

***TOWN COUNCIL***

***MEETING***

***PACKET***

**August 5, 2019**



**Town Council**

**Agenda**  
**Monday, August 5, 2019**  
**Town Hall, Council Chambers**  
**450 So. Parish Avenue**  
**7:00 PM**



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

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

**1) CALL TO ORDER**

A) Pledge of Allegiance

**2) ROLL CALL**

**3) AGENDA APPROVAL**

**4) SPECIAL PRESENTATIONS –**

A. Audit Presentation – Mr. John Cutler, Cutler and Associates

**5) PUBLIC COMMENT (three-minute limit per speaker)**

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

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**6) CONSENT AGENDA**

- A) Town Council Meeting Minutes – July 15, 2019
- B) Water and Sewer Service Agreement – Firestone Complete Car Care
- C) Acknowledgement of Receipt of the 2018 Audit

**7) TOWN MANAGER REPORT**

**8) TOWN ATTORNEY REPORT**

**9) OLD BUSINESS**

**10) NEW BUSINESS**

- A) Town of Johnstown 2019 Street Overlay Project Change Order
- B) I-25 and Highway 60 Interchange Aesthetic Improvements - Consider Agreement with BHA Design

**12) COUNCIL REPORTS AND COMMENTS**

**13) MAYOR'S COMMENTS**

**14) ADJOURN**

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**NOTICE OF ACCOMODATION**

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

## **AGENDA ITEM 6A-C**

### **CONSENT**

### **AGENDA**

- **Council Minutes – July 15, 2019**
- **Water and Sewer Service Agreement –**
- **Acknowledgement of Receipt of the 2018 Audit**

# **Council Minutes**

The Town Council of the Town of Johnstown met on Monday, July 15, 2019 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Lebsack led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Berg, Mellon, Tallent and Young

Those absent were: Councilmembers Lemasters and Molinar Jr.

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

Agenda Approval

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

Recognitions and Proclamations

Mayor Lebsack recognized the Johnstown BBQ Day Committee and their outstanding volunteerism for organizing the town's annual event.

The new Front Range Fire District Fire Chief, Mr. Mike West was introduced to Council.

Mrs. Stephanie Podtburg and Mr. Noland Eastin was present to share information on a proposed 6-12 Tuition Free Public Charter School in the Johnstown-Milliken area. The school will offer opportunities in college and career exploration.

Consent Agenda

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

- July 1, 2019 Council Meeting Minutes
- Payment of Bills
- June Financial Statements
- 2<sup>nd</sup> Reading – Ordinance No. 2019-163, an Ordinance Approving I-25 Gateway Center Filing No. 4 PUD Amendment No. 2, Amending the Outline Development Plan for Property Located in the Southeast Quarter of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld.
- Order Granting Hotel & Restaurant Liquor License to Cheba Hut Investment Company, Inc.
- Intergovernmental Agreement for Contribution to Roadway Improvements – Weld County Road 50

Motion carried with a unanimous vote.

There being no further business to come before the Council the meeting adjourned at 7:57 p.m.

Mayor

Town Clerk

# **WATER AGREEMENT**

## WATER AND SEWER SERVICE AGREEMENT

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

### WITNESSETH:

WHEREAS, the Developer owns an interest in land located in the NW1/4 of T05N, R68W, Section 14, known as Lot 3 of the Amended Plat of Lot 1, Block 1, 2534 Filing No. 4 and Lot 1, Amended Plat of L2, B1, 2534 Filing No. 4 & Lot 1, 2534 Filing No. 4 Second Replat, Town of Johnstown, County of Larimer, more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed and is to be leased as a retail automobile service facility known as Firestone Complete Car Care at 2534 (“Project”); and

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

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

**1. Water and Sewer Demand Studies.** In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended, (“Ordinance”), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis for the Project. Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated July 18, 2019, is hereby accepted by the Town. The analysis provided by Developer addresses the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	0.14	0.007
Landscape Irrigation (non-potable)	0.49	0.416
Total	0.63	0.423

**2. Water Rights Dedication.**

**a. Potable Supply.** As a result of prior dedications and adjustments associated with the 2534 Development, there is currently a surplus dedication credit with the Town of approximately 21.71 acre-feet per year of potable water. The Parties and the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company have agreed that this credit shall be applied to meet the potable water demands of the Project. Evidence of the agreement is attached as Exhibit B.

