TOWN COUNCIL

MEETING

PACKET

March 2, 2020

Town Council

Agenda

Monday, March 2, 2020
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, PROCLAMATIONS AND PRESENTATIONS
Thompson School District – TRR K-8 Facility

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 Minutes – February 19, 2020
B) List of Bills
C) 2020-2029 Capital Improvement Plan Adoption
D) Little Thompson River Trail Contract

7) TOWN MANAGER REPORT

8) TOWN ATTORNEY REPORT

9) OLD BUSINESS

10) NEW BUSINESS
A. Public Hearing – First Reading – Consider Ordinance No. 2020-172, an Ordinance amending Section 10-44 and 10-45 of the Johnstown Municipal Code concerning Harassment and Disorderly Conduct respectively and adding Section 10-25 to the Johnstown Municipal Code concerning Excreting in Public
B. Public Hearing – First Reading – Ordinance No. 2020-173, an Ordinance Approving a Franchise Agreement between the Town of Johnstown and
Poudre Valley Rural Electric Association, Inc.
C. Resolution No. 2020-05 – Finding Substantial Compliance for Initiating Annexation Proceedings for the Ridge at Johnstown Annexation #1

11) EXECUTIVE SESSION

12) COUNCIL REPORTS AND COMMENTS

13) MAYOR'S COMMENTS

14) ADJOURN

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-D

CONSENT
AGENDA

- **Council Minutes – February 19, 2020**
- **Payment of Bills**
- **2020-2029 Capital Improvement Plan Adoption**
- **Little Thompson River Trail Contract**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 2, 2020

ITEM NUMBER: 6A-D

SUBJECT: Consent Agenda

ACTION PROPOSED: Approve Consent Agenda

PRESENTED BY: Town Clerk, Town Manager, Finance Director

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

A) Town Council Minutes – February 19, 2020
B) Payment of Bills
C) *2020-2029 Capital Improvement Plan Adoption
D) **Little Thompson River Trail Contract

*Capital Improvement Plan 2020 – 2029 – As part of each budget adoption, Staff develops a 10-year CIP which is updated annually and reflects the identified capital priorities for the current and future fiscal years. Those items in the current fiscal year mirror those items identified in the current fiscal year budget, while the future years provide the Town with a general roadmap of the projected needs of the future. This information is included in the long-term financial analysis that evaluates our projected fiscal health. While the needs of future fiscal years may change based on various influences that impact the priority, it does provide us with general direction for budgeting purposes. In years moving forward, we anticipate this document to be adopted as part of each fiscal year budget.

**Little Thompson River Trail Contract – In 2019, the Town was awarded a grant through the NRFMPO and CDOT. The grant is funded by the Statewide Transportation Program (STIP) funding. The enclosed document was provided to the Town by CDOT instructions not to modify the agreement. Upon approval, 3 original signed contracts will be returned to CDOT and they will return a single contract in final form, fully executed. This will allow us to award the project which is currently out for proposal for engineer design services. It is out intention that the project will be completed by the end of the fiscal year as budgeted currently.

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:

Council Minutes

The Town Council of the Town of Johnstown met on Wednesday, February 19, 2020 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor pro-Tem Chad Young led the Pledge of Allegiance.

Roll Call:
Those present were: Councilmembers Berg, Lemasters, Mellon, Molinar Jr., Tallent
Those absent were: Mayor Lebsack

Staff present: Avi Rocklin, Town Attorney, Matt LeCerf, Town Manager, Mitzi McCoy, Finance Director and Brian Phillips, Police Chief.

Agenda Approval

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

Consent Agenda

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

- February 3, 2020 Council Meeting Minutes
- January Financial Statements
- 2nd Reading – Ordinance Number 2020-170 an Ordinance Amending Article IV of Chapter 10 of the Johnstown Municipal Code to Include Section 10-76 Concerning Unlawful Dwelling in Vehicles, Recreational Vehicles, Trailers or Campers
- 2nd Reading – Ordinance Number 2020-171 an Ordinance for the Regulation of Traffic by Town of Johnstown, Colorado; Adopting by Reference the 2020 Edition of the Model Traffic Codes; Providing for Certain Additions and Modifications to Such Code; Repealing All Ordinances in Conflict Therewith; and Providing Penalties for Violation Thereof.

Motion carried with a unanimous vote.

New Business

A. Johnstown Downtown Development Association Financial Request – Council did not take action on this item.

Executive Session

Councilmember Mellon made a motion seconded by Councilmember Berg to recess into Executive Session at 7:22 p.m. for the purpose of determining strategy for negotiations, under C.R.S. Section 24-6-402(4)(e) regarding Economic Development and for a Discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) regarding Town Manager.

Mayor Pro Tem Young reopened the meeting at 7:55 p.m. and stated no decisions were made.

There being no further business to come before Council the meeting adjourned at 8:11 p.m.

Mayor Pro Tem

Town Clerk

Payment of
Bills

Town of Johnstown - List of Bills
January 30, 2020 - February 24, 2020

Vendor	Description	Dept.	Amount
4990 Ronald Reagan LLC	Police substation lease	PD	1,519.75
A & E Tire Inc	Tires	PD	156.00
Ace Hardware	Supplies	ALL	1,447.84
Adamson Police Products	Uniforms	PD	537.67
AED Everywhere, Inc.	AEDs and Cabinet	PD	9,800.00
All Copy Products	Copy fees	PW	179.19
American Water Works Association	Membership fees	PW	79.00
Applied Concepts, Inc	Repairs	PD	80.00
Applied Industrial Tech	Supplies	PW	906.77
Arapahoe Rental	Supplies	PW	25.98
Arrowhead Scientific Inc.	Supplies	PD	779.60
Blue360 Media	Supplies - handbooks	PD	185.64
Brandon Copeland	Professional Services	ADM	282.84
Brighton Crane Service LLC	Equipment -pumps	PW	1,960.00
Browns Hill Engineering & Controls	Water & wastewater engineering	PW	86,045.40
CAMCA	Membership fees	ADM	20.00
Card Services	Travel, training & supplies	ALL	6,413.65
Caselle, Inc	Upgrade/software maintenance/support	ALL	2,902.00
CCNC, Inc	Membership fees	PD	100.00
CDR Propane Services, LLC	Propane	PW	1,212.50
Central Weld County Water District	Water purchase	PW	1,342.15
CenturyLink	Telephone	PW	239.11
Cintas	Supplies	ALL	913.37
Cirsa	Insurance	ALL	61,382.99
City of Fort Collins	Water lab testing	PW	2,700.00
Colorado Analytical Labs	Lab testing	PW	515.00
Colorado Assoc for Permit Tech	Membership fees	ADM	25.00
Colorado Concrete Construction	Concrete pads	PW	2,900.00
Colorado Dept. of Labor & Employment	Registration Fee	PW	35.00
Colorado Greenbelt Management	Snow removal	PW	490.00
Community center refunds	Refund of deposits	ADM	950.00
Consolidated Home Supply Ditch &	Trace fees	PW	1,425.40
Core & Main	Supplies & utility marker	PW	3,667.10
D.R. Associates, LLC	Equipment	PW	1,650.00
DBC Irrigation Supply	Supplies	PW	29.97
Denver Industrial Sales	Crack seal material	PW	4,846.48
Douglas County Sheriff's Office	SOTAR 2020 Annual Renewal	PD	2,000.00
DPC Industries Inc	Chemicals	PW	22,857.68
E-470 PUBLIC HIGHWAY AUTHORITY	Travel & training	PD	18.25
Elements	Equipment - Rec Center	PW	26,969.78
Envirotech Services, Inc	Ice slicer	PW	8,189.77
Ergomed	Employment screening	ADM/PD	400.00
Faris Machinery Co.	Engine	PW	2,814.00
FBINAA	Membership fees	PD	105.00
Felsburg Holt & Ullevig	Bill back - Engineering services	ADM	2,813.72
Felsburg Holt & Ullevig	Engineering services	PW	850.76
First Class Security Systems	Fire system monitoring	PW	78.90
First National Bank	Adobe/Microsoft monthly support	ADM	90.71
Gamez, Shirley Newsom	Travel	ADM	65.00
Glenn A. Jones Library	Monthy distribution	ADM	85,221.66
Goldstar Products Inc.	Spill pads	PW	1,396.50
Grainger, Inc.	Supplies	PW	978.71
Greeley Police Department	2020 Victim Assistance Contribution	PD	2,000.00
Greystone Technology Group	Monthly support	ALL	1,265.00

Town of Johnstown - List of Bills
January 30, 2020 - February 24, 2020

H & E Equipment Services, Inc.	Equipment - saw	PW	687.00
Hays Market	Supplies	ADM	76.71
IMEG Corp	Bill back - Engineering services	ADM	4,620.00
IMEG Corp	Engineering services	PW	98,188.40
IMS Heating & Air Inc	Refund permit	ADM	175.57
Infosend, Inc.	Utility bill printing	ADM	2,259.38
Insight North America, LLC	Investment services	ADM	2,713.51
Intellichoice, Inc	Lumens interface	PD	6,700.00
Interstate Battery of the Rockies	Supplies	PW	205.90
InVision GIS	GIS services	ADM	825.00
J&S Contractors Supply Co.	Supplies - plow blade	PW	143.00
John Deere Financial	Supplies	PW	152.82
Johnstown BBQ Day Committee	BBQ Days	ADM	20,000.00
Johnstown Breeze	Publications	ADM	1,792.37
Johnstown Clothing & Embroidery	Uniforms	PW	3,136.67
K & K Laser Creations LLC	Supplies	ADM	81.00
Kenyon P. Jordan, Ph.D.	Job suitability assessment	PD	235.00
Kinsco, LLC	Supplies	PD	1,008.24
Larimer County Sales Tax Administrator	Use tax - reimbursement	ADM	64,560.87
Larimer Humane Society	Contract billing	PD	2,005.00
Law Office of Avi Rocklin LLC	Bill back - legal services	ADM	3,688.70
Law Office of Avi Rocklin LLC	Legal services	ADM	10,822.00
Lazar, Michael	Municipal Court Judge	ADM	1,470.00
Lexis Nexis	Lumen 2020 subscription	PD	1,900.00
Little Thompson Water District	Water	PW	8,581.60
Logic Integration LLC	Audio upgrades - Council chambers	ADM	2,911.20
Loveland Barricade LLC	Signs	PW	35,733.50
Lowe's	Supplies	PW	1,222.81
Mares Auto Inc.	Vehicle repairs	PD	100.00
Mile High Shooting	Supplies - ammunition	PD	1,499.20
Milliken Johnstown Electric	Repair services	PW	1,749.41
Mountain States Pipe & Supply	Meter supplies	PW	427.88
Nalco Company LLC	Chemicals	PW	6,175.11
Napa Auto Parts, Inc	Supplies	PD/PW	967.74
Newco Inc	Supplies	ALL	195.72
Newman	Signs	PW	112.22
North Front Range Water Quality	Membership fees	ADM	2,229.00
Northern Safety Co Inc	Supplies	PW	102.01
O.J. Watson Company Inc	Equipment for truck	PW	8,605.88
Office Depot Business Credit	Office supplies	PW	835.49
Perkins+Will, Inc.	Professional services-Rec Ctr	ADM	9,370.98
Pinnacol Assurance	Insurance	ALL	11,820.34
Poudre Valley REA	Utilities	PW	12,326.05
ProCode Inc.	Inspection services	PW	12,750.00
Ramey Environmental Compliance Inc.	Water & wastewater services	PW	11,538.46
Recording Fees Refund	Recording fees reimbursement	ADM	262.00
REVELATION STEEL, LLC	Supplies	PW	38.40
Rhinehart Oil Co., Inc.	Fuel	ALL	4,577.02
RoadSafe Traffic Systems	Striping Machine	PW	6,532.26
Sam's Club MC/SYNCB	Supplies	PD	242.61
Sandy's Upholstery & Flags LLC	Seat repair	PW	417.52
TDS	Telephone	ALL	2,153.51
The Home Depot/GECF	Supplies	PW	375.87
Twin Silos, LLC	Reimbursement agreement	ADM	4,000.00
United Power	Utilities	PW	798.60
USA Bluebook	Supplies	PW	3,214.93

Town of Johnstown - List of Bills
January 30, 2020 - February 24, 2020

Utility Notification Center	Tranmissions	PW	1,358.88
Utility Refunds	Refund of deposits	ADM	861.85
Veris Environmental, LLC	Chemicals	PW	2,915.20
Verizon Wireless	Cell phones/connection service	PD/PW	2,669.24
Waste Management	Trash services	PW	59,643.44
Weld County Chiefs of Police Assn	Yearly dues	PD	35.00
Weld County Dept of Public	Lab services	PW	2,271.50
Windstream	Telephone/Internet	ALL	1,105.83
Winters, Hellerich & Hughes, L	Prosecuting attorney services	ADM	1,890.00
WR Investment, LLC	Reimbursement agreement	ADM	55,200.00
Xcel Energy	Utilities	ALL	53,862.32
Yost Cleaning	Monthly cleaning service	PW	2,219.00
		Total	919,207.56

2020 – 2029 Capital Improvement Plan

TOWN OF JOHNSTOWN, COLORADO

2020 - 2029 Capital Improvement Plan

PROJECTS BY DEPARTMENT

DEPARTMENT	PROJECT NAME	FUND	FY '20	FY '21	FY '22	FY '23	FY '24	FY '25	FY '26	FY '27	FY '28	FY'29	Total
Administration	Computer Replacement Schedule	Multiple Funds	$ 15,000	$ 15,000	$ 15,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 20,000	$ 25,000	$ 190,000
Administration	Information Technology Need	Multiple Funds	$ 25,000	$ 50,000	$ 50,000		$ 50,000	$ 50,000				$ 50,000	$ 225,000
Administration	Copier Replacement	General Fund	$ 10,000					$ 10,000				$ 10,000	$ 20,000
Administration	PW - New Gate - North Side	General Fund	$ 7,500										$ 7,500
Administration	Senior Center Parking Lot Mill	General Fund				$ 40,000							$ 40,000
Administration	Senior Center HVAC	General Fund	$ 27,000										$ 27,000
Administration	Town Hall Parking Lot Seal	General Fund	$ 7,000										$ 7,000
Administration	Ace Parking Lot Seal	General Fund	$ 7,000					$ 70,000					$ 77,000
Administration	Vehicle Replacement	General Fund	$ 30,000						$ 32,000				$ 62,000
Administration	Computer Software - Utilities/Financial	Multiple Funds									$ 150,000		$ 150,000
	Administration Total		**$ 128,500**	**$ 65,000**	**$ 65,000**	**$ 60,000**	**$ 70,000**	**$ 150,000**	**$ 52,000**	**$ 20,000**	**$ 170,000**	**$ 85,000**	**$ 805,500**
Planning	Comprehensive Plan & Updates	General Fund	$ 150,000					$ 60,000					$ 210,000
Planning	GIS System Development	General Fund	$ 21,600	$ 50,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 15,000	$ 191,600
Planning	Park, Trail, OS Master Plan	Parks & OS		$ 60,000					$ 40,000				$ 100,000
	Planning Total		**$ 171,600**	**$ 110,000**	**$ 15,000**	**$ 15,000**	**$ 15,000**	**$ 75,000**	**$ 55,000**	**$ 15,000**	**$ 15,000**	**$ 15,000**	**$ 501,600**
Police	Copier	General Fund			10,000								$ 10,000
Police	Range	General Fund		25,000									$ 25,000
Police	Vehicle Replacement (Impact Funds)	General Fund	60,000	148,800	156,200	164,000	172,200	180,800	189,800	199,300		209,000	$ 1,480,100
Police	Vehicle Replacement	General Fund	60,000	74,400	78,100	82,000	86,100	90,400	94,900	99,700	104,700	108,000	$ 878,300
Police	UTV	General Fund			28,200								$ 28,200
Police	Police Department Expansion	General Fund		800,000									$ 800,000
	Police Total		**$ 120,000**	**$ 1,048,200**	**$ 272,500**	**$ 246,000**	**$ 258,300**	**$ 271,200**	**$ 284,700**	**$ 299,000**	**$ 104,700**	**$ 317,000**	**$ 3,221,600**
Parks	Park Mowers	Parks & OS			$ 20,000			$ 25,000			$ 25,000		$ 70,000
Parks	Trail Development	Parks & OS	$ 535,000	$ 150,000		$ 300,000		$ 300,000		$ 300,000		$ 300,000	$ 1,885,000
Parks	Brushhog	Parks & OS	$ 18,000										
Parks	Parish pour in place & new swings	Conservation Trust Fund	$ 75,000										$ 75,000
Parks	Pump at lake	Parks & OS	$ 15,000										$ 15,000
Parks	Playground Equipment and Pour in Place (Tent. - Sunrise Park)	Conservation Trust Fund			$ 105,000								$ 105,000
Parks	Playground Equipment and Pour In Place (Tent. Rolling Hills Park)	Conservation Trust Fund					$ 120,000						$ 120,000
Parks	Playground Equipment and Pour in Place (Tent. Hays Park)	Conservation Trust Fund								$ 130,000			$ 130,000
	Parks Total		**$ 643,000**	**$ 150,000**	**$ 125,000**	**$ 300,000**	**$ 120,000**	**$ 325,000**	**$ -**	**$ 430,000**	**$ 25,000**	**$ 300,000**	**$ 2,400,000**
Wastewater	Sludge pad and wetwell	Wastewater	$ 25,000										$ 25,000
Wastewater	Mixing pumps at Lowpoint	Wastewater	$ 20,000										$ 20,000

TOWN OF JOHNSTOWN, COLORADO

2020 - 2029 Capital Improvement Plan

PROJECTS BY DEPARTMENT

DEPARTMENT	PROJECT NAME	FUND	FY '20	FY '21	FY '22	FY '23	FY '24	FY '25	FY '26	FY '27	FY '28	FY'29	Total
Wastewater	Sewer Rehabilitation	Wastewater	$ 40,000	$ 150,000		$ 150,000		$ 200,000		$ 200,000			$ 740,000
Wastewater	Vehicle	Wastewater			$ 35,000			$ 35,000			$ 35,000		$ 105,000
Wastewater	Instrumentation/SCADA	Wastewater	$ 35,500										$ 35,500
Wastewater	Low Point Desgin/Construction Build	Wastewater	$ 250,000	$ 3,300,000									$ 3,550,000
Wastewater	Central Plant Design/Construction (Rebuild)	Wastewater			$ 600,000	$ 600,000	$ 15,000,000	$ 15,000,000					$ 31,200,000
Wastewater	Sewer Interceptor Expansion & Design	Wastewater	$ 10,000,000	$ 30,000,000									$ 40,000,000
Wastewater	VacTruck	Wastewater		$ 50,000								$ 50,000	$ 100,000
	Wastewater Total		**$ 10,370,500**	**$ 33,500,000**	**$ 635,000**	**$ 750,000**	**$ 15,000,000**	**$ 15,235,000**	**$ -**	**$ 200,000**	**$ 35,000**	**$ 50,000**	**$ 75,775,500**
Drainage	Concrete trickle channel Aragon	Drainage	$ 20,000										$ 20,000
Drainage	Drainage - Estes	Drainage	$ 150,000										$ 150,000
Drainage	Storm Drains - Maintenance	Drainage		$ 100,000		$ 100,000		$ 100,000		$ 150,000		$ 300,000	$ 750,000
Drainage	Storm Drains - Greeley	Drainage	$ 280,000										$ 280,000
	Drainage Total		**$ 450,000**	**$ 100,000**	**$ -**	**$ 100,000**	**$ -**	**$ 100,000**	**$ -**	**$ 150,000**	**$ -**	**$ 300,000**	**$ 1,200,000**
Cemetery	Riding Mower	Parks & OS			$ 20,000			$ 20,000			$ 20,000		$ 60,000
Cemetery	Design./ build unused land for graves/roads	Parks & OS							$ 100,000				$ 100,000
Cemetery	Fence around front/north	Parks & OS			$ 20,000				$ 75,000				$ 95,000
	Cemetery Total		**$ -**	**$ -**	**$ 40,000**	**$ -**	**$ -**	**$ 20,000**	**$ 175,000**	**$ -**	**$ 20,000**	**$ -**	**$ 255,000**
Water	Distribution / Collection Crew	Water / Wastewater Fund	$ 72,600		$ 100,000			$ 110,000					$ 282,600
Water	Crew Vehicles	Water / Wastewater Fund		$ 40,000		$ 24,000		$ 24,000		$ 24,000		$ 26,000	$ 138,000
Water	Backhoe Replacement	Multiple Fund	$ 140,000										$ 140,000
Water	Media Design and Replacement	Water Fund	$ 345,000										$ 345,000
Water	Lone Tree Pumphouse Improvements	Water Fund	$ 400,000										$ 400,000
Water	Dredge backwash pond	Water Fund	$ 25,000										$ 25,000
Water	Tank vents	Water Fund	$ 65,000										$ 65,000
Water	Lone tree fence	Water Fund	$ 10,000										$ 10,000
Water	VacTruck	Water Fund		$ 100,000									$ 100,000
Water	South Water Tank Design/Build	Water Fund	$ 5,000,000	$ 5,000,000									$ 10,000,000
Water	Valve Exerciser	Water Fund			$ 20,000								$ 20,000
Water	Waterline Replacement	Water Fund	$ 111,000		$ 200,000		$ 200,000		$ 200,000	$ 200,000	$ 200,000	$ 200,000	$ 1,311,000
Water	Instrumentation/SCADA	Water Fund	$ 35,000	$ 50,000		$ 50,000		$ 50,000		$ 50,000			$ 235,000
Water	Hillsbourough Ditch to Waterplant Design/Build	Water Fund		$ 2,000,000	$ 200,000								$ 2,200,000
Water	Raw Water Pipe line to Plant Design / Build	Water Fund							$ 500,000	$ 15,000,000	$ 15,000,000	$ 15,000,000	$ 45,500,000
Water	Raw Water Acquisition	Water Fund	$ 750,000		$ 750,000		$ 750,000		$ 750,000		$ 750,000	$ 750,000	$ 4,500,000
	Water Total		**$ 6,953,600**	**$ 7,190,000**	**$ 1,270,000**	**$ 74,000**	**$ 950,000**	**$ 184,000**	**$ 1,450,000**	**$ 15,274,000**	**$ 15,950,000**	**$ 15,976,000**	**$ 65,271,600**

TOWN OF JOHNSTOWN, COLORADO

2020 - 2029 Capital Improvement Plan

PROJECTS BY DEPARTMENT

DEPARTMENT	PROJECT NAME	FUND	FY '20	FY '21	FY '22	FY '23	FY '24	FY '25	FY '26	FY '27	FY '28	FY'29	Total
Streets	Sidewalk Replacement	Street & Alley		$ 30,000	$ 30,000	$ 30,000	$ 35,000	$ 35,000	$ 35,000	$ 40,000	$ 40,000	$ 40,000	$ 315,000
Streets	Curb Gutter Replacement repair	Street & Alley	$ 45,000	$ 75,000	$ 75,000	$ 75,000	$ 80,000	$ 80,000	$ 80,000	$ 85,000	$ 85,000	$ 85,000	$ 765,000
Streets	Street Maintenance Program	Street & Alley	$ 350,000	$ 790,000	$ 790,000	$ 850,000	$ 950,000	$ 900,000	$ 925,000	$ 975,000	$ 975,000	$ 975,000	$ 8,480,000
Streets	Bridge Repair & Maintenance	Street & Alley			$ 100,000		$ 100,000		$ 100,000		$ 100,000		$ 400,000
Streets	Alley Overlay Program	Street & Alley		$ 100,000		$ 100,000		$ 100,000		$ 100,000		$ 100,000	$ 500,000
Streets	LCR 3 Design and Construction	Street & Alley	$ 50,000		$ 2,500,000					$ 100,000			$ 2,650,000
Streets	WCR 50	Street & Alley	$ 2,050,000							$ 100,000			$ 2,150,000
Streets	WCR 46	Street & Alley								$ 3,750,000			$ 3,750,000
Streets	Box Sander	Street & Alley	$ 7,500										
Streets	Dump Trailer	Streets & Parks	$ 20,000										
Streets	2 Ton Plow Truck	Street & Alley			$ 75,000				$ 80,000				$ 155,000
Streets	Pickup/Utility Truck	Street & Alley			$ 322,500				$ 50,000				$ 372,500
Streets	CDOT Contributions	Street & Alley	$ 6,250,000		$ 20,000		$ 20,000		$ 20,000		$ 250,000		$ 6,560,000
Streets	5 Ton Plow Truck	Street & Alley		$ 175,000				$ 175,000				$ 175,000	$ 525,000
Streets	Roller for Street Repair	Street & Alley	$ 35,000					$ 60,000					$ 95,000
Streets	Street Sweeper	Street & Alley	$ 275,000								$ 285,000		$ 560,000
Streets	VacTruck	Street & Alley		$ 50,000								$ 50,000	$ 100,000
		Streets	**$ 9,082,500**	**$ 1,220,000**	**$ 3,912,500**	**$ 1,055,000**	**$ 1,185,000**	**$ 1,350,000**	**$ 1,290,000**	**$ 5,150,000**	**$ 1,735,000**	**$ 1,425,000**	**$ 27,377,500**
TOTALS			**$ 27,919,700**	**$ 43,383,200**	**$ 6,335,000**	**$ 2,600,000**	**$ 17,598,300**	**$ 17,710,200**	**$ 3,306,700**	**$ 21,538,000**	**$ 18,054,700**	**$ 18,468,000**	**$ 176,808,300**

Contract

(Little Thompson River Trail)

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation			**Agreement Routing Number** 20-HA4-XC-03023
Local Agency TOWN OF JOHNSTOWN			**Agreement Effective Date** The later of the effective date or March 11, 2020
Agreement Description Little Thompson River Trail PH 1a			**Agreement Expiration Date** March 10, 2030
Project # TAP M690-001 (21992)	**Region #** 4	**Contract Writer** JH	**Agreement Maximum Amount** $312,500.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

LOCAL AGENCY TOWN OF JOHNSTOWN _____ Signature _____ By: (Print Name and Title) Date: _____	**STATE OF COLORADO** Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director _____ Stephen Harelson, P.E., Chief Engineer Date: _____
2nd State or Local Agency Signature if Needed _____ Signature _____ By: (Print Name and Title) Date: _____	**LEGAL REVIEW** Philip J. Weiser, Attorney General _____ Assistant Attorney General _____ By: (Print Name and Title) Date: _____

In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By:_____
Department of Transportation

Effective Date:_____

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1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement ("Local Agency"), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the "State" or "CDOT"). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase ("Phase Performance Period(s)"). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; 2) before the encumbering document for the respective phase *and* the official Notice to Proceed for the respective phase; or 3) after the Final Phase Performance

End Date, as shown in **Exhibit C**.

B. Initial Term

The Parties' respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on the date of notice of CDOT final acceptance ("Agreement Expiration Date") shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i.**

i. Method and Content

The State shall notify Local Agency of such termination in accordance with **§16.** The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency's obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the "Fixing America's Surface Transportation Act" (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

A. "**Agreement**" means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.

B. "**Agreement Funds**" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.

C. "**Award**" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.

D. "**Budget**" means the budget for the Work described in **Exhibit C**.

E. "**Business Day**" means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.

F. "**Consultant**" means a professional engineer or designer hired by Local Agency to design the Work Product.

G. "**Contractor**" means the general construction contractor hired by Local Agency to construct the Work.

H. "**CORA**" means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.

I. "**Effective Date**" means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.

J. "**Evaluation**" means the process of examining Local Agency's Work and rating it based on criteria established in **§6, Exhibit A** and **Exhibit E**.

K. "**Exhibits**" means the following exhibits attached to this Agreement:

i. **Exhibit A**, Statement of Work.

ii. **Exhibit B,** Sample Option Letter.

iii. **Exhibit C**, Funding Provisions

iv. **Exhibit D**, Local Agency Resolution

v. **Exhibit E**, Local Agency Contract Administration Checklist

vi. **Exhibit F**, Certification for Federal-Aid Contracts

vii. **Exhibit G**, Disadvantaged Business Enterprise

viii. **Exhibit H**, Local Agency Procedures for Consultant Services

ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts

x. **Exhibit J**, Additional Federal Requirements

xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions

xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form

xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance")

L. "**Federal Award**" means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

M. "**Federal Awarding Agency**" means a Federal agency providing a Federal Award to a Recipient.

N. "**FHWA**" means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation's highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.

O "**Goods**" means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.

P. "**Incident**" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.

Q. "**Initial Term**" means the time period defined in **§2.B**

R. "**Notice to Proceed**" means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.

S. "**OMB**" means the Executive Office of the President, Office of Management and Budget.

T. "**Oversight**" means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.

U. "**Party**" means the State or Local Agency, and "**Parties**" means both the State and Local Agency.

V. "**PII**" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.

W. "**Recipient**" means the Colorado Department of Transportation (CDOT) for this Federal Award.

X. "**Services**" means the services to be performed by Local Agency as set forth in this Agreement, and shall include any services to be rendered by Local Agency in connection with the Goods.

Y. **"State Confidential Information"** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.

Z. **"State Fiscal Rules"** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).

AA. **"State Fiscal Year"** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.

BB. **"State Purchasing Director"** means the position described in the Colorado Procurement Code and its implementing regulations.

CC. **"State Records"** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.

DD. "**Subcontractor**" means third-parties, if any, engaged by Local Agency to aid in performance of the Work.

EE. "**Subrecipient**" means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.

FF. "**Uniform Guidance**" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the

guidance in Circular A-50 on Single Audit Act follow-up.

GG. "**Work**" means the delivery of the Goods and performance of the Services in compliance with CDOT's Local Agency Manual described in this Agreement.

HH. "**Work Product**" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. STATEMENT OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement.

Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the period of performance for a phase of Work authorized under this Agreement. To exercise this phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B.** The State's unilateral extension of phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

a. Perform or provide the Plans to the extent required by the nature of the Work.

b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.

c. Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.

d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.

e. Stamp the Plans as produced by a Colorado registered professional engineer.

f. Provide final assembly of Plans and all other necessary documents.

g. Ensure the Plans are accurate and complete.

h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.

ii. Local Agency Work

a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation

Projects".

b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.

c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:

1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.

