Resolution Approving Development
EXHIBIT B-3:	Additional Terms, Conditions or Provisions
EXHIBIT C:	Schedule of Public Improvements
EXHIBIT D:	Irrevocable Letter of Credit Form
EXHIBIT E:	Notice (Approval of Final Plan/Plat and of Development Agreement)

EXHIBIT A

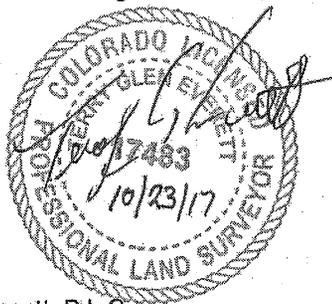
**LEGAL DESCRIPTION
(Development)**

Boundary Description

Lot 1 Block 4, Lot 1 and 2 Block 5, Lots 1 and 2 Block 6, Lot 1 thru 4 Block 7 and Outlot "A" of Johnstown Heights Third Filing according to the final Plat as recorded November 9, 1972 as Document Number 1601353 in the Weld County Clerks Records, all situated in a portion of the South Half of the Southeast Quarter of Section 5, Township 4 North, Range 67 17483 West of the 6th Principal Meridian, Town of Johnstown, County of Weld County, State of Colorado:

SURVEYOR'S STATEMENT

I, Terry G. Everett, a professional land surveyor in the State of Colorado, do hereby state that this description is of the lots and tract that are being amended.



Terry G. Everett, P.L.S.
Professional Land Surveyor
Colorado Registration No.

EXHIBIT B-1

PLAT OR PLAN

(SEE ATTACHED)

EXHIBIT B-2

(RESOLUTION APPROVING PLAT OR PLAN)

(SEE ATTACHED)

EXHIBIT B-3

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

1. Developer shall construct an emergency access connecting the west end of North Second Street and West Park Avenue. The emergency access shall include recycled asphalt road base at the west end of North Second Street as well as a section of concrete with drive-over bollards on either end. The final design of the emergency access shall be subject to approval of the Front Range Fire Rescue Authority.

EXHIBIT C

**SCHEDULE OF PUBLIC IMPROVEMENTS
(ATTACHED)**

AMENDED PLAT OF LOT 1, BLOCK 4, LOTS 1 & 2, BLOCK 5, LOTS 1 & 2, BLOCK 6,
AND LOTS 1 – 4 & OUTLOT "A", BLOCK 7 OF JOHNSTOWN HEIGHTS 3RD FILING

OPINION OF COST FOR PUBLIC SITE IMPROVEMENTS

Dennis R. Messner, P.E.

10/23/17

Item	Description	Unit		Unit Price	Quantity	Amount
------	-------------	------	--	------------	----------	--------

GENERAL

1	Mobilization	Lump Sum		\$1,500.00		\$1,500.00
2	Potholing	Lump Sum		\$750.00		\$750.00
3	Construction Survey	Lump Sum		\$3,150.00		\$3,150.00
4	Material Testing	Lump Sum		\$1,500.00		\$1,500.00
					Subtotal	\$6,900.00

EROSION CONTROL

5	Vehicle Tracking Pad	Lump Sum		\$2,000.00		\$2,000.00
6	Silt Fence	Lineal Feet		\$1.50	540	\$810.00
7	Straw Wattles	Each		\$150.00	6	\$900.00
8	Concrete Washout	Lump Sum		\$850.00		\$850.00
9	Curb Inlet Protection	Each		\$225.00	2	\$450.00
10	Rock Sock	Each		\$50.00	4	\$200.00
					Subtotal	\$5,210.00

EARTHWORK

11	Strip Topsoil	Cubic Yard		\$3.00	400	\$1,200.00
12	Cut to Fill	Cubic Yard		\$4.50	710	\$3,195.00
					Subtotal	\$4,395.00

SANITARY SEWER

13	8" Dia. PVC Sewer Main	Lineal Feet		\$28.00	654	\$18,312.00
14	4' Dia. Manhole	Each		\$5,250.00	3	\$15,750.00
15	Sanitary Sewer Service	Each		\$1,850.00	9	\$16,650.00
16	Remove Existing Asphalt	Square Yard		\$30.00	260	\$7,800.00
17	Replace Pavement	Square Yard		\$70.00	275	\$19,250.00
					Subtotal	\$77,762.00

AMENDED PLAT OF LOT 1, BLOCK 4, LOTS 1 & 2, BLOCK 5, LOTS 1 & 2, BLOCK 6,
AND LOTS 1 – 4 & OUTLOT "A", BLOCK 7 OF JOHNSTOWN HEIGHTS 3RD FILING

OPINION OF COST FOR PUBLIC SITE IMPROVEMENTS

Dennis R. Messner, P.E.

10/23/17

WATER

18	Water Services	Each		\$1,650.00	9	\$14,850.00
					Subtotal	\$14,850.00

STORM SEWER

19	18" RCP	Lineal Feet		\$80.00	50	\$4,000.00
20	18" Flared End Section	Each		\$550.00	1	\$550.00
21	Outlet Structure	Each		\$4,750.00	1	\$4,750.00
22	4' Dia. Manhole	Each		\$4,200.00	1	\$4,200.00
					Subtotal	\$13,500.00

WEST PARK AVENUE

23	Subgrade Prep	Square Yard		\$3.00	2,230	\$6,690.00
24	Drive-over Curbwalk	Lineal Feet		\$28.00	836	\$23,408.00
25	4" HMA with 6" ABC	Square Yard		\$38.50	1,535	\$59,097.50
26	Sped Bump	Lump Sum		\$4,750.00		\$4,750.00
27	Raise Manhole Lids	Each		\$500.00	4	\$2,000.00
28	Raise Valve Boxes	Each		\$425.00	2	\$850.00
29	Asphalt Mobilization	Lump Sum		\$1,600.00		\$1,600.00
					Subtotal	\$98,395.50

EMERGENCY ACCESS

30	Emergency Access Prep	Square Yard		\$3.50	255	\$892.50
31	6" Recycled Asphalt	Square Yard		\$10.00	180	\$1,800.00
32	Drive-over Safehit Bollards	Each		\$210.00	6	\$1,260.00
33	10' Concrete Walk	Lineal Feet		\$90.00	79	\$7,110.00
34	Signs	Each		\$500.00	3	\$1,500.00
					Subtotal	\$3,952.50

AMENDED PLAT OF LOT 1, BLOCK 4, LOTS 1 & 2, BLOCK 5, LOTS 1 & 2, BLOCK 6,
 AND LOTS 1 – 4 & OUTLOT "A", BLOCK 7 OF JOHNSTOWN HEIGHTS 3RD FILING

OPINION OF COST FOR PUBLIC SITE IMPROVEMENTS

Dennis R. Messner, P.E.

10/23/17

MISCELLANEOUS

35	Traffic Control Plan	Each		\$575.00	1	\$575.00
36	Street Closure	Day		\$300.00	3	\$900.00
37	Flagger	Day		\$1,350.00	3	\$4,050.00
					Subtotal	\$5,525.00

TOTAL = \$230,490.00

EXHIBIT D

FORM--IRREVOCABLE LETTER OF CREDIT

NAME OF ISSUING BANK _____
ADDRESS OF ISSUING BANK _____

Town of Johnstown
450 So. Parish
P. O. Box 609
Johnstown, CO 80534

ATTENTION: TOWN OF JOHNSTOWN ATTORNEY AND TOWN MANAGER

We hereby establish, at the request and for the account of this Irrevocable Letter of Credit in favor of the Town of Johnstown in the amount of \$ _____. The purpose of this Letter of Credit is to secure performance of a Development Agreement for _____, dated this day _____ of _____, 20____, between the Town of Johnstown and _____.

You are hereby authorized to draw on sight by drafts or written demands up to the aggregate amount of \$ _____. The sole condition for payment of any demand made or draft drawn against this Irrevocable Letter of Credit is that the Town's demand or draft be accompanied by a letter, on the Town's stationery, signed by the Town Manager to the effect that "the Town of Johnstown has declared a default under the Development Agreement."

Partial and multiple drawings are permitted hereunder.

We hereby agree with the Town of Johnstown and its drawers, endorsers, and bona fide holders of demands made or drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

This Irrevocable Letter of Credit is not transferable.