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

**3. Commitment to serve.** Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Project up to 0.14 acre-feet per year of potable water supply together with the corresponding sewer service and up to 0.49 acre-feet per year non-potable water supply for landscape irrigation.

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

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

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

TO DEVELOPER:

FCAC-Johnstown, LLC  
Jones Hummel Holdings, LLC  
Attn: Managing Member  
3953 Maple Ave #290  
Dallas, TX 75219

TO THE TOWN:

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

WITH A COPY TO  
THE TOWN ATTORNEYS:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

*Signatures follow on separate pages*

**FCAC-JOHNSTOWN, LLC**

By: \_\_\_\_\_  
Steve Meier

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

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

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Steve Meier as \_\_\_\_\_ of FCAC-Johnstown, LLC.

Witness my hand and official seal.

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

My Commission Expires: \_\_\_\_\_

**JONES HUMMEL HOLDINGS, LLC**

By: \_\_\_\_\_  
Steve Meier

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

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

SUBSCRIBED AND SWORN to before me this \_\_\_\_ day of \_\_\_\_\_, 2019 by Steve Meier \_\_\_\_\_ of Jones Hummel Holdings, LLC.

Witness my hand and official seal.

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

\_\_\_\_\_  
Address

\_\_\_\_\_  
Telephone

My Commission Expires: \_\_\_\_\_

TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

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

ATTEST:

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

APPROVED AS TO FORM:

\_\_\_\_\_  
Avi Rocklin  
Johnstown Town Attorney

**EXHIBIT B**

**RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT**

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company raw water credit account held by the Town of Johnstown, known as the "2534 Water Bank," to provide water service to the development known as Firestone Complete Auto Care at 2534, and any successor occupant of the premises at the same location, pursuant to a Water and Sewer Service Agreement to be executed between FCAC-Johnstown, LLC, Jones Hummel Holdings, LLC, and the Town of Johnstown. The amount of such allocated raw water credit is calculated to be 0.14 acre-feet per year for Potable In-Building Use and 0.49 acre-feet per year for Non-Potable Irrigation Use, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.

Because of past adjustments to the 2534 Water Bank, the use of the anticipated dedication credit of potable water will leave additional credit in the potable portion of the 2534 Water Bank in the amount of 21.57 acre-feet. This credit reflects prior assignment(s) that were not completed by certain developer(s) or other changes made to the non-potable portion of the 2534 water bank. Upon notice and written approval of the Town, said credit may be utilized to offset increased demands, if any, which are not currently projected, subject to approval by the Town in subsequent agreement(s) in accordance with the requirements of the applicable Town's Ordinance and approval of the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company.

Because of past adjustments to the 2534 Water Bank, the use of the prior surplus dedication credit of non-potable water will leave additional credit in the non-potable portion of the 2534 Water Bank in the amount of 168.37 acre-feet. This credit reflects prior assignment(s) that were not completed by certain developer(s) or other changes made to the non-potable portion of the 2534 water bank. Upon notice and written approval of the Town, said credit may be utilized to offset increased demands, if any, which are not currently projected, subject to approval by the Town in subsequent agreement(s) in accordance with the requirements of the applicable Town's Ordinance and approval of the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company.

The undersigned certify that they are authorized to execute this Raw Water Allocation Acknowledgment on behalf of Gerrard Family Partnership, LLLP and Thompson Ranch Development Company.

GERRARD FAMILY PARTNERSHIP, LLLP

\_\_\_\_\_ Dated: \_\_\_\_\_  
Nathan Gerrard, Managing Partner  
Gerrard Family Limited Partnership, LLLP

THOMPSON RANCH DEVELOPMENT COMPANY \_\_\_\_\_

Dated: \_\_\_\_\_  
Todd Williams, Vice President  
Thompson Ranch Development Company

**AGENDA ITEM 7**

**TOWN MANAGER**

**REPORT**



# TOWN OF JOHNSTOWN

## MEMORANDUM

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TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: August 5, 2019

CC: Town Staff  
Local Media

SUBJECT: Departmental Report

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

- 08/05/2019 – Regular Town Council Meeting
  - 08/12/2019 – Work Session (None Planned)
  - 08/19/2019 – Regular Town Council Meeting
  - 08/26/2019 – Work Session (None Planned)
- 