2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.

3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b)and (d).

6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

(d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

b. Local Agency shall be responsible for the following:

1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).

2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).

(a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (**Exhibit I**) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).

(b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within 3 working days after they are publicly opened.

(c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.

(d) The requirements of **§6.A.iii.b.2** also apply to any advertising and bid awards made by the State.

(e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.

iv. Right of Way (ROW) and Acquisition/Relocation

a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.

b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at http://www.codot.gov/business/manuals/right-of-way); however, the State always retains oversight responsibilities.

d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant the following categories:

1) Right of way acquisition (3111) for federal participation and non-participation;

2) Relocation activities, if applicable (3109);

3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

b. Obtain the railroad's detailed estimate of the cost of the Work.

c. Establish future maintenance responsibilities for the proposed installation.

d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in **§7.F.vi.**

B. State's Commitments

i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.

ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.

b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.

c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.

d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as

defined below in **§9.A**.).

C. Matching Funds

Local Agency shall provide matching funds as provided in **§7.A**. and **Exhibit C**. Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D**. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7**. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A.** Such Option Letters may not modify the other terms and conditions stated in this Agreement, and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also issue a unilateral Option Letter to simultaneously increase and decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2**, **C-3**, etc.) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. The State may update any information contained in **Exhibit C**, Sections 2 and 4 of the Table, and sub-sections B and C of the **Exhibit C**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

1. Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
2. Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
3. Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
4. Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
5. Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
6. Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
7. Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA has not closed this Federal Award within 1 year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to **§19** or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying

progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five (5) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in **§16**.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Local Agency shall permit the State to audit, inspect, examine, excerpt, copy, and transcribe Local Agency Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is

conducted by Local Agency or a third party.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

a. $1,000,000 each occurrence;
b. $1,000,000 general aggregate;
c. $1,000,000 products and completed operations aggregate; and
d. $50,000 any 1 fire.

iii. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of $1,000,000 each accident combined single limit.

iv. Protected Information

Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJI, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $2,000,000 general aggregate.

v. Professional Liability Insurance

Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $1,000,000 general aggregate.

vi. Crime Insurance

Crime insurance including employee dishonesty coverage with minimum limits as follows:

a. $1,000,000 each occurrence; and

b. $1,000,000 general aggregate.

C. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.

D. Primacy of Coverage

Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.

E. Cancellation

All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with **§16** within 7 days of Local Agency's receipt of such notice.

F. Subrogation Waiver

All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

G. Certificates

For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this **§12**.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully

stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **§14** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§13.B,** shall have all of the remedies listed in this **§14.A.** in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.C**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending

corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State **(a)** secure that right to use such Work for the State or Local Agency; **(b)** replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, **(c)** remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in **§13.B** and the dispute resolution process in **§15** shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the "Resolution Statutes"), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered **(i)** by hand with receipt required, **(ii)** by certified or registered mail to such Party's principal representative at the address set forth below or **(iii)** as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth below. Either Party may change its principal representative or principal representative

contact information by notice submitted in accordance with this **§16** without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Jake Schuch, Project Manager
Region 4
10601 10th St
Greeley, CO 80634
970-350-2205
jake.schuch@state.co.us

For the Local Agency

TOWN OF JOHNSTOWN
Matt LeCerf, Project Manager
450 Parish Avenue
Johnstown, CO 80534
970-587-4664
miecerf@townofjohnstown.com

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is $100,000 or greater, either on the Effective Date or at anytime thereafter, this **§19** shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in **§20.A.** all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be

deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than contract amendments, shall conform to the policies promulgated by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

i. Colorado Special Provisions in the main body of this Agreement.

ii. The provisions of the other sections of the main body of this Agreement.

iii **Exhibit A**, Statement of Work.

iv. **Exhibit D**, Local Agency Resolution.

v. **Exhibit C**, Funding Provisions.

vi. **Exhibit B**, Sample Option Letter.

vii. **Exhibit E**, Local Agency Contract Administration Checklist.

viii. Other exhibits in descending order of their attachment.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C,** this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

P. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws,

rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: **(i)** unpaid child support debts or child support arrearages; **(ii)** unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; **(iii)** unpaid loans due to the Student Loan Division of the Department of Higher Education; **(iv)** amounts required to be paid to the Unemployment Compensation Fund; and **(v)** other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, *et seq.*, C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, *et seq.*, C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, *et seq*., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Revised 11-1-18

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as **Exhibit F**, **Exhibit I**, **Exhibit J**, **Exhibit K** and **Exhibit M** are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of **Exhibit G** and Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency's DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

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EXHIBIT A, STATEMENT OF WORK

The Colorado Department of Transportation (CDOT) will oversee the Town of Johnstown (Town) when town designs and constructs the following: Little Thompson River Trail beginning east of the railroad tracks on CR 46.5, traveling eastbound to CR 19 (Herein referred to as This Work). CDOT and the Town believe it will be beneficial to perform This Work to provide alternate transportation and recreation opportunities in Johnstown. This segment of trail is part of the Johnstown-Milliken Parks Trails and Open Space Master Plan as well as the NFRMPO's 2040 RTP and Regional Bicycle Corridor 2. The trail section will measure approximately 5,000 linear feet based on project costs and availability of funds.

This project will conform to all applicable state and federal regulations and standards. The design phase is anticipated to begin in the winter/spring of 2020 and will be followed by a construction phase. Construction is anticipated to begin in the summer/fall of 2020 and is anticipated to becompleted shortly thereafter.

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EXHIBIT B, SAMPLE OPTION LETTER

<table>
<tr><td colspan="2">State Agency
Department of Transportation</td><td>Option Letter Number
ZOPTLETNUM</td></tr>
<tr><td colspan="2">Local Agency
ZVENDORNAME</td><td>Agreement Routing Number
ZSMARTNO</td></tr>
<tr><td rowspan="3">Agreement Maximum Amount
Initial term
State Fiscal Year ZFYY_1
Extension terms
State Fiscal Year ZFYY_2
State Fiscal Year ZFYY_3
State Fiscal Year ZFYY_4
State Fiscal Year ZFYY_5
Total for all state fiscal years</td><td>

$ ZFYA_1

$ ZFYA_2
$ ZFYA_3
$ ZFYA_4
$ ZFYA_5
$ ZPERSVC_MAX_AMOUNT</td><td></td></tr>
<tr><td rowspan="2"></td><td>Agreement Effective Date
The later of the effective date or ZSTARTDATEX</td></tr>
<tr><td>Current Agreement Expiration Date
ZTERMDATEX</td></tr>
</table>

1. OPTIONS:

A. Option to extend for an Extension Term

B. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads) and to update encumbrance amounts (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

C. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

D. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

E. Option to update a Phase Performance Period and/or Modify OMB Uniform Guidance Information.

2. REQUIRED PROVISIONS:

Option A

In accordance with Section 2, C of the Original Agreement referenced above, the State hereby exercises its option for an additional term, beginning on (*insert date*) and ending on the current contract expiration date shown above, under the same funding provisions stated in the Original Contract Exhibit C, as amended.

Option B

In accordance with Section 7, E of the Original Agreement referenced above, the State hereby excerises its option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)*is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2**, **C-3**, **C-4**, etc.*).

Option C

In accordance with Section 7, E of the Original Agreement referenced above, the State hereby excerises its option to

authorize the Local Agency to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D
In accordance with Section 7, E of the Original Agreement referenced above, the State hereby excerises its option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

(The following language must be included on ALL options):
The Agreement Maximum Amount table on the Contract's Signature and Cover Page is hereby deleted and replaced with the Current Agreement Maximum Amount table shown above.

Option E
In accordance with Section 7, E of the Original Agreement referenced above, the State hereby excerises its option to authorize the Local Agency to update a Phase Performance Period and/or Modify OMB Uniform Guidance Information. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

3. OPTION EFFECTIVE DATE:

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:
Jared S. Polis, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

State Controller
Robert Jaros, CPA, MBA, JD

By: _____

Date: _____

EXHIBIT C – FUNDING PROVISIONS **TAP M690-001 (21992)**

A. **Cost of Work Estimate**

The Local Agency has estimated the total cost the Work to be $312,500.00, which is to be funded as follows:

1.	**BUDGETED FUNDS**	
a.	Federal Funds (80.00% of Participating Costs)	$250,000.00
b.	Local Agency Matching Funds (20.00% of Participating Costs)	$62,500.00
	TOTAL BUDGETED FUNDS	$312,500.00
2.	**OMB UNIFORM GUIDANCE**	
a.	Federal Award Identification Number (FAIN):	TBD
b.	Federal Award Date (also Phase Performance Start Date):	TBD
c.	Amount of Federal Funds Obligated:	$0.00
d.	Total Amount of Federal Award:	$250,000.00
e.	Name of Federal Awarding Agency:	FHWA
f.	CFDA# - Highway Planning and Construction	CFDA 20.205
g.	Is the Award for R&D?	No
h.	Indirect Cost Rate (if applicable)	N/A
3.	**ESTIMATED PAYMENT TO LOCAL AGENCY**	
a.	Federal Funds Budgeted	$250,000.00
b.	Less Estimated Federal Share of CDOT-Incurred Costs	$0.00
	TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY	$250,000.00
4.	**FOR CDOT ENCUMBRANCE PURPOSES**	
a.	Total Encumbrance Amount	$312,500.00
b.	Less ROW Acquisition 3111 and/or ROW Relocation 3109	$0.00
	Net to be encumbered as follows:	$0.00

Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.

WBS Element 21992.10.30	**Performance Period Start*/End Date** TBD / TBD	Design	3020	$0.00
WBS Element 21992.20.10	TBD / TBD	Const.	3301	$0.00

***The Local Agency should not begin work until all three of the following are in place:**

1) Phase Performance Period Start Date; 2) The execution of the document encumbering funds for the respective phase; and

3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three milestones are achieved will not be reimbursable.

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds to 20.00% Local Agency funds, it being understood that such ratio applies only to the $312,500.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds $312,500.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than $312,500.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be $250,000.00 (for CDOT accounting purposes, the federal funds of $250,000.00 and the Local Agency matching funds of $62,500.00 will be encumbered for a total encumbrance of $312,500.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award. **NOTE: $0.00 is currently available. Funds will be added in the future by Option Letter or Amendment.**

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal participating funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 7. E. of this contract.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than $750,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than $750,000
If the Local Agency expends less than $750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of $750,000 or more-Highway Funds Only
If the Local Agency expends $750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of $750,000 or more-Multiple Funding Sources
If the Local Agency expends $750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D, LOCAL AGENCY RESOLUTION

NOT APPLICABLE

EXHIBIT E, LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No.	STIP No.	Project Code	Region
TAP M690-001	SNF5095.004	21992	04

Project Location	Date
Town of Johnstown	August 16, 2019

Project Description
Little Thompson River Trail

Local Agency Town of Johnstown	Local Agency Project Manager Matt LeCerf
CDOT Resident Engineer Katrina Kloberdanz	CDOT Project Manager Jake Schuch

INSTRUCTIONS:
This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the *CDOT Local Agency Manual*.

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	RESPONSIBLE PARTY CDOT
TIP / STIP AND LONG-RANGE PLANS			
2-1	Review Project to ensure consistency with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4-1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5-1	Prepare Design Data - CDOT Form 463		X
5-2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5-3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5-4	Conduct Design Scoping Review meeting	X	X
5-5	Conduct Public Involvement	X	
5-6	Conduct Field Inspection Review (FIR)	X	
5-7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5-8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5-9	Obtain Utility and Railroad Agreements	X	
5-10	Conduct Final Office Review (FOR)	X	
5-11	Justify Force Account Work by the Local Agency – CDOT Form 895	X	#
5-12	Justify Proprietary, Sole Source, or Local Agency Furnished items - CDOT Form 1381	X	#
5-13	Document Design Exceptions - CDOT Form 464	X	#
5-14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5-15	Ensure Authorization of Funds for Construction – CDOT Form 1180		X

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Previous editions are obsolete and may not be used

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6-1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6-2	Determine Applicability of Davis-Bacon Act This project ☐ is ☒ is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Katrina Kloberdanz August 16, 2019 CDOT Resident Engineer(Signature on File) Date		X
6-3	Set On-the-Job Training Goals.		X
6-4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7-1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7-2	Advertise for Bids	X	
7-3	Distribute "Advertisement Set" of Plans and Specifications	X	
7-4	Review Worksite and Plan Details with Prospective Bidders While Project is Under Advertisement	X	
7-5	Open Bids	X	
7-6	Process Bids for Compliance	X	
	Check CDOT Form 1415 - Certificate of Proposed DBE Participation when the low bidder meets DBE goals		X
	Evaluate CDOT Form 1416 - DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7-7	Concurrence from CDOT to Award		X
7-8	Approve Rejection of Low Bidder		X
7-9	Award Contract	X	#
7-10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8-1	Issue Notice to Proceed to the Contractor	X	
8-2	Project Safety	X	
8-3	Conduct Conferences:		
	Pre-construction Conference (Appendix B)	X	
	Presurvey • Construction staking • Monumentation	 X X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in *CDOT Construction Manual)*	X	
	Concrete Pavement Pre-Paving (Agenda is in *CDOT Construction Manual)*	X	
	HMA Pre-Paving (Agenda is in *CDOT Construction Manual)*	X	
8-4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8-5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Matt LeCerf 970-587-4664 Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8-6	Approve Shop Drawings	X	
8-7	Perform Traffic Control Inspections	X	#
8-8	Perform Construction Surveying	X	
8-9	Monument Right-of-Way	X	
8-10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Matt LeCerf 970-587-4664 Local Agency Representative Phone number	X	
8-11	Prepare and Approve Interim and Final Utility/Railroad Billings	X	
8-12	Prepare Local Agency Reimbursement Requests	X	
8-13	Prepare and Authorize Change Orders – CDOT Form 90	X	#
8-14	Approve All Change Orders		X
8-15	Monitor Project Financial Status	X	
8-16	Prepare and Submit Monthly Progress Reports	X	
8-17	Resolve Contractor Claims and Disputes	X	
8-18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Katrina Kloberdanz 970-350-2211 CDOT Resident Engineer Phone number		X
MATERIALS			
9-1	Discuss Materials at Preconstruction Meeting -Buy America documentation **prior** to installation of steel	X	
9-2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	 X X	X
9-3	Perform Project Acceptance Samples and Tests	X	
9-4	Perform Laboratory Verification Tests	X	
9-5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X X	
9-6	Approve Sources of Materials	X	
9-7	Independent Assurance Testing (IAT), Local Agency Procedures ☒ CDOT Procedures ☐ • Generate IAT schedule – CDOT Form 379 • Schedule and provide notification • Conduct IAT	 X X	X
9-8	Approve Mix Designs • Concrete • Hot Mix Asphalt	 X X	 # #
9-9	Check Final Materials Documentation	X	
9-10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10-1	Fulfill Project Bulletin Board and Pre-construction Packet Requirements	X	
10-2	Process CDOT Form 205b - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	
10-3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10-4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" requirements – CDOT Form 1432	X	
10-5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10-6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
10-7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
Finals			
11-1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)	X	#
11-2	Write Final Project Acceptance Letter	X	
11-3	Advertise for Final Settlement	X	
11-4	Prepare and Distribute Final As-Constructed Plans	X	
11-5	Prepare EEO Certification	X	
11-6	Check Final Quantities, Plans and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11-7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11-8	Obtain CDOT Form 1419 - Contractor DBE Payment Certification from the Contactor and submit to the Resident Engineer (Quarterly)	X	
11-9	Obtain FHWA Form 47 - Statement of Materials and Labor Used … from the Contractor		NA
11-10	Process Final Payment	X	
11-11	Complete and Submit CDOT Form 950 - Project Closure		X
11-12	Retain Project Records for Three Years from Date of Project Closure	X	X
11-13	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F, CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Civil Rights & Business Resource Center

Colorado Department of Transportation

2829 W. Howard Place

Denver, Colorado 80204

Phone: (303) 757-9234

REVISED 1/22/98 REQUIRED BY 49 CFR PART

EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.

2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.

3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.

4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.

5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this tiem period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.

6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.

7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

a. Qualifications,

b. Approach to the Work,

c. Ability to furnish professional services.

d. Anticipated design concepts, and

e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

a. Abilities of their personnel,

b. Past performance,

c. Willingness to meet the time and budget requirement,

d. Location,

e. Current and projected work load,

f. Volume of previously awarded contracts, and

g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than $50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I, FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

I. General
II. Nondiscrimination
III. Nonsegregated Facilities
IV. Davis-Bacon and Related Act Provisions
V. Contract Work Hours and Safety Standards Act Provisions
VI. Subletting or Assigning the Contract
VII. Safety: Accident Prevention
VIII. False Statements Concerning Highway Projects
IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
X. Compliance with Governmentwide Suspension and Debarment Requirements
XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding $10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of $10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding $2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g. , the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH–347 is available for this purpose from the Wage and Hour Division Web site at http://www.dol.gov/esa/whd/forms/wh347instr.htm or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH–347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of $10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

(1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
(2) the prime contractor remains responsible for the quality of the work of the leased employees;
(3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
(4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C.3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost $25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost $25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the $25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (https://www.epls.gov/), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of $10,000 by the Local Agencys and their contractors or the Local Agencys).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of $2,000 awarded by the Local Agencys and the Local Agencys when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of $2,000, and in excess of $2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of $100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land or other aid. The Local Agency shall also include the following in all contract advertisements:

> *The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grouds of race, color, or national origin in consideration for any award.*

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et. seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

> *"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, "for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.*

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non- discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 US.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.

6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.

7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.

8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.

9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:

    a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
    b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.

10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:

    a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
    b. the period during which the Recipient retains ownership or possession of the property.

11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.

12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

_____

(***Name of Recipient***)

by _____

(***Signature of Authorized Official***)

DATED_____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations**: The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Non-discrimination**: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.

3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment**: In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.

4. **Information and Reports**: The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.

5. **Sanctions for Noncompliance**: In the event of a contractor's noncompliance with the Non- discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:

   a. withholding payments to the contractor under the contract until the contractor complies; and/or
   b. cancelling, terminating, or suspending a contract, in whole or in part.

6. **Incorporation of Provisions**: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (***Name of Appropriate Legislative Authority***), the Regulations for the Administration of (***Name of Appropriate Program***), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:

   1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non- discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;
1.1.2. Contracts;
1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
1.1.4. Loans;
1.1.5. Loan Guarantees;
1.1.6. Subsidies;
1.1.7. Insurance;
1.1.8. Food commodities;
1.1.9. Direct appropriations;
1.1.10. Assessed and voluntary contributions; and
1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award ***does not*** include:

1.1.12. Technical assistance, which provides services in lieu of money;
1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
1.1.14. Any award classified for security purposes; or
1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in **§1.1.1** through **1.1.11** above.

1.3. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: http://fedgov.dnb.com/webform.

1.5. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
1.5.2. A foreign public entity;
1.5.3. A domestic or foreign non-profit organization;

1.5.4. A domestic or foreign for-profit organization; and

1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.

1.6. **"Executive"** means an officer, managing partner or any other employee in a management position.

1.7. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.

1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."

1.9. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.

1.10. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.

1.11. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.

1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.

1.13. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.

1.14. **"System for Award Management (SAM)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at http://www.sam.gov.

1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:

1.15.1. Salary and bonus;

1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;

1.15.4. Change in present value of defined benefit and actuarial pension plans;

1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;

1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds $10,000.

1.16. "**Transparency Act**" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.

1.17 **"Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**

   3.1. SAM. Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.

   3.2. DUNS. Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.

4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:

   4.1. The total Federal funding authorized to date under the Award is $25,000 or more; and

   4.2. In the preceding fiscal year, Contractor received:

   4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

   4.2.2. $25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and

   4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.

5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in **§2** above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at http://www.colorado.gov/dpa/dfp/sco/FFATA.htm.

6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is $25,000 or more. If the initial Award is below $25,000 but subsequent Award modifications result in a total Award of $25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds $25,000. If the initial Award is $25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below $25,000, the Award shall continue to be subject to the reporting requirements.

7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 ToSAM. A Subrecipient shall register in SAM and report the following data elements in SAM ***for each*** Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than $300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

CDOT SUBRECIPIENT RISK ASSESSMENT	Date:		
Name of Entity (Subrecipient):			
Name of Project / Program:			
Estimated Award Period:			
Entity Executive Director or VP:			
Entity Chief Financial Officer:			
Entity Representative for this Self Assessment:			
Instructions: (See "Instructions" tab for more information) *1. Check only one box for each question. All questions are required to be answered.* *2. Utilize the "Comment" section below the last question for additional responses.* *3. When complete, check the box at the bottom of the form to authorize.*	Yes	No	N/A
EXPERIENCE ASSESSMENT	Yes	No	N/A
1 Is your entity new to operating or managing federal funds (has not done so within the past three years)?	☐	☐	
2 Is this funding program new for your entity (managed for less than three years)? *Examples of funding programs include CMAQ, TAP, STP-M, etc.*	☐	☐	
3 Does your staff assigned to the program have at least three full years of experience with this federal program?	☐	☐	
MONITORING/AUDIT ASSESSMENT	Yes	No	N/A
4 Has your entity had an on-site project or grant review from an external entity *(e.g., CDOT, FHWA)* within the last three years?	☐	☐	☐
5 a) Were there non-compliance issues in this prior review?	☐	☐	☐
b) What were the number and extent of issues in prior review?	☐ *1 to 2*	☐ *> 3*	☐
OPERATION ASSESSMENT	Yes	No	N/A
6 Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? *If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.*	☐	☐	
FINANCIAL ASSESSMENT	Yes	No	N/A
7 a) Does your entity have an indirect cost rate that is approved and current?	☐	☐	
b) If Yes, who approved the rate, and what date was it approved?			
8 Is this grant/award 10% or more of your entity's overall funding?	☐ *>10%*	☐ *<10%*	
9 Has your entity returned lapsed* funds? **Funds "lapse" when they are no longer available for obligation.*	☐	☐	☐
10 Has your entity had difficulty meeting local match requirements in the last three years?	☐	☐	☐
11 What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?			

	INTERNAL CONTROLS ASSESSMENT	Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? *(e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.*	☐	☐	☐
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	☐	☐	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	☐	☐	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	☐	☐	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? *If Yes, in the comment section, please explain your current process for reviewing costs.*	☐	☐	☐
17	How many total FTE perform accounting functions within your organization?	☐ ≥6	☐ 2 to 5	☐ < 2
	IMPACT ASSESSMENT	**Yes**	**No**	**N/A**
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? *If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)*	☐	☐	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? *Response options:* ***YES** = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form.* ***NO** = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section.* ***N/A** = Check if have no violations.*	☐	☐	☐
	PROGRAM MANAGEMENT ASSESSMENT	**Yes**	**No**	**N/A**
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? *If Yes, please submit with this form.*	☐	☐	☐
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? *If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)*	☐	☐	☐
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	☐	☐	☐
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? *If Yes, please submit with this form.*	☐	☐	☐
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? *If Yes, please submit with this form.*	☐	☐	☐

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. *If Yes, please submit with this form.*	☐	☐	☐
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project *(Buy America requirements)? If Yes, please submit with this form.*	☐	☐	☐

Comments *- As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.*

☐ ***By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.***

Tool Version: v2.0 (081816)

EXHIBIT M, OMB Uniform Guidance for Federal Awards
Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance"),
Federal Register, Vol. 78, No. 248, 78590

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

9. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

9.1. "Award" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38

9.2. "Federal Award" means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.

9.3. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37

9.4. "FFATA" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.

9.5. "Grant" or "Grant Agreement" means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.

9.6. "OMB" means the Executive Office of the President, Office of Management and Budget.

9.7. "Recipient" means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86

9.8. "State" means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.

9.9. "Subrecipient" means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.

9.10. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.

9.11. "Uniform Guidance Supplemental Provisions" means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.

10. Compliance. Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions

automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

11. Procurement Standards.

3.1 Procurement Procedures. Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.

3.2 Procurement of Recovered Materials. If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

4. **Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).

5. Single Audit Requirements. If Subrecipient expends $750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.

5.1 Election. Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

5.2 Exemption. If Subrecipient expends less than $750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.

5.3 Subrecipient Compliance Responsibility. Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.

6. Contract Provisions for Subrecipient Contracts. Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

"During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

4.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-

3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

4.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

4.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

4.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

4.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

1. 8.Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30

days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

9. **Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

10. **Performance Measurement**

    The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

    Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

    The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

AGENDA ITEM 7

Town Manager Report

TOWN OF JOHNSTOWN

MEMORANDUM

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: March 2, 2020

CC: Town Staff
Local Media

SUBJECT: Departmental Report

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

- 03/02/2020 – Regular Town Council Meeting
- 03/16/2020 – Regular Town Council Meeting
- 03/21/2020 – Town Council Retreat
- 04/06/2020 – Regular Town Council Meeting

Administration, Finance, & Planning

- *Liquor License Renewals* – Lazy Dog Tavern, Urban Egg A Daytime Eatery and Cassidy's Sports Grill renewal licenses have been submitted to the State.
- *Communication Manager Position* – Jaime Deroiser accepted the position of Communication Manager and will begin work on March 9, 2020.
- *Executive Assistant* – Danielle Garner will start for the Town on March 2nd as Matt's Executive Assistant.
- *Planner I Position* – Interviews are scheduled for the week of March 2nd.
- *Comprehensive Plan* – Planning & Zoning Commission / Comp Plan Steering Committee kicks off their involvement in the comprehensive planning effort with a work session on March 11th with Logan Simpson. Community Engagement meetings are scheduled for March 24th and March 26th – for times, locations, and information is available on the website.
- *TRAKiT Software Implementation* – Planning Staff has scheduled 8 days of intense work in March with CentralSquare to begin laying out business processes and discussing configuration requirements of the project tracking software TRAKiT.
- *LETA Meeting* – Town representatives met with Larimer Emergency Telephone Authority (LETA) the 911 dispatch for Larimer County. They plan to occupy a facility in 2534 in the near future and will be looking at installing fiber for their facility. They have

asked if we are interested in participating to meet our emergency needs. Staff is reviewing this request to determine if it makes sense at this time for future consideration.

- *TRPR Meeting* – The Town Manager met with the TRPR Director to discuss opportunities for trail connectivity in the communities and the region and how we can partner together for the benefit of the community.
- *Leadership Northern Colorado* – The Town Manager participated on a panel of Town/City Managers from Northern Colorado to talk about local government and the amazing impact we can have for and with the community.
- *2019 Audit* – Asset review and final closing steps for 2019 are in process. Invoices for 2019 will be accepted and posted to 2019 until the end of February. Final revenues for 2019 have been gradually coming in and most of them have been recognized at this point.
- *Direct Pay* – The Direct Pay Program for utilities has been successfully discontinued. Town staff assisted customers that were interested in continuing to participate in an automatic payment program to set up accounts in Xpress Bill Pay. This change from Direct Pay to Xpress Bill Pay has substantially increased customer security, which is of utmost importance.

Police Department

Training:

- *ARIDE* – Officer Dudley attended Advanced Roadside Impaired Driving Enforcement (ARIDE) training in Evans. This course instructed Officer Dudley on how to observe, identify, and articulate the signs of impairment related to drugs, alcohol or a combination of both. This 16-hour course included instruction on the seven major drug categories, signs and symptomology, physiology of drugs, drug combinations, courtroom testimony, and report writing.
- *K9* Training – Officer Kehr and K9 Vasco received their certification from Utah Post in narcotic detection. K9 Vasco can now be utilized to sniff out illegal drugs in our community.
- *SFST/Defensive Tactics* – Sergeant Williams conducted an in service training for all officers in Standardized Field Sobriety Test (SFST) and Krav Maga Defensive Tactics. In SFST training, officers refreshed on how to properly conduct the standard field sobriety tests in order to detect DWI/DUI drivers. In Krav Maga training, officers learned basic defensive tactics and handcuffing.

Community Policing, Outreach & Miscellaneous Items:

- *Miscellaneous* – The police department upgraded its security cameras and electric door system. The upgrade was performed by Greeley Lock and Key. Old outdated video cameras were replaced with higher resolution cameras and the electric door system was upgraded to a key fob system.
- *Private/Public Outreach* – Lieutenant Oglesby met with EOC Director Rudi Lacko of Clear View Behavioral Health to do a security assessment and walk through of their building. Lieutenant Oglesby is helping Clear View Behavioral Health implement policies to improve building security. Clear View Behavioral Health is helping the police department with building access and familiarity.

- *Sex Offender Checks* – Officers are currently in the process of conducting sex offender residency checks on the current 30 registered sex offenders in our community. So far, all offenders have been compliant with their registration obligations.

Public Works Department

Streets, Stormwater, & Parks

- *Streets* **–** Crews placed approximately 250 lbs of pothole material around Town. Snow plowing continues to be a weekly job in February. Crews have been busy plowing and sanding roadways. CR 3 was bladed and asphalt millings were brought in to stabilize the roadway. Crack sealing continues around Town as weather permits.
- *Fire hydrants* – Repairs to fire hydrants continue to be made as identified. Recently repairs were made to a hydrant on Thompson Parkway.
- *Generators* – Town building generators are being maintenanced by Wagner Equipment at the water plant, PD, Town Hall and the sewer lift stations.
- *Fleet* - Two police cruisers and a water department vehicle were serviced this period.
- *Staffing* – Staff is down two maintenance people and we are still looking to hire a new Superintendent to manage the daily operations of the water distribution and sewer collection systems in Town.