This Letter of Credit shall be for a twelve (12) month term from the date of execution hereof. It is a condition of this Letter of Credit that it shall be automatically renewed, without amendment, for additional periods of one year each from the present or any future expiration date, unless, at least sixty (60) calendar days prior to the effective expiration date, the Town Manager notifies you in writing delivered by certified U.S. mail, return receipt requested, to your address set forth above that the Town of Johnstown elects not to renew this Letter of Credit for any further additional period. Upon your receipt of our written notification of impending expiration, you may draw the unused balance of this Irrevocable Credit upon your written demand or your sight draft.

EXHIBIT E

NOTICE

Please take notice that on the ____ day of _____, 20 __, the Town Council of the Town of Johnstown approved the final plat for the development known as Johnstown Heights, Amended Filing No. 3, which development was submitted and processed in accordance with the Town of Johnstown's Municipal Code. In conjunction therewith, the Town Council also approved a Development Agreement dated _____, 20 __, between the Town Johnstown and the Developer, pursuant to and under which certain rights and obligations of the Developer will pass on to subsequent owners, heirs, assigns and transferees of the below-described property. The Development Agreement is on file and may be reviewed in the office of the Town Clerk of the Town of Johnstown. The subject property for which such Development Agreement applies is described as follows:

LEGAL DESCRIPTION ATTACHED

DATED this _____ day of _____, 20 ____.

Town Clerk

Town Manager

AGENDA ITEM 9B

**FINDING
OF
SUBSTANTIAL COMPLIANCE
(Initiating Annexation Proceedings)
(U.S. Engineering)
(Resolution No. 2018-09)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 4, 2018

ITEM NUMBER: 9B

SUBJECT: Consider Resolution No. 2018-09, A Resolution Finding Substantial Compliance for Initiating Annexation Proceedings for the US Engineering Annexation

ACTION PROPOSED: Approve Resolution No. 2018-09

PRESENTED BY: Mr. John Franklin, Town Planner

AGENDA ITEM DESCRIPTION: This is a request for annexation of 12± acres located immediately north of the US Engineering facility at 390 Longs Peak Rd. in the I-25 Gateway Center. The site abuts the I-25 Gateway Center and was used as a storage facility by the Canadian oilfield housing builder PTI which previously occupied the existing building.

The Johnstown Area Comprehensive Plan designates the property as Employment. The property has been historically utilized for agriculture and is zoned Ag Agriculture with a Special Review Use for outdoor storage in Weld County. The owner is requesting annexation and Gateway zoning of the property. The intent is to expand the existing US Engineering facility.

State statutes require that the governing body of the annexing municipality approve a resolution of substantial compliance of the annexation petition. As part of the resolution finding substantial compliance, the governing body must set a public hearing to determine if the proposed annexation complies with sections 31-12-105, C.R.S., (Eligibility for Annexation) and 31-12-105, C.R.S., (Limitations). In accordance with statute, a public hearing date of July 16, 2018 has been scheduled.

LEGAL ADVICE: The Town Attorney has reviewed the Annexation Petition and accompanying documents.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: Approve Resolution No. 2018-09.

SUGGESTED MOTIONS:

For Approval: I move to approve Resolution No. 2018-09, A Resolution Finding Substantial Compliance for Initiating Annexation Proceedings for the US Engineering Annexation and schedule a public hearing for the annexation petition for July 16, 2018 at 7:00 p.m.

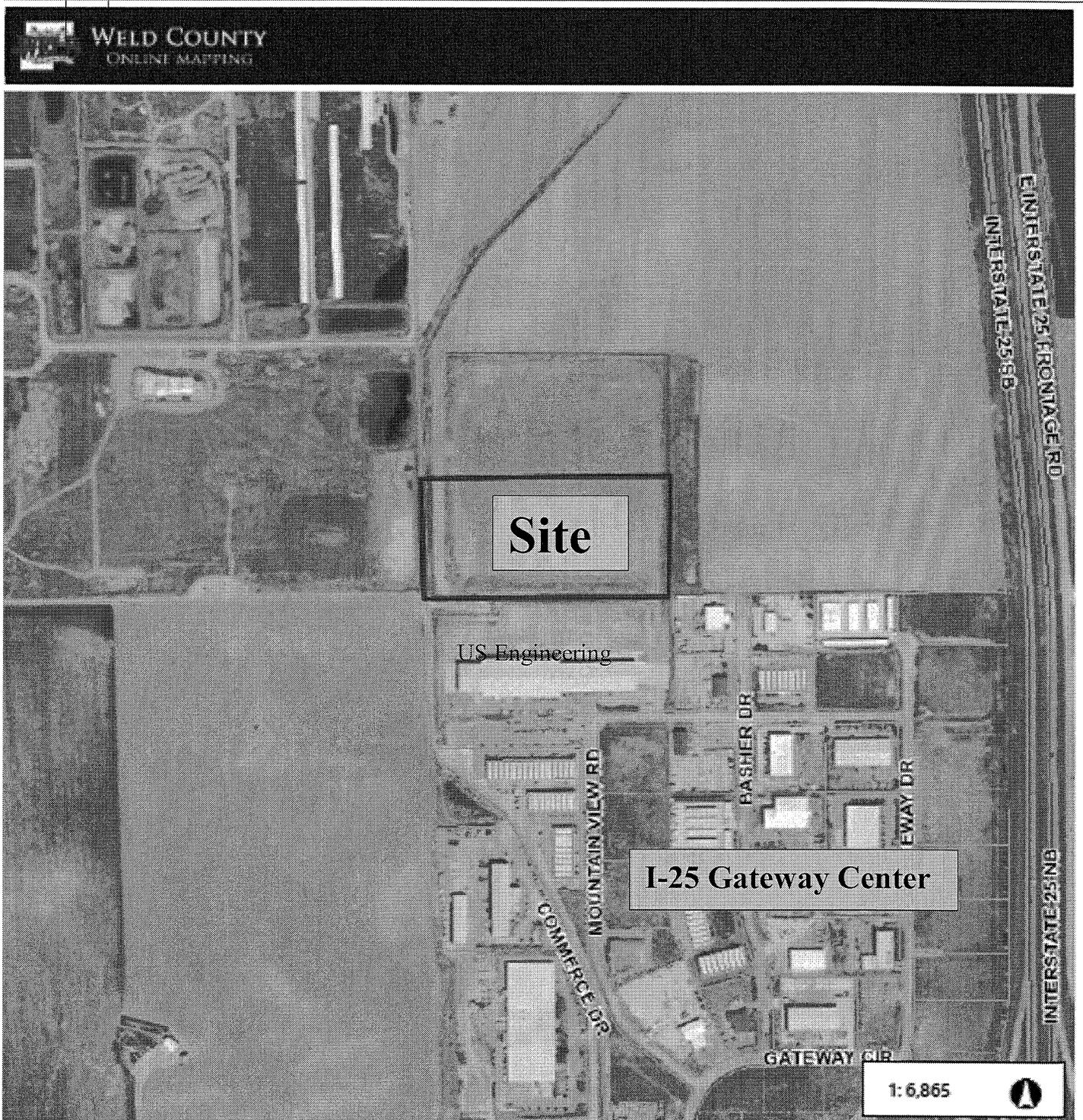
For Denial: I move we deny approval of Resolution No. 2018-09, A Resolution Finding Substantial Compliance for Initiating Annexation Proceedings for the US Engineering Annexation.

Reviewed:


Town Manager

VICINITY MAP

US Engineering Annexation Vicinity Map



RESOLUTION

No. 2018-09

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2018-09**

**FINDING SUBSTANTIAL COMPLIANCE FOR INITIATING
ANNEXATION PROCEEDINGS AND SETTING A PUBLIC
HEARING DATE FOR THE U.S. ENGINEERING ANNEXATION**

WHEREAS, Use Real Estate Holdings, LLC, a Missouri limited liability company, submitted a Petition for Annexation; and

WHEREAS, the Town Council of the Town of Johnstown has reviewed the Petition for Annexation, and, finding substantial compliance as set forth below, desires to initiate annexation proceedings in accordance with the law and set a public hearing.

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

Section 1. The Town Council of the Town of Johnstown finds that a Petition for Annexation of certain property situated in the Northeast Quarter of Section 3, Township 4 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado, being more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference, filed with the Town Clerk on February 15, 2018, to be known as the “U.S. Engineering Annexation,” is in substantial compliance with §31-12-107(1), and that a public hearing should be held to determine if the proposed annexation complies with §§31-12-104 and 31-12-105, C.R.S., or such parts thereof as may be required to establish eligibility pursuant to §31-12-101, *et seq.*;

Section 2. The Town Council hereby sets a public hearing for such purposes for July 16, 2018, at 7:00 p.m., at 450 South Parish Avenue, Johnstown, Colorado.