### **Police Department**

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

- *DUI Training:* Officer Balltrip attended ARIDE Training Advanced Roadside Impaired Driving Enforcement where he learned:
  - SFST Review
  - The Seven Major Drug Categories
  - Signs and Symptomology
  - Physiology of Drugs
  - Drug Combinations
  - Courtroom Testimony
  - Report Writing
- *Taser Instructor:* Sergeant Timme attended Taser Instructor training to become a certified trainer for Conducted Energy Devices (CED) – commonly referred to as a “Taser.”
- *Marijuana Training:* Ofc. Kelley attended basic marijuana enforcement training I hosted by Northglenn Police Department, the training covers the specific elements needed for marijuana enforcement and prosecution.

**The Community That Cares**

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

- *Finally Friday Event* – Officer Perry and Officer Wood provided off-duty security for the Johnstown Milliken Chamber of Commerce in the downtown area for Finally Friday.
- *Ride and Revel Bike Ride Event* – Officer Kelley provided off-duty security at the intersection of HWY 60 – W.C.R. 17 for Ride and Revel. 250 bike riders participated in this event.
- *Vice President Pence visit planning* – JPD command staff attended a meeting at the Loveland Police Department to cover Vice President Pence’s visit to Northern Colorado. Agenda items discussed included site security, motorcades, motorcade route security, tactical, technical security, intelligence, and airport security.
- *Outlaw Motorcycle Gang Activity* – Commander Sanchez and Lt. Oglesby attended a meeting at the Loveland Police Department hosted by the Loveland Street Crimes Unit to discuss recent criminal activity by Outlaw Motorcycle Gangs in Northern Colorado.

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

- *DOLA Presentation* – Matt presented a request for the \$1M grant application to DOLA on July 17 to the advisory committee. The presentation went well with few questions from the committee. We hope to learn the status of this application within 30 days from the date of the presentation.
- *Johnstown/Berthoud IGA* – Town representatives from each municipality are working on considerations for a revision to the current IGA’s the entities currently have in place. The proposed changes will address items related to the current Growth Management Areas and the Regional Wastewater Treatment Plant.
- *Weld County CPA* – Town representatives are working to schedule a time with the County Commissioners next week to discuss and review a draft Cooperative Planning Agreement with the county for greater cooperation and consideration of land use and planning matters within the Johnstown GMA.
- *CDOT* – Town representatives continue to be actively involved in ongoing discussions with CDOT related to 402, the proposed “parallel arterial” that will functionally replace several I-25 frontage roads, as well as expanded ROW needs with current development projects.
- *Hwy 402 Access Control* – The Town met with Loveland and CDOT staff to discuss more detailed access control in the section of CO 402, just east of I-25, that impacts properties in Johnstown & our GMA (to WCR 7).
- *Facebook Survey* – The Town asked residents for their opinion related permissions and applicability to provide for an increase to the length of snakes and caimans in our community. Initially the feedback was roughly 80-20% in opposition. The survey quickly changed though when individuals from outside of Johnstown and the state participated in the poll. Over 2,400 votes were submitted ending in 68% - 32% supporting the item. While this was certainly not scientific and wouldn’t be classified as representative of our community, it was an exercise that had people engaged on both sides of the issue. Staff will continue to review the issue.

- *Johnstown Housing Authority* – Matt met with representatives from the Johnstown Housing Authority and together we plan to have an overview of the JHA’s request provided to Council for consideration at the August 19 Council Meeting.
- *Genuine Johnstown* – Elected Officials and Matt attended the unveiling of the *Genuine Johnstown* brand and marketing campaign. This is a focus of the Chamber as part of our partnership with them to build support and awareness for the Johnstown business community. Those attending provided comments and support for the new brand.
- *Reminder Call Service* – Staff is researching options for shut off notifications for our utility customers in an effort to increase efficiencies and reduce the shut offs to the lowest level possible.
- *Budget Billing* – Staff is researching the option of offering a budget billing program for utility billing to residents.
- *Executive Administrative Assistant position* – Job advertisement was posted on the CML Job Board, Town of Johnstown web site and Indeed.com. Applications for the position are being reviewed and interviews will be scheduled in the near future.
- *Finally Fridays Event* – Friday, August 16, 2019 – Staff is working with the Johnstown Milliken Chamber of Commerce to issue a Special Event Permit for a beer garden at Liberty Firearms
- *Topping Ceremony Johnstown Community YMCA* – Saturday, August 10, 2019, from 11:00 a.m. to 1:00 p.m. at the site