Water and Sewer

- *Aerators* **–** 3 of the 4 aerators are up and running at the Central waste water plant. The 4th aerator should be on line during the week of February 24th.
- *Low Point* – Interviews were conducted to hire an Engineering Firm to design the Low Point Expansion Project. We had 5 engineering firms submit proposals and Staff interviewed three of the five. We anticipate bringing recommendations to Town Council on the 16th of March.
- *Water plant* – Repairs continue at the water treatment plant. SCADA is working and updated every day. Brown Hill our SCADA contractor has been implementing changes that will make our operations easier to manage and control. Chemical monitoring indicators were also installed at the water plant that we hope to be able to monitor through the system as well.
- *Mixed Media Replacement* – Request for bids went out to replace the mixed media filter system at the water plant. As you all may recall, replacement of the filter media was needed as the old media had reached its 15-year life cycle. CDPHE had mentioned this in the 2018 Sanitary Survey that the media may be in need of replacing. Bids are due back week of the 2nd of March and we hope to have a contractor on board by the end of March.
- *Lone Tree pump house* – Work is scheduled to start at the lone tree pump house by the end of March. New pumps will be installed as well as upgrades to panels and electrical to avoid future flooding issues.
- *Staff* – Congratulation to Maurice Pribble for passing his Water A certification.

AGENDA ITEM 10A

Public Hearing
1st Reading Ordinance 2020-172

(Harassment and Disorderly Conduct)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 2, 2020

ITEM NUMBER: 10A

SUBJECT: Public Hearing – (First Reading) Consider Ordinance No. 2020-172, an Ordinance amending Sections 10-44 and 10-45 of the Johnstown Municipal Code concerning Harassment and Disorderly Conduct respectively and adding Section 10-25 to the Johnstown Municipal Code concerning Excreting in Public

ACTION PROPOSED: Approve Ordinance No. 2020-172 on first reading

PRESENTED BY: Town Attorney and Chief Phillips

AGENDA ITEM DESCRIPTION: Ordinance No. 2020-172 amends Sections 10-44 and 10-45 of the Johnstown Municipal Code ("Code") relating to harassment and disorderly conduct respectively and adds Section 10-25 to the Code to include the offense of excreting in public.

Section 10-44 of the Code, codifying the offense of harassment, was adopted over twenty-five years ago and provides that conduct giving rise to harassment may occur based on inappropriate telephone communications. The Colorado legislature has amended the state law harassment statute, C.R.S. §18-9-111, to expand the scope of the offense to include conduct arising from electronic media, such as text messages, instant messages and computers. To broaden the offense of harassment to be consistent with current technology, Town Council may consider an amendment to Section 10-44 of the Code. The proposed amendment mirrors the state law definition of the offense.

Section 10-45 of the Code, codifying the offense of disorderly conduct, was adopted in 1992. Since such adoption, the Colorado Supreme Court ruled that certain provisions of the previously-codified offense are unconstitutional. Town Council may consider an amendment to the offense of disorderly conduct to comply with the Supreme Court's holding. In particular, the amendment provides that a coarse and offensive utterance, gesture or display is only unlawful if it tends to incite an immediate breach of the peace. The proposed amendment mirrors the state law definition of the offense.

In addition to the foregoing revisions, the Johnstown Police Department suggested that the offense of excreting in public places be added to the Code to regulate such conduct. Town Council may consider that addition.

LEGAL ADVICE: Ordinance No. 2020-172 was prepared by the Town Attorney.

FINANCIAL ADVICE: N/A.

RECOMMENDED ACTION: Approve Ordinance No. 2020-172 on first reading.

SUGGESTED MOTION:

For Approval: I move to approve Ordinance No. 2020-172, an Ordinance amending Sections 10-44 and 10-45 of the Johnstown Municipal Code concerning Harassment and Disorderly Conduct respectively and adding Section 10-25 to the Johnstown Municipal Code concerning Excreting in Public.

For Denial: I move to deny approval of Ordinance No. 2020-172.

Reviewed:

_____

Town Manager

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2020-172

AN ORDINANCE AMENDING SECTIONS 10-44 AND 10-45 OF THE JOHNSTOWN MUNICIPAL CODE CONCERNING HARASSMENT AND DISORDERLY CONDUCT RESPECTIVELY AND ADDING SECTION 10-25 TO THE JOHNSTOWN MUNICIPAL CODE CONCERNING EXCRETING IN PUBLIC

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

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

WHEREAS, Article II of Chapter 10 of the Johnstown Municipal Code ("Code") regulates offenses against the public and Article III regulates offenses against persons; and

WHEREAS, Section 10-44 of the Code, codifying the offense of harassment, was adopted over twenty-five years ago and provides that conduct giving rise to harassment may occur based on inappropriate telephone communications; and

WHEREAS, since adoption, the Colorado legislature has amended the state law harassment statute, C.R.S. §18-9-111, to expand the scope of harassment to include conduct arising from electronic media, such as text messages, instant messages and computers; and

WHEREAS, to broaden the offense of harassment to be consistent with current technology, Town Council similarly desires to amend Section 10-44 of the Code; and

WHEREAS, Section 10-45 of the Code, codifying the offense of disorderly conduct, was adopted in 1992; and

WHEREAS, since such adoption, the Colorado Supreme Court has ruled that certain provisions of the previously-codified offense are unconstitutional; and

WHEREAS, Town Council desires to amend the offense of disorderly conduct to be consistent and in compliance with the rulings of the Colorado Supreme Court; and

WHEREAS, in addition to the foregoing revisions, the Johnstown Police Department has requested that the offense of excreting in public places be added to the Code in order to regulate such conduct; and

WHEREAS, based on such recommendation, Town Council desires to add the offense of excreting in public places to the Code; and

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

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

Section 1. Section 10-44 of the Johnstown Municipal Code shall be amended in full to read as follows:

Sec. 10-44. Harassment.

(a) A person commits harassment if, with intent to harass, annoy or alarm another person, he or she:

(1) Strikes, shoves, kicks or otherwise touches a person or subjects him or her to physical contact;
(2) In a public place directs obscene language or makes an obscene gesture to or at another person;
(3) Follows a person in or about a public place;
(4) Directly or indirectly initiates communication with a person or directs language toward another person, anonymously or otherwise, by telephone, telephone network, data network, text message, instant message, computer, computer network, computer system, or other interactive electronic medium in a manner intended to harass or threaten bodily injury or property damage, or makes any comment, request, suggestion, or proposal by telephone, computer, computer network, computer system, or other interactive electronic medium that is obscene;
(5) Makes a telephone call or causes a telephone to ring repeatedly, whether or not a conversation ensues, with no purpose of legitimate conversation;
(6) Makes repeated communications at inconvenient hours or in offensively coarse language; or
(7) Repeatedly insults, taunts, challenges, or makes communications in offensively coarse language to, another in a manner likely to provoke a violent or disorderly response.

(b) As used in this Section, unless the context otherwise requires, *obscene* means a patently offensive description of ultimate sexual acts or solicitation to commit ultimate sexual acts, whether or not said ultimate sexual acts are normal or perverted, actual or simulated, including masturbation, cunnilingus, fellatio, anilingus or excretory functions.

(c) Any act prohibited by Subsection (a)(4) above may be deemed to have occurred or to have been committed at the place at which the telephone call, electronic mail or other electronic communication was either made or received.

Section 2. Section 10-45 of the Johnstown Municipal Code shall be amended in full to read as follows:

Sec. 10-45. Disorderly conduct.

(a) It shall be unlawful for any person to commit the offense of disorderly conduct as provided in this Section.

(b) For purposes of this Section, a person commits disorderly conduct if he or she intentionally, knowingly or recklessly:

(1) Makes a coarse and obviously offensive utterance, gesture, or display in a public place and the utterance, gesture, or display tends to incite an immediate breach of the peace;

(2) Makes unreasonable noise in a public place or near a private residence that he or she has no right to occupy;

(3) Fights with another in a public place except in an amateur or professional contest of athletic skill;

(4) Not being a peace officer, discharges a firearm in a public place except when engaged in lawful target practice or hunting or the ritual discharge of blank ammunition cartridges as an attendee at a funeral for a deceased person who was a veteran of the armed forces of the United States; or

(5) Not being a peace officer, displays a deadly weapon, displays any article used or fashioned in a manner to cause a person to reasonably believe that the article is a deadly weapon, or represents verbally or otherwise that he or she is armed with a deadly weapon in a public place in a manner calculated to alarm.

Section 3. Section 10-25 shall be added to the Johnstown Municipal Code, codifying the offense of excreting in public places, and shall read as follows:

Sec. 10-25. Excreting in Public Places.

It shall be unlawful for any person to urinate or defecate on any public street, upon any public sidewalk, in any other public place, in any public vehicle or in any store, assembly hall, corridor or other place open to or used by the public, except in restrooms

and toilets which are provided for such purpose.

Section 4. Repeal. Existing or parts of ordinances covering the same matters as embraced in this Ordinance are hereby repealed and all ordinances or parts of ordinances inconsistent with the provisions of this Ordinance are hereby repealed, except that this repeal shall not affect or prevent the prosecution or punishment of any person for any act done or committed in violation of any ordinance hereby repealed prior to the taking effect of this Ordinance.

Section 5. Publication; Effective Date; Recording. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

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

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

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

AGENDA ITEM 10B

Public Hearing
1st Reading Ordinance 2020-173

(Franchise Agreement with Poudre Valley Rural Electric Association Inc.)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE:	March 2, 2020
ITEM NUMBER:	10B
SUBJECT:	Public Hearing (1st Reading): Ordinance Number 2020-173, an Ordinance To Provide A Franchise Agreement Between The Town Of Johnstown And Poudre Valley Rural Electric Association, Inc.
ACTION PROPOSED:	Consideration and Approval of Ordinance Number 2020-173, To Provide A Franchise Agreement Between The Town Of Johnstown And Poudre Valley Rural Electric Association, Inc.
ATTACHMENTS:	1. Ordinance Number 2020-173 2. Franchise Agreement
PRESENTED BY:	Matt LeCerf, Town Manager

AGENDA ITEM DESCRIPTION:

Enclosed for your review and consideration is an Ordinance that would provide to the Poudre Valley Rural Electric Association, Inc. (PVREA) a non-exclusive franchise agreement to serve property located in the Town of Johnstown and within the PVREA certificated area. The franchise agreement would provide the Town with a 3% franchise fee, which would allow PVREA to operate in the Town's right of way and serve customers within their territory.

Changes to the presented agreement compared to the previous agreement include the following:

- Enhanced communication between the two parties to ensure that coordination and cooperation is at a premium.
- Allows for both parties to discuss the potential of implementing art into the utility boxes while ensuring safety of the utility operators.
- Requires a permit if PVREA is outside of its certificated area, but within the Town limits of Johnstown.

The term of the agreement will operate until December 31, 2039.

LEGAL ADVICE:
The agreement was drafted and reviewed in consultation with the Town Attorney.

FINANCIAL ADVICE:
Revenue will be realized based on the franchise fee as anticipated in the annual budget.

RECOMMENDED ACTION: Approve Ordinance Number 2020-173 as presented on first reading.

SUGGESTED MOTIONS: FOR THE SUBDIVISION DEVELOPMENT AND IMPROVEMENT AGREEMENT

For Approval:
I move to approve Ordinance Number 2020-173, an Ordinance To Provide A Franchise Agreement Between The Town Of Johnstown And Poudre Valley Rural Electric Association, Inc. on first reading.

For Denial:

I move that we deny Ordinance Number 2020-171, an Ordinance To Provide A Franchise Agreement Between The Town Of Johnstown And Poudre Valley Rural Electric Association, Inc. on first reading.

Reviewed and Approved for Presentation:

_____
Town Manager

TOWN OF JOHNSTOWN, COLORADO
ORDINANCE NO. 2020-173

AN ORDINANCE APPROVING A FRANCHISE AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN AND POUDRE VALLEY RURAL ELECTRIC ASSOCIATION, INC.

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

WHEREAS, the Town Council desires to enter into a Non-Exclusive Franchise Agreement with Poudre Valley Rural Electric Association, Inc., a Colorado cooperative association ("Association"), for the provision of electric utility services to the portion of the Town that the Association is certified to serve ("Service Area") and to its residents; and

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

A. Grants to the Association the non-exclusive right to make reasonable use of Town streets, public utility easements and other public places, subject to the terms and conditions contained therein: (1) to provide electric utility service to the Service Area and its residents and (2) to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town the facilities reasonably necessary for the Association to furnish, sell and distribute electricity within and through the Service Area;
B. Specifies that the franchise shall be effective for a term of approximately twenty (20) years from its Effective Date through December 31, 2039; and
C. Sets a franchise fee of three percent (3%) of the Association's revenues, as defined therein.

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

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

Section 1. The Non-Exclusive Franchise Agreement between the Town of Johnstown and Poudre Valley Rural Electric Association, a Colorado cooperative association, attached hereto and incorporated herein by reference as **Exhibit A**, is hereby approved.

Section 2. The Town Council hereby finds, determines and declares that this Ordinance is promulgated under the general police power of the Town of Johnstown and that it is

promulgated for the health, safety and welfare of the public. This Ordinance bears a rational relationship to the proper legislative object sought to be obtained.

Section 3. This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

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

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this _____ day of _____, 2020.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

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

Franchise Agreement

NON-EXCLUSIVE FRANCHISE AGREEMENT

This Non-Exclusive Franchise Agreement is made and entered into this ____ day of _____, 2020 ("Effective Date") by and between the Town of Johnstown, hereinafter referred to as "the Town", and Poudre Valley Rural Electric Association, Inc., hereinafter referred to as "the Association".

ARTICLE 1 - DEFINITIONS

Section 1.0 Definitions. For the purpose of this franchise, the following words and phrases shall have the meaning given in this article. When not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The word "shall" is mandatory and "may" is permissive. Words not defined in this article shall be given their common and ordinary meaning.

1.1 "Council" or "Town Council" refers to and is the legislative body of the Town.

1.2 "Association" refers to and is Poudre Valley Rural Electric Association, Inc. and its successors and assigns, but does not include its affiliates, subsidiaries or any other entity in which it has an ownership interest.

1.3 "Distribution Facilities" refer to and is only that portion of the Association's electric system which delivers electric energy from the substation breakers to the point-of-delivery of the customer, including all devices connected to that system.

1.4 "Facilities" refer to and are all facilities reasonably necessary to provide electricity into, within and through the Town and include plants, works, systems, substations, transmission and distribution structures, lines, equipment, mains, conduit, transformers, underground lines, meters, wires, cables and poles.

1.5 "Public Easements" refer to and are public and dedicated easements created and available for use by investor-owned, cooperatives, or other public utilities for their facilities.

1.6 "Public Utilities Commission" or "PUC" refers to and is the Public Utilities Commission of the State of Colorado, or other authority including the board of directors of the Association succeeding to the regulatory powers of the Public Utilities Commission.

1.7 "Residents" refers to and includes all persons, businesses, industry, governmental agencies, and any other entity whatsoever, presently located or to be hereinafter located, in whole or in part, within the territorial boundaries of the Town.

1.8 "Revenues" refer to and are those amounts of money which the Association receives from its customers within the Town from the sale of electricity under rates authorized by the Association's board of directors to its customers within the Town and represents amounts billed under such rates as adjusted for refunds, the net write-off of uncollectible accounts, correction or other regulatory adjustments.

1.9 "Town" refers to and is the municipal corporation designated as Town of Johnstown, and includes the territory as currently is or may in the future be included within the boundaries of the Town of Johnstown.

1.10 "Streets and Other Public Places" refer to and are streets, alleys, viaducts, bridges, roads, lanes and other public places in said Town.

ARTICLE 2 - GRANT OF FRANCHISE

Section 2.1 Grant of Franchise. The Town of Johnstown hereby grants to the Association, for the period specified herein and subject to the conditions, terms and provisions contained in this franchise, a nonexclusive right to furnish, sell and distribute electricity to the Town and to all residents within the Town. Subject to the conditions, terms and provisions contained in this franchise, the Town also hereby grants to the Association a nonexclusive right to acquire, construct, install, locate, maintain, operate and extend into, within and through the Town and within the Association's certificated area, all facilities reasonably necessary to furnish, sell and distribute electricity within and through the Town and a nonexclusive right to make reasonable use of the streets and other public places and public easements as may be necessary to carry out the terms of this franchise. These rights shall extend to all areas of the Town within the Association's certificated area as it is now constituted and to additional areas as the Town may increase in size by annexation or otherwise.

Section 2.2 Street Lighting Service. The rights granted in this franchise encompass the nonexclusive franchise to provide street lighting service to the Town and the provisions of this franchise apply with full and equal force to the street lighting service provided by the Association. Wherever reference is made to the sale of electricity or to the provision of electric service in this franchise, these references shall be deemed to include the provision of street lighting service. Wherever reference is made to Association facilities, equipment, system or plant in this franchise, this reference shall be deemed to include Association-owned street lighting facilities, equipment, system and plant.

Section 2.3 Term of Franchise. This franchise shall take effect in accordance with the provisions of the Town of Johnstown's Home Rule Charter. The term of this franchise shall begin with said Effective Date of this franchise and continue to December 31, 2039.

ARTICLE 3 - FRANCHISE FEE

Section 3.1 Franchise Fee. In consideration for the grant of this franchise, the Association shall pay the Town a sum equal to three percent (3%) of all revenues received from the sale of electricity within the Town, excluding all revenues received from the Town for service furnished it.

Section 3.2 Payment Schedule. For the franchise fee owed on revenues received after the effective date of this franchise, payment shall be made in monthly installments not more than thirty (30) days following the close of the month for which payment is to be made. Initial and final payments shall be prorated for the portions of the months at the beginning and end of the term of this franchise. All payment shall be made to the Town Finance Director. The Town Manager, or other authorized representatives, shall have access to the books of the Association for the purpose of auditing or checking to ascertain that the franchise fee has been correctly computed and paid. In the event an error by the Association results in an overpayment of the franchise fee to the Town and said overpayment is in excess of $200, credit for the overpayment shall be spread over the same period the error was undiscovered. If the overpayment is $200 or less, credit shall be taken against the next payment.

Section 3.3 Change of Franchise Fee and Other Franchise Terms. Once during each calendar year of the franchise term, the Town Council, upon giving thirty (30) days' notice to the Association of its intention to do so, may review and change the consideration the Town may be entitled to receive as a part of the franchise; provided, however, the Town Council may only change the consideration to be received by the Town under the terms of this franchise to the equivalent of the consideration paid by the Association to any municipality in the State of Colorado in which the Association supplies electric service under franchise.

The Association shall report to the Town within thirty (30) days of the execution of a subsequent franchise or of any change of franchise in other municipality that could have a reasonably significant financial impact on the consideration to be paid by the

Association to the Town hereunder. If the Town Council decides the consideration shall be so changed, it shall provide for such change by Ordinance, provided, however, that any change in the franchise fee is then allowed to be surcharged by the Association; and provided, further, that the consideration is not higher than the highest consideration paid by the Association to any municipality within the State of Colorado. For purposes of this section, consideration means the franchise fee established in Article 3, Section 1; the undergrounding program established in Article 10, Section 2; and also includes any other provision which is of similar significant financial benefit to the Town.

Section 3.4 Franchise Fee Payment in Lieu of Other Fees. Payment of the franchise fee by the Association is accepted by the Town in lieu of any occupancy tax, license tax, permit charge, inspection fee, or similar tax on the privilege of doing business or in connection with the physical operation thereof, but does not exempt the Association from any lawful taxation upon its property or any other tax not related to the franchise or the physical operation thereof and does not exempt the Association from payment of head taxes or other fees or taxes assessed generally upon businesses.

Section 3.5 Permit and Fees for Work Conducted Outside Association's Certificated Area. Notwithstanding the foregoing, the Association shall be required to obtain a permit from the Town for work conducted within the boundaries of the Town, but outside of the Association's certificated area, including, but not limited to, for the construction, installation, maintenance and operation of the Association's facilities. In the Town's sole discretion, the Association may be required to pay a permit charge, inspection fee and other similar types of fees for the privilege of doing work outside the Association's certificated area.

ARTICLE 4 - SUPPLY, CONSTRUCTION AND DESIGN

Section 4.1 Supply of Electricity. The Association shall take all reasonable and necessary steps to provide an adequate supply of electricity to its customers at the lowest reasonable cost consistent with long-term reliable supplies. If the supply of electricity to

its customers should be interrupted, the Association shall take all necessary and reasonable actions to restore such supply within the shortest practicable time.

Section 4.2 Notification, Outage and Restoration of Service.

A. Notifications. The Association shall provide to the Town daytime and nighttime telephone numbers of a designated Association representative from whom the Town may obtain status information from the Association on a twenty-four (24) hour basis concerning interruptions of electrical service in any part of the Town.

B. Planned Outage. If the supply of electricity to the Associations members should be interrupted due to a planned outage, except in cases of emergency, the Association shall notify its customers as soon as practical in advance of the planned outage.

C. Restoration. In the event the Association's electric system, or any part thereof, is partially or wholly destroyed or incapacitated, the Association shall use due diligence to restore such system(s) to satisfactory service within the shortest practical time.

Section 4.3 Obligations Regarding Association Facilities. The Association shall install, maintain, repair, renovate and replace its facilities with due diligence in a good and workmanlike manner, and the Association's facilities will be of sufficient quality and durability to provide adequate and efficient electric service to the Town and its residents. Association facilities shall not interfere with the Town's water mains, sewer mains or other municipal use of streets and other public places. The Association shall erect and maintain its facilities in such a way so as to minimize interference with trees and other natural features. Association facilities shall be installed in public easements so as to cause a minimal amount of interference with such property.

Section 4.4 Excavation and Construction. All excavation and construction work done by the Association shall be done in a timely and expeditious manner which minimizes the inconvenience to the public and individuals. All public and private property whose use conforms to restrictions in public easements disturbed by Association excavation or

construction activities shall be restored by the Association at its expense to a condition that is substantially the same or better than its prior condition.

Section 4.5 Relocation of Association Facilities. Any relocation of the Association's facilities in any street or other public place required, caused or occasioned by any Town project shall be at the cost of the Association. Relocation shall be completed within a reasonable time from the date when the Town makes its request, such time to be established by the Association as soon as possible after the Town's request. The Association shall be granted an extension of time of completion equivalent to any delay caused by conditions not under its control provided that the Association proceeds with due diligence at all times. Relocated underground facilities shall be underground. Relocated aboveground facilities shall be aboveground unless the Town either agrees to pay the additional cost of moving them underground or requests that such additional cost be paid out of available funds under section 10.2, pursuant to Colorado law.

Section 4.6 Service to New Areas. If the boundaries of the Town are expanded during the term of this franchise, the Association shall extend service to residents in the expanded area that is also within the Service Area at the earliest practicable time and in accordance with the Association's extension policy in areas certificated to the Association. Service to the expanded area shall be in accordance with the terms of this franchise , including payment of franchise fees.

Section 4.7 Town Not Required to Advance Funds. Upon receipt of the Town's authorization for billing and construction, the Association shall extend its facilities to provide electric service to the Town for municipal uses within the Town limits or for any major municipal facility outside the Town limits, within the Association's certificated service area, without requiring the Town to advance funds prior to construction.

Section 4.8 Technological Improvements. The Association shall generally introduce and install, as soon as practicable, electrical energy technological advances in its equipment and service within the Town when such advances are technically and economically feasible and are safe and beneficial to the Town and its residents. Upon request by the

Town, the Association shall review and promptly report advances which have occurred in the electric utility industry that have been incorporated into the Association's operations in the Town in the previous year or will be so incorporated in the six months following the Town's request.

ARTICLE 5 - COMPLIANCE

Section 5.1 Town Regulation. The Town expressly reserves, and the Association expressly recognizes, the Town's right and duty to adopt, from time to time, in addition to the provisions herein contained ordinances and rules and regulations as may by the Town be deemed necessary in the exercise of its police power for the protection of the health, safety and welfare of its citizens.

Section 5.2 Compliance With Town Requirements. The Association will comply with all Town requirements regarding curb and pavement cuts, excavating, digging and related construction activities. If requested by the Town, both parties shall submit to each, reports of annual, long-term planning for capital improvement projects with descriptions of required street cuts, excavation, digging and related construction activities within thirty (30) days after issuance. Except for emergencies, the Town may require that all installations be coordinated with the Town's street improvement programs. The Town Manager shall be the Town's agent for inspection and for compliance with Town ordinances and regulations on any such projects.

Section 5.3 Town Review of Construction and Design. Prior to construction of any significant facilities above ground, or, for electrical energy, any transmission lines or generating plant, building, substation, or similar structure within the Town, the Association shall furnish to the Town the plans for such facilities. In addition, the Association shall assess and report on, which shall include, but not limited to, the impact of such proposed construction on the Town environment. Such plans and reports may be reviewed by the Town to ascertain, without limitation [1] that all applicable laws including building and zoning codes and air and water pollution regulations are complied with, [2] that aesthetic and good planning principles have been given due consideration,

and [3] that adverse impact on the environment has been minimized. Subsequent to review, the Town shall have the right to deny the plans if they do not conform.

Section 5.4 Compliance with Standards. The electrical energy which the Association distributes shall conform with the standards adopted by the Association's board of directors, as the same may be amended from time to time. A copy of such standards shall be available for inspection at the Association's offices and through the Association's website.

Section 5.5 Compliance With Air and Water Pollution Laws. The Association shall use its best efforts to take measures which will result in its facilities meeting the standards required by applicable Federal and State air and water pollution laws. Upon the Town's request, the Association will provide the Town with a status report of such measures.

Section 5.6 Inspection. The Town shall have the right to inspect at all reasonable times any portion of the Association's system used to serve the Town and its residents. The Town shall also have access to Association records for the purpose of determining Association compliance with this franchise. The Association agrees to cooperate with the Town in conducting the inspection and to correct any discrepancies affecting the Town's interest in a prompt and efficient manner.

ARTICLE 6 - LAWFUL PROVISIONS OF TARIFFS

Section 6.1 Tariff Provisions. Notwithstanding the deregulated nature of the Association, the Town and the Association recognize that the lawful provisions of the Association's tariffs are consistent with the restrictions and limitations of Article XXV of the Colorado Constitution regarding the rights of municipalities to franchise and are controlling over any inconsistent provision in this franchise dealing with the same subject matter. In the opinion of the Association, no provision of this franchise is inconsistent with any of the currently effective provisions of the Association's tariffs.

ARTICLE 7 - REPORTS TO TOWN

Section 7.1 Reports on Association Operations. The Association shall submit reasonable and necessary reports containing or based on information readily obtainable from the Association's books and records as the Town may request with respect to the operations of the Association under this franchise and provide the Town with a list of real property within the Town which is owned by the Association.

Section 7.2 Copies of Tariffs. The Association shall keep on file in the Association's office, all tariffs, rules, regulations and policies filed with the Public Utilities Commission relating to service by the Association to the Town and its residents.

ARTICLE 8 - TOWN USE OF ASSOCIATION FACILITIES

Section 8.1 Town Use. The Town shall have the right, for the purpose of stringing wires, to use all poles and suitable overhead structures constructed by the Association within the Town, which use shall not include the distribution or transmission of electricity. Such use by the Town will be without cost. The Association will allow others holding a franchise, except electric service, from the Town to so utilize such poles and suitable overhead structures upon reasonable terms and conditions to be agreed upon by the Association and such holder of a franchise from the Town; provided, however, that the Association shall assume no liability nor shall it be put to any additional expense in connection therewith, and the use of said poles and structures by the Town or others holding a franchise from the Town shall be in such a manner as not to constitute a safety hazard or to interfere unnecessarily with the Association's use of same. The Association agrees to work collaboratively with the Town to implement a program whereby the Association’s utility boxes may be painted.

Section 8.2 Underground Conduit. If the Association installs new electric underground conduit or opens a trench or replaces such conduit, the Association shall provide adequate advance notice to permit additional installations of similar conduit and pull wire for the Town. If the Town wants additional similar conduit and pull wire installed,

it will so notify the Association and provide similar conduit and pull wire at its expense to the Association which will install it without further expense to the Town provided that such action by the Town will not unnecessarily interfere with the Association's facilities or delay the accomplishment of the project.

ARTICLE 9 - INDEMNIFICATION OF THE TOWN

Section 9.1 Town Held Harmless. The Association shall indemnify, defend and save the Town harmless from and against all liability or damage and all claims or demands whatsoever in nature arising out of the operations of the Association within the Town pursuant to this franchise and the securing of and the exercise by the Association of the franchise rights granted in this franchise and shall pay all reasonable expenses arising therefrom. The Town will provide prompt written notice to the Association of the pendency of any claim or action against the Town arising out of the exercise by the Association of its franchise rights. The Association will be permitted, at its own expense, to appear and defend or to assist in defense of such claim. Notwithstanding any provision hereof to the contrary, the Association shall not be obligated to indemnify, defend or hold the Town harmless to the extent any claim, demand or lien arises out of or in connection with any negligent act or failure to act of the Town or any of its officers or employees.

Section 9.2 Payment of Expenses Incurred by Town in Relation to Town Ordinance. As stipulated in the Town Ordinance, the Association shall pay in advance and/or reimburse the Town for the Town's expenses incurred in relation to this franchise.

ARTICLE 10 - UNDERGROUND CONSTRUCTION AND OVERHEAD CONVERSION

Section 10.1 Underground Electrical Distribution Lines in New Areas. The Association shall place newly constructed electrical distribution lines underground to serve new residential subdivision areas in accordance with the Association's tariffs and Town subdivision regulations.

Section 10.2 Overhead Conversion at Expense of Association.

A. As and when requested by the Town, the Association will spend one percent (1%) of the preceding calendar year's electric revenues to move electric distribution facilities located in streets and other public places in the Town underground, provided that the undergrounding shall extend for a minimum distance of one block or 750 feet, or as may be mutually agreed to by the parties.

B. Any unexpended portion of the one percent (1%) of electric revenue may be carried over to succeeding years and, in addition, upon request by the Town, the Association shall anticipate amounts to be available for up to three (3) years in advance. Any amounts advanced shall be credited against amounts to be expended in succeeding years until such advances are eliminated. No relocation expenses which the Association is required to expend pursuant to section 4.5 shall be charged to this allocation.

C. Funds to be expended pursuant to this section shall not be used in any project or situation for which and to the extent that the Town has received Federal or State funds for the purpose of undergrounding utilities. Funds to be expended pursuant to this section may be used for "matching" purposes with State or Federal monies.

D. In addition to the provisions of this section, the Town may require additional facilities to be moved underground at the Town's expense, pursuant to Colorado law.

E. The Town acknowledges that the establishment of this undergrounding fund creates no vested right in the Town to the undergrounding monies. Further, if such monies are not expended pursuant to the conditions hereof, the fund is not convertible to cash or available for any other purposes.