Section 3. The Town Clerk shall publish notice of the hearing once per week for four (4) consecutive weeks in the Johnstown Breeze, with the first publication at least thirty (30) days prior to the date of the hearing. The Town Clerk shall also send a copy of the published notice, together with a copy of this Resolution and the Petition for Annexation, by registered mail to the Weld County Board of County Commissioners and to the Weld County Attorney and to any special district or school district having territory within the area to be annexed at least twenty-five (25) days prior to the date fixed for such hearing.

Section 4. This Resolution shall be effective on the date hereof.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS ___ day of _____, 2018.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

ANNEXATION LEGAL DESCRIPTION

U.S. ENGINEERING ANNEXATION

February 21, 2018

LOT A, RECORDED EXEMPTION NO. 1061-3-1-RECX15-0131, ACCORDING TO THE PLAT RECORDED DECEMBER 17, 2015 AT RECEPTION NUMBER 4165964, BEING LOCATED IN THE NE 1/4 OF SECTION 3, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO.

SAID DESCRIBED TRACT CONTAINS 12.00 ACRES MORE OR LESS, TOGETHER WITH AND SUBJECT TO ALL EASEMENTS AND RIGHTS-OF-WAY EXISTING AND/OR OF PUBLIC RECORD.

EXHIBIT A

PETITION FOR ANNEXATION

To the Town of Johnstown

(Weld County)

The undersigned, in accordance with Article 12, Chapter 31, CRS, as amended, hereby petition the Town Council of the Town of Johnstown, Colorado, for annexation to the Town of Johnstown the unincorporated territory more particularly described below, currently known as Parcel II, Lot A of RECX15-0131, and in support of said Petition, your petitioners allege that:

- (1) It is desirable and necessary that the following described territory be annexed to the Town of Johnstown, Colorado:

See Exhibit A attached hereto and made a part hereof.

- (2) Not less than one-sixth (1/6) of the perimeter of that area proposed to be annexed is contiguous with the Town of Johnstown, Colorado.
- (3) A community of interest exists between the territory proposed to be annexed and the Town of Johnstown, Colorado.
- (4) The territory proposed to be annexed is urban or will be urbanized in the near future;
- (5) The territory proposed to be annexed is integrated or is capable of being integrated with the Town of Johnstown, Colorado;
- (6) The signatures of the Petition comprise one hundred percent (100%) of the landowners of the territory to be included in the area proposed to be annexed and said landowners attesting to the facts and agreeing to the conditions herein contained will negate the necessity of any annexation election;
- (7) No land held in identical ownership, whether consisting of one tract or parcel of real estate or two or more contiguous tracts or parcels of real estate:
 - (a) Is divided into separate parts or parcels without the written consent of the landowner or landowners thereof, unless such tracts or parcels are separated by a dedicated street, road or other public way;
 - (b) Comprising twenty (20) acres or more and which, together with the building and improvements situated thereon has an assessed value in excess of Two Hundred Thousand Dollars (\$200,000.00) for ad valorem tax purposes to be annexed without the written consent of the landowner or landowners.

- (8) No part of the area proposed to be annexed is more than three miles from a point on the municipal boundary, as such was established more than one year before this annexation will take place;
- (9) The area proposed to be annexed comprises more than ten acres and an impact report as provided in Section 31-12-105.5, CRS, as amended, is required.
- (10) The area proposed to be annexed is located within Weld County, ~~School District RE-57~~, Northern Colorado Water Conservancy District, Little Thompson Water District, Johnstown Fire Protection District, Aims Junior College District, and Weld County Library District, School District R2J - Loveland and no others;
- (11) The mailing address of each signer, the legal description of the land owned by each signer and the date of signing of each signature are all shown on this Petition;
- (12) Accompanying this Petition are five (5) prints of the area proposed to be following information:
 - (a) A written legal description of the boundaries of the area proposed to be annexed;
 - (b) A map showing the boundary of the area proposed to be annexed, such map prepared and containing the seal of a registered engineer or land surveyor;
 - (c) Within the annexation boundary map there is shown the location of each ownership tract in unplatted land, and if part or all of the area is to be platted at the time of the effectiveness of the annexation (as opposed to after such effectiveness), then the boundaries and the plat number of plots or of lots and blocks are shown;
 - (d) Next to the boundary of the area proposed to be annexed is drawn the contiguous boundary of the Town of Johnstown, and the contiguous boundary of any other municipality abutting the area proposed to be annexed;
 - (e) The dimensions of the contiguous boundaries are shown on the map.
 - (f) A proposed drainage plan and a proposed utilities plan.
- (13) The territory to be annexed is not presently a part of any incorporated city, city and county, or town;

- (14) The undersigned agree to the following conditions, which shall be covenants running with the land, and which shall, at the option of the Town, appear on the annexation map:
- (a) Water rights shall be provided as mutually agreed to by the Town and the undersigned; The undersigned specifically agree that they have not sold or transferred any water rights appurtenant to their property within the past year nor will they do so during the pendency of this annexation petition and once annexed to the Town of Johnstown, they will not sell or transfer any water rights appurtenant to the subject property without the prior written approval of the Johnstown Town Council.
 - (b) The owners shall participate in providing drainage plan and improvements and payment of a unit drainage fee as may be required by the Town the area;
 - (c) The undersigned hereby waive any and all "vested rights" previously created pursuant to Section 24-68-103, CRS, as amended.
 - (d) The undersigned and the Town may enter into an Annexation Agreement prior to the effective date of this annexation, which agreement shall be additional conditions as effectively as if set forth in this Petition.

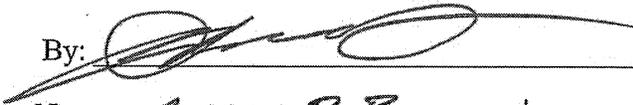
(15) Petitioner represents that: (Check one)

No part of the property to be annexed is included within any site specific development plan approved by Weld County, Colorado.

A site specific development plan has been approved by Larimer County, Colorado, which has created a vested right.

(16) Submitted with this Petition is the required \$100.00 for publication costs.

EXECUTED this 15th day of February, 2018.

By: 

Name: ROBERT R. BRUNSON

Title: C.O.O.

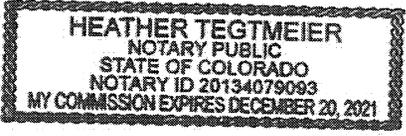
Name of Annexation: U.S. Engineering Annexation

STATE OF COLORADO)
)ss
COUNTY OF _____)

Subscribed and sworn to before me this 15th day of February,
2018 by Robert Brunson as C.O.O. of
U.S. Engineering Company on behalf of
U.S. Engineering Company

WITNESS my hand and official seal.

My commission expires: 12/20/21



Heather Tegmeier
Notary Public

AFFIDAVIT OF CIRCULATOR

The undersigned, being of lawful age, who being first duly sworn upon oath, deposes and says:

That (he or she) was the circulator of the foregoing Petition for Annexation of lands to the Town of Johnstown, Colorado, consisting of _____ pages, including this page and that each signature thereon was witnessed by your affiant and is the true signature of the person whose name it purports to be.

Circulator

STATE OF COLORADO)
)ss
COUNTY OF)

The foregoing Affidavit of Circulator was subscribed and sworn to before me this _____ day of _____, A.D., _____, by _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

AGENDA ITEM 9C

**AWARD
OF
CONTRACT
(Greeley Avenue Resurfacing Project)
(Coulson Excavating Co.)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: June 4, 2018

ITEM NUMBER: 9C

SUBJECT: Consider Award of Contract to Coulson Excavating Co., Inc. - Greeley Avenue Resurfacing Project

ACTION PROPOSED: Award Contract to Coulson Excavating Co., Inc.

PRESENTED BY: Town Manager and Don Gardner, Street Superintendent

AGENDA ITEM DESCRIPTION: On February 26, 2018 the Town entered into a professional services agreement with IMEG Corporation Consulting Engineers for civil engineering design work for the Greeley Avenue Resurfacing Project. A request for bids for the project was advertised in the Johnstown Breeze and also sent to several paving contractors. There were no bids submitted in response to the Town's solicitation. Following the bid opening, Mr. Goertz, project manager, contacted several paving contractors in an effort to encourage them to consider bidding on the project.