## **Public Works Department**

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

- *Parks* – Mowing is ongoing in all Town parks. Crews are added mulch in the planters at Rolling Hills Park, as well as replaced two trees that were removed. Additional trees were also planted in Pioneer and Clearview Parks. Weed mitigation was also completed along path as well as senior center and rolling hills parkway.
- *Johnstown Lake* – Work on the path at Town Lake was completed including the addition of 150 tons of material and grading the pathway.
- *Grading* – 14.5 miles of street grading was completed. Staff will be applying mag chloride to CR 3 which is part of our road maintenance agreement with Larimer County.
- *Sweeping* – Our street sweeper has been out on a regular maintenance schedule. Subdivisions completed were: Pioneer Ridge, Johnstown Farms, Carlson Farms, and the 2534 area.
- *Alleys* – All alleys in Old Town were bladed and gravel added.
- *Paving* – Hawthorne reconstruction has started and weather permitting should be Friday the 2<sup>nd</sup>. The cul-de-sac had some moisture issues and the subgrade was extremely wet. To help stabilize it, we introduced 4” of crushed concrete.

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

- *Water Plant* - Plant has seen an increase in daily flows, directly corresponding to the hot summer. The approximate average flow is 3.7 MGD.
- *DAF Saturator and Pipe Replacement Project* – Saturator project has been completed and punch list items are being addressed prior to commencement of the two warranty period.

**AGENDA ITEM 10A**

**2019 Street Overlay Project  
Change Order**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** August 5, 2019

**ITEM NUMBER:** 10A

**SUBJECT:** Town of Johnstown 2019 Street Overlay Change Order

**ACTION PROPOSED:** Approve change order to Asphalt Specialties

**ATTACHMENTS:** 1. Change order quote

**PRESENTED BY:** Marco Carani, Director of Public Works

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### **AGENDA ITEM DESCRIPTION:**

Enclosed for your review and consideration is a change order request for the 2019 Streets Overlay Project between the Town of Johnstown and Asphalt Specialties.

Asphalt Specialties (Contractor) began work on the overlay project in June. The project consisted of milling two inches of existing asphalt and replace with two inches of new asphalt on the following roads:

- Jay Avenue from Greeley to 6<sup>th</sup> Street
- 4<sup>th</sup> Street from Telep to Greeley
- 7<sup>th</sup> Street
- 7<sup>th</sup> Place
- Hawthorne from Woodbine to the end of Cul de Sac (full reconstruction)

During milling operations some thin spots on the road were found. The Contractor was able to remove these areas and prep for paving which began on July 11, 2019. While paving, the weight of the trucks and equipment caused the thin asphalt (<1.25") to fail. Through visual inspection, both Jay Street and 4<sup>th</sup> Street were only built with 3 inches of asphalt. Town specifications require roadways to have a minimum of 6" asphalt. This change order reflects a 5" roadway instead of the required 6" as per Town specifications.

Due to the problems found, paving operations were put on hold while staff evaluated their options. After consideration of the alternatives, staff feels it is in the Towns best interest to build a quality roadway that will last and a full reconstruction would be the preferred alternative. This would require removal of the remaining asphalt, compaction of the subgrade and place a minimum of 5" inches of asphalt. This change to the project scope would apply to the following roadways.

- Jay Avenue from Greeley to 6<sup>th</sup> Street – 3550 Square Yards (SY)
- 4<sup>th</sup> Street from Telep to Greeley – 9100 (SY)
- 7<sup>th</sup> Place 174 (SY)

In order to make these changes, which will ensure the longevity of the road condition, staff is requesting a change order in the amount of \$429,985.00 as presented in the emailed proposal for the change order. A budget amendment will be necessary to perform this work. A formal budget amendment will be provided later in the fiscal year and staff will interpret approval of this work to the extent that Council will support the budget amendment when presented.

**LEGAL ADVICE:**

N/A

**FINANCIAL ADVICE:**

A budget amendment will be necessary for this change order

**RECOMMENDED ACTION:**

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to approve the change order between the Town of Johnstown and Asphalt Specialties in the amount not to exceed \$429,985 based on the change order presented.