F. The Town shall have access to the books of the Association for the purpose of auditing or checking to ascertain that the overhead conversion balance has been correctly computed and tracked.

Section 10.3 Review of Undergrounding Program. Representatives of both the Town and the Association shall meet annually to review the Association's undergrounding program. This review shall include:

(a) Underground programs, including conversions and replacements which have been accomplished or are underway by the Association, together with the Association's plans for additional undergrounding;

(b) Undergrounding projects anticipated by the Town.

Such meetings shall be held annually to achieve a continuing program for the orderly undergrounding of electrical lines in the Town.

Section 10.4 Cooperation With Other Utilities. When undertaking a project of undergrounding, the Town and the Association shall work with other utilities or companies which have their lines overhead to attempt to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Association shall cooperate with such utilities and companies and undertake to underground Association facilities as part of the same project where feasible. The Association shall not be required to pay the costs of any other utility in connection with work under this section.

ARTICLE 11 - TRANSFER OF FRANCHISE

Section 11.1 Consent of Town Required. The Association shall not transfer or assign any rights under this franchise to a third party, excepting only corporate reorganizations of the Association not including a third party, unless the Town shall approve in writing such transfer or assignment. Approval of the transfer or assignment shall not be unreasonably withheld.

Section 11.2 Transfer Fee. In as much as the Association is a consumer-owned electric cooperative, the approval of the transfer or assignment of rights under this franchise

shall be without a transfer fee., except that the Association shall pay the full amount of all costs and expenses incurred by the Town as a result of any such transfer.

ARTICLE 12 - PURCHASE OR CONDEMNATION

Section 12.1 Town's Right to Purchase or Condemn. The right of the Town to construct, purchase or condemn any public utility works or ways, and the rights of the Association in connection therewith, as provided by the Colorado Constitution and statutes, are hereby expressly reserved.

Section 12.2 Continued Cooperation by Association. In the event the Town exercises its option to purchase or condemn, the Association agrees that, at the Town's request, it will continue to supply any service it supplies under this franchise, for the duration of the term of this franchise pursuant to terms and conditions negotiated for such continued operation.

ARTICLE 13 - REMOVAL OF ASSOCIATION FACILITIES AT END OF FRANCHISE

Section 13.1 Limitations on Association Removal. In the event this franchise is not renewed at the expiration of its term or the Association terminates any service provided herein for any reason whatsoever, and the Town has not purchased or condemned the system and has not provided for alternative electrical service, the Association shall have no right to remove said system pending resolution of the disposition of the system. The Association further agrees it will not withhold any temporary services necessary to protect the public and shall be entitled only to monetary compensation in no greater amount than it would have been entitled to were such services provided during the term of this franchise. Only upon receipt of written notice from the Town stating that the Town has adequate alternative electrical energy sources to provide for the people of the Town shall the Association be entitled to remove any or all of said systems in use under the terms of this franchise.

ARTICLE 14 -
SMALL POWER PRODUCTION AND COGENERATION

Section 14.1 Association to Purchase. The Town expressly reserves the right to engage in the production of electricity. The Association agrees to negotiate for the purchase of Town-generated power in accordance with its tariffs.

ARTICLE 15 - FORFEITURE

Section 15.1 Forfeiture. Both the Association and the Town recognize there may be circumstances whereby compliance with the provisions of this franchise is impossible or is delayed because of circumstances beyond the Association's control. In those instances, the Association shall use its best efforts to comply in a timely manner and to the extent possible. If the Association fails to perform any of the terms and conditions of this franchise and such failure is within the Association's control, the Town, acting by and through its Town Council, may determine, after hearing, that such failure is of a substantial nature. Upon receiving notice of such determination, the Association shall have a reasonable time in which to remedy the violations. If during said reasonable time corrective actions have not been successfully taken, the Town acting by and through its Town Council, shall determine whether any or all rights and privileges granted the Association under this ordinance shall be forfeited.

Section 15.2 Judicial Review. Any such declaration of forfeiture shall be subject to judicial review as provided by law.

Section 15.3 Other Legal Remedies. Nothing herein contained shall limit or restrict any legal rights that the Town or the Association may possess arising from any alleged violation of this franchise.

Section 15.4 Continued Obligation. Upon forfeiture, the Association shall continue to provide service to the Town and its residents in accordance with the terms hereof until

the Town makes alternative arrangements for such service. If the Association fails to provide continued service, it shall be liable for damages to the Town.

ARTICLE 16 - AMENDMENTS

Section 16.1 Amendments to Franchise. At any time during the term of this franchise, the Town, through its Town Council, or the Association may propose amendments to this franchise by giving thirty (30) days' written notice to the other of the proposed amendment(s) desired and both parties thereafter, through their designated representatives, will negotiate within a reasonable time in good faith in an effort to agree on mutually satisfactory amendment(s). The word "amendment" as used in this section does not include a change authorized in section 3.3.

ARTICLE 17 - MISCELLANEOUS

Section 17.1 Successors and Assigns. The rights, privileges, franchises and obligations granted and contained in this ordinance shall inure to the benefit of and be binding upon the Association, its successors and assigns.

Section 17.2 Third Parties. Nothing contained in this franchise shall be construed to provide rights to third parties.

Section 17.3 Representatives. Both parties shall designate from time to time in writing representatives for the Association and the Town who will be the persons to whom notices shall be sent regarding any action to be taken under this ordinance. Notice shall be in writing and forwarded by certified mail or hand delivery to the persons and addresses as hereinafter stated, unless the persons and addresses are changed at the written request of either party, delivered in person or by certified mail. Until any such change shall hereafter be made, notices shall be sent to the Town Manager and to the Association's President and CEO. Currently the addresses are as follows:

For the Town of Johnstown:

Town Manager
Town of Johnstown
450 S. Parish Ave.
P.O. Box 609
Johnstown, CO 80534

For the Association:

President and CEO
Poudre Valley Rural Electric Assn., Inc.
P.O. Box 272550
Ft. Collins, CO 80527-2550

Section 17.4 Severability. Should any one or more provisions of this franchise be determined to be illegal or unenforceable, all other provisions nevertheless shall remain effective; provided, however, the parties shall forthwith enter into good faith negotiations and proceed with due diligence to draft a term that will achieve the original intent of the parties hereunder.

Section 17.5 Entire Agreement. This franchise constitutes the entire agreement of the parties. There have been no representations made other than those contained in this franchise.

ARTICLE 18 - APPROVAL

Section 18.1 Town Council Approval. This grant of franchise shall not become effective unless approved by a majority vote of the Town Council.

Section 18.2 Association Approval. The Association shall file with the Town Clerk its written acceptance of this franchise and of all of its terms and provisions within ten (10) days after the adoption of this franchise by the Town Council. The acceptance shall be in form and content approved by the Town Attorney. If the Association shall fail to timely file its written acceptance as herein provided, this franchise shall be and become null and void.

INTRODUCED AND READ, BASED ON PRIOR PUBLICATION, this _____ day of _____, 2020.

_____
Gary Lebsack, Mayor

ATTEST:

_____
Diana Seele, Town Clerk

PASSED, ADOPTED AND FINALLY APPROVED this _____ day of _____, 2020.

_____
Gary Lebsack, Mayor

ATTEST:

_____
Diana Seele, Town Clerk

APPROVED AS TO FORM:

_____
Law Office of Avi S. Rocklin, LLC
By: Avi S. Rocklin
Town Attorney

Publication Dates: _____
_____
_____

POUDRE VALLEY RURAL ELECTRIC ASSOCIATION, INC.

_____
Jeffrey C. Wadsworth
President and CEO

AGENDA ITEM 10C

Resolution 2020-05

(The Ridge at Johnstown Annexation No. 1)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 2, 2020

ITEM NUMBER: 10C

SUBJECT: Consider Resolution No. 2020-05 a Resolution Finding Substantial Compliance for Initiating Annexation Proceedings and Setting a Public Hearing Date for The Ridge at Johnstown Annexation No. 1

ACTION PROPOSED: Approve Resolution No. 2020-05

PRESENTED BY: Kim Meyer, Planning and Development Director

AGENDA ITEM DESCRIPTION: J-25 Land Holdings, LLC, a Delaware limited liability company ("Developer"), submitted a Petition for Annexation. Subsequent to annexation, the Developer intends to include the property in The Ridge at Johnstown PUD and subdivision.

State statute requires that the governing body of the annexing municipality approve a resolution finding that the proposed annexation is in substantial compliance with C.R.S. § 31-12-107(1), relating primarily to filing requirements. The petition is in substantial compliance with the state statute.

If the petition is in substantial compliance, the governing body must set a public hearing to determine if the proposed annexation complies with C.R.S. § 31-12-104, C.R.S. (eligibility for annexation) and C.R.S. § 31-12-105 (limitations) and further require that proper notice be provided to the public.

LEGAL ADVICE: Resolution No. 2020-05 was prepared by the Town Attorney.

FINANCIAL ADVICE: N/A.

RECOMMENDED ACTION: Approve Resolution No. 2020-05.

SUGGESTED MOTION:

For Approval: I move to approve Resolution No. 2020-05, a Resolution Finding Substantial Compliance for Initiating Annexation Proceedings and Setting a Public Hearing Date for The Ridge at Johnstown Annexation No. 1, and set a public hearing on the proposed annexation for April 6, 2020.

For Denial: I move to deny approval of Reviewed: Resolution No. 2020-05.

Reviewed:

_____

Town Manager

TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2020-05

A RESOLUTION FINDING SUBSTANTIAL COMPLIANCE FOR INITIATING ANNEXATION PROCEEDINGS AND SETTING A PUBLIC HEARING DATE FOR THE RIDGE AT JOHNSTOWN ANNEXATION NO. 1

WHEREAS, J-25 Land Holdings, LLC, a Delaware 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, THAT:

Section 1. The Town Council of the Town of Johnstown finds that a Petition for Annexation of certain property situated in the Northwest Quarter of Section 26, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, consisting of approximately 9.606 acres, being more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference, filed with the Town Clerk on November 1, 2019, to be known as "The Ridge at Johnstown Annexation No. 1," 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 April 6, 2020, 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 Larimer County Board of County Commissioners and to the Larimer 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 _____, 2020.

ATTEST: **TOWN OF JOHNSTOWN, COLORADO**

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

EXHIBIT A
LEGAL DESCRIPTION

PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH/ PM, LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 26, MONUMENTED WITH AN ILLEGIBLE 2 1/2" ALUMINUM CAP IN RANGE BOX;

THENCE S00°00'24"E, A DISTANCE OF 30.00 FEET ON THE WEST LINE OF THAT PARCEL RECORDED AT RECEPTION NUMBER 20180051343 IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE TO THE POINT OF BEGINNING;

THENCE N89°52'50"E, A DISTANCE OF 599.95 FEET ON THE SOUTH RIGHT OF WAY LINE OF LARIMER COUNTY ROAD 18 SAID CORNER WITNESSED BY A NO 4 REBAR WITH YELLOW PLASTIC CAP STAMPED LS 32444;

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THENCE S89°56'58"W, A DISTANCE OF 99.81 FEET, ON THE WEST LINE OF SAID PARCEL TO AN ANGLE POINT THEREIN, MONUMENTED WITH A NO 5 REBAR WITH 1-1/4" PURPLE PLASTIC CAP STAMPED PLS 37067;

THENCE N00°00'24"W, A DISTANCE OF 333.60 FEET ON THE WEST LINE OF SAID PARCEL AND THE WEST LINE OF SAID NORTHWEST QUARTER OF SECTION 26 AND TO THE POINT OF BEGINNING.

PARCEL CONTAINS 418,436 SQUARE FEET OR 9.606 ACRES.

BASIS OF BEARING:

ALL BEARINGS ARE GRID BEARINGS OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983. THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26 BEARS N 89°52'50" E AND DISTANCE OF 1323.05', MONUMENTED AS SHOWN WITH ALL OTHER BEARINGS RELATIVE THERETO.

Planning and Zoning Information

Kim Meyer
Planning and Development Director

Matt LeCerf
Town Manager

PLANNING & ZONING COMMISSION
AGENDA MEMORANDUM

ITEM: **#1** Ridge Annexation No. 1
#2 Ridge Annexation No. 1– Establishment of Zoning

DESCRIPTION: The proposed Ridge annexation and zoning is a 9.6-acre addition to the existing Ridge PUD development (previously "The Villages at Johnstown"). The Ridge annexation would share zoning designation with the existing Ridge project.

LOCATION: 6604 East Larimer County Road 18 (Larimer Co Parcel # 8526000013)

APPLICANT: J-25 Land Holdings LLC (owner)

STAFF: Darryll Wolnik, Planner II

HEARING DATE: February 26, 2020

HEARING NOTICE: *The public hearing on this item was noticed to property owners within **500** feet of the subject area.*

BACKGROUND & SUMMARY

The applicant, J-25 Land Holdings LLC, is requesting annexation of 9.6-acres of land located at 6604 E. County Rd. 18 (Larimer County Parcel #8526000013). This property is located in unincorporated Larimer County. The proposed property is contained on one parcel, which is wholly-owned by the applicant. The applicant is additionally requesting the zoning designation PUD-MU (Planned Unit Development - Mixed Use) for the property.

The subject property is bordered by the Town of Johnstown on the south, east, and west sides. The north side is bounded by Larimer County Road 18, currently in unincorporated Larimer County. Those surrounding zoning designations are PUD-MU (Planned Unit Developemnt - Mixed Use) to the south and west, PUD-I (Planned Unit Development – Industrial) to the east, and FA-Farming to the north in Unincorporated Larimer County. The PUD applicable to the surrounding areas was approved as "The Villages at Johnstown," and the intent is to extend those design guidelines and planning to incorporate this parcel into that larger master planned develompent. (See Attachment 4)

Surrounding land uses are mostly large-lot county residential or agricultural. The exception is the properties to the immediate east and west, which are existing light industrial uses.

ATTACHMENTS
1-Vicinity Map
2- Application & Petition
3-Annexation Map
4-Zoning Map
5-Approved Preliminary Plat of Villages of Johnstown

NOTICE
Notice was published in the local paper of widest circulation, the Johnstown Breeze, on Thursday, February 6, 2020. This notice provided the date, time, and location of the Planning and Zoning Commission hearing, as well as a description of the project. Notices were mailed to all property owners within 500 feet of the property in question. This notice included a map of the proposed annexation and zoning. Due to the small number of adjacent property owners, a community meeting was not held. There are only 5 property owners within 500 feet of the property in question.

No comments or concerns from adjacent property owners was received as of the date of publication of this memorandum.

ANALYSIS
Annexation: This annexation is being considered by the Town for the following reasons:

1. At least 1/6 of the area to be annexed is contiguous to the Town of Johnstown boundary (south, east, and west sides).
2. The property is planned to be zoned and developed in the same manner as proposed urban-level development directly to the south, and is consistent with the Comprehensive Plan.
3. The property is located within the Town of Johnstown Growth Management Area.
4. The Town is capable of providing water, sewer, and police service to the property.
5. The Town is authorized to annex the area without an election under Section 30(b) or Article II of the Colorado Constitution.

General Plan
P.2-5: Property to be annexed is marked "commercial" on the Land Use Framework Plan. This is urban-level development that is consistent with the proposed MU zoning.

Goal CF-1: New development achieves the community's goals and is consistent with the Town's vision.
This proposal will incorporate a currently-missing portion of a larger community area, both in terms of zoning and annexed property. Utilities, services, and infrastructure can be supplied to this property.

Goal CF-2: Beautiful Town gateways at major intersections.
The new 402 interchange has created an opportunity for a Town gateway, as shown in the Land Use Framework Plan. This proposal will allow for commercial development along and near this gateway.

Goal CC-1: Walkable, mixed-use centers.
The proposed zoning for the property is MU-Mixed Use. It is located along a major arterial roadway.

Zoning:
The current zoning for the property is FA-Farming, zoned in Larimer County. The applicant requests zoning PUD-MU, at annexation. With this zoning, the property will be included in the overall Ridge development, taking place to the west, south, and east.

Staff Concerns
Staff has no concerns regarding this annexation and proposed zoning. In fact, this annexation and proposed zoning will create greater contiguity in this area, allowing for more logical and cohesive development while avoiding pockets of disjointed development along Larimer County Road 18.

RECOMMENDED PLANNING AND ZONING COMMISSION FINDINGS AND MOTIONS

Item #1 Annexation: Ridge Annexation No. 1
It is recommended that Planning and Zoning Commission send a positive recommendation to Town Council that the Ridge Annexation be approved based upon the following findings:

1. The area is contiguous to the Town of Johnstown along at least 1/6 of its boundaries.
2. The property is located within the Town of Johnstown Growth Management Area.
3. The Town can adequately and efficiently provide utility and police services.
4. The proposed zoning is consistent with the Town of Johnstown Comprehensive Plan.
5. The property is eligible for annexation without election pursuant to the Colorado Constitution Article II, Section 30(b).

Recommended Motion
Based on the application received, associated submittal materials, and the preceding analysis, the Planning & Zoning Commission finds that the request for the Ridge Annexation No. 1 furthers the *Johnstown Area Comprehensive Plan* goals, and is compatible with all other applicable Town standards and regulations, and therefore moves to recommend to the Town Council approval of the Ridge Annexation No. 1 based upon the findings as stated in the staff memo.

Alternate Motions

A. Motion to Approve with Conditions: "I move that the Commission recommend to Town Council approval of the Ridge Annexation No. 1 with the following conditions…"

B. Motion to Deny: "I move that the Commission recommend to the Town Council denial of the Ridge Annexation No. 1 based upon the following…"

Item #2 Zoning: Ridge Annexation No. 1 Establishment of Zoning
It is recommended that Planning and Zoning Commission send a positive recommendation to Town Council that the requested zoning of PUD-MU for the Ridge Annexation No. 1 be approved based upon the following findings:

1. The proposed zoning is consistent with the Town of Johnstown Comprehensive Plan.
2. The proposed zoning is consistent with the surrounding zoning for the Ridge development.

Motion

Based on the application received, associated submittal materials, and the preceding analysis, the Planning & Zoning Commission finds that the request for PUD-MU zoning for the Ridge Annexation furthers the *Johnstown Area Comprehensive Plan* goals, and is compatible with all other applicable Town standards and regulations, and therefore moves to recommend to the Town Council approval of the request for PUD-MU zoning for the Ridge Annexation based upon the 2 findings as stated in the staff report.

Alternate Motion

Motion to Deny: "I move that the Commission recommend to the Town Council denial of the request for PUD-MU zoning for the Ridge Annexation based upon the following..."

Planner:

Darryll Wolnik
Planner II

Reviewed by:

Kim Meyer
Planning & Development Director

File Name: S:\PLANNING\2019 Land Use Projects\ANX19-001 Ridge Annexation\Staff Report.docx

Application

450 S. Parish Ave. Johnstown, CO 80534 P: 970-587-4664 F: 970-587-0141

Town of Johnstown

LAND USE APPLICATION

Project Name: The Ridge Annexation

Land Use Action:
- ☐ Site Development Plan
- ☐ Use by Special Review
- ☒ Annexation

Subdivision: ☐ Replat ☐ Preliminary ☐ Final

PUD: ☐ Outline/ODP ☐ Prel/PDP ☐ Final/FDP

Zoning: ☐ Establish Zoning (Annexation) ☐ Rezone

Site Address or Parcel #s: APN: 8526000013/ 6604 E County Road 18 Johnstown, CO 80534

Applicant/Project Owner: J-25 Land Holdings, LLC

Address: 8901 E Mountain View Rd. Ste 150, Scottsdale, AZ 85258

Email: roy.bade@caliberco.com Telephone: 480-295-7600

Consultant /Representative: Galloway Engineering

Address: 5265 Ronald Reagan Blvd, Ste 210, Johnstown, CO 80534

Email: robvanuffelen@gallowayus.com Telephone: 970-800-3300

Landowner Authorization to Proceed with Land Use Action: *(Required)*

The undersigned (1) affirms ownership or authorized representation thereof of the subject property, and (2) hereby authorizes the individuals or entities listed herein as "applicant" and/or "authorized representative" to represent me/us in all aspects of the land use process for the project being submitted with this application.

☒ Please keep me informed of the status and progress of this project via email at the address below.

☐ I do NOT want to be updated on this project. (To modify this request, contact Planning@TownofJohnstown.com)

Landowner(s): J-25 Land Holdings, LLC

Email: roy.bade@caliberco.com courtney.bring@caliberco.com Telephone: 480-295-7600

Signature of Landowner

Signature of Landowner

REV. 05-19

STATEMENT OF AUTHORITY
(FOR A TRUST OR CORPORATE ENTITY)

1. This Statement of Authority relates to an entity named: J-25 Land Holdings, LLC

2. The type of entity is a Limited Liability Company. *(Trust, corporation, etc.).*

3. The entity is formed under the laws of Delaware (*state*).

4. The mailing address for the entity is: 8901 E Mountain View Rd Ste 150 Scottsdale AZ 85258

5. The name and position of the person authorized to execute instruments conveying, encumbering, or otherwise affecting title to real property on behalf of the entity, pursuant to the provisions of Colorado Revised Statute Section 38-30-172(2), is:

Jennifer Schrader, Director

Executed this 13 day of February, 2019.

J-25 Land Holdings, LLC
By: J-25 Development Group, LLC, a Delaware limited liability company, as Manager
By: Caliber Services, LLC, an Arizona limited liability company, as its sole Member
By: Caliber Companies, LLC, an Arizona limited liability company, as Manager
By: Calibercos, Inc., a Delaware corporation, as its sole Member

Jennifer Schrader, Director

STATE OF Arizona)
) ss
COUNTY OF Maricopa)

The foregoing instrument was acknowledged before me this 13th day of February, 2019 by ~~Liesa~~ Jennifer Schrader.

Witness my hand and seal.

My commission expires: May 23, 2020.

LIESA A HARKNESS
NOTARY PUBLIC - ARIZONA
MARICOPA COUNTY
My Commission Expires
May 23 ,2020

Notary Public

PETITION FOR ANNEXATION
To the Town of Johnstown
(Larimer 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 The Ridge at Johnstown Annexation, 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 Larimer County, Thompson School District, Northern Colorado Water Conservancy District, Little Thompson Water District, Loveland Rural Fire Protection District, Aims Junior College District, and_____, 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. **NOT APPLICABLE**

(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)

__X___No part of the property to be annexed is included within any site specific development plan approved by Larimer 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 __1____day of _November_, _2019__.

By: _____

Name: Jennifer Schrader

Title: Authorized Signatory

Name of Annexation: The Ridge

Mailing Address: 8901 E Mountain View Rd Ste 150 Scottsdale, AZ 85258

STATE OF ~~COLORADO~~ Arizona)
)ss
COUNTY OF Maricopa)

Subscribed and sworn to before me this 1st day of November, 2019 by Jennifer Schrader as Authorized Signatory of Caliber Companies on behalf of J25 Land Holdings.

WITNESS my hand and official seal.

My commission expires: 9-21-20

COURTNEY L. MILLER
Notary Public - State of Arizona
MOHAVE COUNTY
My Commission Expires
September 21, 2020

Courtney L. Miller
Notary Public

EXHIBIT A
LEGAL DESCRIPTION

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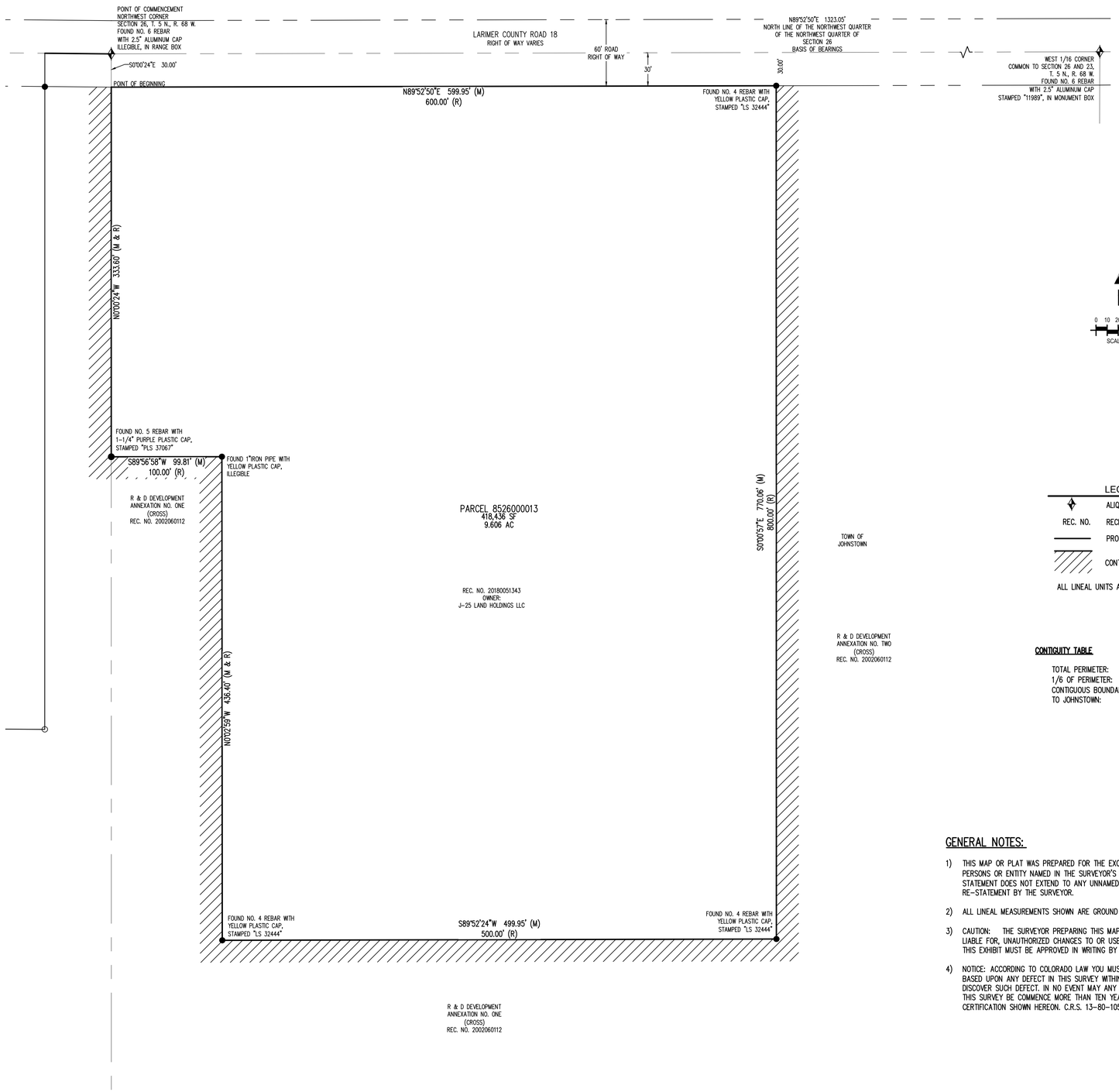
PARCEL CONTAINS 418,436 SQUARE FEET OR 9.606 ACRES.

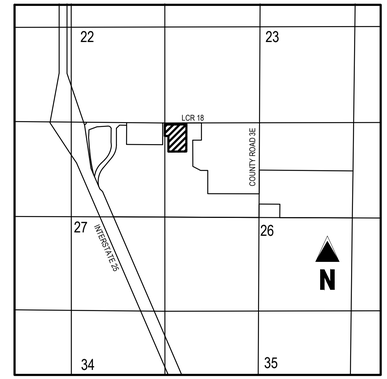
BASIS OF BEARING:

ALL BEARINGS ARE GRID BEARINGS OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983. THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26 BEARS N 89°52'50" E AND DISTANCE OF 1323.05', MONUMENTED AS SHOWN WITH ALL OTHER BEARINGS RELATIVE THERETO.

THE RIDGE AT JOHNSTOWN ANNEXATION NO. 1

PART OF THE NORTHWEST QUARTER OF SECTION 26
T. 5 N., R. 68 W. OF THE 6TH P.M.,
COUNTY OF LARIMER, STATE OF COLORADO





VICINITY MAP
NOT TO SCALE

LEGAL DESCRIPTION:

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LEGEND

	ALIQUOT CORNER (AS DESCRIBED)
REC. NO.	RECEPTION NUMBER
	PROPOSED ANNEXATION
	CONTIGUITY BOUNDARY LINE

ALL LINEAL UNITS ARE US SURVEY FEET

CONTIGUITY TABLE

TOTAL PERIMETER:	2739.77'	
1/6 OF PERIMETER:	1 : 1.30	
CONTIGUOUS BOUNDARY TO JOHNSTOWN:	2139.82'	78%

GENERAL NOTES:

1) THIS MAP OR PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS OR ENTITY NAMED IN THE SURVEYOR'S STATEMENT HEREON. SAID STATEMENT DOES NOT EXTEND TO ANY UNNAMED PERSON WITHOUT AN EXPRESS RE-STATEMENT BY THE SURVEYOR.

2) ALL LINEAL MEASUREMENTS SHOWN ARE GROUND DISTANCES AND U.S. SURVEY FEET.

3) CAUTION: THE SURVEYOR PREPARING THIS MAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR, UNAUTHORIZED CHANGES TO OR USES OF THIS MAP. ALL CHANGES TO THIS EXHIBIT MUST BE APPROVED IN WRITING BY THE SURVEYOR IN CHARGE.

4) NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCE MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. C.R.S. 13-80-105(3)(A).

TOWN COUNCIL APPROVAL

THIS MAP TO BE KNOWN AS _____ IS APPROVED AND ACCEPTED TO THE TOWN OF JOHNSTOWN, COLORADO BY ORDINANCE NUMBER _____, PASSED AND ADOPTED ON FINAL READING AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, HELD ON THE _____DAY OF _____, _____.

BY: _____ ATTEST: _____
MAYOR TOWN CLERK

TITLE COMMITMENT NOTE

THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY GALLOWAY TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD.

