

**AGENDA ITEM 9E**

**APPROVING/ADOPTING  
MODEL  
MULTIPLE DISTRICT  
SERVICE PLAN  
(Resolution No. 2017-03)**

**TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** February 22, 2017

**ITEM NUMBER:** 9E

**SUBJECT:** Consider Town of Johnstown Model Multiple District Service Plan

**ACTION PROPOSED:** Approve Town of Johnstown Model Multiple District Service Plan

**PRESENTED BY:** Town Attorney

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**AGENDA ITEM DESCRIPTION:** The Town Council has, from time to time, approved metropolitan district service plans pursuant to the Special District Act, C.R.S. §§ 32-1-101, *et seq.*, to facilitate land development in the Town. Based on requests from landowners and input from members of the special district community, the Town Council expressed its desire to adopt a model service plan to assist in future development projects. The Town Council heard a presentation from Gary White, an attorney in the special district community and thereafter retained special district counsel, MaryAnn McGeady of McGeady Becher, P.C., to assist in the preparation of a model multiple district service plan. Ms. McGeady has attended two work sessions, on December 12, 2016 and January 30, 2017, to discuss the terms of a model service plan and obtain direction from Council.

Based on the foregoing, special counsel and the Town Attorney drafted the attached Model Multiple District Service Plan. Pursuant to special counsel's recommendation, certain provisions that are generally standard in model service plans have been omitted from the Model Multiple District Service Plan, including a maximum debt mill levy imposition term, a maximum operations and maintenance mill levy, a maximum aggregate mill levy and enhanced disclosure requirements to residential home buyers.

Because each development contains unique aspects and features, the proposed Resolution provides that, despite adopting a model, the Town retain flexibility to modify the terms of the model service plan as appropriate for each development.

In addition, William Massey, a landowner and developer in the Town, deposited \$15,000.00 toward the development of the Model Multiple District Service Plan. Mr. Massey has requested reimbursement up to \$10,000.00 from fees paid to the Town for use of the plan within twenty-four (24) months of the date of this Resolution, by collection of \$2,500 from the next four applicants.

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**LEGAL ADVICE:** The Town of Johnstown Model Multiple District Service Plan was drafted by the Town's special counsel, MaryAnn McGeady, and the Town Attorney.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve and adopt the Town of Johnstown Model Multiple District Service Plan

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**SUGGESTED MOTION:**

**For Approval:** I move to approve and adopt the Town of Johnstown Model Multiple District Service Plan on the condition that the Town retain flexibility to modify the terms of the plan as appropriate for each development.

**For Denial:** I move to deny approval of the Town of Johnstown Model Multiple District Service Plan.

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**Reviewed:**

  
Town Manager

# **RESOLUTION**

**No. 2017-03**

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO. 2017-03**

**APPROVING AND ADOPTING TOWN OF JOHNSTOWN  
MODEL MULTIPLE DISTRICT SERVICE PLAN**

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

**WHEREAS**, the Town Council supports efficient, responsible and cost-effective development of land in the Town; and

**WHEREAS**, the Town Council has, from time to time, approved metropolitan district service plans pursuant to the Special District Act, C.R.S. §§ 32-1-101, *et seq.*, to facilitate development; and

**WHEREAS**, based on requests from landowners and input from members of the special district community, including a presentation by Gary White, Esq. of White Bear Ankele Tanaka & Waldron, Town Council seeks to adopt a model service plan to assist in future development projects; and

**WHEREAS**, the Town Council retained special district counsel, MaryAnn McGeady, Esq. of McGeady Becher, P.C., to assist in the preparation of a model multiple district service plan and has held two work sessions, on December 12, 2016 and January 30, 2017, to discuss the terms of a such a plan; and

**WHEREAS**, the Town Council recognizes that each development contains unique aspects and features and, despite adopting a model service plan, desires that the model service plan provide general guidance regarding the Town’s intent, but that the Town retain flexibility to modify the terms of the model service plan as appropriate; and

**WHEREAS**, based on the foregoing, the Town Council finds that approval of a model service plan is in the best interests of the Town of Johnstown and desires to approve and adopt the model service plan that is attached hereto and incorporated herein by reference as Exhibit A (“Model Service Plan”); and

**WHEREAS**, the Town Council recognizes that William Massey, a landowner and developer in the Town, deposited \$15,000.00 toward the development of the Model Service Plan and seeks to reimburse Mr. Massey up to \$10,000.00 for the cost from fees paid to the Town for use of the Model Service Plan within twenty-four (24) months of the date of this Resolution.

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

Section 1. The Town Council hereby approves and adopts the Model Service Plan that is attached hereto as Exhibit A.

Section 2. The Model Service Plan shall provide general guidance regarding Town Council's intent with respect to development, but the Town shall retain flexibility to modify the terms of Model Service Plan as the Town deems appropriate for each specific development.

Section 3. The Town Council directs that, for twenty-four (24) months from the date of this Resolution, Town staff shall collect \$2,500.00 from the next four applicants who seek to form a metropolitan district pursuant to the Special District Act, C.R.S. §§ 32-1-101, *et seq.*, and remit such amount to William Massey.

PASSED, SIGNED, APPROVED, AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2017.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

By: \_\_\_\_\_  
Diana Seele, Town Clerk

By: \_\_\_\_\_  
Scott James, Mayor

**SERVICE  
PLAN**

**[TOWN OF JOHNSTOWN MODEL  
MULTIPLE DISTRICT SERVICE PLAN]**

**MODEL SERVICE PLAN  
FOR**

\_\_\_\_\_ **METROPOLITAN DISTRICT NOS.** \_\_\_\_\_

**TOWN OF JOHNSTOWN, COLORADO**

Prepared

by

[NAME OF PERSON OR ENTITY]

[ADDRESS]

[ADDRESS]

[Submittal DATE]

[Resubmittal DATE]

[Approval DATE]

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<b>EXHIBIT B</b>	Johnstown Vicinity Map
<b>EXHIBIT C-1</b>	Initial District Boundary Map
<b>EXHIBIT C-2</b>	Inclusion Area Boundary Map
<b>EXHIBIT C-3</b>	Proofs of Ownership and Consents of Owners
<b>EXHIBIT D</b>	Intergovernmental Agreement between the Districts and Johnstown
<b>EXHIBIT E</b>	Capital Plan
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<b>EXHIBIT G</b>	Form of District Disclosure Notice
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## I. INTRODUCTION

### A. Intent and Purpose.

The Town intends that this Service Plan grant authority to the Districts to provide for the planning, design, acquisition, construction, installation and financing of Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the Districts. The Town and the Districts acknowledge that the Districts are independent units of local government, separate and distinct from the Town, and, except as may otherwise be provided for by State or local law, this Service Plan or an intergovernmental agreement with the Town, the Districts' activities are subject to review by the Town only insofar as the activities may deviate in a material manner from the requirements of the Service Plan.

### B. Need for the Districts.

There are currently no other governmental entities, including the Town, located in the immediate vicinity of the Districts that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction, installation and financing of the Public Improvements or the ownership, operation and maintenance of the Public Improvements that are not accepted for ownership, operation and maintenance by the Town or another entity. Formation of the Districts is therefore necessary in order for the Public Improvements to be provided in the most economic manner possible.

### C. Town's Objective.

The Town's objective in approving the Service Plan is to authorize the Districts to provide for the planning, design, acquisition, construction, installation and financing of the Public Improvements from the proceeds of Debt that may be issued by the Districts and to provide for the ownership, operation and maintenance of any Public Improvement not otherwise accepted for ownership, operation or maintenance by the Town or another entity. Debt is expected to be repaid by an ad valorem property tax no higher than the Maximum Debt Mill Levy and other legally available revenues of the Districts. Debt issued within these parameters and, as further described in the Financial Plan, is intended to insulate property owners from excessive tax and financial burdens and result in a timely and reasonable repayment. Public Improvements costs that cannot be funded within these parameters are not costs to be paid by the Districts.

The Town intends to authorize the Districts to have the ability to plan, design, acquire, construct, install and finance the initial Public Improvements necessary to develop the Project and seeks the timely payment of Debt related to those initial Public Improvements so that the financial burden on End Users is minimized. The Districts shall be required to obtain authorization of the Town, in the form of an intergovernmental agreement, prior to issuing Debt for redevelopment of an existing Public Improvement.

The Town prefers that all property classified as "residential" shall be located solely within the boundaries of a Residential District and that all property classified as "commercial" shall be located solely within the boundaries of a Commercial District. For purposes of this distinction "commercial property" shall mean all property other than "residential real property"

as that term is defined in Article X, Section 3(1)(b) of the Colorado Constitution. The distinction facilitates two goals: (1) to have similarly situated properties governed by common interests, and (2) to apply a lower maximum tax burden on residential owners. The foregoing shall not prohibit the Residential and Commercial Districts from sharing the costs of Public Improvements in compliance with the provisions of this Service Plan and applicable law.

The Town intends that the Districts dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt and for continuation of any operations.

## **II. DEFINITIONS**

In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Approved Development Plan: means a subdivision improvement development agreement, preliminary or final plat or other process established by the Town for identifying, among other matters, the Public Improvements necessary for facilitating development of property within a part or all of the Service Area as approved by the Town pursuant to the Town Code, as amended from time to time.

Board: means the board of directors of each District.

Bond, Bonds or Debt: means bonds, notes, contracts, reimbursement agreements or other multiple fiscal year financial obligations issued by the Districts or other obligations for the payment of which a District has promised to impose an ad valorem property tax mill levy and/or impose and collect Development Fees.

Bond Counsel Opinion: means the opinion, to be provided by an attorney licensed in Colorado and published in the then current publication of the Bond Buyer Directory of Municipal Bond Attorneys, providing that the Debt that is the subject of the opinion was issued in accordance with the provisions of the Service Plan.

Capital Plan: means the Capital Plan described in Section V.C. which includes: (a) a list of the Public Improvements that may be developed by the District; (b) an engineer's estimate of the cost of the Public Improvements; and (c) a pro forma capital expenditure plan correlating expenditures with development.

Commercial District: means \_\_\_ District No. \_\_\_.

Cost Verification Report: means a report provided by an engineer or accountant as required pursuant to Section V.A.26.

Covenant Enforcement and Design Review Services: means those covenant enforcement and design review services authorized in the Special District Act.

Debt: See Bond, Bonds or Debt.

Developer: means the owner or owners of the property within the Service Area, any affiliates of such owner or owners and their successors and assigns other than End Users.

Developer Debt: means bonds, notes, contracts, reimbursement agreements or other multiple fiscal year financial obligations issued by the Districts to the Developer within the Districts for reimbursement of sums advanced or paid for funding of Public Improvements and/or operation and maintenances expenses. Developer Debt shall be subordinate to other Debt of the Districts.

Developer Debt Mill Levy Limitation Term: means the Developer Debt Mill Levy Imposition Term set forth in Section VI.D.1.

Development Fee: means a one-time development or system development fee that may be imposed by the Districts on a per-unit (*residential*) or per square-foot (*non-residential*) basis at or prior to the issuance of a building permit for the unit or structure to assist with the planning and development of the Public Improvements.

District: means any one of the Districts.

Districts: means District No. 1 and District Nos. \_\_\_\_, \_\_\_\_, \_\_\_\_ (fill in number of each District), collectively.

End User: means any owner or occupant of any taxable residential real property or commercial property within the Districts after such property has been vertically developed. By way of illustration, a resident homeowner, renter, commercial property owner or commercial tenant is an End User. The Developer and any business entity that constructs homes or commercial structures is not an End User.

External Financial Advisor: means a consultant approved by the Town that: (i) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (ii) shall be an underwriter, investment banker or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place; and (iii) is not an officer or employee of the Developer or the Districts.