**For Denial:**

I move to deny the change order between the Town of Johnstown and Asphalt Specialties for the amount of \$429,985

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## **Quote from Contractor**

Marco,

Per your request, we are submitting additional pricing below to repair the following areas:

7<sup>th</sup> Place – 174 SY

Jay – Greeley to 6<sup>th</sup> – 3556 sy

4<sup>th</sup> – Greeley to Park – 9100 sy

The method of repair will be to remove an additional 3” of existing asphalt and subgrade, recondition the subgrade and install an additional 3” of asphalt (Grading S)(75)(PG-64-22)(20% RAP) to what has already been contracted.

Pricing is as follows:

1. Remove Existing 3”	12830 SY @ \$3.70/SY	= \$ 47,471.00
2. Recondition Subgrade (12”)	12830 SY @ \$2.05/SY	= \$ 26,301.50
3. Install additional 3” of Asphalt	2195 TON @ \$77.50/TON	= \$170,112.50
4. Additional Traffic Control	1 LS @ \$31,000.00	= \$ 31,000.00
5. Additional Mobilization	1 LS @ \$20,700.00	= \$ 20,700.00
6. Allowance for Soft Spots (33% @ 1’ Depth)	1400 CY @ \$96.00/CY	= <u>\$134,400.00</u>
	TOTAL	\$429,985.00

All items to be paid based on actual quantity installed and subgrade material delivered to Johnstown yard.

This work will take approximately 14 additional working days depending on the amount of soft spots we encounter that need repair. Scheduling for this work is dependent on availability of our crews.

If you have any questions, please feel free to call.

**AGENDA ITEM 10B**

**I-25 and Highway 60  
Interchange Aesthetic Improvements**

**(Agreement with BHA Design)**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** August 5, 2019

**ITEM NUMBER:** 10B

**SUBJECT:** I-25 & Highway 60 Interchange Aesthetic Improvements

**ACTION PROPOSED:** Approve the Agreement with BHA Design as Presented

**ATTACHMENTS:** 1. BHA Design Agreement with Exhibit A describing the Scope Proposal

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

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### **AGENDA ITEM DESCRIPTION:**

At the July 15, 2019 Council Meeting, Town Council was advised regarding the planned improvements for I-25 and Segment 6 which encompasses the Highway 60 Corridor. As part of the planned improvements, a Divergent Diamond Interchange is proposed at I-25 and State Highway 60. Plans are currently 30% complete and it is expected that 60% design completion will be achieved around January 2020.

The Town has been presented by CDOT with the opportunity to, if desired, make aesthetic improvements to the interchange (Exit 252). These improvements would be at the Town's cost. In order to make aesthetic improvements, the Town needs to identify and create a concept of what they would like to see at this interchange and work with a landscape architect to establish a preliminary design. The preliminary design will then be used to establish what the additional loading will be on the bridge decks, other ancillary improvements, and preliminary cost estimates. CDOT is on a tight timeline and needs to have the loading requirements incorporated into their design at the 60% design concept for the Interchange improvements which is as mentioned January 2020.

The Town contacted BHA Design who was highly recommended for successful design and concepts at the various interchanges along I-25. We requested a proposal which is included in this communication for Council consideration. Based on the proposal presented, the cost for the initial elements to meet the needs of CDOT and have a design identified, the estimated cost is \$33,800. This does not include the final design construction plans.

Generally, this agreement would be handled administratively, but funds for this project and scope have not been allocated and will need to be appropriated in a future budget amendment. Approval of this agreement would presume that the Council will approve a corresponding budget amendment when presented at a later date before the close of the fiscal year. The cost of the agreement as presented is \$33,800. Council does have discretion to change the scope presented if desired, but this will change the cost based on a reduction or increase in services.

**LEGAL ADVICE:**

The agreement is our standard vendor agreement we use for small projects.

**FINANCIAL ADVICE:**

A budget amendment will be necessary and if the Council continues forward with construction funds will need to be considered in the FY 2020 budget.

**RECOMMENDED ACTION:** Staff recommends approval of the agreement as presented based on the reasons described in this agenda item and a desire by the Council to make aesthetic improvements to the interchange.

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to approve the Agreement with BHA Design as presented.

**For Denial:**

I move that we deny the Agreement with BHA Design as presented.

**Reviewed and Approved for Presentation:**

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Town Manager

# **Professional Services Agreement**

**TOWN OF JOHNSTOWN  
PROFESSIONAL SERVICES AGREEMENT**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_ 20\_\_ (the “Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and BHA Design, Inc., a Colorado Corporation (“Contractor”) (collectively, the “Parties”).