SURVEYOR'S STATEMENT:

I, _____, A COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS ANNEXATION MAP IS AN ACCURATE REPRESENTATION OF THE PROPERTY TO THE BEST OF MY KNOWLEDGE, INFORMATION, BELIEF, AND IN MY PROFESSIONAL OPINION. I FURTHER STATE THAT THIS CERTIFICATE DOES NOT EXTEND TO ANY UNNAMED PARTIES OR THE SUCCESSORS AND/OR ASSIGNS.

_____
FRANK A. KOHL
COLORADO PROFESSIONAL LAND SURVEYOR #37067
FOR AND ON BEHALF OF GALLOWAY & COMPANY, INC.

Galloway
5265 Ronald Reagan Blvd., Suite 210
Johnstown, CO 80534
970.800.3300
GallowayUS.com

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THE RIDGE AT JOHNSTOWN
ANNEXATION NO. 1
PART OF NORTHWEST QUARTER OF SECTION 26,
TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH P.M.,
COUNTY OF LARIMER, STATE OF COLORADO

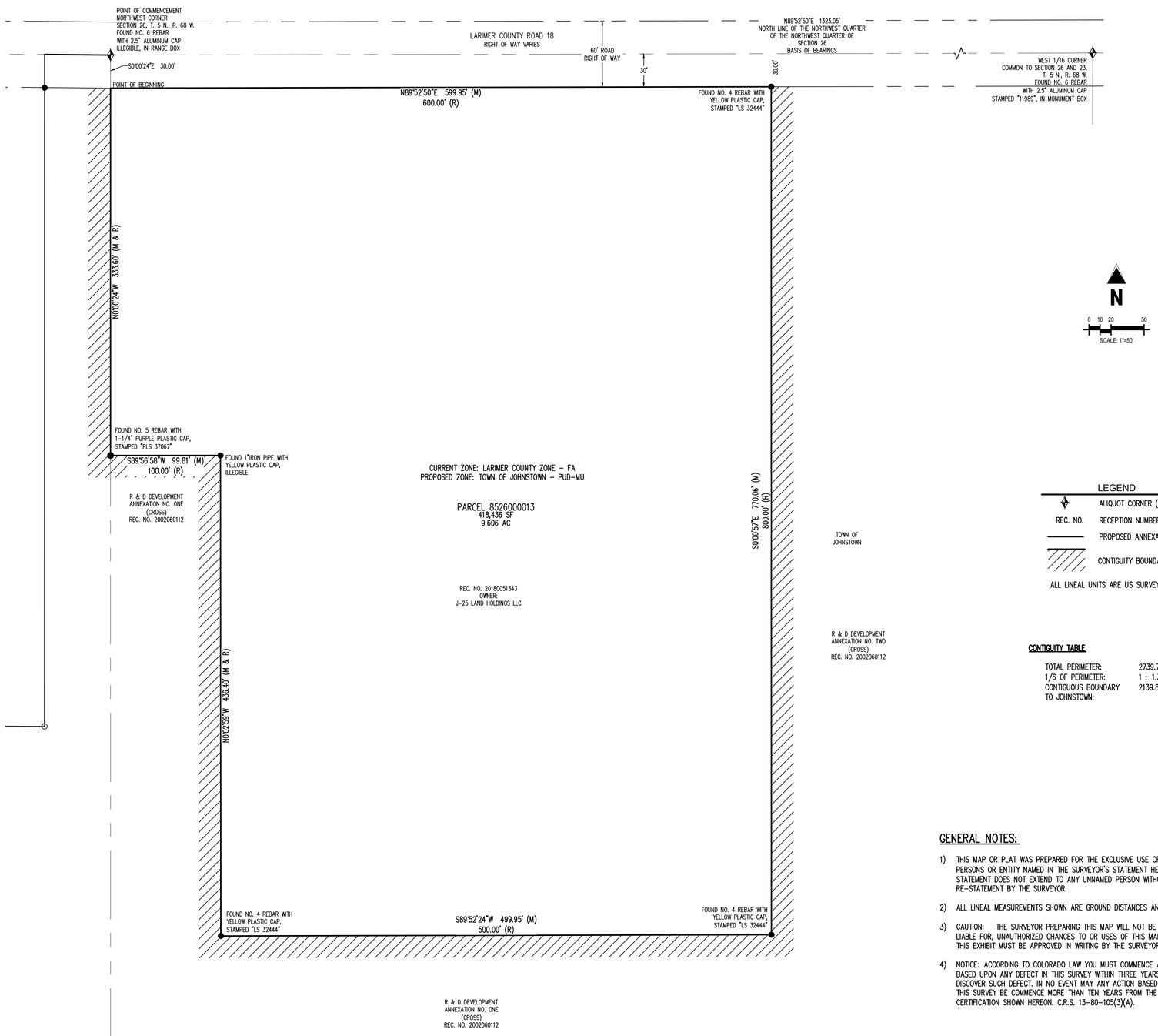
#	Date	Issue / Description	Init.
1	11/15/19	REVISED PER TOWN COMMENTS	AN

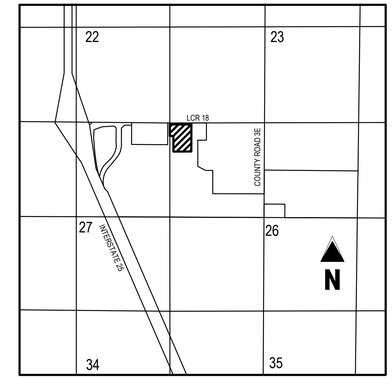
Project No:	JLH000001.10
Drawn By:	AN
Checked By:	FAK
Date:	9/25/19

1
SHEET 1 OF 1

THE RIDGE AT JOHNSTOWN ZONING MAP

PART OF THE NORTHWEST QUARTER OF SECTION 26
T. 5 N., R. 68 W. OF THE 6TH P.M.,
COUNTY OF LARIMER, STATE OF COLORADO





VICINITY MAP
NOT TO SCALE

LEGAL DESCRIPTION:

PART OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PM, LARIMER COUNTY, COLORADO, DESCRIBED AS FOLLOWS;

COMMENCING AT THE NORTHWEST CORNER OF SAID SECTION 26, MONUMENTED WITH AN ILLEGIBLE 2 1/2" ALUMINUM CAP IN RANGE BOX;

THENCE S00°00'24"E, A DISTANCE OF 30.00 FEET ON THE WEST LINE OF THAT PARCEL RECORDED AT RECEPTION NUMBER 20180051343 IN THE LARIMER COUNTY CLERK AND RECORDERS OFFICE TO THE POINT OF BEGINNING;

THENCE N89°52'50"E, A DISTANCE OF 599.95 FEET ON THE SOUTH RIGHT OF WAY LINE OF LARIMER COUNTY ROAD 18 SAID CORNER WITNESSED BY A NO 4 REBAR WITH YELLOW PLASTIC CAP STAMPED LS 32444;

THENCE S00°00'57"E, A DISTANCE OF 770.06 FEET ON THE EAST LINE OF SAID PARCEL RECORDED AT RECEPTION NUMBER 20180051343, TO A NO 4 REBAR WITH YELLOW PLASTIC CAP STAMPED LS 32444;

THENCE S89°52'24"W, A DISTANCE OF 499.95 FEET ON THE SOUTH LINE OF SAID PARCEL RECORDED AT RECEPTION NUMBER 20180051343, TO A NO 4 REBAR WITH YELLOW PLASTIC CAP STAMPED LS 32444;

THENCE N00°02'59"W, A DISTANCE OF 436.40 FEET ON THE WEST LINE OF SAID PARCEL RECORDED AT RECEPTION NUMBER 20180051343, TO AN ANGLE POINT THEREIN, MONUMENTED WITH 1" IRON PIPE WITH YELLOW PLASTIC CAP, ILLEGIBLE;

THENCE S89°56'58"W, A DISTANCE OF 99.81 FEET, ON THE WEST LINE OF SAID PARCEL TO AN ANGLE POINT THEREIN, MONUMENTED WITH A NO 5 REBAR WITH 1-1/4" PURPLE PLASTIC CAP STAMPED PLS 37067;

THENCE N00°00'24"W, A DISTANCE OF 333.60 FEET ON THE WEST LINE OF SAID PARCEL AND THE WEST LINE OF SAID NORTHWEST QUARTER OF SECTION 26 AND TO THE POINT OF BEGINNING.

PARCEL CONTAINS 418,436 SQUARE FEET OR 9.606 ACRES.

BASIS OF BEARING: ALL BEARINGS ARE GRID BEARINGS OF THE COLORADO STATE PLANE COORDINATE SYSTEM, NORTH ZONE, NORTH AMERICAN DATUM 1983. THE NORTH LINE OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 26 BEARS N 89°52'50" E AND DISTANCE OF 1323.05', MONUMENTED AS SHOWN WITH ALL OTHER BEARINGS RELATIVE THERETO.

LEGEND

✦	ALIQUOT CORNER (AS DESCRIBED)
REC. NO.	RECEPTION NUMBER
———	PROPOSED ANNEXATION
▨	CONTIGUITY BOUNDARY LINE

ALL LINEAL UNITS ARE US SURVEY FEET

CONTIGUITY TABLE

TOTAL PERIMETER:	2739.77'	
1/6 OF PERIMETER:	1 : 1.30	
CONTIGUOUS BOUNDARY TO JOHNSTOWN:	2139.82'	78%

GENERAL NOTES:

1) THIS MAP OR PLAT WAS PREPARED FOR THE EXCLUSIVE USE OF THE PERSON, PERSONS OR ENTITY NAMED IN THE SURVEYOR'S STATEMENT HEREON. SAID STATEMENT DOES NOT EXTEND TO ANY UNNAMED PERSON WITHOUT AN EXPRESS RE-STATEMENT BY THE SURVEYOR.

2) ALL LINEAL MEASUREMENTS SHOWN ARE GROUND DISTANCES AND U.S. SURVEY FEET.

3) CAUTION: THE SURVEYOR PREPARING THIS MAP WILL NOT BE RESPONSIBLE FOR, OR LIABLE FOR, UNAUTHORIZED CHANGES TO OR USES OF THIS MAP. ALL CHANGES TO THIS EXHIBIT MUST BE APPROVED IN WRITING BY THE SURVEYOR IN CHARGE.

4) NOTICE: ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCE MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON. C.R.S. 13-80-105(3)(A).

TOWN COUNCIL APPROVAL

THIS MAP TO BE KNOWN AS _____ IS APPROVED AND ACCEPTED TO THE TOWN OF JOHNSTOWN, COLORADO BY ORDINANCE NUMBER _____, PASSED AND ADOPTED ON FINAL READING AT A REGULAR MEETING OF THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, HELD ON THE _____DAY OF _____, _____.

BY: _____ ATTEST: _____
MAYOR TOWN CLERK

TITLE COMMITMENT NOTE

THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY GALLOWAY TO DETERMINE OWNERSHIP OR EASEMENTS OF RECORD.

SURVEYOR'S STATEMENT:

I, _____, A COLORADO REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY STATE THAT THIS ZONING MAP IS AN ACCURATE REPRESENTATION OF THE PROPERTY TO THE BEST OF MY KNOWLEDGE, INFORMATION, BELIEF, AND IN MY PROFESSIONAL OPINION. I FURTHER STATE THAT THIS CERTIFICATE DOES NOT EXTEND TO ANY UNNAMED PARTIES OR THE SUCCESSORS AND/OR ASSIGNS.

_____
FRANK A. KOHL
COLORADO PROFESSIONAL LAND SURVEYOR #37067
FOR AND ON BEHALF OF GALLOWAY & COMPANY, INC.

Galloway
5265 Ronald Reagan Blvd., Suite 210
Johnstown, CO 80534
970.800.3300
GallowayUS.com

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THE RIDGE AT JOHNSTOWN
ZONING MAP

PART OF NORTHWEST QUARTER OF SECTION 26,
TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH P.M.,
COUNTY OF LARIMER, STATE OF COLORADO

#	Date	Issue / Description	Init.
1	11/15/19	REVISED PER TOWN COMMENTS	AN

Project No:	JLH000001.10
Drawn By:	AN
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1
SHEET 1 OF 1

THE VILLAGES AT JOHNSTOWN

PRELIMINARY PLAT

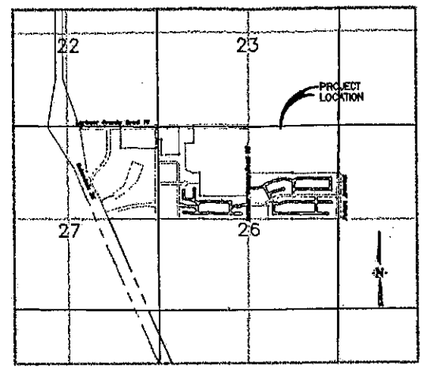
A PORTION OF THE NORTHEAST 1/4 OF SECTION 27 AND A PORTION OF THE NORTH 1/2 OF SECTION 26, TOWNSHIP 05 NORTH, RANGE 68 WEST 6th PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO.

LEGAL DESCRIPTION

A parcel of land being a portion of the Northeast ¼ of Section 27 and a portion of the North ½ of Section 26, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado described as follows:

Considering the North line of the Northeast ¼ of Section 27, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado bears S 89°28'12"E with all bearings contained herein relative thereto:

BEGIN at the Northwest corner of the Northwest ¼ of Section 26, Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado;
thence run S 00°00'43" E along the West line of said Northwest ¼ for a distance of 383.59 feet to a point on a boundary line described in Reception # 95079576;
thence leaving said West line run along said boundary line for the following courses and distances:
thence run N 89°52'27" E for a distance of 100.02 feet;
thence run S 00°00'48" E for a distance of 436.40 feet;
thence run N 89°52'27" E for a distance of 500.00 feet;
thence run N 00°00'48" W for a distance of 799.99 feet to the North line of said Northwest ¼ of Section 26;
thence run N 89°52'27" E along said North line for a distance of 423.24 feet;
thence leaving said North line run S 00°07'33" E for a distance of 463.34 feet;
thence run S 89°52'27" W for a distance of 243.44 feet;
thence run S 00°07'33" E for a distance of 732.89 feet;
thence run S 82°06'03" E for a distance of 244.80 feet;
thence run N 89°52'31" E for a distance of 200.75 feet;
thence leaving said boundary line run S 00°09'00" W for a distance of 648.94 feet to a point on the North line of the South ½ of the the South ½ of said Northwest ¼;
thence run S 89°48'52" E along said North line for a distance of 1437.73 feet to a point on the West line of the Northeast ¼ of said Section 26, said point also being a point on the boundary line described in Reception # 2000008391;
thence leaving said North line run along said boundary line for the following courses and distances:
thence run N 00°18'25" E along said West line for a distance of 862.44 feet to the Northwest corner of the South ½ of said Northeast ¼;
thence leaving said East line run S 89°32'57" E along the North line of the South ½ of said Northeast ¼ for a distance of 2618.85 feet to the East line of said Northeast ¼;
thence leaving said North line run S 00°44'09" W along said East line for a distance of 1316.14 feet to the South line of said Northeast ¼;
thence leaving said East line run N 89°44'30" W along said South line for a distance of 2027.35 feet;
thence leaving said South line run N 00°19'13" E for a distance of 374.30 feet;
thence run N 89°44'30" W for a distance of 561.74 feet to the aforesaid West line of said Northeast ¼;
thence leaving said boundary line run S 00°18'25" W along said West line for a distance of 374.30 feet to the Southeast corner of the aforesaid Northwest ¼;
thence leaving said West line run N 89°44'09" W along the South line of said Northwest ¼ for a distance of 2631.84 feet to the Southeast corner of the Northeast ¼ of Section 27, said point also being a point on the boundary line described in the Reception # 0095024264;
thence leaving said South line along said boundary line for the following courses and distances:
thence run N 59°39'05" W along the South line of said Northeast ¼ for a distance of 1436.11 feet to a point on the Easterly right of way line of Interstate 25;
thence leaving said South line run along said Easterly right of way line for the following courses and distances:
thence run N 23°22'31" W for a distance of 764.62 feet;
thence run N 42°10'31" W for a distance of 107.70 feet;
thence run N 23°22'31" W for a distance of 624.00 feet;
thence run N 08°30'01" W for a distance of 1224.50 feet;
thence run N 45°25'29" E for a distance of 84.26 feet;
thence run N 00°31'46" E for a distance of 34.70 feet to the North line of the Northeast ¼ of Section 27 of the aforesaid Township 5 North, Range 68 West of the 6th P.M., Larimer County, Colorado;
thence leaving said right of way line run S 89°28'12" E along said North line for a distance of 1130.99 feet;
thence leaving said North line run S 00°24'36" W for a distance of 612.23 feet;
thence run S 89°35'24" E for a distance of 1012.17 feet;
thence run N 00°00'43" W for a distance of 810.13 feet to the aforesaid North line of the Northeast ¼;
thence run S 89°28'12" E along said North line for a distance of 60.00 feet to the Point of Beginning.
Containing 245.81 acres, more or less.



VICINITY MAP

1"=2000'

IN WITNESS THEREOF ROY MASON, ALII DEVELOPMENT CORPERATION, INC. HAS CAUSED THESE PRESENTS TO BE EXECUTED THIS _____DAY OF _____ AD 20___.

BY:_____
ROY MASON, ALII DEVELOPMENT CORPERATION, INC.

NOTARIAL:

STATE OF _____)
)SS
COUNTY OF _____)

THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____ AD 20____ BY ROY MASON, ALII DEVELOPMENT CORPERATION,

WITNESS MY HAND AND OFFICIAL SEAL

_____
NOTARY PUBLIC

MY COMMISSION EXPIRES _____ NOTARY/BUSN. ADDRESS:

TOWN OF JOHNSTOWN APPROVALS:

CITY ATTORNEY:_____ DATE:_____

PLANNING DIRECTOR:_____ DATE:_____

PLANNING COMMISSION:_____ DATE:_____

CITY COUNCIL:_____ DATE:_____
MAYOR

ATTEST:_____ DATE:_____
CITY CLERK

RECORDERS CERTIFICATE:

ACCEPTED FOR FILING IN THE OFFICE OF THE CLERK AND RECORDER OF LARIMER COUNTY, COLORADO
CLERK AND RECORDER: _____ DEPUTY:_____

AT _____ O'CLOCK _____M, THIS _____ DAY OF _____ AD, 20___

HIGHLINE ENGINEERING & SURVEYING
ENGINEERING CONSULTANTS
12354 EAST CALEY AVENUE, SUITE 8A
DENVER, COLORADO 80237
Tel. No.(303) 889-0044
Fax. No(303) 889-0012

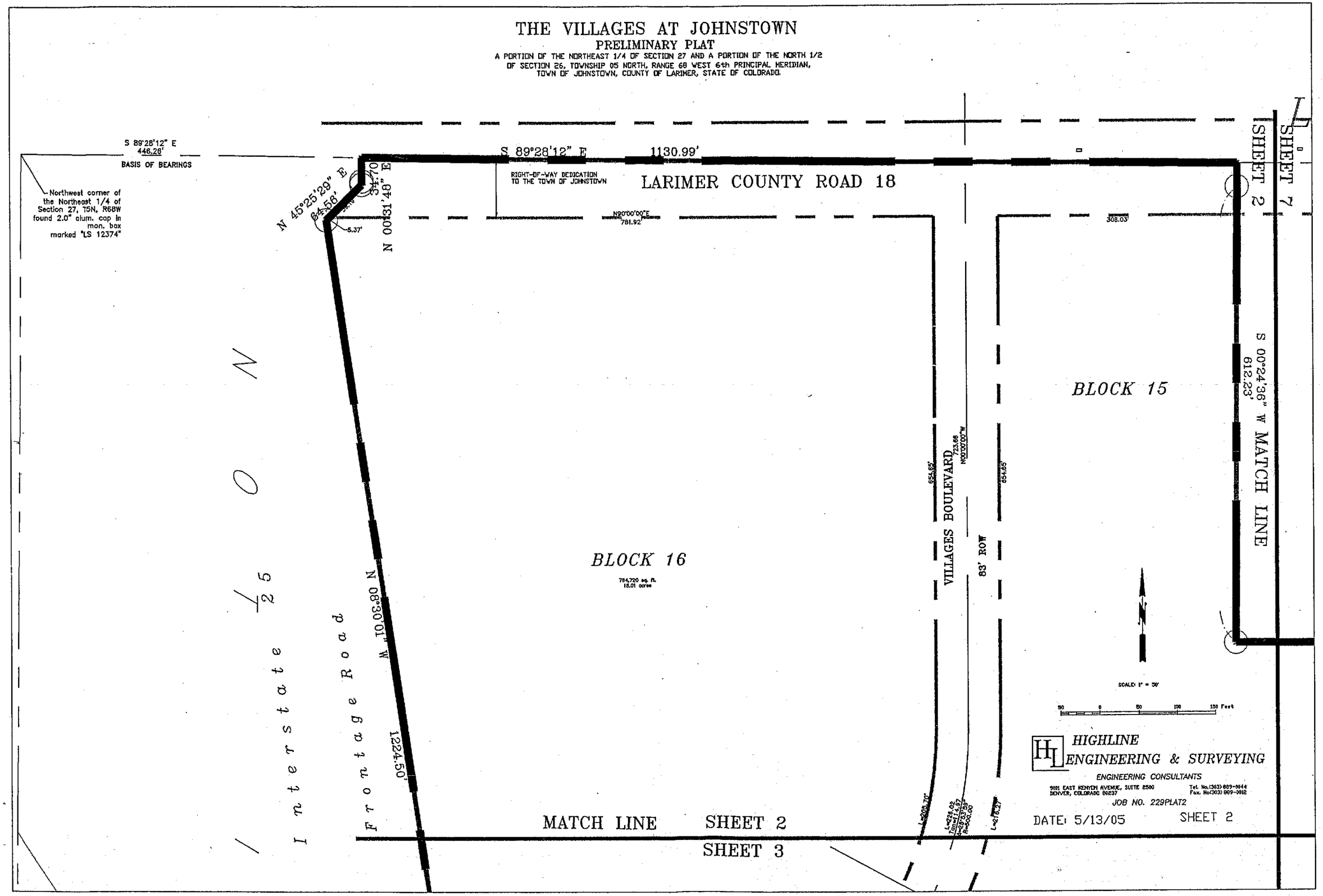
JOB NO. 229PLAT

DATE: 6/2/05 SHEET 1

THE VILLAGES AT JOHNSTOWN

PRELIMINARY PLAT

A PORTION OF THE NORTHEAST 1/4 OF SECTION 27 AND A PORTION OF THE NORTH 1/2 OF SECTION 26, TOWNSHIP 05 NORTH, RANGE 68 WEST 6th PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO



THE VILLAGES AT JOHNSTOWN

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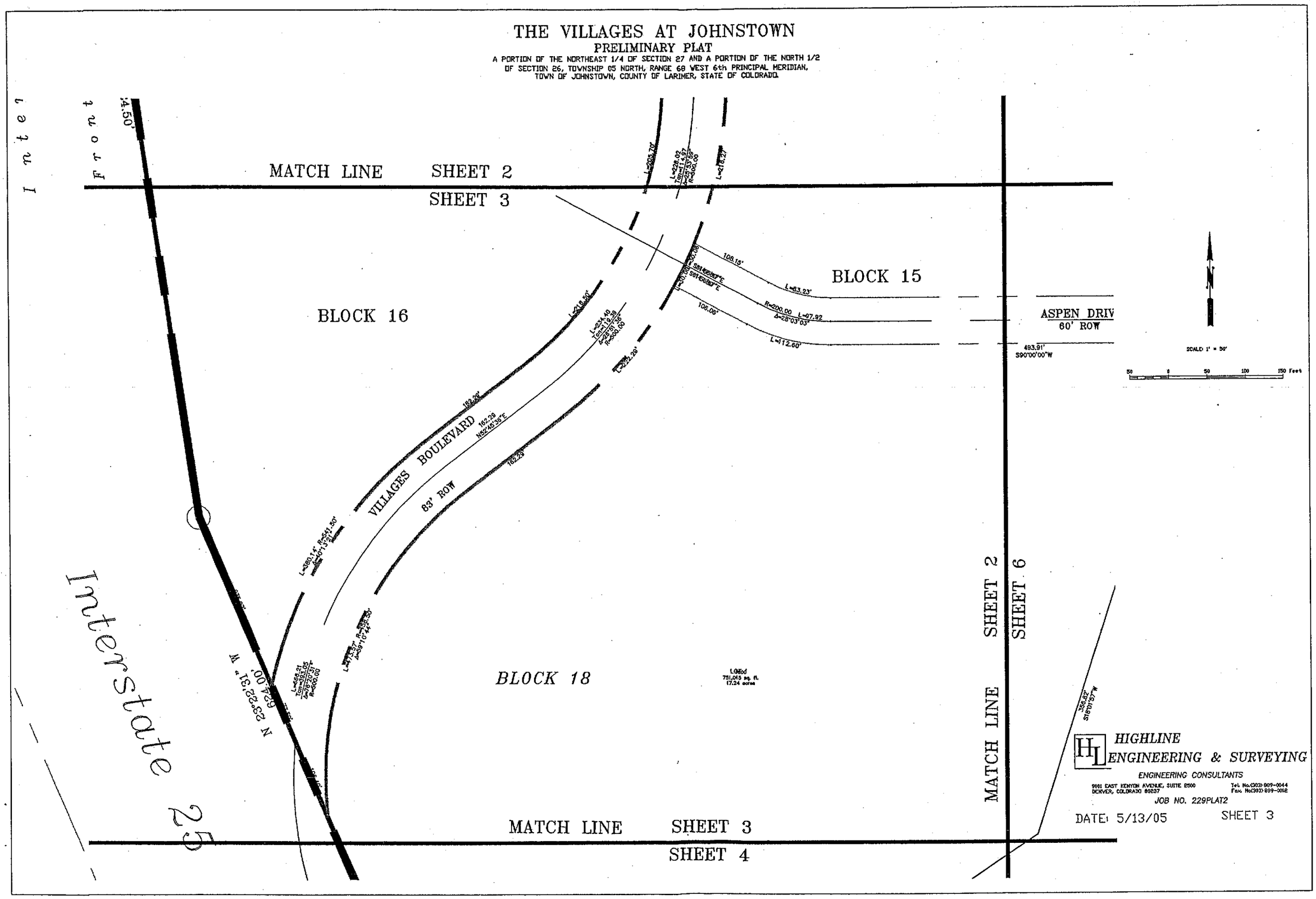

THE VILLAGES AT JOHNSTOWN

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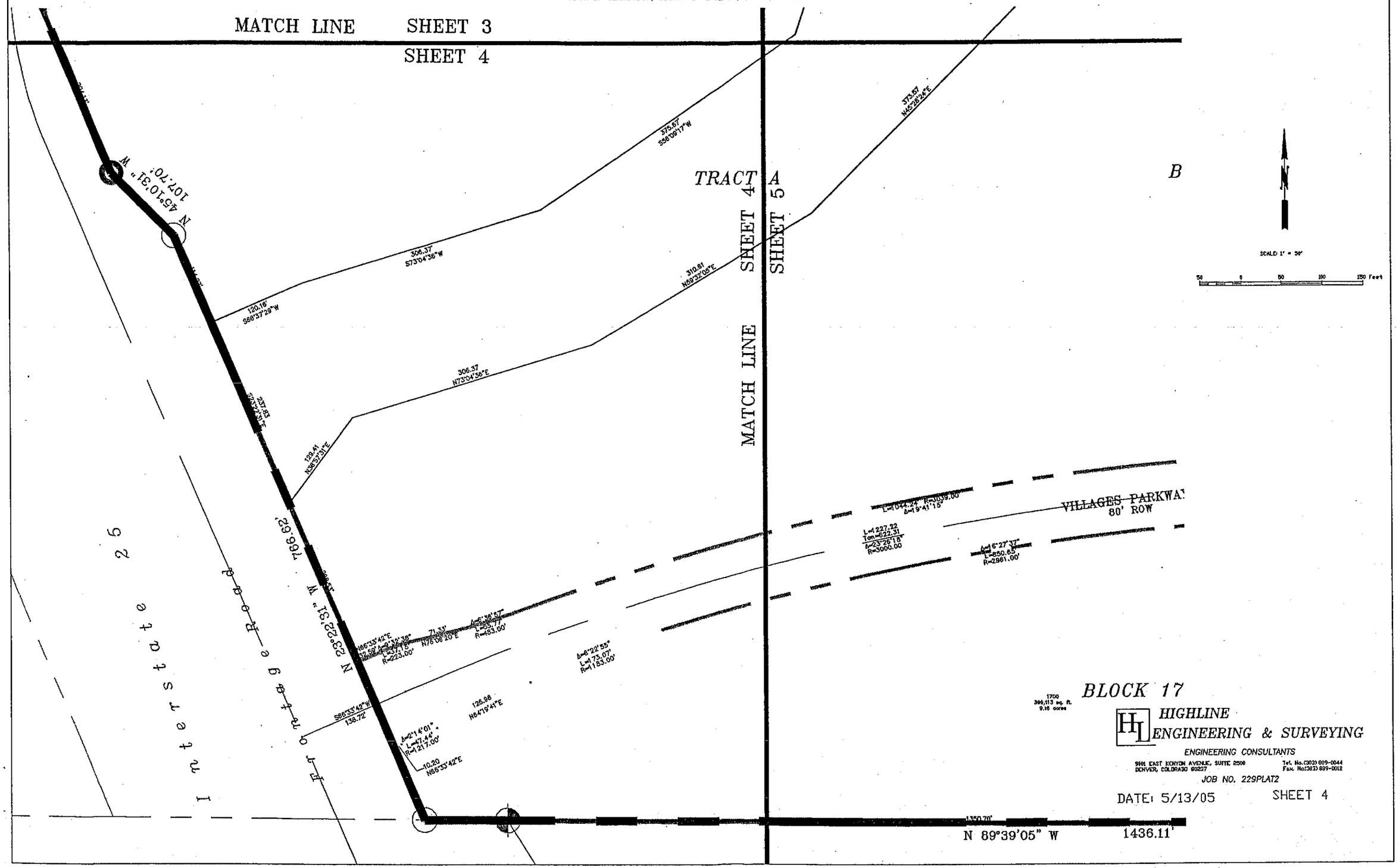

BLOCK 17

1700
394,413 sq. ft.
9.16 acres

HIGHLINE ENGINEERING & SURVEYING

ENGINEERING CONSULTANTS

9101 EAST KENYON AVENUE, SUITE 2500
DENVER, COLORADO 80237

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Fax. No.(303) 689-0012

JOB NO. 229PLAT2

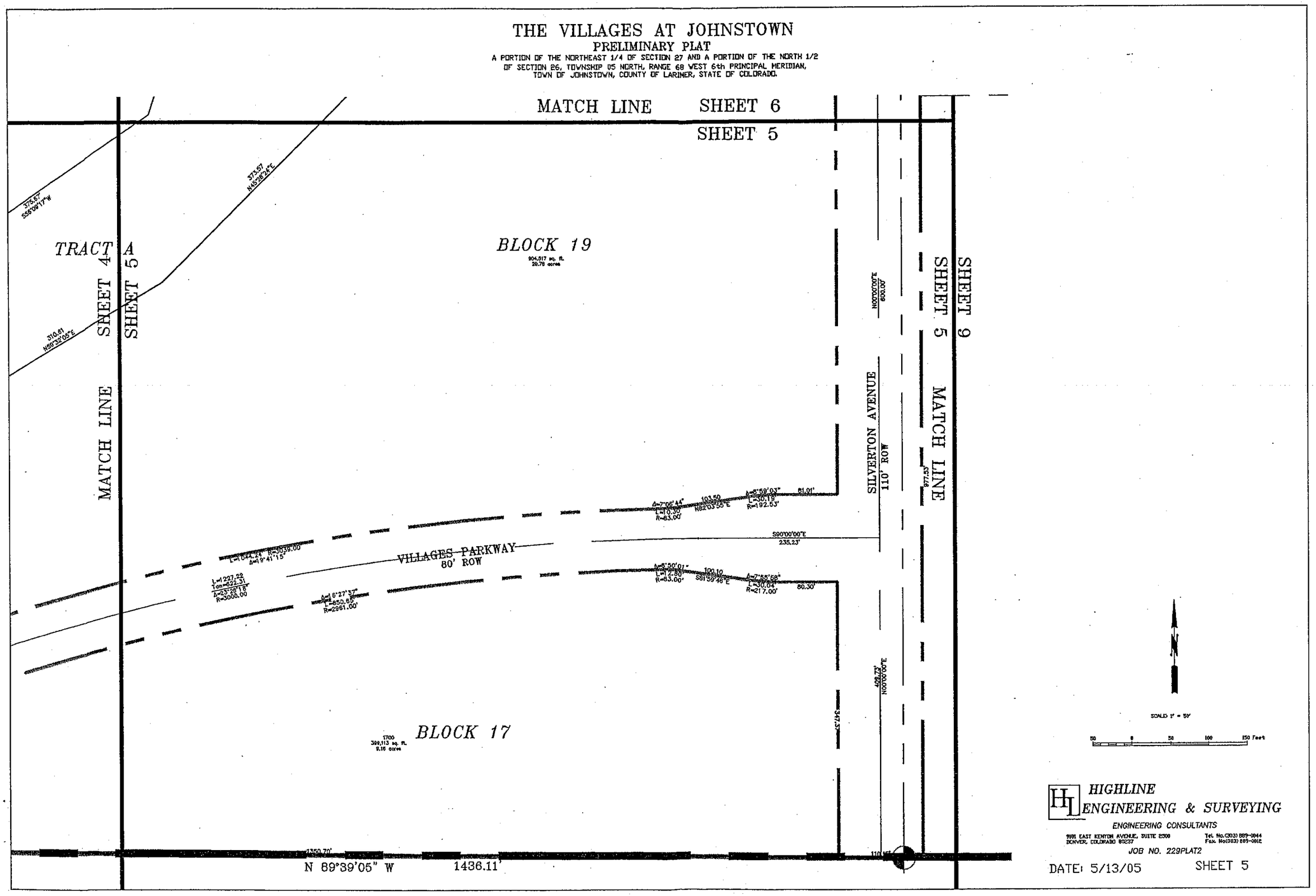
DATE: 5/13/05

SHEET 4

THE VILLAGES AT JOHNSTOWN

PRELIMINARY PLAT

A PORTION OF THE NORTHEAST 1/4 OF SECTION 27 AND A PORTION OF THE NORTH 1/2 OF SECTION 26, TOWNSHIP 05 NORTH, RANGE 68 WEST 6th PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO.