External Financial Advisor Certification: means the certification required to be provided pursuant to Section V.A.10. below.

Financial Plan: means the Financial Plan described in Section VI, which describes (i) how the Public Improvements are to be financed; (ii) how Debt may be incurred; and (iii) the estimated operating revenue derived from property taxes.

Gallagher Adjustment: means, if, on or after January 1, 2016, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement, the Maximum Debt Mill Levy may be increased or decreased to reflect such changes, such increases and decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax

revenues generated by the applicable mill levy, as adjusted for changes occurring after January 1, 2016, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Inclusion Area Boundaries: means the boundaries of the area described in the Inclusion Area Boundary Map.

Inclusion Area Boundary Map: means the map attached hereto as **Exhibit C-2**, describing the property proposed for inclusion within one, but not any more than one, of the boundaries of the Districts.

Initial District Boundaries: means the boundaries of the area described in the Initial District Boundary Map.

Initial District Boundary Map: means the map attached hereto as **Exhibit C-1**, describing the District's initial boundaries.

Maximum Debt Authorization: means the total Debt the Districts are permitted to incur as set forth in Section V.A.14. below.

Maximum Commercial Debt Mill Levy: means the maximum mill levy a District is permitted to impose upon taxable property other than "residential real property" as that term is defined in Article X, Section 3(1)(b) of the Colorado Constitution for payment of Debt as set forth in Section VI.C. below.

Maximum Debt Mill Levy: means the maximum mill levy the Districts are permitted to impose for payment of Debt as set forth in Section VI.C below, and includes, as appropriate, the Maximum Commercial Debt Mill Levy and the Maximum Residential Debt Mill Levy.

Maximum Residential Debt Mill Levy: means the maximum mill levy a District is permitted to impose upon taxable "residential real property" as that term is defined in Article X, Section 3(1)(b) of the Colorado Constitution for payment of Debt as set forth in Section VI.C. below.

Operations and Maintenance Mill Levy: means the mill levy the Districts are permitted to impose for payment of administrative, operations and maintenance expenses as set forth in Section VI.C. below.

Privately Placed Debt: means Debt that is issued by the placement of the Debt directly with the Debt purchaser and without the use of an underwriter as a purchaser and reseller of the Debt, and includes, but is not limited to, Developer Debt and bank loans.

Project: means the development or property commonly referred to as \_\_\_\_\_.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed and financed as listed on the Capital Plan,

attached as **Exhibit E**, and generally described in the Special District Act, or as set forth in an Approved Development Plan or intergovernmental agreement with the Town, to serve the anticipated inhabitants and taxpayers of the Service Area, except as specifically limited in Section V below. and as approved by the Board from time to time.

Publicly Marketed Debt: means Debt that is offered for sale to the public by the Districts with the use of an underwriter as a purchaser and reseller of the Debt.

Recurring Fee(s): means any recurring fee, rate, toll, penalty or charge imposed by the Districts for administrative, operations and maintenance costs and for services, programs or facilities provided by the Districts as limited by the provisions of Section V.A.15. below, but in no event to be used for payment of Debt.

Refunding Bonds or Refunding Debt: means Debt issued for purposes of refunding any Bond or Debt.

Residential District: means \_\_\_ District No. \_\_\_.

Service Area: means the property within the Inclusion Area Boundary Map.

Service Plan: means this service plan for the Districts approved by Town Council.

Service Plan Amendment: means an amendment to the Service Plan approved by Town Council in accordance with the Town's ordinance and the applicable state law.

Special District Act: means Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time.

State: means the State of Colorado.

Taxable Property: means real or personal property within the Service Area subject to ad valorem property taxes imposed by the Districts.

Town: means the Town of Johnstown, Colorado.

Town Code: means the Town Code of the Town of Johnstown, Colorado.

Town Council: means the Town Council of the Town of Johnstown, Colorado.

### **III. BOUNDARIES**

The area of the Initial District Boundaries includes approximately \_\_\_\_\_ (\_\_\_\_) acres and the total area proposed to be included in the Inclusion Area Boundaries is approximately \_\_\_\_\_ (\_\_\_\_) acres. A legal description of the Initial District Boundaries and the Inclusion Area Boundaries is attached hereto as **Exhibit A**. A vicinity map is attached hereto as **Exhibit B**. A map of the Initial District Boundaries is attached hereto as **Exhibit C-1**, and a map of the Inclusion Area Boundaries is attached hereto as **Exhibit C-2**. Proofs of Ownership and consents of the owners to organization of the Districts for all properties within the District

Boundaries are attached hereto as **Exhibit C-3**. The Districts' boundaries may change from time to time as the Districts undergo inclusions and exclusions pursuant to the Special District Act, subject to the limitations set forth in Section V below and as authorized by the Town.

**IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION**

The Service Area consists of approximately \_\_\_\_\_ (\_\_\_\_) acres of \_\_\_\_\_ land. The current assessed valuation of the Service Area is \$ \_\_\_\_\_ for purposes of this Service Plan and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the Districts at build-out is estimated to be approximately \_\_\_\_\_ (\_\_\_\_) people.

The Town's approval of this Service Plan does not imply approval of the development of a specific area within the Districts, nor does it imply approval of the number of residential units or the commercial area that may be identified in this Service Plan, unless the same is contained within an Approved Development Plan.

**V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES**

A. Powers of the Districts and Service Plan Amendment.

The Districts shall have the power and authority to provide the Public Improvements and operation and maintenance services within and without the boundaries of the Districts as such power and authority is described in the Special District Act and in other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.

1. Operations and Maintenance Limitation. The purpose of the Districts is to provide for the planning, design, acquisition, construction, installation and financing of the Public Improvements for the use and benefit of all anticipated inhabitants and taxpayers of the Districts. The Districts shall only operate and maintain those Public Improvements that are not accepted for ownership, operations and maintenance by the Town or other appropriate entity in a manner consistent with the Approved Development Plan and other rules and regulations of the Town and the Town Code.

2. Trails and Amenities. The Districts may own, operate and maintain trails and related amenities within the Districts. All parks and trails shall be open to the general public, including Town residents who do not reside in the Districts, free of charge. Any fee imposed by the Districts for access to recreation improvements owned by the Districts, other than parks and trails, shall not result in Town residents who reside outside the Districts paying a user fee that is greater than, or otherwise disproportionate to, amounts paid by residents of the Districts and shall not result in the Districts' residents subsidizing the use by non-Districts' residents. The Districts shall be entitled to impose a reasonable administrative fee to cover additional expenses associated with use of District recreational improvements, other than parks and trails, by Town residents who do not reside in the Districts to ensure that such use is not subsidized by the Districts' residents.

3. Fire Protection, Ambulance and Emergency Services Limitation. The Districts shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Town. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision. The Districts shall not be authorized to provide for ambulance or emergency medical services unless the provision of such service is approved by the Town in an intergovernmental agreement.

4. Television Relay and Translation Limitation. The Districts shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, unless such facilities and services are provided pursuant to an intergovernmental agreement with the Town.

5. Telecommunication Facilities. The Districts agree that no telecommunication facilities owned, operated or otherwise allowed by the Districts shall affect the ability of the Town to expand its public safety telecommunication facilities or impair the Town's existing telecommunication facilities.

6. Construction Standards Limitation. The Districts shall ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction. The Districts shall obtain the Town's approval of civil engineering plans and applicable permits for construction and installation of Public Improvements prior to performing such work.

7. Zoning and Land Use Requirements; Sales and Use Tax. The Districts shall be subject to all of the Town's zoning, subdivision, building code and other land use requirements.

8. Growth Limitations. The Districts acknowledge that the Town shall not be limited in implementing Town Council or voter approved growth limitations, even though such actions may reduce or delay development within the Districts and the realization of Districts' revenue.

9. Conveyance. The Districts agree to convey to the Town, at no expense to the Town and upon written notification from the Town, any real property owned by the Districts that is necessary, in the Town's sole discretion, for any Town capital improvement projects for transportation, utilities or drainage. The Districts shall, at no expense to the Town and upon written notification from the Town, transfer to the Town all rights-of-way, fee interests and easements owned by the Districts that the Town determines are necessary for access to and operation and maintenance of the Public Improvements to be owned, operated and maintained by the Town, consistent with an Approved Development Plan.

10. Privately Placed Debt Limitation. Prior to the issuance of any Privately Placed Debt, including but not limited to any Developer Debt, the Districts shall obtain the

certification of an External Financial Advisor approved by the Town, in form substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the Districts' Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the Districts.

The Districts shall submit written notice to the Town Manager of the name of the proposed External Financial Advisor which shall either be approved or objected to by the Town within twenty (20) days of the submittal of such written notice to the Town Manager. If the Town Manager does not object to such selection within the twenty (20) day period, the Town Manager's approval shall be deemed to have been given to the District retaining the External Financial Advisor named in the written notice.

Within ten (10) days subsequent to the issuance of Privately Placed Debt, the Districts shall provide the Town with copies of the relevant Debt documents, the External Financial Advisor Certification and the Bond Counsel Opinion addressed to the Districts and the Town regarding the issuance of the Debt.

11. Inclusion Limitation. The Districts may include all property with the Inclusion Area Boundaries, and shall provide written notice to the Town of all such inclusions concurrently therewith. The Districts shall not include within their boundaries any property outside the Inclusion Area Boundaries without the prior written consent of the Town. The Districts shall only include within its boundaries property that has been annexed to the Town and no portion of any of the Districts shall ever consist of property not within the Town's corporate boundaries.

12. Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate Debt mill levies within the overlapping Districts will not at any time exceed the lesser of the Maximum Debt Mill Levy that applies to either of the overlapping Districts.

13. Debt Limitation. Unless otherwise approved in an intergovernmental agreement with the Town, on or before the effective date of approval by the Town of an Approved Development Plan, the Districts shall not: (a) issue any Debt; (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; or (c) impose and collect any Development Fees.

14. Maximum Debt Authorization. The Districts shall not issue Debt in excess of (\$ \_\_\_\_\_). Refunded Debt, wherein the initial debt issuance counted toward the Maximum Debt Authorization, and Debt in the form of an intergovernmental agreement

between one or more of the Districts shall not count against the Maximum Debt Authorization set forth herein.

15. Recurring Fee Limitation. The Districts may impose and collect Recurring Fees for administrative, operations and maintenance expenses and for services, programs or facilities furnished by the Districts. Any Recurring Fees for administrative, operations and maintenance expenses not specifically set forth in the Financial Plan, including a subsequent increase in such Recurring Fees, shall be subject to review and approval by the Town, either administratively or by formal action of Town Council, at the discretion of the Town Manager. If the Town does not respond to a request for the imposition of the Recurring Fee or an increase in such Recurring Fee within forty-five (45) days of receipt of a written request from the Districts, the Town shall be deemed to have approved the ability of the Districts to impose or increase the Recurring Fee as described in the request. Any Recurring Fees imposed or increased for operation and maintenance expenses without approval as set forth herein shall constitute a material departure from the Service Plan. The revenue from a Recurring Fee shall not be used to pay for Debt.

16. Monies from Other Governmental Sources. The Districts shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds or other funds available from or through governmental or non-profit entities for which the Town is eligible to apply, except pursuant to an intergovernmental agreement with the Town. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the Districts without any limitation.

17. Consolidation Limitation. The Districts shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town, unless such consolidation is with District No. \_\_\_\_.

18. Public Improvement Fee Limitation. The Districts shall not collect, receive, spend or pledge to any Debt or use to pay for operations and maintenance services, any fee, assessment, tax or charge which is collected by a retailer in the Districts on the sale of goods or services by such retailer and which is measured by the sales price of such goods or services, except pursuant to an intergovernmental agreement with the Town.