The following firms submitted bids in response to IMEG's solicitation:

- Coulson Excavating Co., Inc. - **\$167,958**
- Brannan Sand & Gravel Co. - \$184,786.50
- Martin Marietta - \$186,640.80
- PLM Asphalt & Concrete, Inc. - \$195,277.90

The contract provides for the construction of approximately 5,600 square yards of asphalt milling, 1,550 tons of asphalt overlay and ancillary construction including striping. The engineer's cost estimate for the project was **\$213,280**.

Based upon a review of the bids by the project manager (please refer to letter of recommendation), it is recommended the contract for the Greeley Avenue Resurfacing Project be awarded to Coulson Excavating Co., Inc. in a total amount not to exceed \$167,958.

LEGAL ADVICE: The Town Attorney has reviewed the contract.

FINANCIAL ADVICE: According to the Town Treasurer, sufficient funds have been budgeted for the project.

RECOMMENDED ACTION: Award contract to Coulson Excavating Co., Inc.

SUGGESTED MOTIONS:

For Approval: I move to award the contract for the Greeley Avenue Resurfacing Project to Coulson Excavating Co., Inc. in a total amount not to exceed **\$167,958** and also, authorize the Town Manager to approve change orders in an amount not to exceed ten (10%) of the contract amount, and authorize the Mayor to sign the agreement.

For Denial: I move to deny the award of the contract for the Greeley Avenue Resurfacing Project to Coulson Excavating Co., Inc.

Reviewed:


Town Manager

**LETTER
OF
RECOMMENDATION**



May 11, 2018

Roy Lauricello, Town Manager
Town of Johnstown
450 S. Parish Street
Johnstown, CO 80534

RE: Greeley Avenue Resurfacing – Town of Johnstown
IMEG Job #: 18001183.07

Dear Mr. Lauricello,

This letter of correspondence serves as documentation of IMEG's evaluation of the submitted bids for the Greeley Avenue Resurfacing Project for the Town of Johnstown. IMEG's recommendation of award of the construction Contract is included along with the bid evaluation for your review.

Bid Summary

A total of 4 Bids were received Thursday, May 10, 2018, by 5:00 p.m. local time, via electronic mail submittals to IMEG. All bids were submitted on time and in compliance with bidding requirements set forth in the contract documents and instructions included with invitation to bid. The following is a summary of the bids:

Contractor	Total Bid Submitted
Coulson Excavating Co., Inc.	\$167,958.00
Brannan Sand & Gravel Company	\$184,786.50
Martin Marietta Materials, Inc.	\$186,640.80
PLM Asphalt & Concrete, LLC	\$195,277.90
Engineer's Opinion of Cost	\$219,915.00

Bid Evaluation

The bid opening on May 10, 2018 resulted in Coulson Excavating Company, Inc. (Coulson) as the apparent Low Bidder.

Supplemental Information Provided by Bidder

All references for Coulson shared favorable referrals in the following areas:

- Overall Project Understanding, Coordination of Phases of Work, etc.
- Coordination and Communication Capability
- Ability to complete the Project within Project Schedule

- Change Orders, Coordination & Reasonability
- Completed Project Quality

IMEG has spoken directly with Coulson representatives about schedule and Coulson's ability to complete this project in a timely fashion, meeting the needs and concerns of the Town of Johnstown. Coulson will not be able to start this project immediately due to previous projects that they have committed to having complete. In the event that this project is unable to be completed prior to the new school year starting, the general activities associated with this type of project should have minimal impact to school traffic.

Recommendation

It is our findings that Coulson is a qualified and responsible contractor. With Coulson's ability and oversight of the project, IMEG believes this project will be completed in a successful, efficient manner. IMEG recommends that the Town of Johnstown award the construction contract to Coulson Excavating Company, Inc. for the Greeley Avenue Resurfacing project for the Town of Johnstown.

Additional Direct Costs by Town

The Town of Johnstown is responsible for providing additional direct costs for this project for the material testing.

If you have any questions or comments, please contact me at your earliest convenience.

Sincerely,



IMEG Corporation

Taylor C. Goertz, P.E.

Enclosure(s):

- Bid Tabulation
- Bid submitted by Coulson Excavating Co., Inc.
- Notice of Award
- Agreement
- Notice to Proceed



**BID
TABULATION**



BID TABULATION

Client: Town of Johnstown
Project: Greeley Avenue Resurfacing
Job No.: 18001183.07

Date: 5/10/2018

1 Charlotte to 2nd Street				Engineer's Estimate		Coulson Excavating Co, Inc.		Brannan Sand & Gravel Company		Martin Marietta Materials, Inc.		PLM Asphalt & Concrete, LLC	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	2" Asphalt Rotomill	1,144	S.Y.	\$5.00	\$5,720.00	\$2.25	\$2,574.00	\$2.75	\$3,146.00	\$2.30	\$2,631.20	\$1.70	\$1,944.80
2	Asphalt Overlay-2"	350	TON	\$80.00	\$28,000.00	\$64.00	\$22,400.00	\$70.00	\$24,500.00	\$74.00	\$25,900.00	\$82.30	\$28,805.00
3	Adjust Manhole	3	EA.	\$600.00	\$1,800.00	\$450.00	\$1,350.00	\$64.00	\$192.00	\$600.00	\$1,800.00	\$100.00	\$300.00
4	Adjust Valve Box	3	EA.	\$400.00	\$1,200.00	\$250.00	\$750.00	\$29.50	\$88.50	\$500.00	\$1,500.00	\$45.00	\$135.00
5	2' X 10' Crosswalk Block	18	EA.	\$500.00	\$9,000.00	\$400.00	\$7,200.00	\$352.00	\$6,336.00	\$210.00	\$3,780.00	\$555.00	\$9,990.00
6	Traffic Control	1	L.S.	\$2,000.00	\$2,000.00	\$4,200.00	\$4,200.00	\$3,765.00	\$3,765.00	\$625.00	\$625.00	\$2,215.00	\$2,215.00
7	Mobilization	1	L.S.	\$1,700.00	\$1,700.00	\$1,500.00	\$1,500.00	\$4,466.00	\$4,466.00	\$355.00	\$355.00	\$4,450.00	\$4,450.00
8	Erosion Control	1	L.S.	\$500.00	\$500.00	\$500.00	\$500.00	\$256.00	\$256.00	\$250.00	\$250.00	\$675.00	\$675.00
9	Force Account	1	L.S.	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
SUB-TOTAL					\$54,920.00		\$45,474.00		\$47,749.50		\$41,841.20		\$53,514.80

2 2nd Street to 4th Street				Engineer's Estimate		Coulson Excavating Co, Inc.		Brannan Sand & Gravel Company		Martin Marietta Materials, Inc.		PLM Asphalt & Concrete, LLC	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	2" Asphalt Rotomill	767	S.Y.	\$5.00	\$3,835.00	\$2.25	\$1,725.75	\$2.75	\$2,109.25	\$2.30	\$1,764.10	\$2.30	\$1,764.10
2	Asphalt Overlay-2"	230	TON	\$80.00	\$18,400.00	\$64.00	\$14,720.00	\$70.00	\$16,100.00	\$74.00	\$17,020.00	\$82.30	\$18,929.00
3	Adjust Manhole	3	EA.	\$600.00	\$1,800.00	\$450.00	\$1,350.00	\$64.00	\$192.00	\$600.00	\$1,800.00	\$100.00	\$300.00
4	Adjust Valve Box	2	EA.	\$400.00	\$800.00	\$250.00	\$500.00	\$29.50	\$59.00	\$500.00	\$1,000.00	\$45.00	\$90.00
5	Traffic Control	1	L.S.	\$1,200.00	\$1,200.00	\$4,200.00	\$4,200.00	\$3,765.00	\$3,765.00	\$625.00	\$625.00	\$2,215.00	\$2,215.00
6	Mobilization	1	L.S.	\$1,200.00	\$1,200.00	\$1,500.00	\$1,500.00	\$2,450.00	\$2,450.00	\$300.00	\$300.00	\$4,450.00	\$4,450.00
7	Erosion Control	1	L.S.	\$1,000.00	\$1,000.00	\$500.00	\$500.00	\$256.00	\$256.00	\$150.00	\$150.00	\$675.00	\$675.00
8	Force Account	1	L.S.	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
SUB-TOTAL					\$33,235.00		\$29,495.75		\$29,931.25		\$27,659.10		\$33,423.10