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Tel. No.(303) 889-0944
Fax. No(303) 889-0912

JOB NO. 229PLAT2

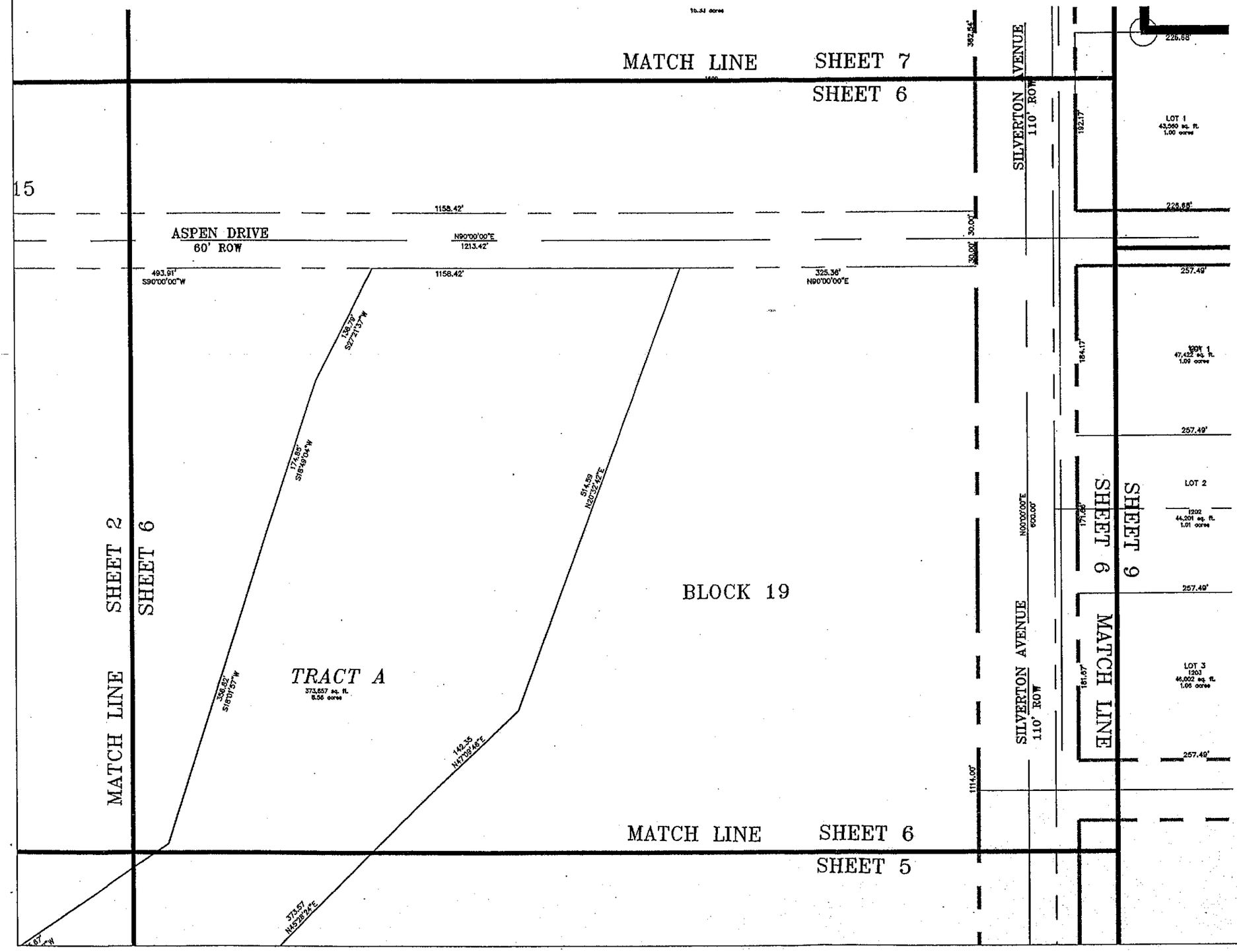
DATE: 5/13/05

SHEET 5

THE VILLAGES AT JOHNSTOWN

PRELIMINARY PLAT

A PORTION OF THE NORTHEAST 1/4 OF SECTION 27 AND A PORTION OF THE NORTH 1/2 OF SECTION 26, TOWNSHIP 05 NORTH, RANGE 68 WEST 6th PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO.



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JOB NO. 229PLAT2

DATE: 5/13/05

SHEET 6

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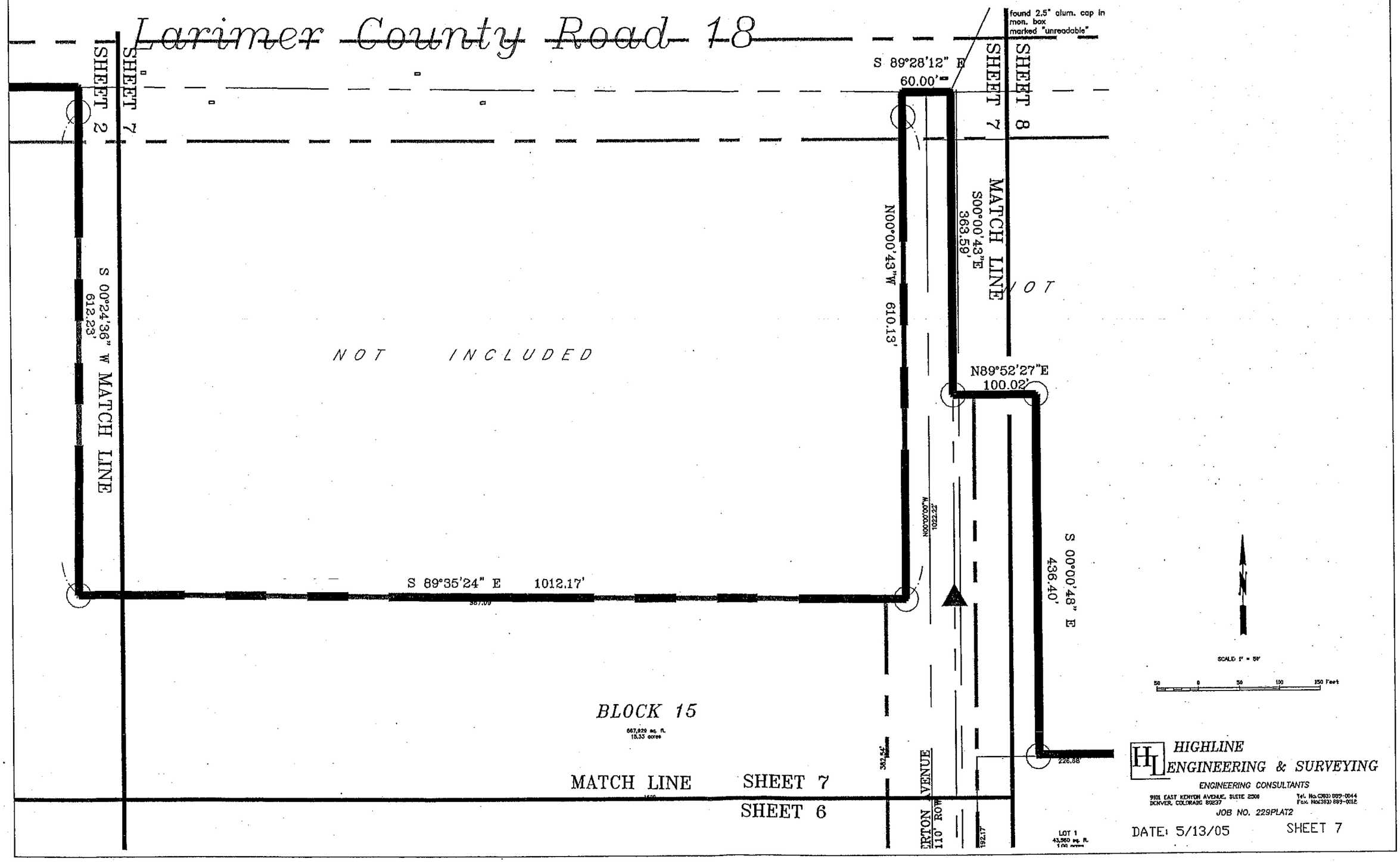

THE VILLAGES AT JOHNSTOWN

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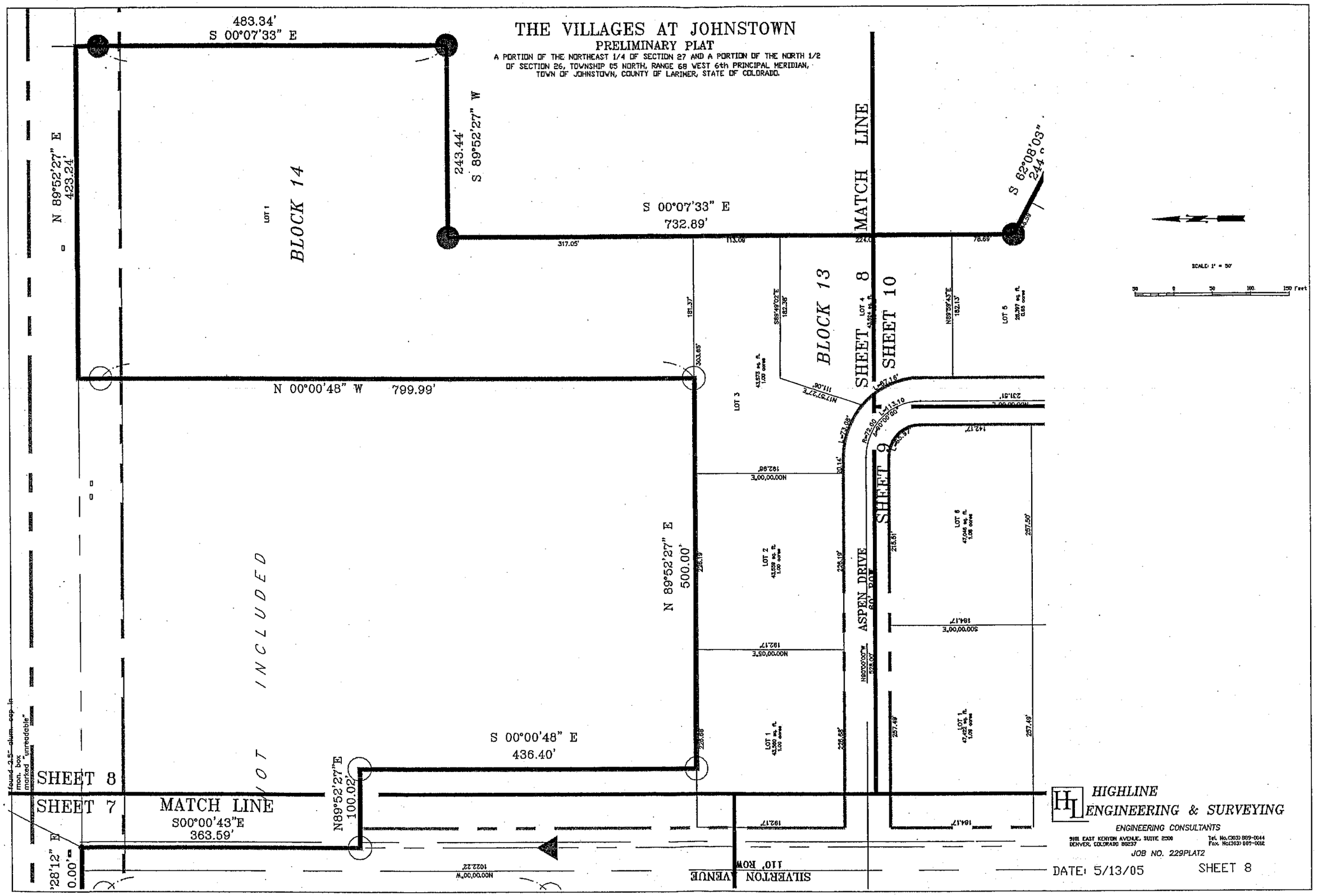

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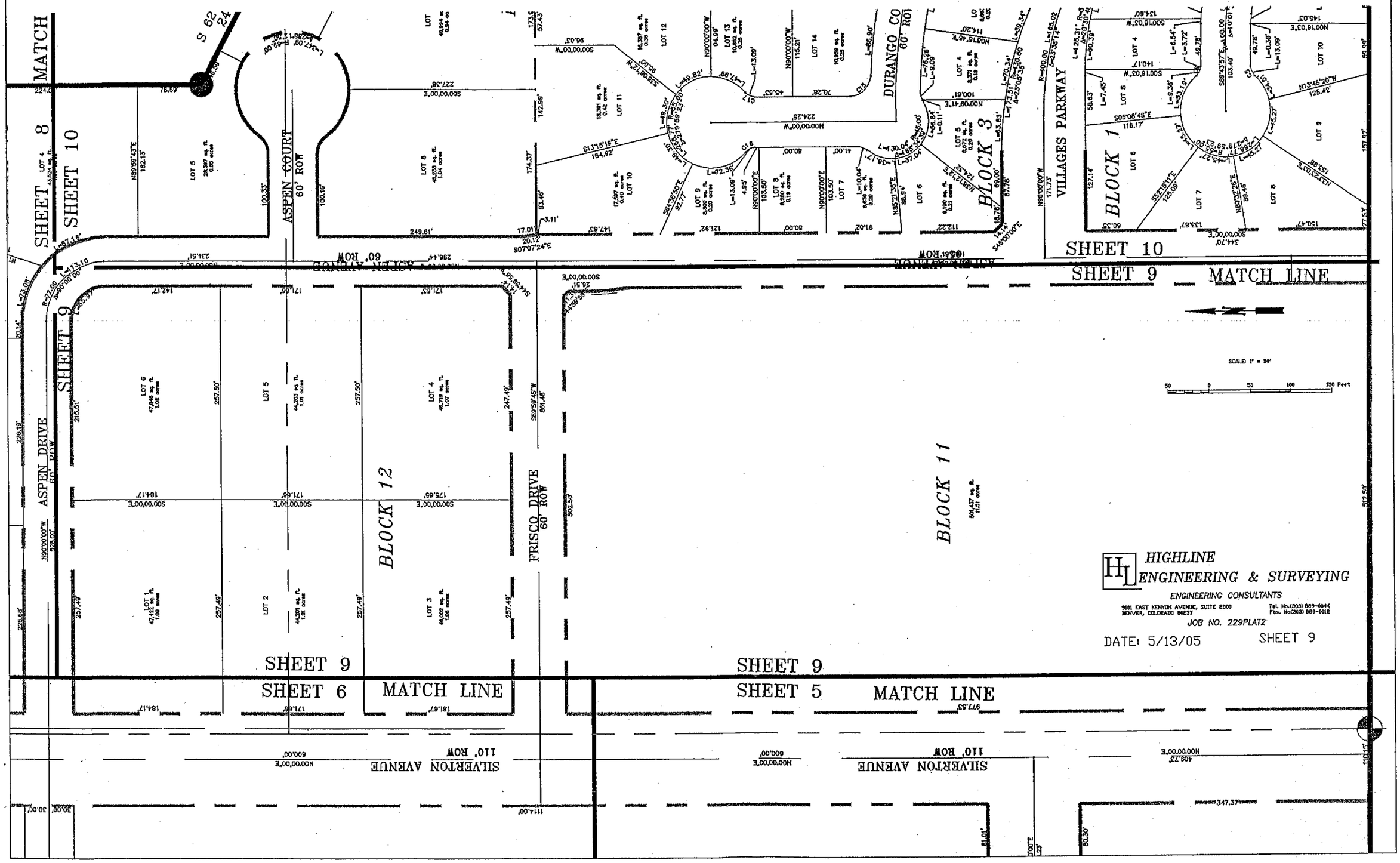

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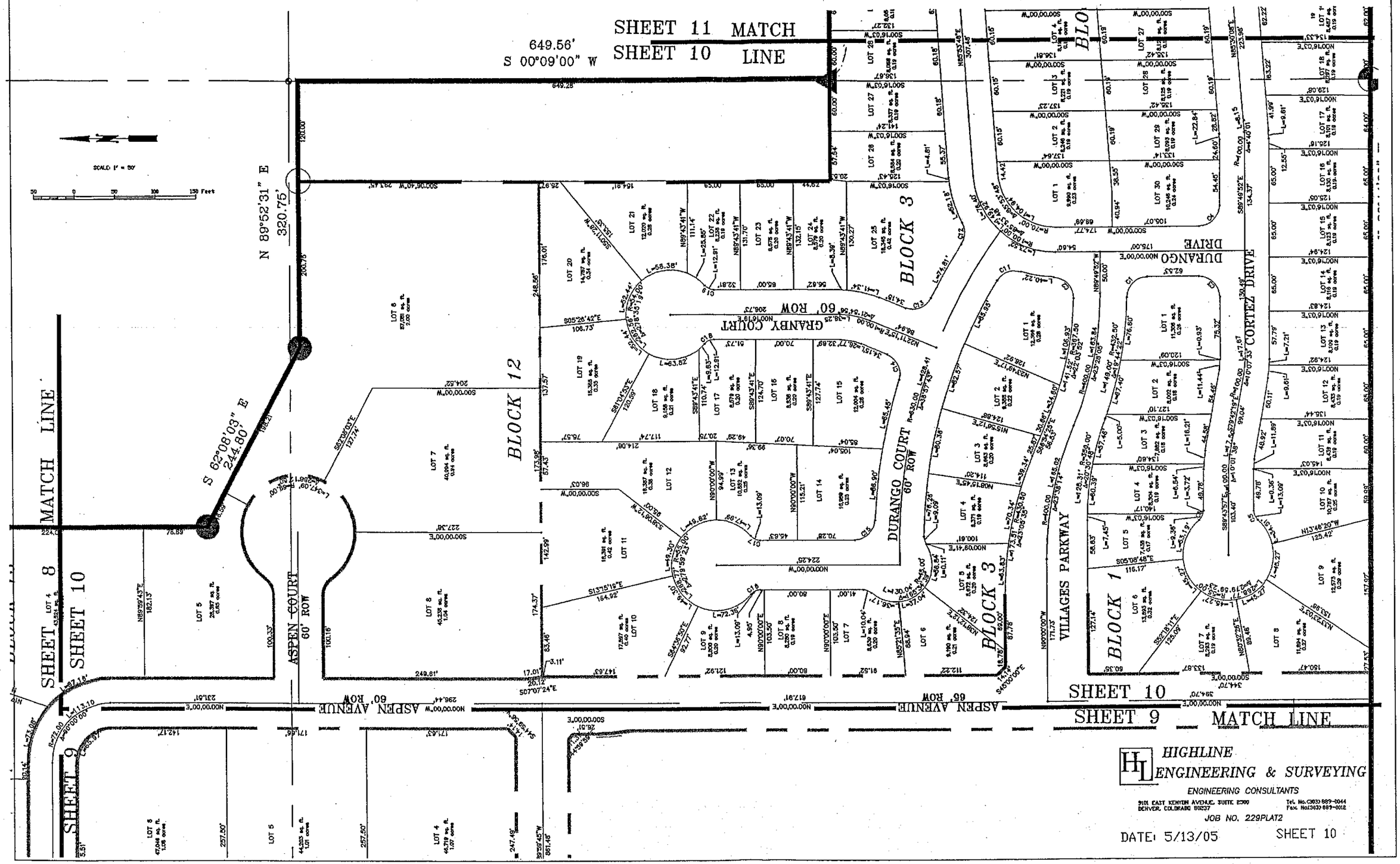

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9101 EAST KENYON AVENUE, SUITE E300
DENVER, COLORADO 80237

Tel. No.(303) 689-0044
Fax. No.(303) 689-0012

JOB NO. 229PLAT2

DATE: 5/13/05

SHEET 10

THE VILLAGES AT JOHNSTOWN

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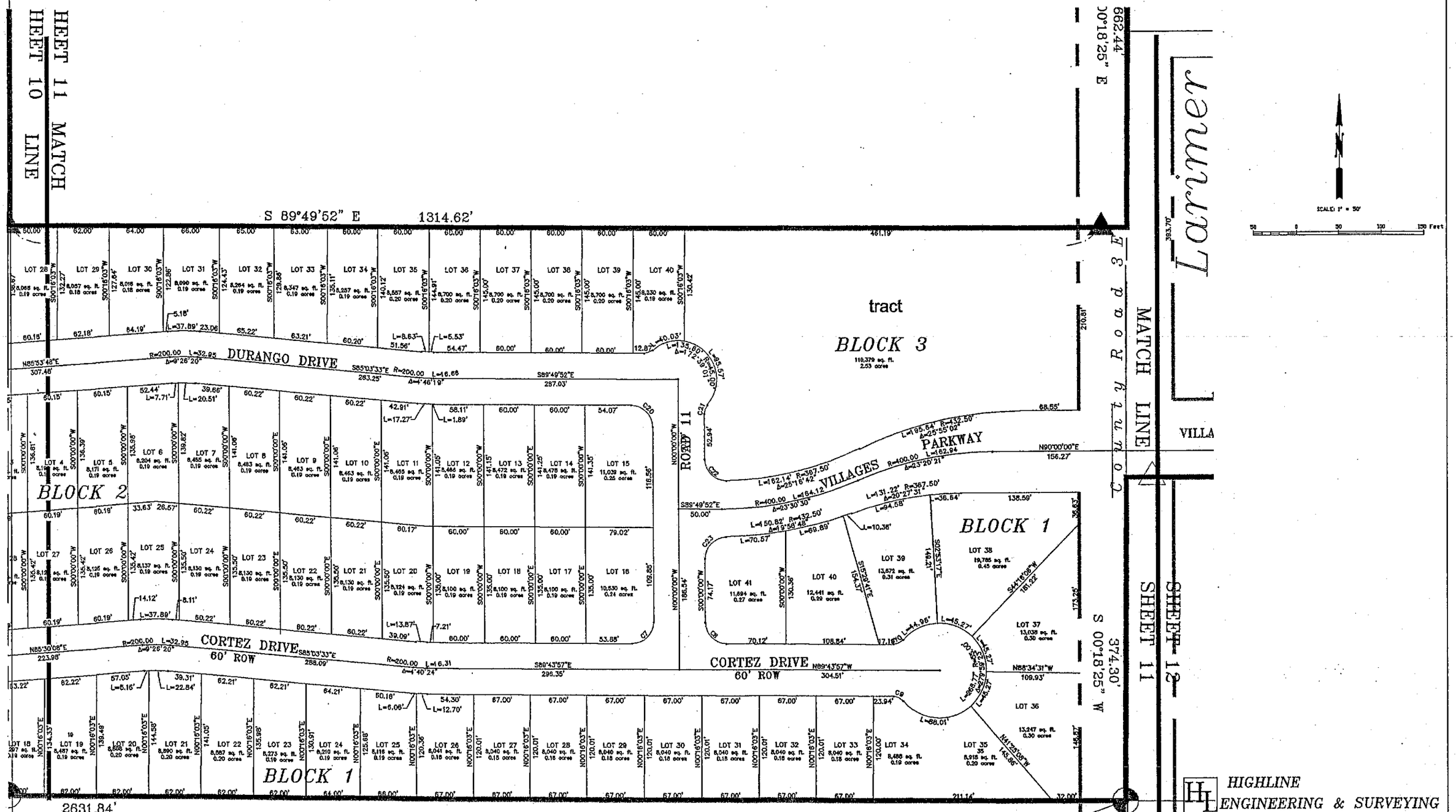

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DENVER, COLORADO 80237

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DATE: 5/13/05

SHEET 11

THE VILLAGES AT JOHNSTOWN

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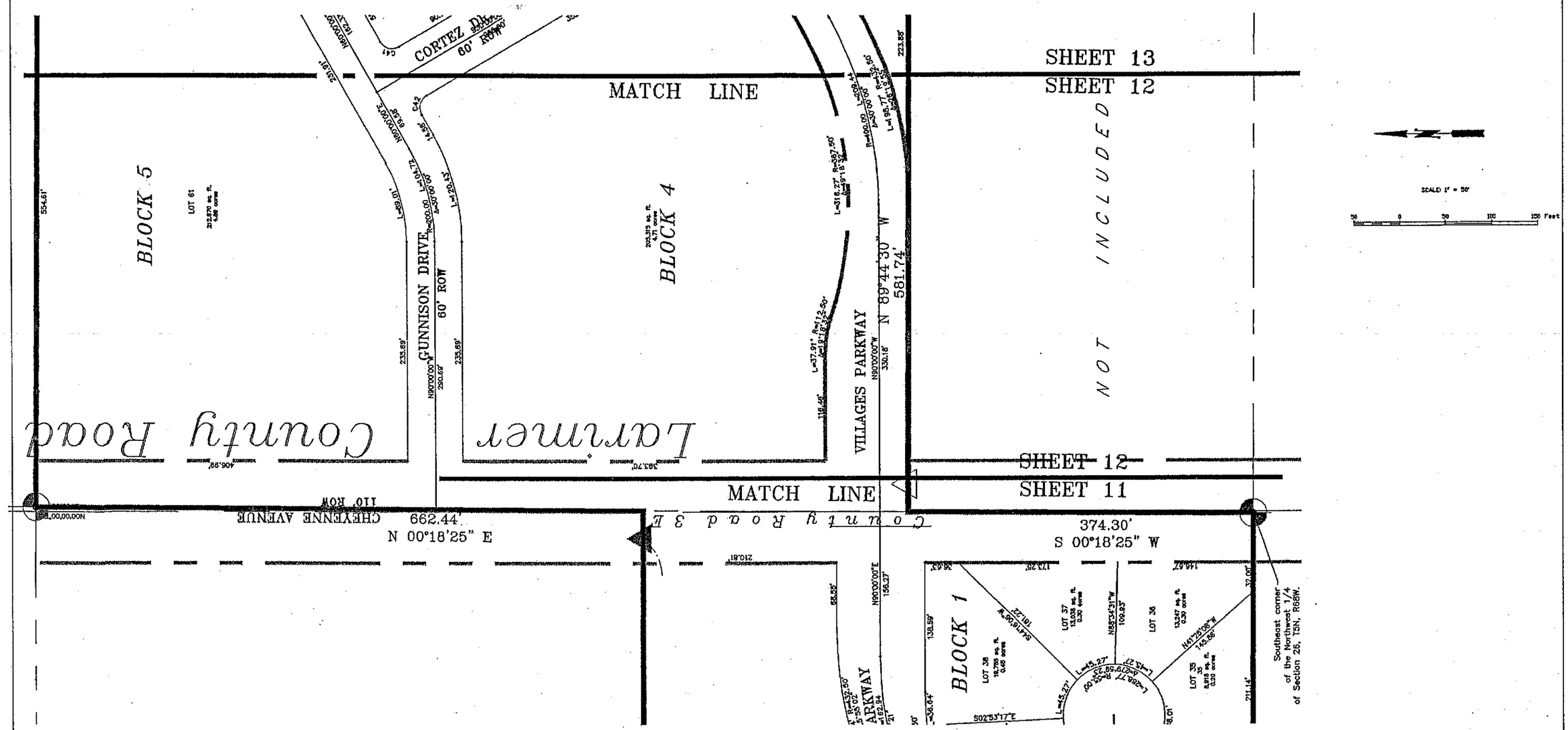