19. Bankruptcy Limitation. It is expressly intended that all of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Recurring Fees, that have been established under the authority of the Town to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S.:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent an amendment to the Service Plan; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

The filing of any bankruptcy petition by the Districts shall constitute, simultaneously with such filing, a material departure of the express terms of this Service Plan, and thus an express violation of the approval of this Service Plan.

20. Water Rights/Resources Limitation. The Districts shall not acquire, own, manage, adjudicate or develop water rights or resources except pursuant to an intergovernmental agreement with the Town.

21. Eminent Domain Limitation. Absent the prior written approval of the Town, the Districts shall not exercise their statutory power of eminent domain or dominant eminent domain for the purpose of condemning property outside of the Service Area. Additional approval from the Town shall not be required prior to the Districts' exercise of their statutory power of eminent domain or dominant eminent domain with respect to property within the Service Area. In no event shall the Districts exercise their statutory power of dominant eminent domain to condemn property owned by the Town.

22. Covenant Enforcement and Design Review Services. The Districts shall have the power, but not the obligation, to provide Covenant Enforcement and Design Review Services within the Districts in accordance with the Colorado Statutes as they are amended from time to time. The Town shall not bear any responsibility for Covenant Enforcement and Design Review Services within the boundaries of the Districts. The Town's architectural control, design review and other zoning, land use, development, design and other controls are separate requirements that must be met in addition to any similar controls or services undertaken by the Districts.

23. Special Improvement Districts. The District shall not be entitled to create a special improvement district pursuant to Section 32-1-1101.7, C.R.S., unless otherwise provided pursuant to an intergovernmental agreement with the Town.

24. Reimbursement Agreement with Adjacent Landowners. If the Districts utilize reimbursement agreements to obtain reimbursements from adjacent landowners for costs of improvements that benefit the third-party landowners, such agreements shall be done in accordance with Town Code. Any and all resulting reimbursements received for such improvement shall be used to re-pay the cost of the Public Improvement that is the subject of the reimbursement agreement or shall be deposited in the District's debt service fund and used for the purpose of retiring Debt. The District shall maintain an accurate accounting of the funds received and disbursed pursuant to reimbursement agreements.

25. Land Purchase Limitation. Proceeds from the sale of Debt and other revenue of the Districts may not be used to pay the Developer for the acquisition from the Developer of any real property, easements or other interests required to be dedicated for public use by annexation agreements, Approved Development Plans, the Town Code or other development requirements, unless otherwise provided pursuant to an intergovernmental agreement with the Town.

26. Developer Reimbursement of Public Improvement Related Costs. Prior to the reimbursement to the Developer for costs incurred in the organization of the Districts, or for

funds expended on the Districts behalf related to the Public Improvements, or for the acquisition of any part of the Public Improvements, the Districts shall receive: a) the report of an engineer retained by the Districts, independent of the Developer and licensed in Colorado verifying that, in such engineer's professional opinion, the reimbursement for the costs of the Public Improvements that are the subject of the reimbursement or acquisition, including the construction costs and the soft costs, but excluding the accounting and legal fees, are, in such engineer's opinion, reasonable and are related to the provision of the Public Improvements or are related to the Districts' organization; and b) the report of an accountant retained by the Districts, independent of the Developer and licensed in Colorado verifying that, in such accountant's professional opinion, the reimbursement for the accounting and legal fees that are the subject of the reimbursement or acquisition, are, in such accountants opinion, reasonable and related to the Public Improvements or the Districts' organization. Upon request, the Districts shall provide the reports to the Town.

27. Developer Reimbursement of Administration, Operations and Maintenance Related Costs. Prior to the reimbursement to the Developer for costs incurred or for funds expended on behalf of the District related to the administration of the Districts or the operation and maintenance of the Public Improvements, the Districts shall receive the report of an accountant retained by the Districts, who is independent of the Developer and licensed in Colorado, verifying that, in such accountant's professional opinion, the reimbursement of the funds advanced for such administration, operations or maintenance costs, are, in such accountants opinion, receivable and related to the administration, operations or maintenance of the Districts or the Public Improvements. Upon request, the Districts shall provide the report to the Town.

28. Board Meetings and Website Limitations. Once an End User owns property in the Service Area, the Districts' Board meeting(s) shall be conducted within the boundaries of the Town of Johnstown. The Districts' website(s) shall include the name of the Project or a name that allows residents of the development community to readily locate the Districts online and shall also include an updated street map for those properties within the Service Area that have constructed streets that are open for public use.

29. Financial Review. The Town shall be permitted to conduct periodic reviews of the financial powers of the Districts in the Service Plan in the manner and form provided in Section 32-1-1101.5, C.R.S. As provided in the statute, the Town may conduct the first financial review in fifth calendar year after the calendar year in which a special district's ballot issue to incur general obligation indebtedness was approved by its electors. After such fifth calendar year and notwithstanding the provisions of the statute, the Town may conduct the financial review at any time, by providing sixty (60) days written notice to the Districts, except that the Town may not conduct a financial review within sixty (60) months of the completion of its most recent financial review. The Town's procedures for conducting a financial review under this Paragraph, and the remedies available to the Town as a result of such financial review, shall be identical to those provided for in Section 32-1-1101.5(2), C.R.S. The Districts shall be responsible for payment of the Town consultant and legal and administrative costs associated with such review, and the Town may require a deposit of the estimated costs thereof.

B. Service Plan Amendment Requirement.

This Service Plan has been designed with sufficient flexibility to enable the Districts to provide required services and facilities under evolving circumstances without the need for numerous amendments. Actions of the Districts which violate the limitations set forth in this Service Plan shall be deemed to be material modifications to this Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin such actions of the Districts, including the remedy of enjoining the issuance of additional authorized but unissued debt, until such material modification is remedied.

C. Capital Plan.

The Districts shall have authority to provide for the planning, design, acquisition, construction, installation and financing of the Public Improvements within and without the boundaries of the Districts. A Capital Plan, attached hereto as **Exhibit E**, includes: (1) a list of the Public Improvements to be developed by the District, supported by a engineering or architectural survey; (2) a good faith estimate of the cost of the Public Improvements; and (3) a pro forma capital expenditure plan correlating expenditures with development. The Public Improvements described in the Capital Plan may be modified in an Approved Development Plan or an intergovernmental agreement with the Town, and may differ from the Capital Plan without constituting a material modification of this Service Plan. To the extent that the Capital Plan sets forth the timing of the construction of the Public Improvements, such timing may also deviate from the Capital Plan without constituting a material modification of this Service Plan. As shown in the Capital Plan, the estimated cost of the Public Improvements is approximately \_\_\_\_\_ Dollars (\$\_\_\_\_\_). Costs of required Public Improvements that cannot be financed by the Districts within the parameters of this Service Plan and the financial capability of the Districts are expected to be financed by the Developer of the Project.

D. Multiple District Structure.

The Town anticipates that the Districts, collectively, will undertake the planning, design, acquisition, construction, installation and financing of the Public Improvements contemplated herein. Specifically, the Districts shall enter into one or more intergovernmental agreements governing the relationship between and among the Districts with respect to the planning, design, acquisition, construction, installation and financing of the Public Improvements contemplated herein and with respect to the administration, operations and maintenance of the Districts.

VI. FINANCIAL PLAN

A. General.

The Districts shall be authorized to provide for the planning, design, acquisition, construction, installation and financing of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the Districts. The Financial Plan for the Districts shall be to issue such Debt as the Districts are reasonably able to pay from revenues derived from the Maximum Debt Mill Levy and other legally available revenues. The total Debt that the Districts shall be permitted to issue shall not exceed the Maximum Debt Authorization, \_\_\_\_\_ Dollars (\$\_\_\_\_\_), and shall be permitted to be issued on a schedule and in such year or years as the Districts determines shall meet the needs of the

Financial Plan referenced above and phased to serve development as it occurs. All Debt issued by the Districts may be payable from any and all legally available revenues of the Districts, as set forth in this Service Plan, including ad valorem property taxes or Development Fees.

The Financial Plan, prepared by \_\_\_\_\_, and attached hereto as **Exhibit F**, sets forth (i) how the Public Improvements are to be financed; (ii) how Debt may be incurred; and (iii) the estimated operating revenue derived from property taxes for the Districts. The Maximum Debt Authorization is supported by the Financial Plan.

In its discretion, the Town may require additional financial forecasts and feasibility reports to evaluate the Financial Plan for commercial projects, wherein the Town is sharing revenue with, or providing additional economic incentives to, the Developer. Such a requirement shall be set forth in an intergovernmental agreement with the Town.

**B. Maximum Voted Interest Rate, Maximum Underwriting Discount, Maximum Interest Rate on Developer Debt.**

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. In the event of a default, the proposed maximum interest rate on any Debt is not to exceed twelve percent (12%). The proposed maximum underwriting discount shall be four percent (4%). Debt, when issued, shall comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities. Failure to observe the requirements established in this paragraph shall constitute a material modification under the Service Plan.

The interest rate on Developer Debt shall not exceed the lesser of the current Bond Buyer 20-Bond GO index plus four percent (4%) or twelve percent (12%). Developer Debt shall be subordinate to other Debt of the Districts and shall be subject to the debt limitation term provided in Section VI.D below.

**C. Mill Levies.**

1. Maximum Commercial Debt Mill Levy. The Maximum Commercial Debt Mill Levy shall be fifty (50) mills subject to a Gallagher Adjustment. For the portion of any aggregate Debt which is equal to or less than fifty percent (50%) of the Commercial District's assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Commercial Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

2. Maximum Residential Debt Mill Levy. The Maximum Residential Debt Mill Levy shall be forty (40) mills subject to a Gallagher Adjustment.

3. Maximum Mixed-Use Debt Mill Levy. If residential real property and commercial property are included within the boundaries of the same District, whether a Residential District or a Commercial District, the Maximum Residential Debt Mill Levy shall apply, provided however, if the inclusion of the residential real property and the commercial

property within the same District is approved by the Town in an intergovernmental agreement, the Maximum Commercial Debt Mill Levy shall apply.

4. Operations and Maintenance Mill Levy. The Operations and Maintenance Mill Levy shall be a mill levy the Districts are permitted to impose for payment of the Districts' administrative, operations and maintenance costs, which shall include, but not be limited to, the funding of operating reserves and sufficient ending fund balances to assure sufficient cash flow to fund expenses as they come due, and shall at all times not exceed the maximum mill levy necessary to pay those expenses.

5. Subdistricts. To the extent that a District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to each District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

D. Developer Debt Mill Levy Imposition Term.

1. Developer Debt Mill Levy Imposition Term. Developer Debt shall expire and be forgiven twenty (20) years after the date of the initial imposition by the Districts of an ad valorem property tax to pay any Debt, unless otherwise provided pursuant to an intergovernmental agreement with the Town. Refunding Bonds shall not be subject to this Developer Debt Mill Levy Imposition Term so long as such Refunding Bonds are not owned by the Developer or by a party related to the Developer.

E. Debt Instrument Disclosure Requirement.

In the text of each Bond and any other instrument representing and constituting Debt, the Districts shall set forth a statement in substantially the following form:

By acceptance of this instrument, the owner of this Bond agrees and consents to all of the limitations in respect of the payment of the principal of and interest on this Bond contained herein, in the Resolution of the District authorizing the issuance of this Bond and in the Service Plan for creation of the District.

Similar language describing the limitations in respect of the payment of the principal of and interest on Debt set forth in this Service Plan shall be included in any document used for the offering of the Debt for sale to persons, including, but not limited to, the Developer of property within the boundaries of the Districts.