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

**WHEREAS**, the Parties wish to memorialize their contractual relationship.

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

**SECTION 1: PARTIES**

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

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

**SECTION 2: SERVICES, TERM AND COMPENSATION**

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

2.02 Term. Unless otherwise terminated in accordance with Section 5, the term of this Agreement shall be from the Effective Date through December 31, 2019, and shall not extend beyond that date absent the written approval of the Town.

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

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

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

### **SECTION 3: OPERATIONS**

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

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

### **SECTION 4: INSURANCE AND INDEMNITY PROVISIONS**

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

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

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

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

### **SECTION 5: TERMINATION**

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

## **SECTION 6: INDEPENDENT CONTRACTOR**

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

## **SECTION 7: NOTICE**

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

**TO THE TOWN:**

Town of Johnstown  
Attn: Matt LeCerf  
Town Manager  
PO Box 609  
450 S. Parish Avenue  
Johnstown, CO 80534  
Email: mlecerf@townofjohnstown.com

**TO CONTRACTOR:**

BHA Design Incorporated  
Attn: Roger B. Sherman, Principal  
1603 Oakridge Drive, Suite 100  
Fort Collins, Colorado 80525  
Email: rsherman@bhadesign.com

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

## **SECTION 8: MISCELLANEOUS**

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

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made

available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

8.03 Illegal Aliens. Contractor shall comply with the statutory provisions prohibiting employment of illegal aliens, as set forth on Exhibit B, attached hereto and incorporated herein by such reference.

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

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

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

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

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

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

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

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

Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by the Contractor.

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

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

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

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

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

[Remainder of page intentionally left blank.]



# EXHIBIT A

BHA Design Incorporated  
1603 Oakridge Drive  
Fort Collins, CO 80525

July 22, 2019



Matt LeCerf  
Town Manager  
Town of Johnstown  
450 Parish Avenue | PO Box 609 Johnstown, CO 80534

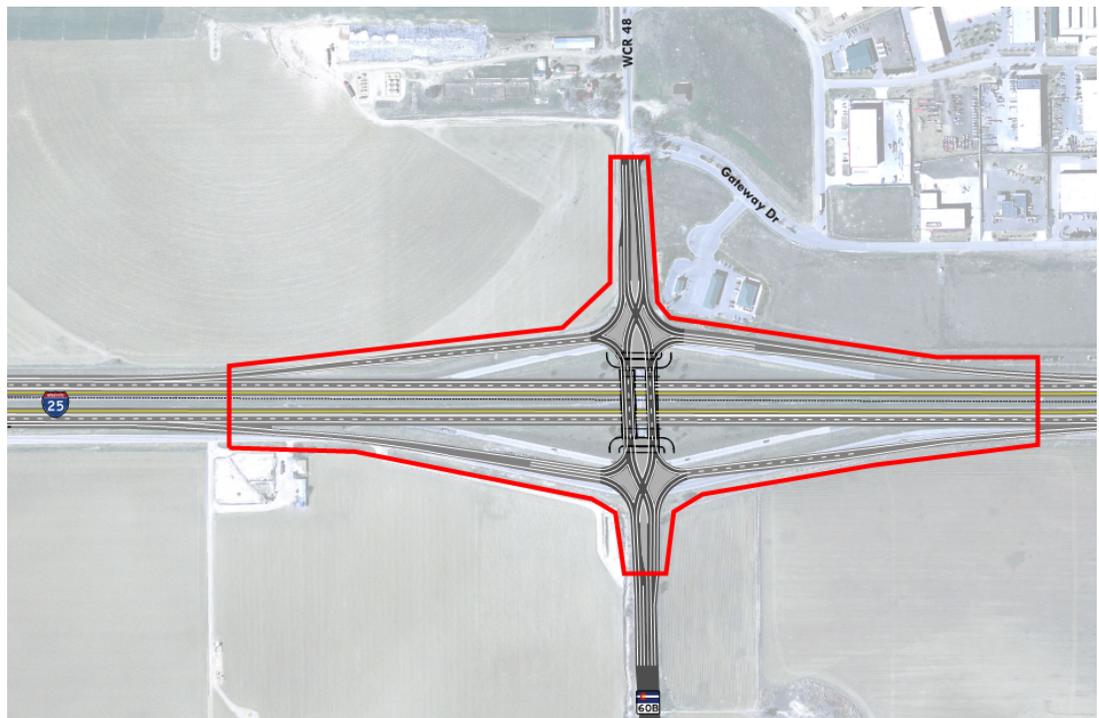
## RE: Johnstown Hwy 60 Interchange

Dear Matt,

We are pleased to present our conceptual design services proposal for the proposed I-25/ Highway 60 Interchange located in Johnstown, CO.