3 4th Street to Park & 7TH CT.				Engineer's Estimate		Coulson Excavating Co, Inc.		Brannan Sand & Gravel Company		Martin Marietta Materials, Inc.		PLM Asphalt & Concrete, LLC	
No.	Item	Quantity	Unit	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost	Unit Cost	Total Cost
1	2" Asphalt Rotomill	3,705	S.Y.	\$5.00	\$18,525.00	\$2.25	\$8,336.25	\$2.75	\$10,188.75	\$2.30	\$8,521.50	\$1.20	\$4,446.00
2	Asphalt Overlay-2"	970	TON	\$80.00	\$77,600.00	\$64.00	\$62,080.00	\$70.00	\$67,900.00	\$74.00	\$71,780.00	\$81.10	\$78,667.00
3	Scarify/Recompact Subgrade (8-Inch)	1,220	S.F.	\$3.00	\$3,660.00	\$0.60	\$732.00	\$3.40	\$4,148.00	\$2.95	\$3,599.00	\$2.10	\$2,562.00
4	HMA Pavement (2-2 Inch Lifts)	35	TON	\$85.00	\$2,975.00	\$64.00	\$2,240.00	\$109.00	\$3,815.00	\$74.00	\$2,590.00	\$78.00	\$2,730.00
5	Adjust Manhole/Remove Concrete Collar	12	EA.	\$600.00	\$7,200.00	\$450.00	\$5,400.00	\$257.00	\$3,084.00	\$600.00	\$7,200.00	\$260.00	\$3,120.00
6	Adjust Valve Box/Remove Concrete Collar	12	EA.	\$400.00	\$4,800.00	\$250.00	\$3,000.00	\$223.00	\$2,676.00	\$500.00	\$6,000.00	\$180.00	\$2,160.00
7	Traffic Control	1	L.S.	\$5,000.00	\$5,000.00	\$4,200.00	\$4,200.00	\$5,645.00	\$5,645.00	\$8,400.00	\$8,400.00	\$4,430.00	\$4,430.00
8	Mobilization	1	L.S.	\$5,000.00	\$5,000.00	\$1,500.00	\$1,500.00	\$4,265.00	\$4,265.00	\$3,900.00	\$3,900.00	\$4,550.00	\$4,550.00
9	Erosion Control	1	L.S.	\$2,000.00	\$2,000.00	\$500.00	\$500.00	\$384.00	\$384.00	\$150.00	\$150.00	\$675.00	\$675.00
10	Force Account	1	L.S.	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00	\$5,000.00
SUB-TOTAL					\$131,760.00		\$92,988.25		\$107,105.75		\$117,140.50		\$108,340.00

Grand Total =

\$219,915.00

\$167,958.00

\$184,786.50

\$186,640.80

\$195,277.90

**CONTRACTOR'S
BID**

IMEG Corporation
Consulting Engineers

Contractor's Bid

Client: Town of Johnstown

Project: Greeley Avenue Resurfacing

Job No.: 18001183.07

1 Charlotte to 2nd Street				Contractor	
No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	2" Asphalt Rotomill	1,144	S.Y.	\$2.25	\$2,574.00
2	Asphalt Overlay-2"	350	TON	\$64.00	\$22,400.00
3	Adjust Manhole	3	EA.	\$450.00	\$1,350.00
4	Adjust Valve Box	3	EA.	\$250.00	\$750.00
5	2' X 10' Crosswalk Block	18	EA.	\$400.00	\$7,200.00
6	Traffic Control	1	L.S.	\$4,200.00	\$4,200.00
7	Mobilization	1	L.S.	\$1,500.00	\$1,500.00
8	Erosion Control	1	L.S.	\$500.00	\$500.00
9	Force Account	1	L.S.	\$5,000.00	\$5,000.00
SUB-TOTAL					\$45,474.00

2 2nd Street to 4th Street				Contractor	
No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	2" Asphalt Rotomill	767	S.Y.	\$2.25	\$1,725.75
2	Asphalt Overlay-2"	230	TON	\$64.00	\$14,720.00
3	Adjust Manhole	3	EA.	\$450.00	\$1,350.00
4	Adjust Valve Box	2	EA.	\$250.00	\$500.00
5	Traffic Control	1	L.S.	\$4,200.00	\$4,200.00
6	Mobilization	1	L.S.	\$1,500.00	\$1,500.00
7	Erosion Control	1	L.S.	\$500.00	\$500.00
8	Force Account	1	L.S.	\$5,000.00	\$5,000.00
SUB-TOTAL					\$29,495.75

3 4th Street to Park & 7TH CT.				Contractor	
No.	Item	Quantity	Unit	Unit Cost	Total Cost
1	2" Asphalt Rotomill	3,705	S.Y.	\$2.25	\$8,336.25
2	Asphalt Overlay-2"	970	TON	\$64.00	\$62,080.00
3	Scarify/Recompact Subgrade (8-Inch)	1,220	S.F.	\$0.60	\$732.00
4	HMA Pavement (2-2 Inch Lifts)	35	TON	\$64.00	\$2,240.00
5	Adjust Manhole/Remove Concrete Collar	12	EA.	\$450.00	\$5,400.00
6	Adjust Valve Box/Remove Concrete Collar	12	EA.	\$250.00	\$3,000.00
7	Traffic Control	1	L.S.	\$4,200.00	\$4,200.00
8	Mobilization	1	L.S.	\$1,500.00	\$1,500.00
9	Erosion Control	1	L.S.	\$500.00	\$500.00
10	Force Account	1	L.S.	\$5,000.00	\$5,000.00
SUB-TOTAL					\$92,988.25

Grand Total = \$167,958.00

COULSDN EXCAVATING Co, INC.
Company Name

5/10/18
Date

William Schrad
Authorized Signature
WILLIAM SCHRADER

Vice President
Title

**NOTICE
OF
AWARD**

SECTION 00 51 00

NOTICE OF AWARD

Dated May 21, 2018

TO: Coulson Excavating Company, Inc.
Bidder

Project: GREELEY AVENUE RESURFACING – TOWN OF JOHNSTOWN

ENGINEER's Proj. No. 18001183.07

OWNER: TOWN OF JOHNSTOWN, COLORADO

You are hereby notified that your Bid dated May 10, 2018 for the above Contract has been considered. You are the apparent successful Bidder and have been awarded a contract for

GREELEY AVENUE RESURFACING – TOWN OF JOHNSTOWN

The Contract Price of your contract is One Hundred Sixty-Seven Thousand Nine Hundred Fifty Eight Dollars and No Cents
(\$167,958.00)

Six copies of each of the proposed Contract Documents (except Drawings) accompany this Notice of Award. Three sets of the Drawings will be delivered separately or otherwise made available to you immediately.

You must comply with the following conditions precedent within ten days of the date of this Notice of Award, that is by June 1, 2018.

1.You must deliver to the OWNER six fully executed counterparts of the Agreement including all the Contract Documents. This includes the sets of Drawings. Each of the Contract Documents must bear your signature on the cover of the page.

2.You must deliver with the executed Agreement the Contract Security (Bonds) as specified in the Instructions to Bidders, General Conditions (paragraph 5.01) and Supplementary Conditions.

Failure to comply with these conditions within the time specified will entitle OWNER to consider your bid abandoned, to annul this Notice of Award and to declare your Bid Security forfeited.

Within ten days after you comply with those conditions, OWNER will return to you two fully signed counterparts of the Agreement with the Contract Documents attached.

TOWN OF JOHNSTOWN

By: _____

Title: _____

AGREEMENT

SECTION 00 52 43

AGREEMENT

THIS AGREEMENT is dated as of the _____ day of _____, in the year 20____ by and between

TOWN OF JOHNSTOWN
(hereinafter called OWNER)

and

Coulson Excavating Company, Inc.
(hereinafter called CONTRACTOR)

OWNER and CONTRACTOR, in consideration of the mutual covenants hereinafter set forth, agree as follows:

ARTICLE 1. WORK

CONTRACTOR shall complete all Work as specified or indicated in the Contract Documents. The Work is generally described as follows:

GREELEY AVENUE RESURFACING – TOWN OF JOHNSTOWN

ARTICLE 2. ENGINEER

The Project has been designed by

IMEG Corporation

who is hereinafter called ENGINEER and who will assume all duties and responsibilities and will have the rights and authority assigned to ENGINEER in the Contract Documents in connection with completion of the Work in accordance with the Contract Documents.

ARTICLE 3. CONTRACT TIME

3.1 The Work will be substantially completed on _____, 2018 (30 days) and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on _____, 2018 (45 days).