F. Publicly-Marketed Debt.

At least ten (10) business days prior to the issuance of Publicly-Marketed Debt, the Districts shall provide the Town with the marketing documents that have been or shall be published. Within ten (10) days subsequent to the issuance of Publicly-Marketed Debt, the Districts shall provide the Town with the Bond Counsel Opinion addressed to the Districts and the Town regarding the issuance of the Debt and copies of the relevant Debt documents.

G. Security for Debt.

The Districts shall not pledge any revenue or property of the Town as security for the indebtedness set forth in this Service Plan. The Town's approval of this Service Plan shall not be construed as a guarantee by the Town of payment of any of the Districts' obligations; nor shall anything in the Service Plan be construed so as to create any responsibility or liability on the part of the Town in the event of default by the Districts in the payment of any such obligation.

H. District Operating Costs.

The estimated cost of acquiring land, engineering services, legal services and administrative services, together with the estimated cost of the Districts' organization and initial operations, are anticipated to be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), which will be eligible for reimbursement from Debt proceeds.

In addition to the capital costs of the Public Improvements, the Districts will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The first year's operating budget is estimated to be \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) which is anticipated to be derived from property taxes and other revenues.

**VII. ANNUAL REPORT**

A. General.

The Districts shall be responsible for submitting an annual report to the Town no later than August 1<sup>st</sup> of each year following the year in which the Order and Decree creating the Districts has been issued (the "report year"). The Town reserves the right, pursuant to Section 32-1-207(3)(c), C.R.S., to request annual reports from the District beyond five years after the District's organization.

B. Reporting of Significant Events.

The annual report required by this Section VII shall include information as to any of the following events that occurred during the report year:

1. Narrative of the Districts progress in implementing the Service Plan and a summary of the development in the Project.
2. Boundary changes made or proposed.
3. Intergovernmental agreements executed.
4. A summary of any litigation involving the Districts.
5. Proposed plans for the year immediately following the report year.

6. Construction contracts executed and the name of the contractors as well as the principal of each contractor.

7. Status of the Districts' Public Improvement construction schedule and the Public Improvement schedule for the following five years.

8. Notice of any uncured defaults.

9. A list of all Public Improvements constructed by the Districts that have been dedicated to and accepted by the Town.

10. If requested by the Town, copies of minutes of all meetings of the Districts' boards of directors.

11. The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel and the date, place and time of the regular meetings of the Board.

12. Certification from the Boards that the Districts are in compliance with all provisions of the Service Plan.

13. Copies of any Agreements with the Developer entered into in the report year.

14. Copies of any Cost Verification Reports provided to the Districts in the report year.

C. Summary of Financial Information.

The annual report shall include a summary of the following information for the report year:

1. Assessed value of Taxable Property within the Districts' boundaries.
2. Total acreage of property within the Districts' boundaries.
3. Most recently filed audited financial statements of the Districts, to the extent audit financial statements are required by state law or most recently filed audit exemption.
4. Annual budget of the Districts.
5. Resolutions regarding issuance of Debt or other financial obligations, including relevant financing documents, credit agreements, and official statements.
6. Outstanding Debt (stated separately for each class of Debt).
7. Outstanding Debt service (stated separately for each class of Debt).
8. The Districts' tax revenue.

9. Other revenues of the Districts.
10. The Districts' Public Improvements expenditures.
11. The Districts' other expenditures.
12. The Districts' inability to pay any financial obligations as they come due.
13. The amount and terms of any new Debt issued.
14. Any Developer Debt.

## **VIII. DISSOLUTION**

Upon a determination of the Town Council that the purposes for which the Districts were created have been accomplished, the Districts agree to file petitions in the District Court for dissolution, pursuant to the applicable State statutes. Dissolution shall not occur until the Districts have provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

## **IX. INTERGOVERNMENTAL AGREEMENTS**

The Intergovernmental Agreement to be entered into between the Town and the Districts at the Districts' organizational meeting is attached as **Exhibit D**. The Districts shall submit the executed Intergovernmental Agreement to the Town within ten (10) days of the Districts' organizational meeting.

The Districts shall enter into one or more intergovernmental agreements from time to time to allocate their respective responsibilities for the provision of the Public Improvements. The Districts shall submit a copy of any such intergovernmental agreement to the Town Manager within ten (10) business days of execution.

The Districts and the Developer shall also execute indemnification letters in the form attached hereto as **Exhibit H**. The Developer's indemnification letter shall be submitted to the Town as part of this Service Plan. The Districts shall approve and execute the indemnification letter at their first Board meeting after their organizational election, in the same form as the indemnification letter set forth as **Exhibit H**, and shall deliver an executed original to the Town within ten (10) days of the Districts' organizational meeting.

## **X. NON-COMPLIANCE WITH SERVICE PLAN**

In the event it is determined that the Districts have undertaken any act or omission which violates the Service Plan or constitutes a material departure from the Service Plan, the Town may impose any of the sanctions set forth in the Town Code and pursue any sanctions or remedies available under law, including but not limited to affirmative injunctive relief to require the Districts to act in accordance with the provisions of this Service Plan. To the extent permitted by law, the Districts hereby waive the provisions of C.R.S. § 32-1-207(3)(b) with respect to the

Town and agree not to rely on such provisions as a bar to the enforcement by the Town of any provisions of this Service Plan.

## **XI. MISCELLANEOUS**

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

B. Town Consent. Unless otherwise provided herein or provided in an intergovernmental agreement with the Town, references in this Service Plan to Town consent or Town approval shall require the consent of Town Council.

C. Town Expenses. The Districts shall pay any and all expenses, including but not limited to professional service fees and attorneys' fees, incurred by the Town in enforcing any provision of the Service Plan.

## **XII. CONCLUSION**

It is submitted that this Service Plan for the Districts, as required by Section 32-1-203(2), C.R.S., establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the Districts;
2. The existing service in the area to be served by the Districts is inadequate for present and projected needs;
3. The Districts are capable of providing economical and sufficient service to the area within its proposed boundaries;
4. The area to be included in the Districts does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis;
5. Adequate service is not, and will not be, available to the area through the Town or county or other existing municipal or quasi-municipal corporations, including existing special districts, within a reasonable time and on a comparable basis;
6. The facility and service standards of the Districts are compatible with the facility and service standards of the Town within which the special district is to be located and each municipality which is an interested party under Section 32-1-204(1), C.R.S.;
7. The proposal is in substantial compliance with a comprehensive plan adopted pursuant to the Town Code;
8. The proposal is in compliance with any duly adopted Town, regional or state long-range water quality management plan for the area; and

9. The creation of the Districts is in the best interests of the area proposed to be served.

**EXHIBIT A**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Legal Descriptions

**EXHIBIT B**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Johnstown Vicinity Map

**EXHIBIT C-1**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Initial District Boundary Map

**EXHIBIT C-2**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Inclusion Area Boundary Map

**EXHIBIT C-3**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Proofs of Ownership and Consent of Owners

**EXHIBIT D**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Intergovernmental Agreement between the Districts and Johnstown

**[MULTIPLE DISTRICT SERVICE PLAN]**  
**INTERGOVERNMENTAL AGREEMENT BETWEEN**  
**THE TOWN OF JOHNSTOWN, COLORADO**  
**AND**  
\_\_\_\_\_ **METROPOLITAN DISTRICT NOS.** \_\_\_\_\_

THIS AGREEMENT is made and entered into as of this \_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between the TOWN OF JOHNSTOWN, a home-rule municipal corporation of the State of Colorado (“Town”), and \_\_\_\_\_ METROPOLITAN DISTRICT NOS. \_\_\_\_\_, quasi-municipal corporations and political subdivisions of the State of Colorado (the “Districts”). The Town and the Districts are collectively referred to as the “Parties.”

**RECITALS**

WHEREAS, the Districts were organized to provide those services and to exercise powers as are more specifically set forth in the Districts’ Service Plan approved by the Town on \_\_\_\_\_ (“Service Plan”); and

WHEREAS, the Service Plan makes reference to the execution of an intergovernmental agreement between the Town and the Districts; and

WHEREAS, the Town and the Districts have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Intergovernmental Agreement (“Agreement”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

**COVENANTS AND AGREEMENTS**

1. Operations and Maintenance Limitation. The Districts shall only operate and maintain those Public Improvements that are not accepted for ownership, operations and maintenance by the Town or other appropriate entity in a manner consistent with the Approved Development Plan and other rules and regulations of the Town and the Town Code.

2. Trails and Amenities. The Districts may own, operate and maintain trails and related amenities within the Districts. All parks and trails shall be open to the general public, including Town residents who do not reside in the Districts, free of charge. Any fee imposed by the Districts for access to recreation improvements owned by the Districts, other than parks and trails, shall not result in Town residents who reside outside the Districts paying a user fee that is greater than, or otherwise disproportionate to, amounts paid by residents of the Districts and shall not result in the Districts’ residents subsidizing the use by non-Districts’ residents. The Districts shall be entitled to impose a reasonable administrative fee to cover additional expenses associated with use of District recreational improvements, other than parks

and trails, by Town residents who do not reside in the Districts to ensure that such use is not subsidized by the Districts' residents.

3. Fire Protection, Ambulance and Emergency Services Limitation. The Districts shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain fire protection facilities or services, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town. The authority to plan for, design, acquire, construct, install, relocate, redevelop or finance fire hydrants and related improvements installed as part of the water system shall not be limited by this provision. The Districts shall not be authorized to provide for ambulance or emergency medical services, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

4. Television Relay and Translation Limitation. The Districts shall not be authorized to plan for, design, acquire, construct, install, relocate, redevelop, finance, operate or maintain television relay and translation facilities and services, other than for the installation of conduit as a part of a street construction project, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

5. Telecommunication Facilities. The Districts agree that no telecommunication facilities owned, operated or otherwise allowed by the Districts shall affect the ability of the Town to expand its public safety telecommunication facilities or impair the Town's existing telecommunication facilities.

6. Construction Standards Limitation. The Districts shall ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction. The Districts shall obtain the Town's approval of civil engineering plans and applicable permits for construction and installation of Public Improvements prior to performing such work.

7. Zoning and Land Use Requirements; Sales and Use Tax. The Districts shall be subject to all of the Town's zoning, subdivision, building code and other land use requirements.

8. Growth Limitations. The Districts agree that the Town shall not be limited in implementing Town Council or voter approved growth limitations, even though such actions may reduce or delay development within the Districts and the realization of Districts' revenue.

9. Conveyance. The Districts agree to convey to the Town, at no expense to the Town and upon written notification from the Town, any real property owned by the Districts that is necessary, in the Town's sole discretion, for any Town capital improvement projects for transportation, utilities or drainage. The Districts shall, at no expense to the Town and upon written notification from the Town, transfer to the Town all rights-of-way, fee interests and easements owned by the Districts that the Town determines are necessary for access to and operation and maintenance of the Public Improvements to be owned, operated and maintained by the Town, consistent with an Approved Development Plan.

10. Privately Placed Debt Limitation. Prior to the issuance of any Privately Placed Debt, including but not limited to any Developer Debt, the Districts shall obtain the certification of an External Financial Advisor approved by the Town, in form substantially as follows:

We are [I am] an External Financial Advisor within the meaning of the Districts' Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the Districts.

The Districts shall submit written notice to the Town Manager of the name of the proposed External Financial Advisor which shall either be approved or objected to by the Town within twenty (20) days of the submittal of such written notice to the Town Manager. If the Town Manager does not object to such selection within the twenty (20) day period, the Town Manager's approval shall be deemed to have been given to the District retaining the External Financial Advisor named in the written notice.