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DENVER, COLORADO 80237

Tel. No.(303) 889-0044
Fax. No(303) 889-0081

JOB NO. 229PLAT2

DATE: 5/13/05

SHEET 12

THE VILLAGES AT JOHNSTOWN

PRELIMINARY PLAT

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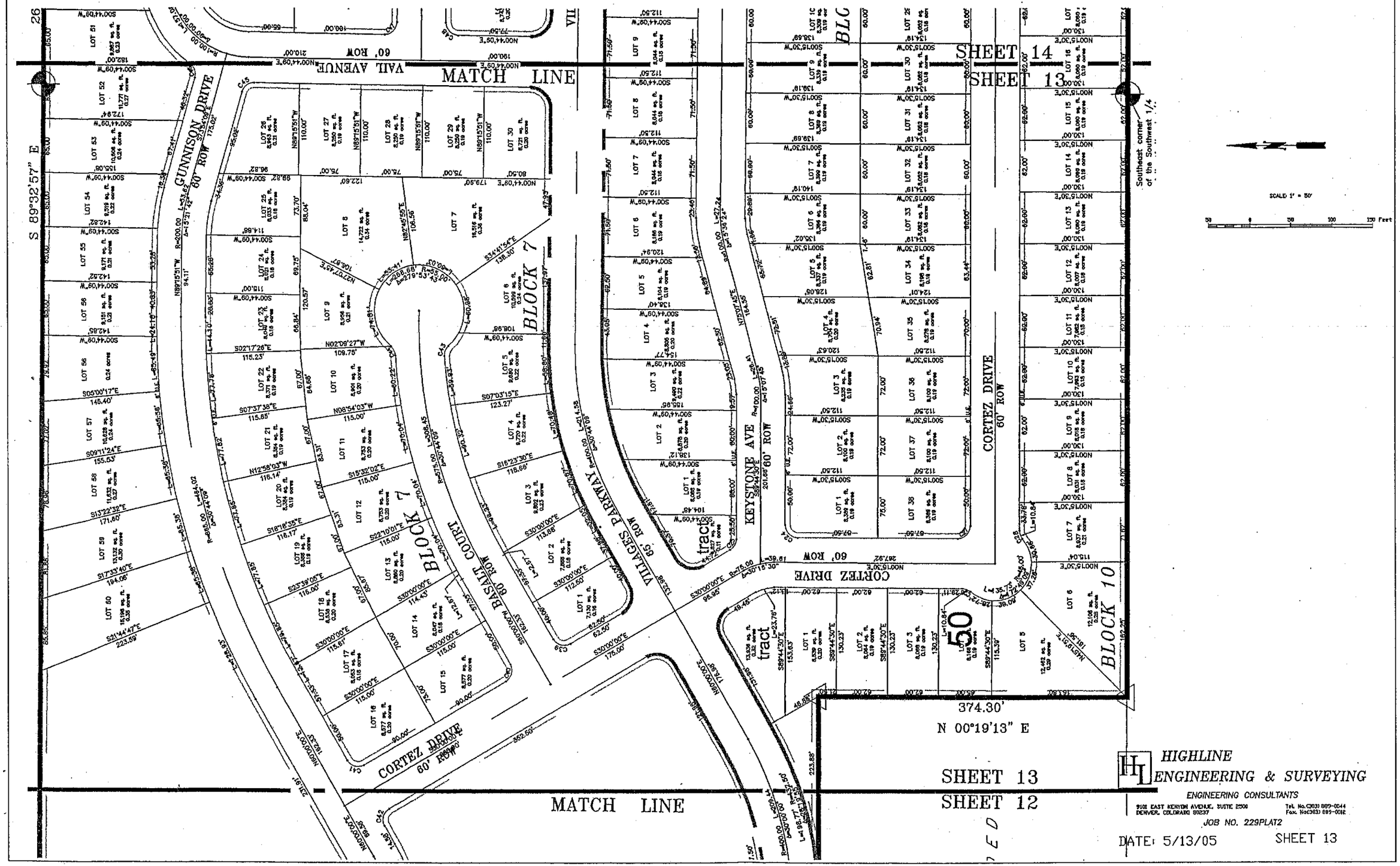

THE VILLAGES AT JOHNSTOWN

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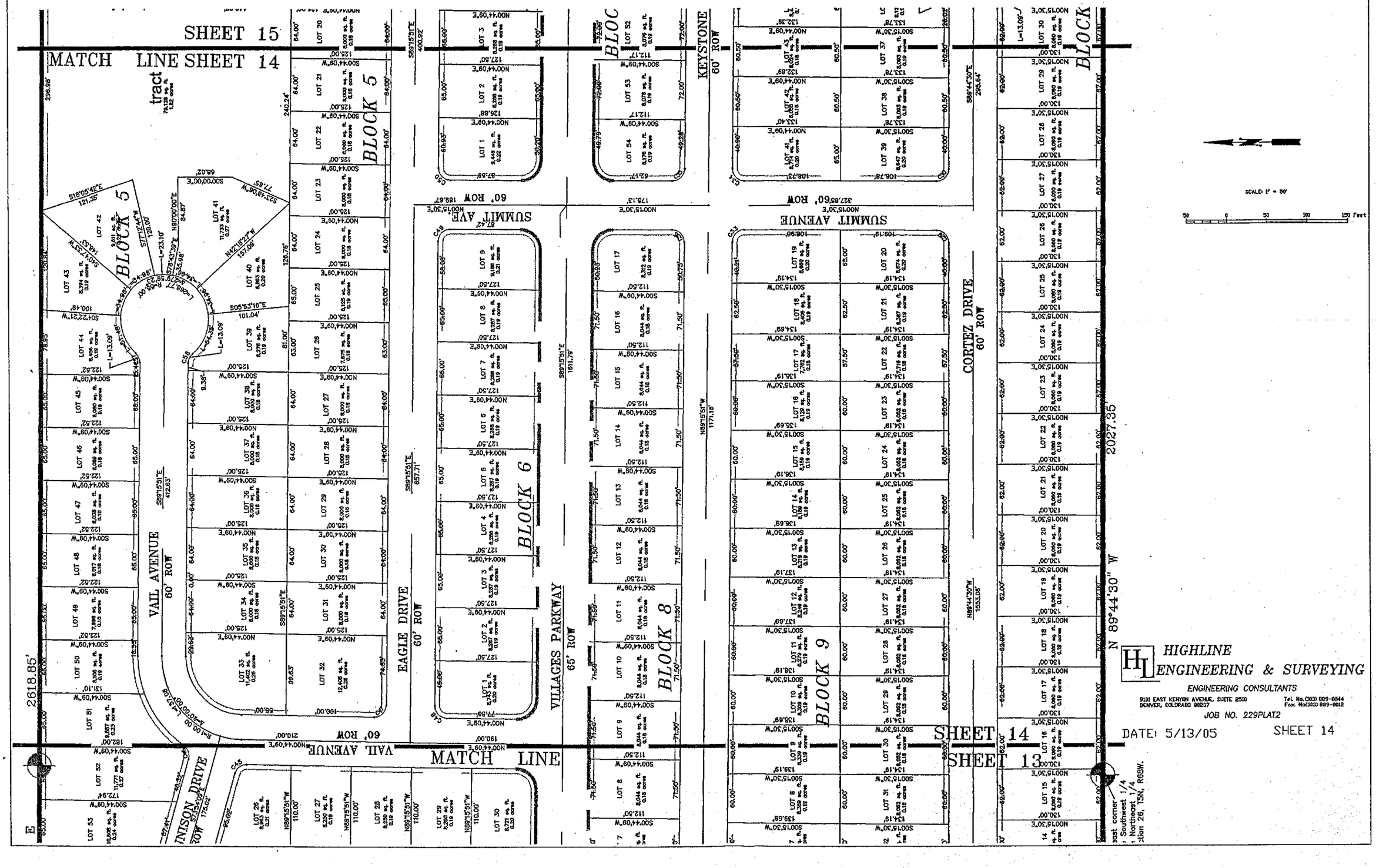
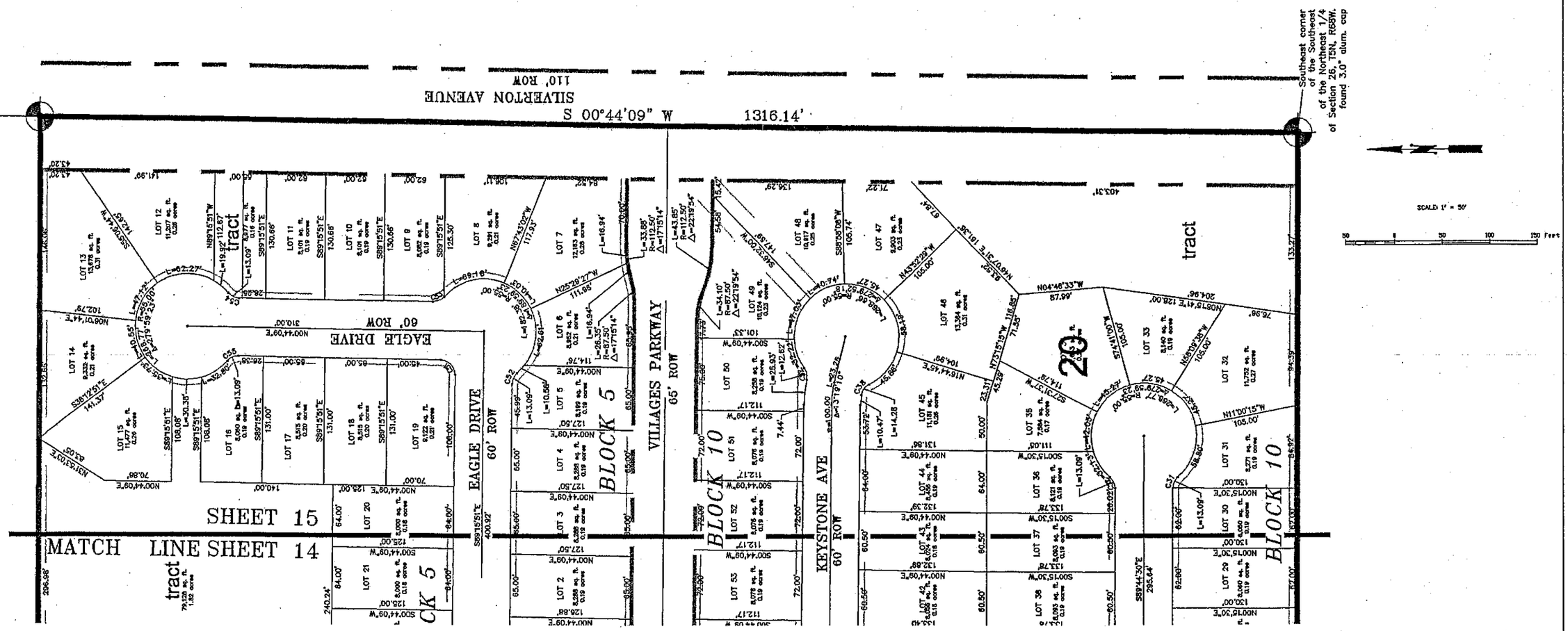


THE VILLAGES AT JOHNSTOWN

PRELIMINARY PLAT

A PORTION OF THE NORTHEAST 1/4 OF SECTION 27 AND A PORTION OF THE NORTH 1/2 OF SECTION 26, TOWNSHIP 05 NORTH, RANGE 68 WEST 6th PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO.



HIGHLINE ENGINEERING & SURVEYING

ENGINEERING CONSULTANTS

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DENVER, COLORADO 80237

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JOB NO. 229PLAT2

DATE: 5/13/05

SHEET 15

INFORMATIONAL

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 2, 2020

SUBJECT: Recommended amendment to Section 16-101 to 16-106 of the Johnstown Municipal Code, related to Conditional Use Grants

PRESENTED BY: Kim Meyer, Planning and Development Director

ITEM DESCRIPTION: Staff is recommending updates to the Johnstown Municipal Code, Section 16-101 to 16-106, related to Conditional Use Grants. Current code language requires that an application for a Conditional Use Grant is heard and decided by the Planning and Zoning Commission. Staff's proposed updates to the code would modify this section such that the Planning and Zoning Commission would review the application and make a recommendation to the Town Council for final determination and conditions of approval.

Conditional Use Grants may be approved for certain uses within a given zoning district that may, with appropriate conditions and context, be compatible with other permitted uses in the district; whereas the absence of such conditions could otherwise negatively impact the purpose and intent of the district and the permitted uses therewithin.

LEGAL ADVICE: Proposed amended code language was prepared by the Town Attorney.

FINANCIAL ADVICE: N/A.

RECOMMENDED ACTION: None.

Reviewed:

Town Manager

Redlined Version:

Sec. 16-101. Intent.

The conditional use classification is intended to provide for the inclusion within a district of uses of such unique nature or character, or uses which are so dependent upon specific contemporary conditions, that predetermination of permissibility by right, or the detailing within the ordinance of specific standards, requirements or conditions necessary or appropriate to such permissibility are not practical; but which may be permitted in the district where listed subject to conditions and requirements as hereinafter specified.

Sec. 16-102. Approval of conditional use grants.

Uses listed as conditional uses may be permitted upon petition to the Town ~~Planning and Zoning Commission~~ for a conditional use grant. After review by Town staff, the petition shall be considered by the Planning and Zoning Commission for a recommendation to Town Council. Town Council shall thereafter determine whether to permit the conditional use grant based on ~~and subject to approval of the Commission. The Planning and Zoning Commission shall base its determination on general considerations as to~~ the effect of such use~~permit~~ on the health, safety, welfare and economic prosperity of the Town and, more ~~and~~ specifically, on ~~on~~ the effect of such use upon the immediate neighborhood in which it would be located, based on the ~~including the~~ considerations listed in Section 16-105 below. Approval shall only be for a specific location and shall terminate upon change in the use.

Sec. 16-103. Application to existing uses.

A use which existed lawfully on a lot at the time the lot was placed in a district where such use would be permitted only upon approval of a conditional use grant shall automatically be granted conditional use status. In such cases, the grant of conditional use status shall be based upon the existing conditions at that time and any expansion or change in use shall require changing of the conditional use grant. Petition may be made at any time for expansion or other change of the conditional use grant, and such petition shall not prejudice the existing grant as herein authorized.

Sec. 16-104. Termination of conditional uses.

Where a permitted conditional use does not continue in conformity with the conditions of ~~the~~ approval~~original approval~~, ~~or where a use is no longer compatible with the surrounding area,~~ the conditional grant may be terminated or modified by ~~the~~ Town Council subsequent to ~~upon referral to the Planning and Zoning Commission and~~a public hearing ~~thereon~~. ~~Such use shall thereafter be classified as a legal non-conforming use; except that where the action is due to failure to comply with the conditions of the conditional grant, the Town Council may require complete termination of the use.~~

Sec. 16-105. Standards and requirements.

(a) Approval of a conditional use grant shall be based on an evaluation of such factors as the following: the character and quality of the area in which the use will be located; the physical

appearance of the use, including suitability of architectural and landscaping treatment; appropriate location of the building or buildings on the lot; adequate provision of parking, loading and circulation facilities; potential effect of the use upon off-site vehicular and pedestrian traffic circulation, with particular reference to potential traffic congestion; potential effect of the use on storm drainage in the area; adequacy of planting screens where necessary; provision of operational controls where necessary to avoid hazardous conditions or eliminate potential air or water pollutants or other noxious influences; and the general compatibility of the proposed use with the area in which it is to be located.

(b) *Conformity with regulations*. Except as may be specifically otherwise provided, any conditional use shall conform to the lot size, building location, building size, open space and height limitation regulations of the district in which it is located.

(c) *Accessory uses*. Uses and structures accessory to a principal conditional use shall be subject to appropriate regulations in the same manner as herein set forth for the principal conditional use.

Sec. 16-106. Procedure.

(a) *Filing*. A petition for a conditional use grant shall be submitted in writing and filed with the Town. The~~ Clerk, who shall promptly refer such petition of the Planning and Zoning Commission. Such~~ petition shall be accompanied by building, site and operational plans as provided in Section 16-145(c) and by such other data and information necessary for proper evaluation of the request as determined by ~~the~~ Town staff.

(b) *Planning and Zoning Commission~~Hearing~~*. Subsequent to review, Town staff shall refer the petition to the Planning and Zoning Commission. The Planning and Zoning Commission shall ~~conduct a study and investigation on the petition and shall~~ provide ~~give~~ public notice and hold a public hearing~~ thereon as provided in Section 16-48~~. Following the public hearing, the Planning and Zoning Commission shall make a recommendation to Town Council.

(c) *Town Council~~Determination~~*. Upon receipt of the ~~Following public hearing, the~~ Planning and Zoning Commission's recommendation, Town Council shall provide public notice and hold a public hearing. Town Council shall thereafter make a determination related to the conditional use request and set forth its decision in writing, indicating conditions of approval, if any, or, if the petition is denied~~disapproved~~, indicating the reason therefor.

~~(d) *Recording*. When a conditional use grant is approved, such approval shall be appropriately noted on building permits and certificates of zoning compliance. Indication of such grant shall also be made on the Official Zoning District Map by appropriate symbol.~~

Clean Version:

Sec. 16-101. Intent.

The conditional use classification is intended to provide for the inclusion within a district of uses of such unique nature or character, or uses which are so dependent upon specific contemporary conditions, that predetermination of permissibility by right, or the detailing within the ordinance of specific standards, requirements or conditions necessary or appropriate to such permissibility are not practical; but which may be permitted in the district where listed subject to conditions and requirements as hereinafter specified.

Sec. 16-102. Approval of conditional use grants.

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Sec. 16-104. Termination of conditional uses.

Where a permitted conditional use does not continue in conformity with the conditions of approval, the conditional grant may be terminated or modified by Town Council subsequent to a public hearing.

Sec. 16-105. Standards and requirements.

(a) Approval of a conditional use grant shall be based on an evaluation of such factors as the following: the character and quality of the area in which the use will be located; the physical appearance of the use, including suitability of architectural and landscaping treatment; appropriate location of the building or buildings on the lot; adequate provision of parking, loading and circulation facilities; potential effect of the use upon off-site vehicular and pedestrian traffic circulation, with particular reference to potential traffic congestion; potential effect of the use on storm drainage in the area; adequacy of planting screens where necessary; provision of operational controls where necessary to avoid hazardous conditions or eliminate

potential air or water pollutants or other noxious influences; and the general compatibility of the proposed use with the area in which it is to be located.

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(b) *Planning and Zoning Commission*. Subsequent to review, Town staff shall refer the petition to the Planning and Zoning Commission. The Planning and Zoning Commission shall provide public notice and hold a public hearing. Following the public hearing, the Planning and Zoning Commission shall make a recommendation to Town Council.

(c) *Town Council*. Upon receipt of the Planning and Zoning Commission's recommendation, Town Council shall provide public notice and hold a public hearing. Town Council shall thereafter make a determination related to the conditional use request and set forth its decision in writing, indicating conditions of approval, if any, or, if the petition is denied, indicating the reason therefor.

January 2020 **Glenn A. Jones M.D. Memorial Library**

By the numbers:

JOHNSTOWN

	October	November	December	2019 Totals
Computer Use:	851	643	730	10,811
Total Circulation:	9020	8201	8225	118,045
Borrowers:	1923	1742	1866	56,561
Door Count:	14,258	9883	9126	116,820

MILLIKEN

Computer Use:	25	34	40	631
Total Circulation:	62	46	54	691
Borrowers:	7	8	8	218
Door Count:	85	45	48	740

PROGRAMMING

				programs people
Children:	33 – 955	24 – 576	25 – 842	306-11,933
Teen:	1 – 11	1 – 13	1 – 9	11 - 229
Adults:	18 – 130	15 – 158	13 – 112	200 - 1900

JONES MEMORIAL LIBRARY CASH FLOW REPORT - DEC 2019			Y-T-D	BUDGET	
INFLOWS - REGULAR CHECKING - BEG. BAL.		$ 72,834.10	$ -	$ 20,000.00	
	Donations/Grants	$ 5,000.00	$ 10,422.00	$ 1,500.00	
	Interest	$ 26.79	$ 1,382.42	$ 3,000.00	
	Misc Income	$ 817.95	$ 3,065.28	$ 7,500.00	
	Investments	*$ 450,000.00*	*$ 1,705,355.35*	$ -	
	Town of Johnstown	$ 1,747,429.36	$ 2,180,554.36	$ 472,500.00	
	High Plains Library District	$ -	$ 713,748.40	$ 712,411.00	
	Transfer from Reserve Account	$ 100,000.00	$ 2,120,000.00	$ 353,089.00	
TOTAL INFLOWS		**$ 2,303,274.10**	**$ 6,734,527.81**	**$ 1,570,000.00**	
OUTFLOWS					To Date
	Advertising	$ 1,416.00	$ 19,761.32	$ 9,000.00	
	Audio/CD - 16	$ 483.44	$ 8,005.83	$ 12,000.00	242
	Books - 305	$ 4,528.59	$ 36,551.18	$ 50,000.00	3020
	Collection Fees/Bad Debts	$ 163.85	$ 1,557.45	$ 2,000.00	
	Computer Expenses	$ -	$ -	$ 5,000.00	
	Equipment & Furniture	$ -	$ 1,058.90	$ 10,000.00	
	Health Ins./Worker's Comp.	$ 854.82	$ 2,354.82	$ 10,000.00	
	Insurance	$ 3,798.01	$ 3,798.01	$ 5,000.00	
	Investments	$ 1,700,000.00	$ 4,275,302.22	$ -	
	Legal Fees/Consulting Fees	$ -	$ -	$ 10,000.00	
	Maintenance	$ 6,408.84	$ 35,081.55	$ 50,000.00	
	Memberships/Licenses	$ -	$ 285.47	$ 2,500.00	
	Outreach	$ 373.65	$ 2,682.64	$ 10,000.00	
	Professional/Gifts	$ 1,388.23	$ 4,451.13	$ 5,000.00	
	Programming	$ 1,072.33	$ 8,250.89	$ 15,000.00	
	Salaries	$ 154,544.30	$ 298,395.70	$ 450,000.00	
	Subscriptions/Periodicals	$ -	$ 3,081.77	$ 3,000.00	
	Supplies, Janitorial	$ -	$ 823.74	$ 2,000.00	
	Supplies, Library	$ 642.59	$ 6,578.93	$ 12,000.00	
	Telephone	$ 490.52	$ 5,623.22	$ 7,500.00	
	Utilities	$ 1,837.61	$ 29,297.34	$ 40,000.00	
	Video/DVD - 19	$ 320.06	$ 6,733.41	$ 10,000.00	295
	Capital Improvement	$ 471,158.00	$ 1,180,616.00	$ 850,000.00	
TOTAL OUTFLOWS		**$ 2,349,480.84**	**$ 5,930,291.52**	**$ 1,570,000.00**	
	Transfers	$ -	$ 827,000.00		
ENDING BALANCE		$ 26,627.36			
PETTY CASH-BEG. BALANCE		$ 796.76	Edward Jones	$ -	
	Transfer from regular checking	$ -	acct. closed	$ -	
	Advertising	$ -	Colo Trust	$ 2,405,989.39	Y-T-D
ENDING BALANCE		$ 796.76	int.	$ 4,076.44	$ 34,763.61
			deposit	$ 1,700,000.00	
			withdrawal	*$ 450,000.00*	
				$ 3,660,065.83	END BAL.
RESERVE ACCOUNT-BEG. BALANCE		$ 108,611.38	To Date		
	Interest	$ 6.67	$ 1,294.67		
	Transfer from regular checking	$ -			
	Transfer to regular checking	$ 100,000.00			
ENDING BALANCE		$ 8,618.05			

JONES MEMORIAL LIBRARY CASH FLOW REPORT - NOV 2019			Y-T-D	BUDGET	
INFLOWS - REGULAR CHECKING - BEG. BAL.		$ 61,448.54	$ -	$ 20,000.00	
	Donations	$ -	$ 5,422.00	$ 1,500.00	
	Interest	$ 2.85	$ 1,348.96	$ 3,000.00	
	Misc Income	$ 138.27	$ 2,247.33	$ 7,500.00	
	Investments	*$ 200,000.00*	$ 1,255,355.35	$ -	
	Town of Johnstown	$ 39,375.00	$ 433,125.00	$ 472,500.00	
	High Plains Library District	$ -	$ 713,748.40	$ 712,411.00	
	Transfer from Reserve Account	$ -	$ 2,020,000.00	$ 353,089.00	
TOTAL INFLOWS		**$ 239,516.12**	**$ 4,431,247.04**	**$ 1,570,000.00**	
OUTFLOWS					To Date
	Advertising	$ 1,764.00	$ 18,345.32	$ 9,000.00	
	Audio/CD - 17	$ 588.33	$ 7,522.39	$ 12,000.00	226
	Books - 318	$ 3,601.40	$ 32,022.59	$ 50,000.00	2715
	Collection Fees/Bad Debts	$ 71.30	$ 1,393.60	$ 2,000.00	
	Computer Expenses	$ -	$ -	$ 5,000.00	
	Equipment & Furniture	$ -	$ 1,058.90	$ 10,000.00	
	Health Ins./Worker's Comp.	$ -	$ 1,500.00	$ 10,000.00	
	Insurance	$ -	$ -	$ 5,000.00	
	Investments	$ -	$ 2,575,302.22	$ -	
	Legal Fees/Consulting Fees	$ -	$ -	$ 10,000.00	
	Maintenance	$ 5,974.59	$ 28,672.71	$ 50,000.00	
	Memberships/Licenses	$ 121.47	$ 285.47	$ 2,500.00	
	Outreach	$ -	$ 2,308.99	$ 10,000.00	
	Professional/Gifts	$ 72.98	$ 3,062.90	$ 5,000.00	
	Programming	$ 154.48	$ 7,178.56	$ 15,000.00	
	Salaries	$ -	$ 143,851.40	$ 450,000.00	
	Subscriptions/Periodicals	$ -	$ 3,081.77	$ 3,000.00	
	Supplies, Janitorial	$ 17.96	$ 823.74	$ 2,000.00	
	Supplies, Library	$ 240.23	$ 5,936.34	$ 12,000.00	
	Telephone	$ 497.88	$ 5,132.70	$ 7,500.00	
	Utilities	$ 2,379.82	$ 27,459.73	$ 40,000.00	
	Video/DVD - 53	$ 852.12	$ 6,413.35	$ 10,000.00	276
	Capital Improvement	$ 211,794.00	$ 709,458.00	$ 850,000.00	
TOTAL OUTFLOWS		**$ 228,130.56**	**$ 3,580,810.68**	**$ 1,570,000.00**	
	Transfers	$ -	$ 827,000.00		
ENDING BALANCE		$ 72,834.10			
PETTY CASH-BEG. BALANCE		$ 796.76	Edward Jones	$ 53.13	BEG. BAL.
	Transfer from regular checking	$ -	Corp. Acct.	$ -	incr.
	Advertising	$ -	*Investment*	*$ 53.13*	
ENDING BALANCE		$ 796.76	*acct. closed*	$ -	END BAL.
			Colo Trust	$ 2,602,101.52	Y-T-D
				$ 3,887.87	int.
			withdrawal	*$ (200,000.00)*	$ 30,687.17
				$ 2,405,989.39	END BAL.
RESERVE ACCOUNT-BEG. BALANCE		$ 108,593.53	To Date		
	Interest	$ 17.85	$ 1,288.00		
	Transfer from regular checking	$ -			
	Transfer to regular checking	$ -			
ENDING BALANCE		$ 108,611.38			

Director's Report January 20, 2020

Exterior Refresh

Outstanding items on the Punch List as of January 13th, 2020

#1 Replace glass just west of the book drops. This pane had been back-ordered. My understanding is that it has come in as of Friday, just waiting for glass sub to make a trip to Johnstown.

#2 This item concerns the effervescence in the brick. Bernardo has requested that this item be put on hold until the brick has had time to dry out. Could we check again in the Spring.

#27 The gutter on the front of the library needs to be adjusted. Unsightly roof line.

#52 Heat tape has been installed by the electrician. I have requested that they give me a tutorial about how it works. Should it be plugged in all of the time? Seasonally? What if it comes undone?

#62 East end of building. The corner of the glass is "splayed beyond 90 degrees." Again, this is something the glass sub-contractor will deal with when then come out.

#66 The exterior light on the east end of the building has not been changed. An appropriate replacement, similar to the front of the building, has not been located yet.

Follow Ups:

✓*VFW (Scotty Zahn) collected 41 flags to be retired in 2019.

✓*Newell Bros. completed trimming all trees around perimeter of Library lot.