3.2 Liquidated Damages. OWNER and CONTRACTOR recognize that time is of the essence of this Agreement and that OWNER will suffer financial loss if the Work is not substantially complete within the time specified in paragraph 3.1 above, plus any extensions thereof allowed in accordance with Article 12 of the General Conditions. They also recognize the delays, expense and difficulties involved in proving in a legal or arbitration proceeding the actual loss suffered by OWNER if the Work is not substantially completed time. Accordingly, instead of requiring any such proof, OWNER and CONTRACTOR agree that as liquidated damages for delay (but not as a penalty) CONTRACTOR shall pay OWNER one thousand dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for substantial completion until the Work is substantially complete. After Substantial Completion if CONTRACTOR shall neglect, refuse or fail to complete the remaining Work within the Contract Time or any proper extension thereof granted by OWNER, CONTRACTOR shall pay OWNER one thousand dollars (\$1,000.00) for each day that expires after the time specified in paragraph 3.1 for completion and readiness for final payment.

ARTICLE 4. CONTRACT PRICE

- 4.1 OWNER shall pay CONTRACTOR for performance of the Work in accordance with the CONTRACT DOCUMENTS in current funds in accordance with the attached bid.

ARTICLE 5. PAYMENT PROCEDURES

Contractor shall submit Applications for Payment in accordance with Article 14 of the General Conditions. Applications for Payment will be processed by ENGINEER as provided in the General Conditions.

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the thirtieth (30) day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.

- 5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.

90% of Work completed. If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.

90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02.A.1 of the General Conditions).

Nothing contained in this provision shall preclude the OWNER and CONTRACTOR from making other arrangements consistent with C.R.S. 24-91-105 prior to contract award.

- 5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine or OWNER may withhold in accordance with paragraph 14.02.B.5 of the General Conditions.

- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07, as amended by the supplementary conditions.

ARTICLE 6. INTEREST

All moneys not paid when due hereunder as provided in Article 14 of the General Conditions shall bear interest at the rate of 8% per annum, compounded monthly.

ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

In order to induce OWNER to enter into this Agreement CONTRACTOR makes the following representations:

- 7.1 CONTRACTOR has familiarized himself with the nature and extent of the Contract Documents, Work, site, locality, and with all local conditions and Laws and Regulations that in any manner may affect cost, progress, performance, or furnishing of the Work.
- 7.2 CONTRACTOR has studied carefully all reports of explorations and tests of subsurface conditions and drawings of physical conditions which are identified in the Supplementary Conditions as provided in paragraph 4.02 of the General Conditions, and accepts the determination set forth in paragraph SC-4.02 of the Supplementary Conditions of the extent of the technical data contained in such reports and drawings upon which CONTRACTOR is entitled to rely.
- 7.3 CONTRACTOR has obtained and carefully studied (or assumes responsibility for obtaining and carefully studying) all such examinations, investigations, explorations, tests, reports, and studies (in addition to or to supplement those referred to in paragraph 7.2 above) which pertain to the subsurface or physical conditions at or contiguous to the site or otherwise may affect the cost, progress, performance or furnishing of the Work as CONTRACTOR considers necessary for the performance or furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.02 of the General Conditions; and no additional examinations, investigations, explorations, tests, reports, studies or similar information or data are or will be required by CONTRACTOR for such purposes.
- 7.4 CONTRACTOR has reviewed and checked all information and data shown or indicated on the Contract Documents with respect to existing Underground Facilities at or contiguous to the site and assumes responsibility for the accurate location of said Underground Facilities. No additional examinations, investigations, explorations, tests, reports, studies or similar information or data in respect of said Underground Facilities are or will be required by CONTRACTOR in order to perform and furnish the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents, including specifically the provisions of paragraph 4.03 of the General Conditions.
- 7.5 CONTRACTOR has correlated the results of all such observations, examinations, investigations, tests, reports and data with the terms and conditions of the Contract Documents.
- 7.6 CONTRACTOR has given ENGINEER written notice of all conflicts, errors or discrepancies that he has discovered in the Contract Documents and the written resolution thereof by ENGINEER is acceptable to CONTRACTOR.

ARTICLE 8. CONTRACT DOCUMENTS

The Contract Documents which comprise the entire agreement between OWNER and CONTRACTOR concerning the Work consist of the following:

- 8.1 This Agreement (pages 1 to 7, inclusive).
- 8.2 Exhibits to this Agreement.
- 8.3 Performance, Payment and other Bonds (identified as exhibits 00 61 13.13 and 00 61 13.16n and consisting of 2 pages.)
- 8.4 Notice of Award.
- 8.5 Notice to Proceed.

- 8.6 General Conditions (pages 1 to 62, inclusive) being the Standard General Conditions of the Construction Contract (2007 Edition).
- 8.7 Supplementary Conditions (pages 1 to 13, inclusive).
- 8.8 Specifications bearing the title **GREELEY AVENUE RESURFACING – TOWN OF JOHSTOWN**, dated **APRIL, 2018**.
- 8.9 Drawings, consisting of sheets numbered 1 through 4 inclusive with each sheet bearing the following general title:

GREELEY AVENUE RESURFACING

- 8.10 Addenda numbers 0 to 0 , inclusive.
- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Award (pages 1 to 1 , inclusive).
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.
- 8.13 The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

There are no Contract Documents other than those listed above in this Article 8. The Contract Documents may only be amended, modified or supplemented as provided in paragraphs 3.4 and 3.5 of the General Conditions.

ARTICLE 9. REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS.

- 9.1 Contractor shall not:
 - 1) Knowingly employ or contract with an illegal alien 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 an illegal alien to perform work under the public contract for services.
- 9.3 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.
- 9.4 Contractor is prohibited from using 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.
- 9.5 If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, 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 an illegal alien; 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 the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

- 9.6 Contractor shall comply with any reasonable request by Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to its authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes.
- 9.7 **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.**

ARTICLE 10. MISCELLANEOUS

- 10.1 Terms used in this Agreement which are defined in Article 1 of the General Conditions shall have the meanings indicated in the General Conditions.
- 10.2 Reference to the General Conditions shall include modifications thereof by the Supplementary Conditions.
- 10.3 No assignment by a party hereto of any rights under or interests in the Contract Documents will be binding on another party hereto without the written consent of the party sought to be bound; and specifically but without limitation, moneys that may become due and moneys that are due may not be assigned without such consent (except to the extent that the effect of this restriction may be limited by law), and unless specifically stated to the contrary in any written consent to an assignment no assignment will release or discharge that assignor from any duty or responsibility under the Contract Documents.
- 10.4 Except for the intended beneficiaries of the Labor and Material Payment Bond executed in conjunction with this Agreement, nothing in this Agreement shall be construed to give any rights or benefits by virtue of this Agreement to anyone other than Owner and Contractor, and all duties and responsibilities undertaken pursuant to this Agreement will be for sale and exclusive benefit of Owner and Contractor and not for the benefit of any other party.
- 10.5 OWNER and CONTRACTOR each binds itself, its partners, successors, assigns and legal representatives to the other party hereto, its partners, successors, assigns and legal representatives in respect to all covenants, agreements and obligations contained in the Contract Documents.
- 10.6 Any provision or part of the Contract Documents held to be void or unenforceable under any law or regulation shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Owner and Contractor, who agree that the Contract Documents shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- 10.7 The Owner and Contractor acknowledge and agree that the payments hereunder shall constitute current expenditures of the Owner payable in the fiscal years for which funds are appropriated for the payment thereof. The Owner's obligations under this Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of the Owner, or an obligation of the Owner payable in any fiscal year beyond the fiscal year for which

funds are appropriated for the payment thereof, or payable from any funds of the Owner other than funds appropriated for the payment of current expenditures. No provision of the Agreement shall be construed to pledge or to create a lien on any class or source of Owner monies, assets or properties.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement in triplicate. One counterpart each has been delivered to OWNER, CONTRACTOR and ENGINEER. All portions of the Contract Documents have been signed or identified by OWNER and CONTRACTOR or by ENGINEER on their behalf.

This Agreement will be effective on _____, _____.

OWNER: TOWN OF JOHNSTOWN, CO.

CONTRACTOR :
Coulson Excavating Company, Inc.