Within ten (10) days subsequent to the issuance of Privately Placed Debt, the Districts shall provide the Town with copies of the relevant Debt documents, the External Financial Advisor Certification and the Bond Counsel Opinion addressed to the Districts and the Town regarding the issuance of the Debt.

11. Inclusion Limitation. The Districts may include all property with the Inclusion Area Boundaries, and shall provide written notice to the Town of all such inclusions concurrently therewith. The Districts shall not include within their boundaries any property outside the Inclusion Area Boundaries without the prior approval of Town Council. The Districts shall only include within its boundaries property that has been annexed to the Town and no portion of any of the Districts shall ever consist of property not within the Town's corporate boundaries.

12. Overlap Limitation. The boundaries of the Districts shall not overlap unless the aggregate Debt mill levies within the overlapping Districts will not at any time exceed the lesser of the Maximum Debt Mill Levy that applies to either of the overlapping Districts.

13. Debt Limitation. On or before the effective date of approval by the Town of an Approved Development Plan, the Districts shall not: (a) issue any Debt; (b) impose a mill levy for the payment of Debt by direct imposition or by transfer of funds from the operating fund to the Debt service funds; or (c) impose and collect any Development Fees, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

14. Maximum Debt Authorization. The Districts shall not issue Debt in excess of (\$ \_\_\_\_\_). Refunded Debt, wherein the initial debt issuance counted toward

the Maximum Debt Authorization, and Debt in the form of an intergovernmental agreement between one or more of the Districts shall not count against the Maximum Debt Authorization set forth herein.

15. Recurring Fee Limitation. The Districts may impose and collect Recurring Fees for administrative, operations and maintenance expenses and for services, programs or facilities furnished by the Districts. Any Recurring Fees for administrative, operations and maintenance expenses not specifically set forth in the Financial Plan, including a subsequent increase in such Recurring Fees, shall be subject to review and approval by the Town, either administratively or by formal action of Town Council, at the discretion of the Town Manager. If the Town does not respond to a request for the imposition of the Recurring Fee or an increase in such Recurring Fee within forty-five (45) days of receipt of a written request from the Districts, the Town shall be deemed to have approved the ability of the Districts to impose or increase the Recurring Fee as described in the request. Any Recurring Fees imposed or increased for operation and maintenance expenses without approval as set forth herein shall constitute a material departure from the Service Plan. The revenue from a Recurring Fee shall not be used to pay for Debt.

16. Monies from Other Governmental Sources. The Districts shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds or other funds available from or through governmental or non-profit entities for which the Town is eligible to apply, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the Districts without any limitation.

17. Consolidation Limitation. The Districts shall not file a request with any Court to consolidate with another Title 32 district without the prior approval of Town Council, unless such consolidation is with District No. \_\_\_\_.

18. Public Improvement Fee Limitation. The Districts shall not collect, receive, spend or pledge to any Debt or use to pay for operations and maintenance services, any fee, assessment, tax or charge which is collected by a retailer in the Districts on the sale of goods or services by such retailer and which is measured by the sales price of such goods or services, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

19. Bankruptcy Limitation. It is expressly intended that all of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Debt Mill Levy and the Recurring Fees, that have been established under the authority of the Town to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S.:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent an amendment to the Service Plan; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral

approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

The filing of any bankruptcy petition by the Districts shall constitute, simultaneously with such filing, a material departure of the express terms of this Service Plan, and thus an express violation of the approval of this Service Plan.

20. Water Rights/Resources Limitation. The Districts shall not acquire, own, manage, adjudicate or develop water rights or resources, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

21. Eminent Domain Limitation. Absent the prior written approval of the Town, the Districts shall not exercise their statutory power of eminent domain or dominant eminent domain for the purpose of condemning property outside of the Service Area. Additional approval from the Town shall not be required prior to the Districts’ exercise of their statutory power of eminent domain or dominant eminent domain with respect to property within the Service Area. In no event shall the Districts exercise their statutory power of dominant eminent domain to condemn property owned by the Town.

22. Covenant Enforcement and Design Review Services. The Districts shall have the power, but not the obligation, to provide Covenant Enforcement and Design Review Services within the Districts in accordance with the Colorado Statutes as they are amended from time to time. The Town shall not bear any responsibility for Covenant Enforcement and Design Review Services within the boundaries of the Districts. The Town’s architectural control, design review and other zoning, land use, development, design and other controls are separate requirements that must be met in addition to any similar controls or services undertaken by the Districts.

23. Special Improvement Districts. The District shall not be entitled to create a special improvement district pursuant to Section 32-1-1101.7, C.R.S., except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

24. Reimbursement Agreement with Adjacent Landowners. If the Districts utilize reimbursement agreements to obtain reimbursements from adjacent landowners for costs of improvements that benefit the third-party landowners, such agreements shall be done in accordance with Town Code. Any and all resulting reimbursements received for such improvement shall be used to re-pay the cost of the Public Improvement that is the subject of the reimbursement agreement or shall be deposited in the District’s debt service fund and used for the purpose of retiring Debt. The District shall maintain an accurate accounting of the funds received and disbursed pursuant to reimbursement agreements.

25. Land Purchase Limitation. Proceeds from the sale of Debt and other revenue of the Districts shall not be used to pay the Developer for the acquisition from the Developer of any real property, easements or other interests required to be dedicated for public use by annexation agreements, Approved Development Plans, the Town Code or other development requirements, except pursuant to an amendment to this Agreement or a subsequent intergovernmental agreement with the Town.

26. Developer Reimbursement of Public Improvement Related Costs. Prior to the reimbursement to the Developer for costs incurred in the organization of the Districts, or for funds expended on the Districts behalf related to the Public Improvements, or for the acquisition of any part of the Public Improvements, the Districts shall receive: a) the report of an engineer retained by the Districts, independent of the Developer and licensed in Colorado verifying that, in such engineer's professional opinion, the reimbursement for the costs of the Public Improvements that are the subject of the reimbursement or acquisition, including the construction costs and the soft costs, but excluding the accounting and legal fees, are, in such engineer's opinion, reasonable and are related to the provision of the Public Improvements or are related to the Districts' organization; and b) the report of an accountant retained by the Districts, independent of the Developer and licensed in Colorado verifying that, in such accountant's professional opinion, the reimbursement for the accounting and legal fees that are the subject of the reimbursement or acquisition, are, in such accountants opinion, reasonable and related to the Public Improvements or the Districts' organization. Upon request, the Districts shall provide the reports to the Town.

27. Developer Reimbursement of Administration, Operations and Maintenance Related Costs. Prior to the reimbursement to the Developer for costs incurred or for funds expended on behalf of the District related to the administration of the Districts or the operation and maintenance of the Public Improvements, the Districts shall receive the report of an accountant retained by the Districts, who is independent of the Developer and licensed in Colorado, verifying that, in such accountant's professional opinion, the reimbursement of the funds advanced for such administration, operations or maintenance costs, are, in such accountants opinion, receivable and related to the administration, operations or maintenance of the Districts or the Public Improvements. Upon request, the Districts shall provide the report to the Town.

28. Board Meetings and Website Limitations. Once an End User owns property in the Service Area, the Districts' Board meeting(s) shall be conducted within the boundaries of the Town of Johnstown. The Districts' website(s) shall include the name of the Project or a name that allows residents of the development community to readily locate the Districts online and shall also include an updated street map for those properties within the Service Area that have constructed streets that are open for public use.

29. Financial Review. The Town shall be permitted to conduct periodic reviews of the financial powers of the Districts in the Service Plan in the manner and form provided in Section 32-1-1101.5, C.R.S. As provided in the statute, the Town may conduct the first financial review in fifth calendar year after the calendar year in which a special district's ballot issue to incur general obligation indebtedness was approved by its electors. After such fifth calendar year and notwithstanding the provisions of the statute, the Town may conduct the financial review at any time, by providing sixty (60) days written notice to the Districts, except that the Town may not conduct a financial review within sixty (60) months of the completion of its most recent financial review. The Town's procedures for conducting a financial review under this Paragraph, and the remedies available to the Town as a result of such financial review, shall be identical to those provided for in Section 32-1-1101.5(2), C.R.S. The Districts shall be responsible for payment of the Town consultant and legal and administrative costs associated with such review, and the Town may require a deposit of the estimated costs thereof.

30. Service Plan Amendment Requirement. Actions of the Districts which violate the limitations set forth in this Service Plan shall be deemed to be material modifications to this Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin such actions of the Districts, including the remedy of enjoining the issuance of additional authorized but unissued debt, until such material modification is remedied.

31. Maximum Debt Mill Levy. The Maximum Debt Mill Levy shall be maximum mill levy the Districts are permitted to impose for payment of Debt and includes, as appropriate, the Maximum Commercial Debt Mill Levy and the Maximum Residential Debt Mill Levy, and shall be determined as follows:

(a) Maximum Commercial Debt Mill Levy. The Maximum Commercial Debt Mill Levy shall be fifty (50) mills subject to a Gallagher Adjustment. For the portion of any aggregate Debt which is equal to or less than fifty percent (50%) of the Commercial District's assessed valuation, either on the date of issuance or at any time thereafter, the mill levy to be imposed to repay such portion of Debt shall not be subject to the Commercial Maximum Debt Mill Levy and, as a result, the mill levy may be such amount as is necessary to pay the Debt service on such Debt, without limitation of rate.

(b) Maximum Residential Debt Mill Levy. The Maximum Residential Debt Mill Levy shall be forty (40) mills subject to a Gallagher Adjustment.

(c) Maximum Mixed-Use Debt Mill Levy. If residential real property and commercial property are included within the boundaries of the same District, whether a Residential District or a Commercial District, the Maximum Residential Debt Mill Levy shall apply, provided however, if the inclusion of the residential real property and the commercial property within the same District is approved by the Town in an amendment to this Agreement or in a subsequent intergovernmental agreement, the Maximum Commercial Debt Mill Levy shall apply.

32. Operations and Maintenance Mill Levy. The Operations and Maintenance Mill Levy shall be a mill levy the Districts are permitted to impose for payment of the Districts' administrative, operations and maintenance costs, which shall include, but not be limited to, the funding of operating reserves and sufficient ending fund balances to assure sufficient cash flow to fund expenses as they come due, and shall at all times not exceed the maximum mill levy necessary to pay those expenses.

33. Subdistricts. To the extent that a District is composed of or subsequently organized into one or more subdistricts as permitted under Section 32-1-1101, C.R.S., the term "District" as used herein shall be deemed to refer to each District and to each such subdistrict separately, so that each of the subdistricts shall be treated as a separate, independent district for purposes of the application of this definition.

34. Developer Debt Mill Levy Imposition Term. Developer Debt shall expire and be forgiven twenty (20) years after the date of the initial imposition by the Districts of an ad valorem property tax to pay any Debt, except as otherwise provided in an amendment of this Agreement or subsequent intergovernmental agreement with the Town. Refunding Bonds shall

not be subject to this Developer Debt Mill Levy Imposition Term so long as such Refunding Bonds are not owned by the Developer or by a party related to the Developer.

35. Dissolution. Upon a determination of the Town Council that the purposes for which the Districts were created have been accomplished, the Districts agree to file petitions in the District Court for dissolution, pursuant to the applicable State statutes. Dissolution shall not occur until the Districts have provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to State statutes.

36. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Districts: \_\_\_\_\_ Metropolitan District Nos. \_\_\_\_\_  
Attn:  
Phone:  
Fax:

To the Town: Attn: Town Manager  
Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534  
Phone: (970) 587-4664

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

37. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan.

38. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

39. Default/Remedies. Upon the occurrence of any event of breach or default by either Party, the non-defaulting party shall provide written notice to the other Party. The defaulting Party shall immediately proceed to cure or remedy such breach or default, and in any event, such breach or default shall be cured within fifteen (15) days after receipt of the notice.

Following the cure period in the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available by law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees, to the extent permitted by law.

40. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado and venue shall be in the County in which the Districts are located.

41. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

42. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

43. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the Districts and the Town any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Districts and the Town shall be for the sole and exclusive benefit of the Districts and the Town.

44. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

45. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

46. No Liability of Town. The Town has no obligation whatsoever to construct any improvements that the Districts are required to construct, or pay any debt or liability of the Districts, including any Bonds.

47. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

48. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

\_\_\_\_\_ METROPOLITAN  
DISTRICT NOS. \_\_\_\_\_

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary

TOWN OF JOHNSTOWN, COLORADO

By: \_\_\_\_\_  
Mayor

Attest:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

APPROVED AS TO FORM: \_\_\_\_\_

**EXHIBIT E**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Capital Plan

**EXHIBIT F**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Financial Plan

**EXHIBIT G**

SERVICE PLAN FOR [*NAME OF DISTRICT*] METROPOLITAN DISTRICT NO. \_\_\_\_

Disclosure Notice

**EXHIBIT H**

SERVICE PLAN FOR [NAME OF DISTRICT] METROPOLITAN DISTRICT NO. \_\_\_\_

Part I - Developer Indemnity Letter

{date – on or after date of Service Plan approval}

Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534

**RE:** \_\_\_\_\_ Metropolitan District Nos. \_\_\_\_

To the Town Council:

This Indemnification Letter (the “Letter”) is delivered by the undersigned (the “Developer”) in connection with the review by the Town of Johnstown (the “Town”) of the Service Plan, including all amendments heretofore or hereafter made thereto (the “Service Plan”) for the \_\_\_\_\_ Metropolitan District Nos. \_\_\_\_ (the “Districts”). Developer, for and on behalf of itself and its transferees, successors and assigns, represents, warrants, covenants and agrees to and for the benefit of the Town as follows:

1. Developer hereby waives and releases any present or future claims it might have against the Town or the Town’s elected or appointed officers, employees, agents, contractors or insurers (the “Released Persons”) in any manner related to or connected with the adoption of a Resolution of Approval regarding the Town’s approval of the Districts’ Service Plan or any action or omission with respect thereto. Developer further hereby agrees to indemnify and hold harmless the Released Persons from and against any and all liabilities costs and expenses (including reasonable attorneys’ fees and expenses and court costs) resulting from any and all claims, demands, suits, actions or other proceedings of whatsoever kind or nature made or brought by any property owner or other person or third party which directly or indirectly or purportedly arise out of or are in any manner related to or connected with any of the following: (a) the Service Plan or any document or instrument contained or referred to therein; or (b) the formation of the Districts; or (c) any actions or omissions of the Developer or the Districts, or their agents, in connection with the Districts, including, without limitation, any actions or omissions of the Developer or Districts, or their agents, in relation to any bonds or other financial obligations of the Districts or any offering documents or other disclosures made in connection therewith.

2. This Letter has been duly authorized and executed on behalf of Developer.

Very truly yours,

DEVELOPER \_\_\_\_\_

By: \_\_\_\_\_

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

Part II - District Indemnity Letter

{date – date of organizational meeting}

Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534

**RE:** \_\_\_\_\_ **District Nos.** \_\_\_\_\_

To the Town Council:

This Indemnification Letter (the “Letter”) is delivered by \_\_\_\_\_ Metropolitan District Nos. \_\_\_\_\_ (the “Districts”) in order to comply with the Service Plan, including all amendments heretofore or hereafter made thereto (the “Service Plan”) for the Districts. The Districts, for and on behalf of themselves and their transferees, successors and assigns, covenant and agree to and for the benefit of the Town as follows:

1. The Districts hereby waive and release any present or future claims they might have against the Town or the Town’s elected or appointed officers, employees, agents, contractors or insurers (the “Released Persons”) in any manner related to or connected with the adoption of a Resolution of Approval of the Town of the Districts’ Service Plan or any action or omission with respect thereto. To the fullest extent permitted by law, the Districts hereby agree to indemnify and hold harmless the Released Persons from and against any and all liabilities costs and expenses (including reasonable attorneys’ fees and expenses and court costs) resulting from any and all claims, demands, suits, actions or other proceedings of whatsoever kind or nature made or brought by any property owner or other person which directly or indirectly or purportedly arise out of or are in any manner related to or connected with any of the following: (a) the Service Plan or any document or instrument contained or referred to therein; or (b) the formation of the Districts; or (c) any actions or omissions of the \_\_\_\_\_ (the “Developer”), or their agents, in connection with the formation and organization of the Districts, including, without limitation, any actions or omissions of the Districts or Developer, or their agents, in relation to any bonds or other financial obligations of the Districts or any offering documents or other disclosures made in connection therewith, including any claims disputing the validity of the Service Plan and said Resolution of Approval of the Town.

2. It is understood and agreed that neither the Districts nor the Town waive or intend to waive the monetary limits or any other rights, immunities and protections provided by the Colorado Governmental Immunity Act, § 24-10-101, *et seq.*, C.R.S., as from time to time amended, or any other defenses, immunities, or limitations of liability otherwise available to the Town, the Districts, its officers, or its employees by law.

3. This Letter has been duly authorized and executed on behalf of the Districts.

Very truly yours,

\_\_\_\_\_ METROPOLITAN  
DISTRICT NOS. \_\_\_\_\_

By: \_\_\_\_\_  
President

Attest:

\_\_\_\_\_  
Secretary



**AGENDA ITEM 9F**

**AWARD  
OF  
CONTRACT  
(North Second Street Improvement Project)  
(Concrete Express, Inc.)**

**TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** February 22, 2017

**ITEM NUMBER:** 9F

**SUBJECT:** Consider Award of Contract to Concrete Express Inc., for North Second Street Improvement Project

**ACTION PROPOSED:** Award Contract to Concrete Express Inc.

**PRESENTED BY:** Town Manager and Consulting Engineer (Taylor Goertz –TTG Engineers -Denver)

**AGENDA ITEM DESCRIPTION:** On February 16, 2016 the Town entered into a professional services agreement with TTG Engineers-Denver for civil engineering design and construction drawings preparation for the North Second Street Improvement Project. On January 12, 2017 a request for bids for the project was advertised in the Johnstown Breeze, Denver Daily Journal (1/09/17, 1/12/17) and also sent to several contractors. A mandatory prebid conference was held on January 19, 2017.

The project boundary includes North Second Street from Parish Avenue west to Greeley Avenue. The project consists of water line replacement, removal of existing concrete sidewalks, curb and gutter, and asphalt to include furnishing and installing new concrete walks, curb and gutter, asphalt, adjustment of valve boxes, striping, access ramps, concrete crosswalks, landscaping, and miscellaneous electrical items and appurtenances.

The following firms submitted bids in response to solicitation for the project (refer to attachment):

BASE BIDS

- Concrete Express Inc. (Denver) - **\$1,308,232**
- Duran Excavating – (Greeley) - \$1,312,000
- Technology Constructors Inc., (Arvada) - \$1,568,780
- Jalisco International, Inc. – (Commerce City) - \$1,689,000
- American Civil Constructors (Littleton) - \$1,783,047.74

The engineer's preliminary estimate for the project was \$1,582,463.

Based upon a review of the bids by the Town's consulting engineer, it is recommended the contract for the North Second Street Improvement Project be awarded to Concrete Express Inc., in a total amount not to exceed **\$1,308,232** (please refer to letter of recommendation). (Note – Alternate Schedules A (high school sidewalk) and B (concrete crosswalks) contingent upon approval by RE-5J School Board).

\*Mr. Taylor Goertz, consulting engineer will be in attendance to provide a brief overview of the project and discuss the bid results.

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**LEGAL ADVICE:** The Town Attorney has reviewed the contract and bid documents.

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

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**RECOMMENDED ACTION:** Award contract to Concrete Express Inc.

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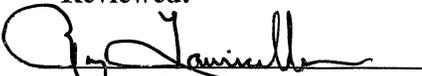
**SUGGESTED MOTIONS:**

**For Approval:** I move to award the contract for the North Second Street Improvement Project to Concrete Express Inc., in a total amount not to exceed **\$1,308,232** and also, authorize the Town Manager to approve change orders in an amount not to exceed **ten (10%)** percent of the contract amount, and authorize the Mayor to sign the agreement.

**For Denial:** I move to deny awarding the contract for the North Second Street Improvement Project to Concrete Express Inc.

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**Reviewed:**

  
Town Manager

# **AGREEMENT**

**SECTION 00 52 43**

**AGREEMENT**

THIS AGREEMENT is dated as of the \_\_\_\_\_ day of \_\_\_\_\_, in the year 20\_\_\_\_by and between

**TOWN OF JOHNSTOWN**  
(hereinafter called OWNER)

and

**CONCRETE EXPRESS, INC.**  
(hereinafter called CONTRACTOR)

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

**ARTICLE 1. WORK**

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

**NORTH SECOND STREET IMPROVEMENTS – TOWN OF JOHNSTOWN**

**ARTICLE 2. ENGINEER**

The Project has been designed by

TTG Engineers

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

**ARTICLE 3. CONTRACT TIME**

3.1 The Work will be substantially completed on \_\_\_\_\_, 2017 (160 days) and completed and ready for final payment in accordance with paragraph 14.07 of the General Conditions on \_\_\_\_\_, 2017 (180 days).

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

#### ARTICLE 4. CONTRACT PRICE

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

#### ARTICLE 5. PAYMENT PROCEDURES

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

- 5.1 Progress Payments. OWNER shall make progress payments on account of the Contract Price on the basis of CONTRACTOR's Applications for Payment as recommended by ENGINEER, on or about the thirtieth (30) day of each month during construction as provided below. All progress payments will be on the basis of the progress of the Work measured by the schedule of values established in paragraph 2.07 of the General Conditions (and in the case of Unit Price Work based on the number of units completed) or, in the event there is no schedule of values, as provided in the General Requirements.
- 5.1.1 Prior to Substantial Completion progress payments will be in the amount equal to the percentage indicated below, but, in each case, less the aggregate of payments previously made and less such amounts as ENGINEER shall determine, or OWNER may withhold, in accordance with paragraph 14.02.B.5 of the General Conditions.
- 90% of Work completed. If Work has been 50% completed as determined by ENGINEER, and if the character and progress of the Work have been satisfactory to OWNER and ENGINEER, OWNER on recommendation of ENGINEER, may determine that as long as the character and progress of the Work remain satisfactory to them, there will be no additional retainage on account of Work completed in which case the remaining progress payments prior to Substantial Completion will be in an amount equal to 100% of the Work completed.
- 90% of materials and equipment not incorporated in the Work (but delivered, suitably stored and accompanied by documentation satisfactory to OWNER as provided in paragraph 14.02.A.1 of the General Conditions).
- Nothing contained in this provision shall preclude the OWNER and CONTRACTOR from making other arrangements consistent with C.R.S. 24-91-105 prior to contract award.
- 5.1.2 Upon Substantial Completion in an amount sufficient to increase total payments to CONTRACTOR to 95% of the Contract Price, less such amounts as ENGINEER shall determine or OWNER may withhold in accordance with paragraph 14.02.B.5 of the General Conditions.
- 5.2 Final Payment. Upon final completion and acceptance of the Work in accordance with paragraph 14.07 of the General Conditions, OWNER shall pay the remainder of the Contract Price as recommended by ENGINEER as provided in said paragraph 14.07, as amended by the supplementary conditions.