✓*Artist-in-Residence December -Junior Olympian Ben Keller Sharp Shooting

✓*Paint-n-Sip continues to be the hottest ticket in town. This is going to moved to on-line registration two weeks before the event. (Jan. 24th-Feb.7th) Rachael also started once a month *Thursday Crafternoons* with a Vision Board project.

✓**Breaking Bread* This is a four-week class. Saturday mornings Feb. 1st-22nd. Four weeks-four breads with master bakers.

✓*IGA The town lawyer has read, detailed and submitted revisions for the good of the library. National Library Week (April 19th-25th) is the District's target date for signatures. An invitation is being issued to our lawyer and town administrator for February 24th@ 5:30 p.m. at CVL Branch in Firestone to bring all participating parties together.

New!

✓*Donna Derrera was selected to present at the 2020 CLIC Spring Workshop in Fort Morgan on March 27th. Her topic is "Choose Happy! The Science of Happiness". (This was a six-week program she ran here in our library.) To attend, it is $50 per person. I would like to send quite a few of her coworkers to show our support. These $$ could be reimbursed through the training dollars available at HPLD.

*With the **Interior Refresh**, unfortunately the Elementary Art Show will have to be canceled for this year.

*PR Campaign We need a slogan!

Kristi Plumb 1/20/20

February 2020 Glenn A. Jones M.D. Memorial Report

By the numbers:

JOHNSTOWN

	December	January
Computer Use:	730	853
Total Circulation:	8225	9255
Borrowers:	1866	1983
Door Count:	9126	8948

MILLIKEN

Computer Use:	40	67
Total Circulation:	54	62
Borrowers:	8	8
Door Count:	48	30

PROGRAMMING

Children:	25 – 842	25 - 613
Teen:	1 – 9	0 - 0
Adults:	13 – 112	19 - -150

JONES MEMORIAL LIBRARY CASH FLOW REPORT - JAN 2020			Y-T-D	BUDGET	
BEGINNING CHECKING BALANCE		$ 26,627.36	$ -	$ 20,000.00	
INFLOWS	Donations/Grants	$ -		$ 3,500.00	
	Interest	$ 4.02	$ 4.02	$ 1,500.00	
	Misc Income	$ 96.19	$ 96.19	$ 7,500.00	
	Investments	*$ 225,000.00*	*$ 225,000.00*	$ -	
	Town of Johnstown	$ 85,221.66	$ 85,221.66	$ 1,022,066.00	
	High Plains Library District	$ -	$ -	$ 827,171.00	
	Transfer from Reserve Account	$ -	$ -	$ -	
INFLOWS TOTAL		$ 310,321.87	$ 310,321.87	$ 1,861,737.00	
TOTAL AVAILABLE FUNDS		$ 336,949.23		*$ 1,881,737.00*	
					To Date
OUTFLOWS	Advertising (2 months)	$ 3,156.00	$ 3,156.00	$ 20,000.00	
	Audio/CD - 20	$ 686.10	$ 686.10	$ 12,000.00	20
	Books - 152	$ 1,857.64	$ 1,857.64	$ 50,000.00	152
	Collection Fees/Bad Debts	$ -	$ -	$ 2,000.00	
	Computer Expenses	$ -	$ -	$ 5,000.00	
	Equipment & Furniture	$ -	$ -	$ 35,000.00	
	Insurance, Bldg. Contents	$ -	$ -	$ 5,000.00	
	Investments	$ -	$ -	$ 508,237.00	
	Legal Fees/Consulting Fees	$ -	$ -	$ 10,000.00	
	Maintenance	$ 5,552.26	$ 5,552.26	$ 50,000.00	
	Memberships/Licenses	$ -	$ -	$ 2,500.00	
	Outreach/PCC	$ -	$ -	$ 10,000.00	
	Professional Enrichment	$ -	$ -	$ 5,000.00	
	Programming/Gifts	$ -	$ -	$ 15,000.00	
	Salaries/Bonuses	$ -	$ -	$ 425,000.00	
	Subscriptions, Periodicals	$ 379.60	$ 379.60	$ 3,000.00	
	Supplies, Janitorial	$ -	$ -	$ 2,000.00	
	Supplies, Library	$ -	$ -	$ 12,000.00	
	Telephone	$ 453.75	$ 453.75	$ 7,500.00	
	Utilities	$ 2,247.21	$ 2,247.21	$ 40,000.00	
	Video/DVD - 40	$ 997.85	$ 997.85	$ 10,000.00	40
	Worker's Comp.	$ -	$ -	$ 2,500.00	
	Capital Improvement F&P	$ 231,507.00	$ 231,507.00	$ 650,000.00	
	Transfers	$ -	$ -	$ -	
OUTFLOWS TOTAL		$ 246,837.41	$ 246,837.41	*$ 1,881,737.00*	
ENDING CHECKING BALANCE		$ 90,111.82			
BEGINNING PETTY CASH BALANCE		$ 796.76			
ENDING PETTY CASH BALANCE		$ 796.76			
BEGINNING RESERVE ACCOUNT BALANCE		$ 8,618.05	Y-T-D		
	Interest	$ 1.46	$ 1.46		
ENDING RESERVE ACCOUNT BALANCE		$ 8,619.51			
	COLORADO TRUST INVESTMENT		Y-T-D		
BEGINNING BALANCE		$ 3,660,065.83			
	Income Interest	$ 5,570.17	$ 5,570.17		
	Contribution	$ -			
	Withdrawal	*$ (225,000.00)*			
ENDING BALANCE		$ 3,440,636.00			

Director's Report February 18th, 2020

*The Public Library Annual Report was submitted on February 14th.

*IGA The next meeting regarding the IGA will be Monday February 24th @ 5:30 p.m. at the Carbon Valley Library in Firestone. The HPLD Board has set the goal of National Library Week (April 19th-25th) as the target date for signatures.

**Breaking Bread* class has been terrific! French Bread -21 Biscuits – 15 White Bread – 13 This program has been put on by volunteers.

*Artist-in-Residence for January was Mary Crabtree presenting her Botanical Artwork.

*Donna Derrera's has submitted her resignation letter. Her last day is March 6th. Donna still plans on presenting at the CLIC Conference out in Fort Morgan on March 27th. We are sending 7 staff out to attend. As far as replacing her, I am comfortable sitting on this for awhile. A few of her hours were distributed to employees that were looking to gain in this area. As far as her duties, these also will be assumed by her coworkers on a temporary basis. I would like to hire in April.

*Kudos

Interior Refresh

February 24th!

-Bernardo plans to start building the partition wall for closing off the East end of the building.

-IT will be here to move computer stations. These will be stored in the Colorado Room.

-PS Installations will be moving books, shelves and furniture out to storage trailers.

-I will be rearranging the Large Print area into a "Lucky Day" Children's collection.

- Both heat trace and front sign need attention from a High Point electrician.

-Early Literacy Computers

-Sharon Bussing Mural work

-On the Road Story Times

-Upholstery meeting with Drew on Saturday February 22nd at 9 a.m.

Subcontractor for snow removal-?

Policies/Procedures → Town copy-?

TOWN OF JOHNSTOWN
PROFESSIONAL SERVICES AGREEMENT

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is made and entered into this 14th day of February, 2020 (the "Effective Date") by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the "Town") and A.G.Wassenaar 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 February 14, 2021, 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: Town Clerk
450 S. Parish Avenue
Johnstown, CO 80534
Email: dseele@townofjohnstown.com

TO CONTRACTOR:
Thomas A. Hasting
2180S Ivanhoe ST Suite 5
Denver CO. 80222
303-759-8100

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.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Matthew S. LeCerf, Town Manager

By _____
Name: Thomas A. Hastings
Title: Vice President.

STATE OF COLORADO)
) ss
COUNTY OF Denver)

SUBSCRIBED AND SWORN to before me this 15th day of February, 2020, by Thomas Hastings as the Vice President of A.G. Wassenaar, Inc..

WITNESS my hand and official seal.

My commission expires: 03/23/2021

_____
Notary Public

ADAM P SPENCER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20094002315
My Commission Expires March 23, 2021

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.

SCOPE OF SERVICES

Use of automated data collection.
Paser Evaluation of 57 miles of roadway.
FWD testing 1,550 locations.
Coring of 40 locations.
Soil Classification of 40 samples.
Report Preparation.

Amount not to exceed $67,000.00.

Traffic control services may be needed for safe operations to firm and residents. Cost will be discussed prior to commencement of work. All additional costs must be approved by the Town of Johnstown prior for approval.

CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY) 02/14/2020

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Aon Risk Services Central, Inc.
Chicago IL Office
200 East Randolph
Chicago IL 60601 USA

CONTACT NAME:
PHONE (A/C. No. Ext): (866) 283-7122 FAX (A/C. No.): (800) 363-0105
E-MAIL ADDRESS:

INSURER(S) AFFORDING COVERAGE		NAIC #
INSURER A:	Zurich American Ins Co	16535
INSURER B:	American Zurich Ins Co	40142
INSURER C:		
INSURER D:		
INSURER E:		
INSURER F:		

INSURED
A.G. Wassenaar, Inc.
2180 S. Ivanhoe St., Suite 5
Denver CO 80222 USA

COVERAGES **CERTIFICATE NUMBER:** 570080531648 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

Limits shown are as requested

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
A	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE / X OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: X POLICY / PRO-JECT / LOC OTHER:			GL0348648617	04/01/2019	04/01/2020	EACH OCCURRENCE	$1,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$500,000
							MED EXP (Any one person)	$10,000
							PERSONAL & ADV INJURY	$1,000,000
							GENERAL AGGREGATE	$2,000,000
							PRODUCTS - COMP/OP AGG	$2,000,000
A	AUTOMOBILE LIABILITY X ANY AUTO OWNED AUTOS ONLY / SCHEDULED AUTOS HIRED AUTOS ONLY / NON-OWNED AUTOS ONLY			BAP 3486487-17	04/01/2019	04/01/2020	COMBINED SINGLE LIMIT (Ea accident)	$1,000,000
							BODILY INJURY (Per person)	
							BODILY INJURY (Per accident)	
							PROPERTY DAMAGE (Per accident)	
	UMBRELLA LIAB / OCCUR EXCESS LIAB / CLAIMS-MADE DED / RETENTION						EACH OCCURRENCE	
							AGGREGATE	
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER/MEMBER EXCLUDED? Y/N N (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		WC348648517	04/01/2019	04/01/2020	X PER STATUTE / OTH-	
							E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE-EA EMPLOYEE	$1,000,000
							E.L. DISEASE-POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

Town of Johnstown
450 S. Parish Avenue
Johnstown CO 80534 USA

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Aon Risk Services Central, Inc.

Holder Identifier :

Certificate No : 570080531648

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The ACORD name and logo are registered marks of ACORD

OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF COLORADO

CERTIFICATE OF FACT OF GOOD STANDING

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

AGW, INC.

is a

Corporation

formed or registered on 03/13/2012 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20121153863 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 02/13/2020 that have been posted, and by documents delivered to this office electronically through 02/18/2020 @ 07:47:38 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 02/18/2020 @ 07:47:38 in accordance with applicable law. This certificate is assigned Confirmation Number 12090678 .

Jena Griswold

Secretary of State of the State of Colorado

**********End of Certificate**********

Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, http://www.sos.state.co.us/biz/CertificateSearchCriteria.do entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, http://www.sos.state.co.us/ click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."

FRONT RANGE FIRE RESCUE

Serving Johnstown, Milliken, Larimer and Weld Counties for over 100 years

PO Box 130, Milliken, CO 80543 970.587.4464 www.frfr.co

COURAGE ★COMPASSION ★PROFESSIONALISM

February 19, 2020

Dear Matthew LeCerf,

I hope you are off to a wonderful start to 2020! I wanted to share a copy of our 2019-year end report with you that tells the story of our department over the last year. At Front Range Fire Rescue (FRFR), we are excited about the growth and continued development of our department. Service and caring for people are the heart of what we do here at FRFR. Our mission of delivering exceptional service, honoring humanity, and transforming lives is always front and center of our mission. Whether it's extinguishing a fire, assisting a patient experiencing a health issue, teaching children how to be safe, or helping folks with smoke detectors, we are here for you 24 hours a day, 7 days a week.

Since beginning as your new Fire Chief in July, I've gained a great appreciation of the job performed by our Firefighters and Staff, and their professional response to the challenges I've presented to them.

Just a few highlights from 2019 include;

- The membership has begun work on defining, documenting, and institutionalizing the culture of FRFR. The document we are producing will help us define our collective expectations. This will eventually become part of our hiring process as well as a methodology for training and evaluation.
- We Finalized the IGA with the Town of Johnstown and are close to completing the same with Milliken.
- We finalized an agreement with UCH to allow Station 3 in Hill and Park to have full medical coverage 24/7/365

Please consider joining us some of the 2020 events we are planning, such as our pancake breakfasts and our grand re-opening of Station 2, once the remodel is complete. If I can ever be of service or answer any question, please don't hesitate to ask.

Front Range Fire Rescue is grateful to serve you and appreciate your continued support for 2020 and beyond!

Sincerely,

Michael West
Fire Chief
Front Range Fire Rescue
mwest@frfr.co
970.587.4464

FRONT RANGE FIRE RESCUE

101 S. Irene Ave,. Milliken, Co 80543 (970) 587-4464 www.frfr.co

2019 ANNUAL REPORT

Courage Compassion Professionalism

2019 Year in Review

Calls for Service	1908
Existing Inspections	197
New Construction Inspections	41
Plan Reviews	144
Hours of Training	7800

FRONT RANGE FIRE RESCUE

Proudly serving Johnstown, Milliken, along with unincorporated Larimer and Weld Counties for more than 100 years.

COURAGE

COMPASSION

PROFESSIONALISM

MESSAGE FROM THE FIRE CHIEF

It's hard to believe that we are in a new decade! It's also difficult to imagine that I've already been the Fire Chief at Front Range Fire Rescue (FRFR) for six months! My days have been full getting to know our amazing staff, learning the history and foundations that have led us to our current place in the community, and meeting our citizens and elected officials to discover how we can meet their needs even better. In 2020, we will take this knowledge and begin to work on ways to help our communities even more.

We have already done a lot of leg work in strengthening relationships with other agencies and I am happy to share that we have greatly improved service to our east side. We have also improved our financial wellbeing by increasing our reserve funds to assure we are financially sound should there be an economic downturn. We have also begun work on improving our facilities to better accommodate our professional workforce and assure we meet the most current standards. We have also started preliminary work in looking at additional firehouses in the areas we expect to see new development. All of this planning has taken place while our women and men have responded to thousands of emergency incidents in Johnstown, Milliken, as well as in Larimer and Weld County in 2019.

I can't even begin to describe how very proud I am of the compassionate and caring nature of the firefighters and Emergency Services professionals that serve you.

We anticipate even more positive change in 2020. We are working with our community partners and external stakeholders as we plan to handle the anticipated growth in the area. While growth isn't always embraced by everyone, FRFR knows that growing populations mean more demand for our service and we will be prepared to deliver the best emergency response for all of our customers.

I sincerely hope you have a happy, healthy, and safe 2020.
Michael West, Fire Chief

FRONT RANGE FIRE RESCUE
2019 ANNUAL REPORT
Courage Compassion Professionalism

OPERATIONS

2019 has been a busy year for the Operations Division. Firefighters have responded to 1,908 calls for service, which averages to around 5 calls per day, and is 5% above calls received in 2018.

FRFR calls for service were comprised of;

30% Fires including; building, vehicle, and ground cover

55% Medical

10% Traffic Accidents.

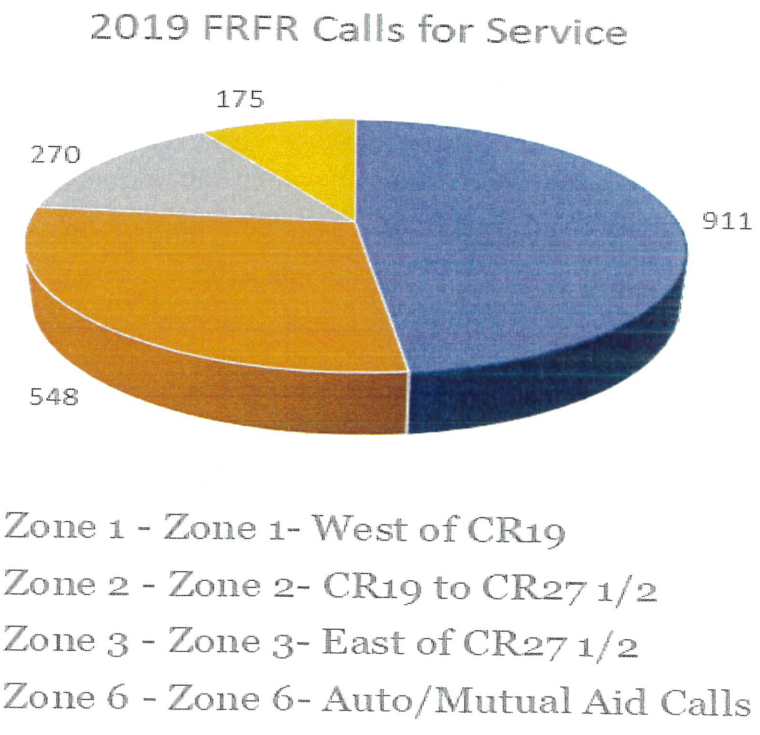
5% Assist citizens with concerns of gas leaks, carbon monoxide, and smoke alarms

We are thankful for our relationship and partnership with UC Health EMS to bring the best possible service to the District. Our neighboring Fire Agencies are relevant to FRFR service delivery and we strive to maintain strong bonds with all of them.

When our members are not attending to 911 calls, they are busy in the community assisting the Life Safety Division. We provide monthly blood pressure checks at both the Johnstown and Milliken Senior Centers.

In 2020 you will see crews out and about visiting businesses within the district. We are working on building a preplan of the occupancies and performing safety inspections. In the event of an emergency, we want to be familiar with the business and the intricacies of the building.

Training is a significant part of our member's day. We want to ensure we are well trained to the highest standards and ready to handle the needs of our District.



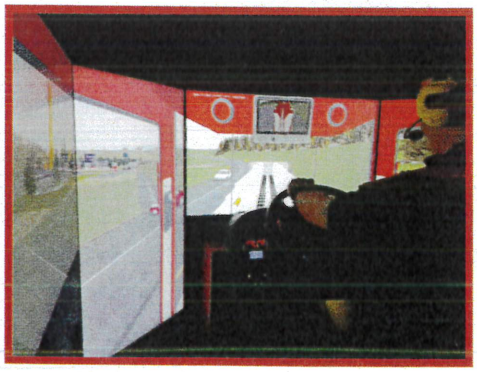
Winter isn't over Yet!

TRAINING

Front Range Fire Rescue logged over 1400 hours of training during the fourth quarter for a total of 7800 throughout 2019. Internal department training included annual company performance evaluations on fire attack and victim rescue, live fire evolutions with Greeley Fire, active threat response with Milliken Police Department, legal considerations in the fire service, and training on our new Communications SOP. We had personnel attend outside training on active threat response, fire investigation, ICS-300, firefighter rescue, IV certification, and the Company Officer Leadership Symposium at the annual Colorado Fire Chiefs conference.

In November, St 1 hosted the Division of Fire Prevention and Control's Mobile Driving Simulator Unit for a week. We had all of our crews rotate through various driving scenarios. We also had participants from Milliken PD, Johnstown PD, UCHealth EMS, Berthoud Fire, Platteville-Gilcrest Fire, and Windsor Fire attend.

Engineer Ferrell and Firefighter Rodriguez completed their training to become certified CPR instructors and, over the course of a few weeks in November and December, were able to provide CPR renewal classes to Milliken PD officers. Deputy Chief Drage developed and taught a State of Colorado Fire Inspector pilot class in mid-October. The class was hosted at St 1 and included participants from around the region. Battalion Chief Kronholm taught a Fire Instructor class hosted at Greeley Station 1. Personnel from Front Range attended the 4-day class.



FRONT RANGE FIRE RESCUE
2019 ANNUAL REPORT

LIFE SAFETY DIVISION

2019 TOTAL

	EXISTING CONSTRUCTION	Total	Square Feet
INSPECTIONS	General Inspection	184	2,370,947
	HazMat Inspection	6	29,116
	Re-inspection	2	108,073
	Complaint	0	0
	Service Call	5	16,000
	NEW CONSTRUCTION	**#**	**Square Feet**
	Building Construction	8	101,553
	Fire Alarm System	15	871,858
	Fire Sprinkler System	11	355,391
	Kitchen Hood System	3	5,700
	HazMat Storage/Use	4	14,900
PLAN REVIEWS	**PLAN REVIEWS**	**#**	**Square Feet**
	New Developments	34	171,506,639
	Site Plans	19	21,074,628
	Building Permits	27	211,378
	Fire Alarm Systems	16	323,443
	Fire Sprinkler Systems	14	407,398
	Kitchen Hood Systems	4	7,020
	HazMat Storage/Use	6	762,099
	Special Events or Hazards	24	2,234,978

WELCOME KURT NAKATA

Inspector Kurt Nakata joined FRFR as our part-time Inspector on 11-5-18. Thanks to the support of our Board of Directors, we were able to expand his duties to full-time. Prior to joining FRFR, Nakata spent 26 years, both paid and volunteer, with Loveland Fire Rescue Authority. Nakata brings with him a diverse range of experience that has already made a tremendously positive impact on our community's safety in the past year

PUBLIC OUTREACH

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	TOTAL
Car Seat Service	3	4	2	1	4	3	1	2	3	3	1		27
Blood Pressure Checks	3	2	2	2	3	2	2	3	3	3	3		28
Station Tour/Apparatus Demo	3	0	2	0	2	1	3	2	0	6	0		19
Education Sessions	0	0	1	0	4	0	1	0	3	12	0		21
Other Outreach Efforts	2	0	3	2	1	4	2	6	1	2	3		26
MONTHLY COUNT	11	6	15	5	14	10	9	12	10	26	7		125
MONTHLY HOURS	14	9	19	10	24	16	12	19	3	32	10		168
INDIVIDUAL CONTACTS	118	48	72	154	400	1827	212	1136	241	3414	235		7857

WELCOME BISHOP DICKERSON

Bishop Dickerson joined FRFR as a full time Firefighter in October 2019. FF Dickerson is currently attending CSU Global and pursuing his Bachelor's Degree in Organizational Leadership.

When Dickerson isn't working as a Firefighter or going to school, he enjoys traveling, recently returning from a vacation in Paris, with his fiancé.

FRONT RANGE FIRE RESCUE 2019 AWARDS

FIREFIGHTER OF THE YEAR
FF CHRIS FRAIN

OFFICER OF THE YEAR
DUSTIN WEST

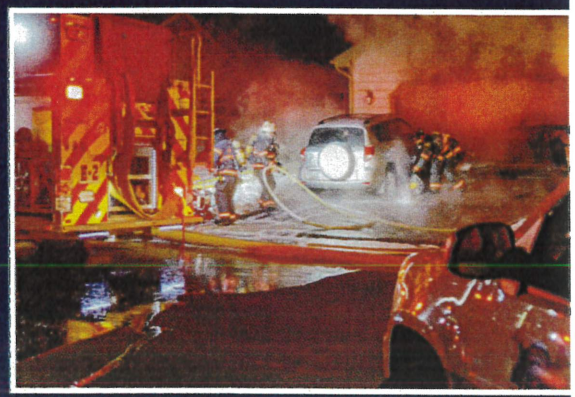
ROOKIE OF THE YEAR
RICHIE VAN TINE

TERRY STAHR AWARD
KELLAN MCTAGUE

FIRE CHIEF AWARD
DEPUTY CHIEF TY DRAGE

OUR RESPONDERS IN ACTION

Pictures courtesy of Ian Zahn



MDA FUNDRAISER

Bryan Leto, Engineer with Front Range Fire Rescue and Coordinator for the MDA Fill the Boot Campaign, presented a check for **$9,418.88** to Jakeb Lutz and his family last night at the November 13, Board Meeting. Jakeb is the MDA Spokesman for the Rocky Mountain MDA Chapter. FRFR Firefighters worked hard to FILL THE BOOT over Labor Day Weekend. Leto also worked with Johnson's Corner Restaurant to host a Spaghetti Dinner last month. Thanks to Johnson's Corner and Shamrock foods for donating the food and venue so that all net proceeds could be donated to the Fill the Boot Campaign.

Connect with FRFR on Social Media

Frfr.co

@frontrangefirerescue

Frfrfireprotectiondistrict

FRFRDistrict

front-range-fire-rescue-1?init_source=copy_link_share

www.pinterest.com/FRFR2015/

Interested in having the Fire Department tour? Call 970.587.4464 or Email info@frfr.co to set up a visit.

FRONT RANGE FIRE RESCUE
2019 ANNUAL REPORT
Courage Compassion Professionalism

2019 Financial Update

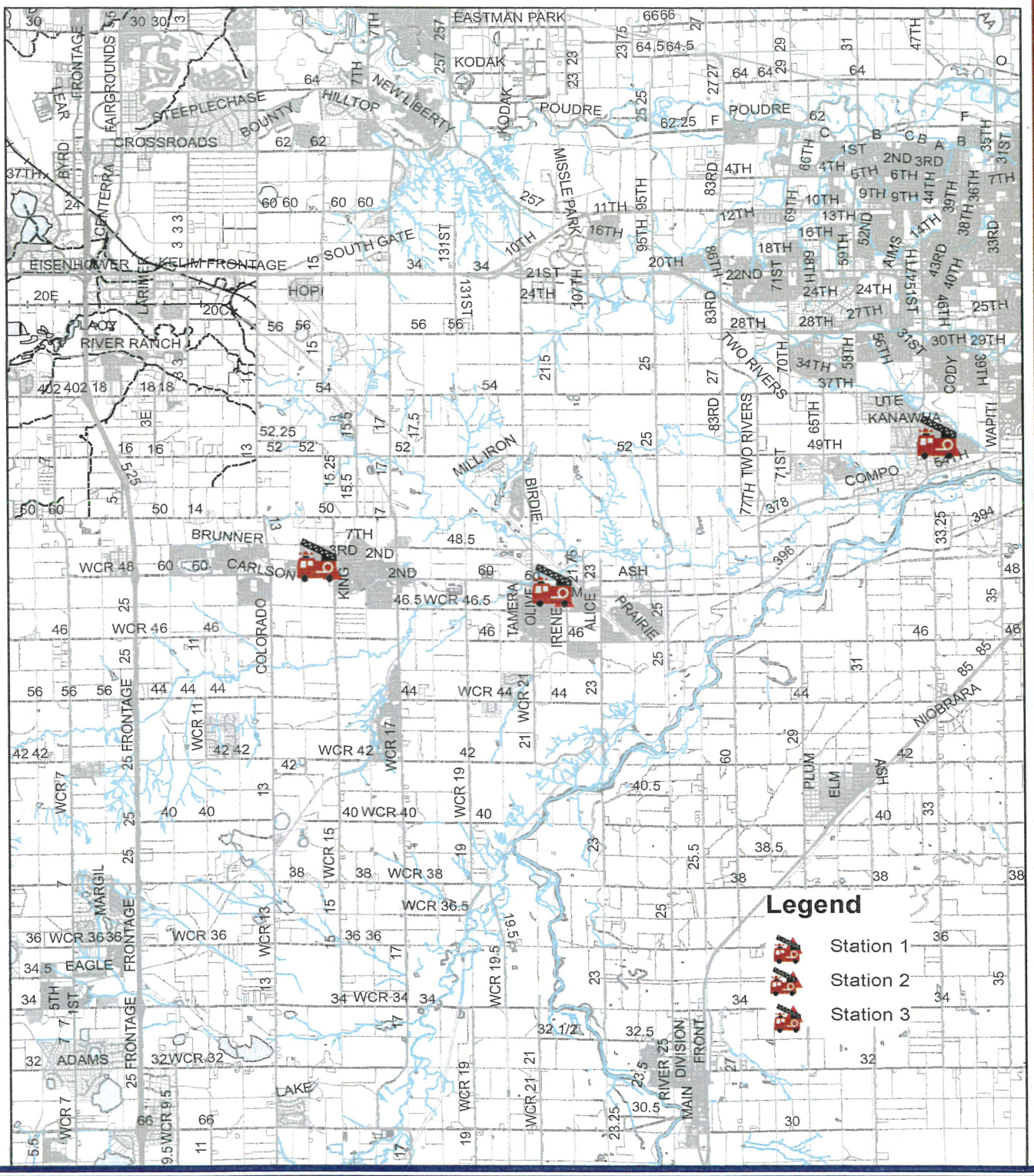
Front Range Fire Rescue (FRFR) strives to be prudent stewards of the public's funds. We began 2019 with a goal to increase reserves so that should there be a significant downturn in the economy, as some are predicting, we would be able to maintain the same high level of service for our citizens. We are happy to report that we were able to exceed our goal and are now close to holding 100% of our annual operating budget in reserve. A conservative approach to spending has allowed the District to be under-budget during the past three (3) years. As an organization, we have been frugal and worked towards balancing our growing service demands with ensuring the financial stability of the FRFR District in perpetuity.

Budget to Actual 2019 YTD

General Fund

	ACTUAL	BUDGET
REVENUES		
Property Tax	5,590,952	5,695,877
Earning on Investments	142,000	20,000
Intergovermental	28,000	36,000
Grants	89,743	81,305
Permit/Planning Fees	17,967	17,500
Miscellaneous Revenue	61,901	79,430
Total Revenues	5,930,563	5,930,112
EXPENDITURES		
Administration	3790000	3,763,546
Community Safety Services	12,000	11,000
Support	24,228	25,000
Fund Transfer	1,271,487	1,318,187
Operations	533,350	533,350
Total Expenditures	5,631,065	5,651,083
Excess or Deficiency of Revenues	299,498	279,029
Fund Balance December31, 2019	4,535,475	

Front Range Fire Rescue Fire Protection District



Who to call:

For any emergency call 911 FIRST!

Questions about permits, plans, or school visits, Chief Ty Drage, 970.587.4464

Car Seat check or install , admin office 970.587.4464

Set up a station tour or Ride along, admin office 970.587.4464

For any other questions call our admin office 970.587.4464