### PROJECT UNDERSTANDING:

The Town would like to enhance CDOT's proposed I-25/Hwy 60 interchange. Bridge enhancements may include architectural bridge treatments, upgraded pedestrian bridge railing, ornamental lighting, upgraded retaining wall finishes, and unique concrete stain colors. Johnstown identification signage is also an important aspect of the project. Landscape improvements will be modest and strategically placed for maximum impact. The project extents are outlined in red below.





### SCOPE OF SERVICE:

- A. Attend kick-off meeting with Town representatives to discuss the project vision, goals, budget, schedule, Town image/signage, maintenance operations, etc.
- B. Meet with CDOT representatives to discuss bridge design opportunities and constraints, clearance zone requirements, grading, drainage, lighting, utilities, etc.
- C. Obtain CDOT's 30% interchange CAD drawings (DWG or DGN format).
- D. Obtain copies of CDOT's cost estimate for the interchange. This will be used to compare CDOT's base costs and costs associated with Town upgrades and enhancements.
- E. Contact CDOT's project structural engineer to discuss bridge design parameters and weight restrictions.
- F. Collect precedent images of other bridges and share them with the Town to determine stylistic preferences.
- G. Meet with Town Council to review precedent images and to discuss their project vision and priorities.
- H. Prepare 2 preliminary bridge elevations concepts.
- I. Prepare 2 preliminary Town identification sign concepts.
- J. Prepare 1 conceptual landscape plan.
- K. Prepare 3D SketchUp models to illustrate the preliminary bridge concepts. At this stage, a portion of the bridge will be modeled in SketchUP, not the entire bridge.
- L. Meet with Town representatives to review the preliminary design concepts and receive feedback.
- M. Meeting with CDOT to review preliminary design concepts.
- N. Public Open House – preliminary concepts will be formatted on 24x36 sheets and mounted on foam boards. Two members of BHA's staff will attend the open house,
- O. A written summary of comments received during the open house will be forwarded to the Town following the meeting.
- P. Prepare preferred bridge concept based on the Town's feedback. The final deliverables will include the following:
  - 1. 3D SketchUp model of the bridge and interchange.
  - 2. Conceptual landscape plan.
  - 3. Two color rendered perspective illustrations of the interchange will be prepared using SketchUp and Enscape. The final view angles will be determined with input from the Town.
  - 4. Opinion of Probable Construction cost for Town upgrades and enhancements.

BHA Design Incorporated  
1603 Oakridge Drive  
Fort Collins, CO 80525

- Q. The graphics described above will be colored, labeled, and formatted on 11x17 sheets with a titleblock. PDF copies will be forwarded to the Client.
- R. Present preferred bridge concept and costs to Town Council.



**EXCLUSIONS:**

- Design services beyond conceptual design
- Preparation of grading plans, lighting plans, irrigation plans
- Structural engineering services
- Design services associated with improvements located outside of the CDOT right-of-way
- Additional Meetings
- Presentations to Planning Commission

Total compensation (including reimbursable expenses) for the above scope of service will not exceed **\$33,800**. BHA's labor and related expenses will be charged monthly on an hourly not-to-exceed basis.

Thank you again for the opportunity to be involved in this important project.

Sincerely,  
BHA Design, Inc.

A handwritten signature in black ink, appearing to read "Roger B. Sherman".

Roger B. Sherman  
Vice President

**EXHIBIT B**  
**REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES**  
**PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS**

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 this public contract for services.

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

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

If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with 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 that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

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

**IF CONTRACTOR VIOLATES ANY OF THE AFOREMENTIONED REQUIREMENTS, 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.**

***INFORMATIONAL***

Hosted by the



# FINALLY FRIDAYS

Live Entertainment,  
Food, and Family Fun!

August 16, 2019

5:00- 9:00 pm

Liberty Firearms at 2534