#### ARTICLE 6. INTEREST

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

## ARTICLE 7. CONTRACTOR'S REPRESENTATIONS

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

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

## ARTICLE 8. CONTRACT DOCUMENTS

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

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

- 8.6 General Conditions (pages 1 to 62, inclusive) being the Standard General Conditions of the Construction Contract (2007 Edition).
- 8.7 Supplementary Conditions (pages 1 to 13, inclusive).
- 8.8 Specifications bearing the title **NORTH SECOND STREET IMPROVEMENTS – TOWN OF JOHSTOWN**, dated **January, 2017**.
- 8.9 Drawings, consisting of sheets numbered 1 through 16 inclusive with each sheet bearing the following general title:

**NORTH SECOND STREET IMPROVEMENTS**

- 8.10 Addenda numbers   1   to   2  , inclusive.
- 8.11 Documentation submitted by CONTRACTOR prior to Notice of Award (pages    to   , inclusive).
- 8.12 The following which may be delivered or issued after the Effective Date of the Agreement and are attached hereto: All Written Amendments and other documents amending, modifying, or supplementing the Contract Documents pursuant to paragraphs 3.4 and 3.5 of the General Conditions.
- 8.13 The documents listed in paragraphs 8.2 et seq. above are attached to this Agreement (except as expressly noted otherwise above).

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

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

- 9.1 Contractor shall not:
  - 1) Knowingly employ or contract with an illegal alien to perform work under this Public Contract for services; or
  - 2) Enter into a contract with a subcontractor that fails to certify to the contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under the public contract for services.
- 9.3 Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the Department of Labor and Employment program.
- 9.4 Contractor is prohibited from using the e-verify program or the Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.
- 9.5 If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, Contractor shall be required to:
  - 1) Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor

is employing or contracting with an illegal alien; and

- 2) Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph 1 of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days the subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.
- 9.6 Contractor shall comply with any reasonable request by Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to its authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes.
- 9.7 **If Contractor violates any of the aforementioned requirements, the Town may terminate the Contract for breach of contract. If this Contract is so terminated, Contractor shall be liable for actual and consequential damages to the Town of Johnstown.**

#### ARTICLE 10. MISCELLANEOUS

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

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

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

This Agreement will be effective on \_\_\_\_\_, \_\_\_\_\_.

OWNER: TOWN OF JOHNSTOWN, CO.

CONTRACTOR :  
CONCRETE EXPRESS, INC.

By \_\_\_\_\_

By \_\_\_\_\_

(CORPORATE SEAL)

(CORPORATE SEAL)

Attest \_\_\_\_\_

Attest \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

License No. \_\_\_\_\_

Agent for service of process:

\_\_\_\_\_

**LETTER  
OF  
RECOMMENDATION**



February 9, 2017

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

RE: North Second Street Improvements – Town of Johnstown  
TTG Job #: 0127066.00

Dear Mr. Lauricello,

This letter of correspondence serves as documentation of TTG's evaluation of the submitted bids for the North Second Street Improvements for the Town of Johnstown. TTG's recommendation of award of the construction Contract is included along with the following:

- Bid Summary
- Bid Evaluation
- Additional Direct Costs by Town

**Bid Summary**

A total of 5 Bids were received at the bid opening on Wednesday, February 1, 2017, held at 1:00 p.m. local time, at 450 S. Parish Avenue, Johnstown, Colorado. All bids were submitted on time and in compliance with bidding requirements set forth in the contract documents and subsequent addenda. The following is a summary of the bids:

<b>Contractor</b>	<b>Total Bid Submitted</b>
Concrete Express, Inc.	\$1,308,232.00
Duran Excavating	\$1,312,000.00
Technology Constructors, Inc	\$1,568,780.00
Jalisco International	\$1,689,000.00
American Civil Constructors	\$1,783,047.74
Engineer's Opinion of Cost	\$1,582,463.00

**Bid Evaluation**

The bid opening on February 1<sup>st</sup> resulted in Concrete Express, Inc. (CEI) as the apparent Low Bidder.



### Supplemental Information Provided by Bidder

CEI provided ten (10) reference contacts for projects of similar size and scope to the North Second Street Improvements. Article 10 of the Instruction to Bidders, allows for the Owner or Engineer to request information on previous projects completed.

All references for CEI shared favorable referrals in all of the following areas:

- Overall Project Understanding, Coordination of Phases of Work, etc...
- Coordination and Communication Capability
- Ability to complete the Project within Project Schedule
- Change Orders, Coordination & Reasonability
- Completed Project Quality

TTG also spoke with the CEI bonding company, Travelers Casualty and Surety Company of America. They indicated that CEI will have adequate bonding capacity for this project and all required bonds will be provided upon CEI receiving the award of the construction contract. Travelers Casualty and Surety Company of America has never had a bond claim while covering CEI.

### Recommendation

It is our findings that CEI is a qualified and responsible contractor. With CEI's ability and oversight of the project, TTG believes this project will be completed in a successful, efficient manner. TTG recommends that the Town of Johnstown award the construction contract to Concrete Express, Inc. for the North Second Street Improvements for the Town of Johnstown.

### Additional Direct Costs by Town

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

TTG will request 3 bids for the Material Testing portion of the project. The material testing involves periodic testing and observation for earthwork (subgrade preparation), utility trench backfill, concrete testing, and Asphalt Paving. This will be provided to the Town before construction starts.

The offsite power costs are determined by Xcel Energy. Xcel Energy is to remove the overhead power poles on site. The estimated price is to be set by Xcel Energy.



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

Sincerely,

A handwritten signature in black ink that reads "Taylor C. Goertz".

TTG Engineers

Taylor C. Goertz, P.E.

Enclosure(s):

- Bid Opening Summary
- Bid submitted by Concrete Express, Inc.
- Notice of Award
- Agreement
- Notice to Proceed



**AGENDA ITEM 9G**

**PROFESSIONAL**

**SERVICES**

**AGREEMENT**

**(Architect Design Services)**

**(Johnstown Community Recreation Center)**

**(Sink Combs Dethlefs)**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** February 22, 2017

**ITEM NUMBER:** 9G

**SUBJECT:** Consider Agreement Between the Town of Johnstown and Sink Combs Dethlefs, P.C. for architectural services related to the construction of the community recreation center

**ACTION PROPOSED:** Consider Agreement Between the Town of Johnstown and Sink Combs Dethlefs, P.C.

**PRESENTED BY:** Town Attorney

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**AGENDA ITEM DESCRIPTION:** Based on proposals submitted to the Town for architectural services related to the construction of the community recreation center, the Town Council moved to award the agreement to Sink Combs Dethlefs, P.C. and directed the Town Attorney to prepare an agreement. The proposed agreement is a modified version of the American Institute of Architect's Standard Form of Agreement Between Owner and Architect for Large or Complex Projects ("Agreement").

Of note, the Agreement provides that the fee for the architectural services, including services for landscape, engineering and aquatic design, shall total \$1,098,000 based on the proposal submitted to the Town on January 19, 2017. The Agreement provides that total reimbursable expenses shall not exceed \$33,099. The totals may increase if additional services are requested. The Agreement allows that the Town Manager may approve fees for additional services up to 5% of the contract amount.

The Agreement further provides an anticipated schedule, commencing with the completion of pre-design by March 31, 2017 and schematic design by April 30, 2017 and, along with other milestones, substantial completion of construction by November 30, 2018. Based on the schedule set forth in the Agreement, the Town will need to engage a contractor by the end of 2017. The Town will also be required to engage a surveyor and a geotechnical engineer, unless the Town requests that the Architect undertake those additional services. The Architect's proposal contains an estimate for a survey ranging from \$6,500-\$10,000 and an estimate for a geotechnical consultant ranging from \$9,000-\$12,000.

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**LEGAL ADVICE:** The Town Attorney reviewed and provided revisions to the American Institute of Architect's Standard Form of Agreement Between Owner and Architect for Large or Complex Projects.

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**FINANCIAL ADVICE:** The Agreement will involve expenditures and the Town Budget will be amended accordingly (please refer to agenda item 9H).

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**RECOMMENDED ACTION:** Approve the Agreement Between the Town of Johnstown and Sink Combs Dethlefs, P.C. for architectural services related to the construction of the community recreation center.

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**SUGGESTED MOTION:**

**For Approval:** I move to approve the Agreement Between the Town of Johnstown and Sink Combs Dethlefs, P.C. and authorize the Mayor to sign it.

**For Denial:** I move to reject the the Agreement Between the Town of Johnstown and Sink Combs Dethlefs, P.C.

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**Reviewed:**

  
Town Manager

# **AGREEMENT**

# AIA<sup>®</sup> Document B103<sup>™</sup> – 2007

## *Standard Form of Agreement Between Owner and Architect for a Large or Complex Project*

AGREEMENT made as of the Seventh day of February in the year Two Thousand Seventeen

BETWEEN the Architect's client identified as the Owner:

Town of Johnstown  
450 South Parish Avenue  
Johnstown, Colorado 80534

and the Architect:

Sink Combs Dethlefs  
475 Lincoln Street, Suite 100  
Denver, Colorado 80203

Telephone Number: 303-308-0200  
Fax Number: 303-305-0222

for the following Project:

Johnstown Community Recreation Center  
Town of Johnstown  
450 S. Parish Ave.  
Johnstown, CO 80534  
Design services for new community center including lobby spaces, locker rooms, administrative staff areas, leisure pool, gymnasium, fitness spaces, community spaces and base site development.

The Owner and Architect agree as follows.

### ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

TABLE OF ARTICLES

- 1 INITIAL INFORMATION
- 2 ARCHITECT'S RESPONSIBILITIES
- 3 SCOPE OF ARCHITECT'S BASIC SERVICES
- 4 ADDITIONAL SERVICES
- 5 OWNER'S RESPONSIBILITIES
- 6 COST OF THE WORK
- 7 COPYRIGHTS AND LICENSES
- 8 CLAIMS AND DISPUTES
- 9 TERMINATION OR SUSPENSION
- 10 MISCELLANEOUS PROVISIONS
- 11 COMPENSATION
- 12 SPECIAL TERMS AND CONDITIONS
- 13 SCOPE OF THE AGREEMENT

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(Paragraph deleted)*

§ 1.1.1 The Owner's program for the Project:

*(Paragraph deleted)*

(

As described in SCD's Proposal dated January 19, 2017, attached hereto and incorporated herein by reference as Exhibit A.

§ 1.1.2 The Project's physical characteristics:

*(Paragraph deleted)*

The new community recreation center will be approximately 60,000 square feet in area, and will likely include a pool, indoor track, gymnasium, exercise/meeting/class rooms, locker rooms, staff office, lobby, warm water leisure pool, gymnasium, fitness spaces, community spaces and parking.

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:

Building Subtotal - \$16,477,952  
Total Base Site Development - \$1,654,150  
Total Construction - \$18,132,102

§ 1.1.4 The Owner's anticipated design and construction schedule:

.1 Design phase milestone dates, if any:

March 31, 2017 - Completion of Pre-Design  
April 30, 2017 - Completion of Schematic Design

July 31, 2017 - Completion of Design Development  
November 30, 2017 - Completion of Construction Documents  
November 30, 2018 – Substantial Completion of Construction  
December 30, 2018 – Final Completion of Construction

.2 Commencement of construction:

September 01, 2017

.3 Substantial Completion date or milestone dates:

*(Paragraphs deleted)* November 30, 2018

§ 1.1.5 The Owner intends the following procurement or delivery method for the Project:

Construction Manager/General Contractor at risk

§ 1.1.6 The Owner's requirements for accelerated or fast-track scheduling, multiple bid packages, or phased construction are set forth below:

Construction schedule anticipates multiple bid packages, including earthwork, site utilities, footing, foundation, underground mechanical electrical plumbing.