By _____

By _____

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest _____

Attest _____

Address for giving notices:

Address for giving notices:

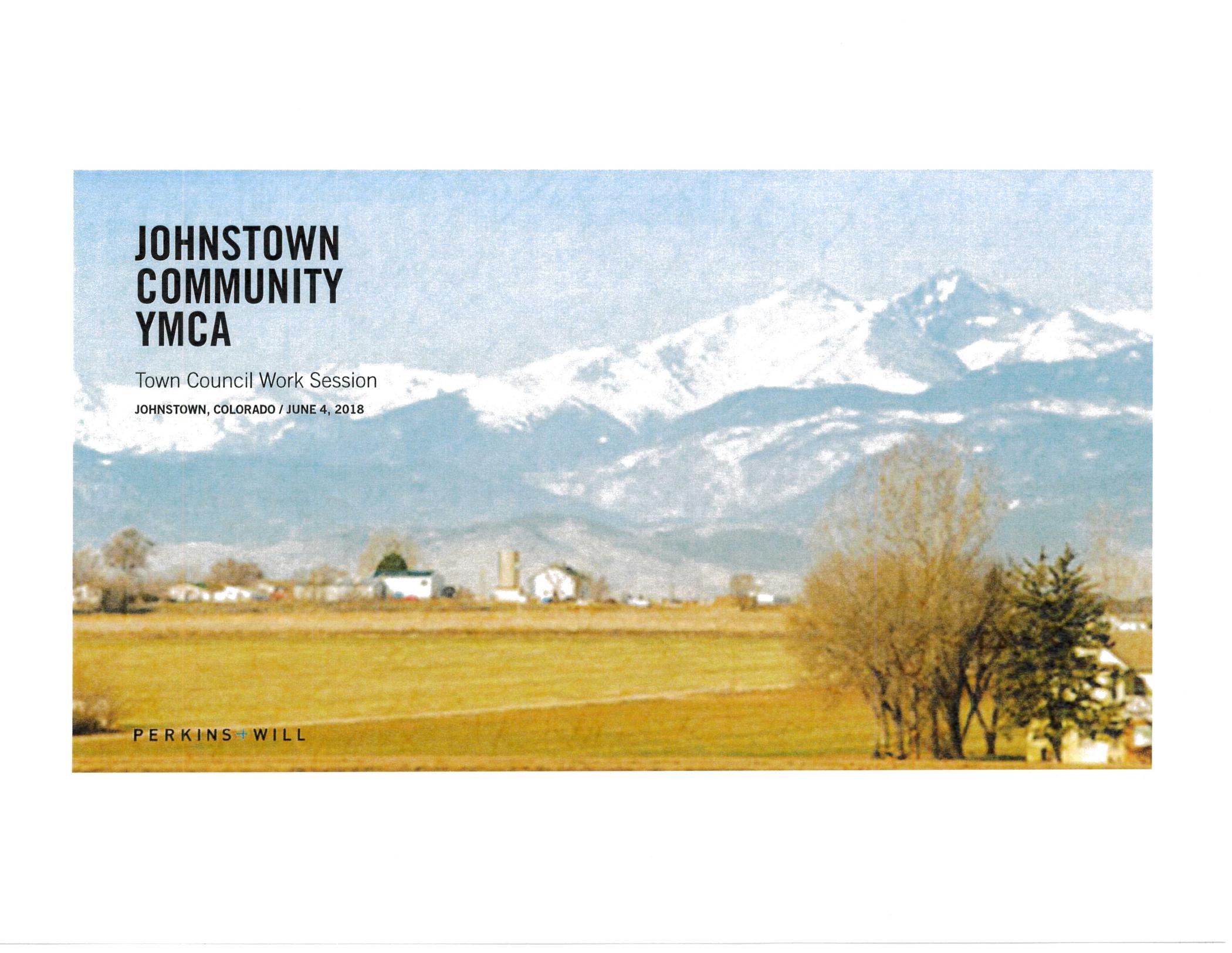
(If OWNER is a public body,
attach evidence of authority
to sign and resolution or
other document authorizing
execution of Agreement.)

License No. _____

Agent for service of process:

WORK SESSION

**JOHNSTOWN
COMMUNITY RECREATION
CENTER
UPDATE**



JOHNSTOWN COMMUNITY YMCA

Town Council Work Session

JOHNSTOWN, COLORADO / JUNE 4, 2018

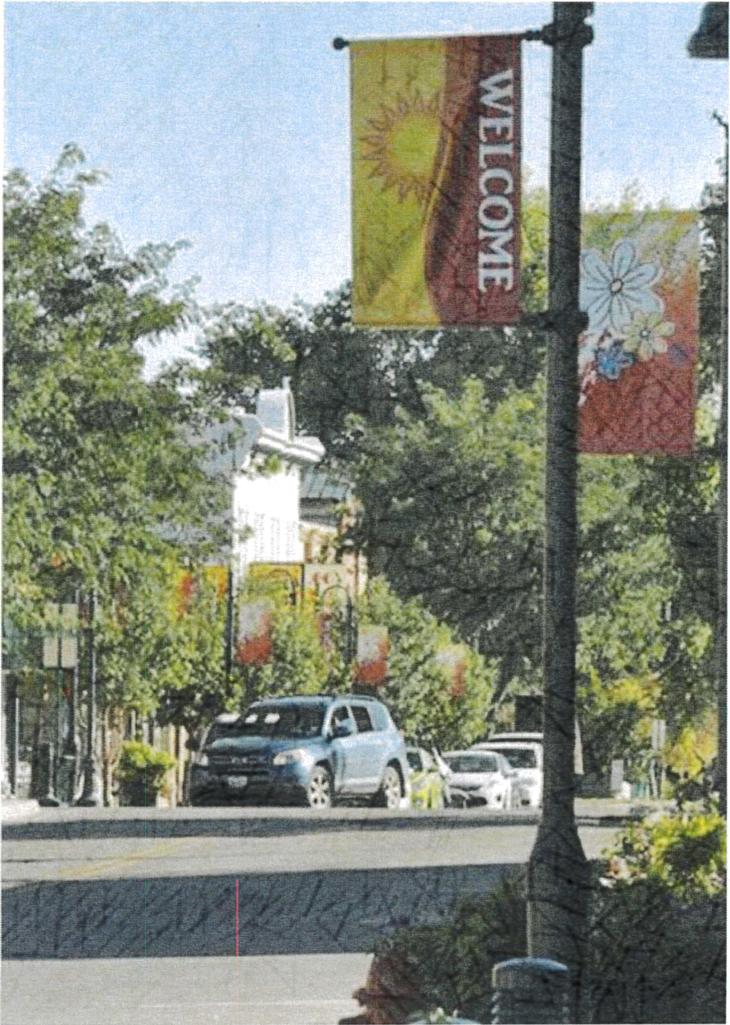
PERKINS+WILL

AGENDA

01 / Design Update

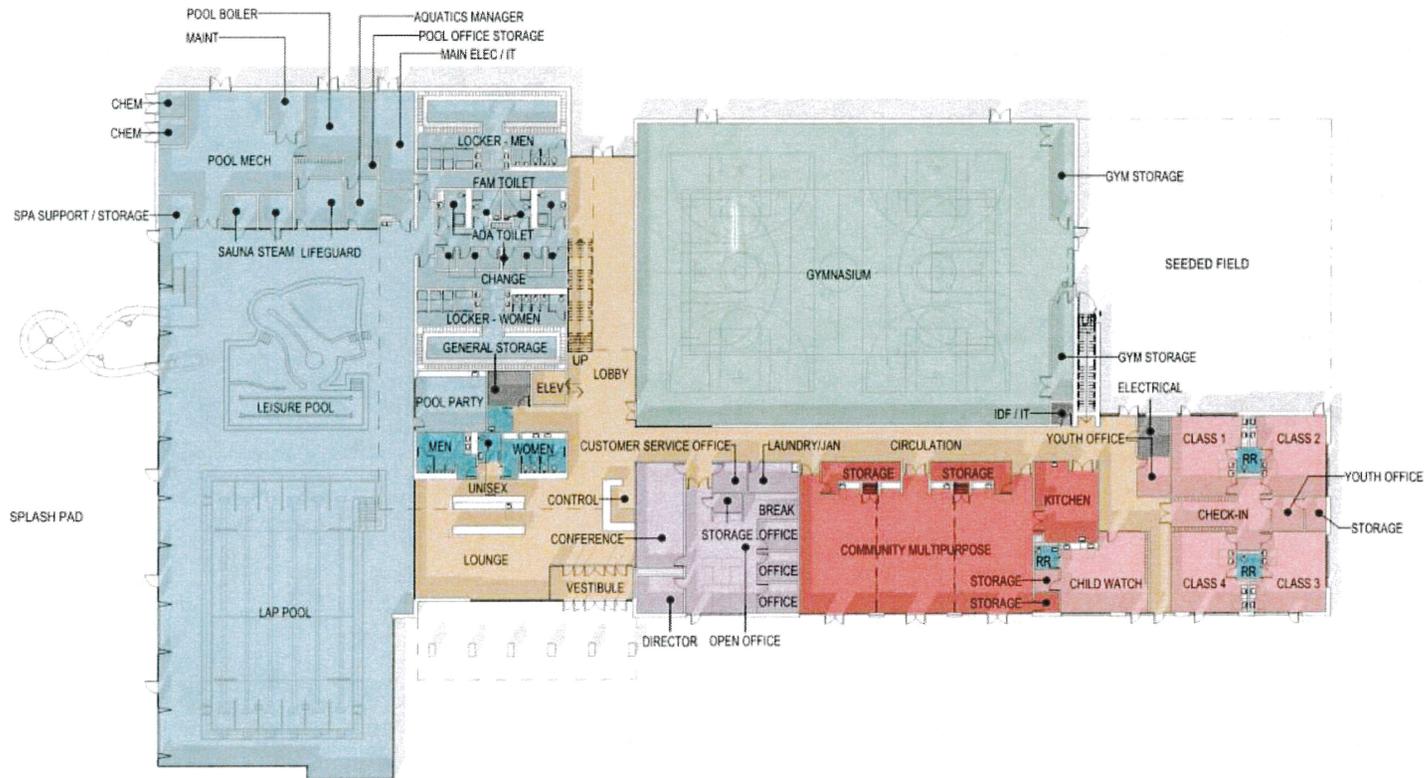
02 / Budget Update

01 / DESIGN UPDATE





← PARISH AVENUE →



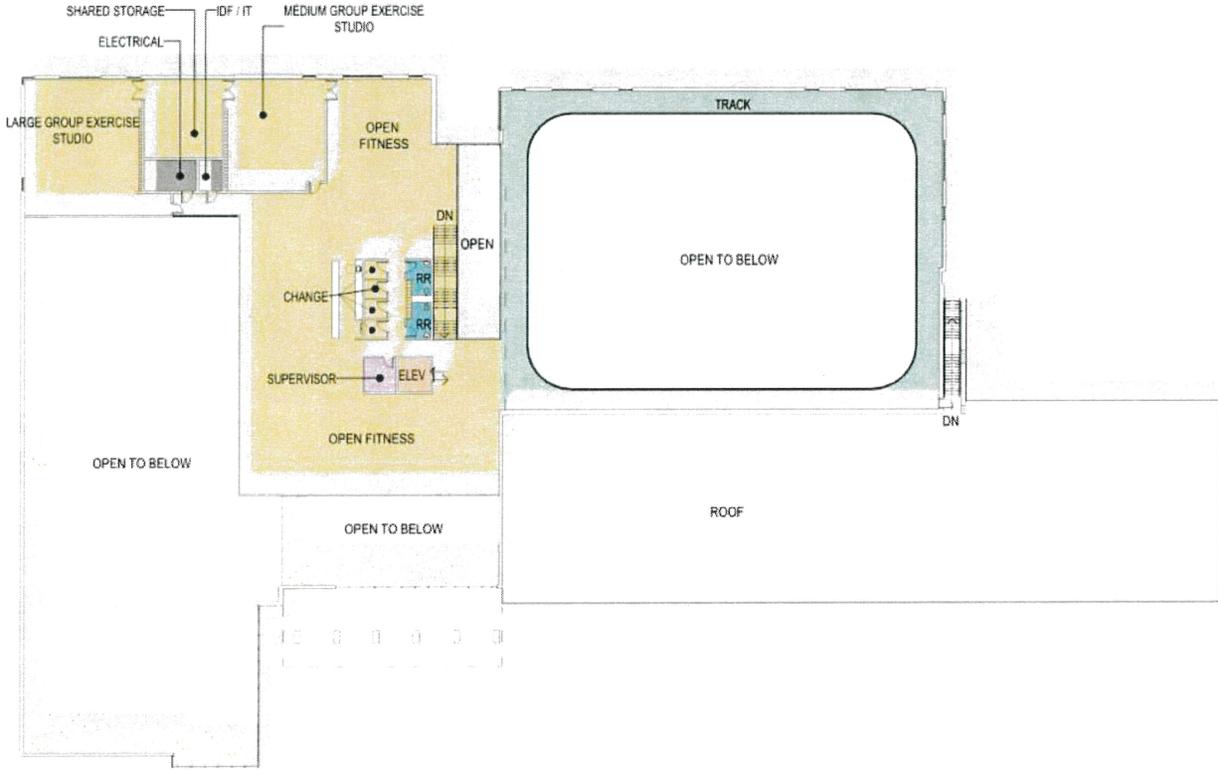
LEGEND

- ADMINISTRATION
- AQUATIC
- BUILDING SUPPORT
- CIRCULATION
- COMMUNITY
- GYMNASIUM
- PRESCHOOL
- RESTROOM

FIRST FLOOR PLAN



← PARISH AVENUE →

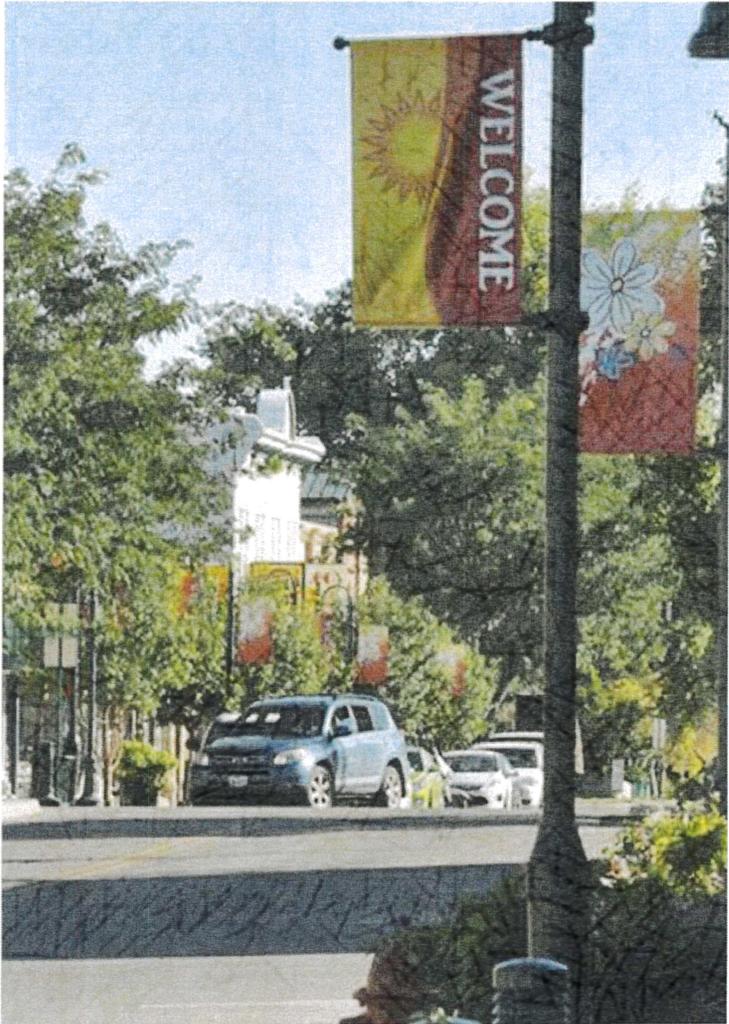


- LEGEND**
- ADMINISTRATION
 - BUILDING SUPPORT
 - CIRCULATION
 - FITNESS
 - GYMNASIUM
 - RESTROOM

SECOND FLOOR PLAN



02 / BUDGET UPDATE



ADDITIONAL AMENITIES SINCE 2013 MASTER PLAN PROGRAM

- Outdoor multipurpose field and perimeter walking path
- Public outdoor playground and play structure
- 6-lane, 25-yard lap pool
- Steam and sauna rooms
- Community room size increased from 100 to 175 people
- Preschool for 80 children, associated outdoor playground and play structure
- Open fitness area increased by 1,700 SF
- Additional group exercise room

COST INFO TO BE PROVIDED PRIOR TO WORK SESSION