§ 1.1.7 Other Project information:

*(Paragraph deleted)*

Architect shall endeavor to incorporate design elements that enhance environmental responsibility, including LEED-type concepts. Owner will not be pursuing LEED certification on this Project.

§ 1.1.8 The Owner identifies the following representative in accordance with Section 5.4:

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

Telephone Number: 970-587-4664

§ 1.1.9 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:

To be determined

§ 1.1.10 The Owner will retain the following consultants and contractors:

*(Paragraph deleted)*

.1 Cost Consultant

N/A

.2 Scheduling Consultant:

N/A

.3 Geotechnical Engineer:

To be determined

.4. Surveyor:

To be determined

*(Paragraph deleted)*

§ 1.1.11 The Architect identifies the following representative in accordance with Section 2.3:

Christopher Kastelic  
475 Lincoln Street, Suite 100  
Denver, Colorado 80203  
Telephone Number: 303-308-0200  
Fax Number: 303-308-0222

Email Address: kastelic@sinkcombs.com

§ 1.1.12 The Architect will retain the consultants identified in Sections 1.1.12.1 and 1.1.12.2:

§ 1.1.12.1 Consultants retained under Basic Services:

.1 Cost Consultant (Architect will retain Cost Consultant through Schematic Design):

DFH Consulting LLC  
David Hoffman  
2409 Primo Road, Unit F  
Highlands Ranch, Colorado 80129  
Telephone Number: 303-798-3018

.2 Structural Engineer:

Martin/Martin Consulting Engineers  
Timothy Lack  
12499 West Colfax Ave.  
Lakewood, Colorado 80215  
Telephone Number: 303-431-6100

.3 Mechanical Engineer:

The Ballard Group, Inc.  
Tim Harris

2525 South Wadsworth Blvd., Suite 200  
Lakewood, CO 80227  
Telephone Number: 303-988-4514  
Fax Number: 303-988-4517

.4 Electrical Engineer:

Innovative Electrical Systems, Inc.  
Kevin L. Yingling  
7550 West Yale Ave., Suite B-130  
Denver, Colorado 80227  
Telephone Number: 303-988-9305  
Fax Number: 303-984-8603

.5 Civil Engineer:

JVA Consulting Engineers  
Howard McHenry  
1512 Larimer Street, Suite 710  
Denver, Colorado 80202  
Telephone Number: 303-565-4934

.6 Aquatics:

Aquatic Design Group  
Justin O. Caron  
2226 Faraday Avenue  
Carlsbad, California 92008  
760-444-8304

.6 Landscape Design:

BHA Design, In.  
Roger Sherman  
1603 Oakridge Drive  
Fort Collins, Colorado 80525  
970-223-7577

§ 1.1.12.2 Consultants retained under Additional Services:

Unknown at time of execution

§ 1.1.13 Other Initial Information on which the Agreement is based:

N/A

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the schedule, the Architect's services and the Architect's compensation.

**ARTICLE 2 ARCHITECT'S RESPONSIBILITIES**

§ 2.1 The Architect shall provide the professional services as set forth in this Agreement.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect accepts responsibility for the Architect's professional performance and agrees to maintain in full force and effect an Errors and Omissions or Professional Liability Insurance Policy affording coverage in the amount of \$3,000,000 per claim and in the aggregate, for the duration of this Agreement. The contract of insurance shall insure against all claims, liabilities, damages, losses, or expenses, including reasonable attorney's fees as determined by a court, to the extent caused by, arising out of or resulting from the negligent performance of professional services contemplated in this Agreement, provided that any such claim, liability, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, or to failure of the structure or facility, or any of its components, including the loss of use resulting therefrom, and is caused, by the negligent act, error or omission of the Architect, any consultant thereto or associate thereof, anyone directly employed by the Architect, or anyone for whose acts any of them may be liable. The Architect shall submit a certificate of the policy at the signing of this Agreement and also any notices of renewals of the said policy as they occur. In addition, the Architect shall take out and maintain at the Architect's own expense general liability insurance, including automobile liability, and Workers' Compensation Insurance. Certificates of such insurance shall be furnished to the Owner. The Architect shall maintain the following minimum limits of insurance:

a. Comprehensive General Liability: Combined single limits of One Million (\$1,000,000) each occurrence and Two Million (\$2,000,000) aggregate.

b. Auto Liability: \$1,000,000 combined single limit and aggregate for bodily injury and property damage.

c. Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of Colorado and Employer's Liability limits of \$2,000,000 per accident.

d. Professional Liability Coverage: Not less than \$3,000,000 per claim and in the aggregate.

e. The policies required above to be carried by Architect, except for the Workers' Compensation insurance and Employers' Liability insurance, shall be endorsed to include the Owner, and its officers and employees, as additional insureds. Every policy required above shall be primary insurance, and any insurance carried by the Owner, its officers, or its employees, shall be excess and not contributory insurance to that provided by Architect. The additional insured endorsement for the Comprehensive General Liability insurance required above shall not contain any exclusion for bodily injury or property damage arising from completed operations. The Architect shall be solely responsible for any deductible losses under each of the policies required above.

f. Certificates of insurance shall be completed by the Architect's insurance agent as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by the Owner. Each certificate shall identify the Project and shall provide that the coverages afforded under the policies shall not be cancelled, terminated or materially changed until at least 30 days prior written notice has been given to the Owner. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be stricken from the certificate by the agent(s) completing the certificate. The Owner reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

g. Failure on the part of the Architect to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Owner may immediately terminate the

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contract, or at its discretion may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by the Owner shall be repaid by Architect to the Owner upon demand, or the Owner may offset the cost of the premiums against any monies due to Architect from the Owner.

*(Paragraphs deleted)*

§ 2.6 The Architect agrees to remedy any defects arising from the performance of this Agreement or, at the election of the Owner, to pay a reasonable cost of such remedy as performed by a competent third party chosen by the Owner.

§ 2.7 The Architect shall furnish all services as described herein, required in connection with the Project, and shall be responsible to the Owner for the employment of properly trained, qualified and competent engineers and consultants in such regard.

§ 2.8. The Architect shall not specify that asbestos containing building materials be used as a building material in any construction document for the Project.

### **ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES**

§ 3.1 The Architect's Basic Services consist of those described in Article 3 and include usual and customary structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, consult with the Owner, research applicable design criteria, attend Project meetings, communicate with members of the Project team and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit to the Owner a schedule of the Architect's services for inclusion in the Project schedule. The schedule of the Architect's services shall include design milestone dates, anticipated dates when cost estimates or design reviews may occur, and allowances for periods of time required (1) for the Owner's review (2) for the performance of the Owner's consultants, and (3) for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.4 Upon the Owner's reasonable request, the Architect shall submit information to the Owner and participate in developing and revising the Project schedule as it relates to the Architect's services.

§ 3.1.5 Once the Owner and the Architect agree to the time limits established by the Project schedule, the Owner and the Architect shall not exceed them, except for reasonable cause.

§ 3.1.6 The Architect shall not be responsible for an Owner's directive or substitution made without the Architect's approval.

§ 3.1.7 The Architect shall, at appropriate times, contact the governmental authorities required to approve the Construction Documents and the entities providing utility services to the Project. In designing the Project, the Architect shall respond to applicable design requirements imposed by such governmental authorities and by such entities providing utility services.

§ 3.1.8 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

### § 3.2 SCHEMATIC DESIGN PHASE SERVICES

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, and the proposed procurement or delivery method and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project, including the feasibility of incorporating environmentally responsible design approaches. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present for the Owner's approval a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital modeling. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider environmentally responsible design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain other environmentally responsible design services under Article 4.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics in developing a design for the Project that is consistent with the Owner's schedule and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit the Schematic Design Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Schematic Design Documents. The Architect shall furnish the services of the Cost Consultant for the Schematic Design Phase only.

§ 3.2.7 Upon receipt of the Cost Consultant's estimate at the conclusion of the Schematic Design Phase, the Architect shall take action as required under Section 6.4, and request the Owner's approval of the Schematic Design Documents. If revisions to the Schematic Design Documents are required to comply with the Owner's budget for the Cost of the Work at the conclusion of the Schematic Design Phase, the Architect shall incorporate the required revisions in the Design Development Phase.

### § 3.3 DESIGN DEVELOPMENT PHASE SERVICES

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work pursuant to Section 5.3, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and such other elements as may be appropriate. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish in general their quality levels.

§ 3.3.2 Prior to the conclusion of the Design Development Phase, the Architect shall submit the Design Development Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Design Development Documents.

§ 3.3.3 Upon receipt of the Cost Consultant's estimate at the conclusion of the Design Development Phase, the Architect shall take action as required under Sections 6.5 and 6.6 and request the Owner's approval of the Design Development Documents.

**§ 3.4 CONSTRUCTION DOCUMENTS PHASE SERVICES**

§ 3.4.1 Based on the Owner's approval of the Design Development Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Construction Documents for the Owner's approval. The Construction Documents shall illustrate and describe the further development of the approved Design Development Documents and shall consist of Drawings and Specifications setting forth in detail the quality levels of materials and systems and other requirements for the construction of the Work. The Owner and Architect acknowledge that in order to construct the Work the Contractor will provide additional information, including Shop Drawings, Product Data, Samples and other similar submittals, which the Architect shall review in accordance with Section 3.6.4.

§ 3.4.2 The Architect shall incorporate into the Construction Documents the design requirements of governmental authorities having jurisdiction over the Project.

§ 3.4.3 During the development of the Construction Documents, the Architect shall assist the Owner in the development and preparation of (1) bidding and procurement information that describes the time, place and conditions of bidding, including bidding or proposal forms; (2) the form of agreement between the Owner and Contractor; and (3) the Conditions of the Contract for Construction (General, Supplementary and other Conditions). The Architect shall also compile a project manual that includes the Conditions of the Contract for Construction and Specifications and may include bidding requirements and sample forms.

§ 3.4.4 Prior to the conclusion of the Construction Documents Phase, the Architect shall submit the Construction Documents to the Owner and the Cost Consultant. The Architect shall meet with the Cost Consultant to review the Construction Documents.

§ 3.4.5 Upon receipt of the Cost Consultant's estimate at the conclusion of the Construction Documents Phase, the Architect shall take action as required under Section 6.7 and request the Owner's approval of the Construction Documents.

§ 3.4.6 Construction drawings and specifications, or other construction documents or construction contract documents submitted by Architect to Owner for approval or to any contractors for bidding or negotiation shall be complete and unambiguous as consistent with a standard of care and performance of a nationally recognized firm of similar size and experience in the profession of architecture and in compliance with all applicable codes, ordinances, statutes, regulations and laws. By submitting the same for construction contract purposes, Architect agrees that Architect has informed the Owner of any tests, studies, analyses or reports which are necessary or advisable to be performed by or for the Owner at such point in time. Architect shall additionally confirm these facts in writing at such time, if Owner so requests.

§ 3.4.7 Owner's approval of Construction Documents shall be limited to approval as to general layout of the facility. In the event of design failure, Owner's approval of Construction Documents shall not be used as a defense against Architect's failure to perform under this Agreement.

**§ 3.5 BIDDING OR NEGOTIATION PHASE SERVICES**

**§ 3.5.1 GENERAL**

The Architect shall assist the Owner in establishing a list of prospective contractors. Following the Owner's approval of the Construction Documents, the Architect shall assist the Owner in (1) obtaining either competitive bids or negotiated proposals; (2) confirming responsiveness of bids or proposals; (3) determining the successful bid or proposal, if any; and, (4) awarding and preparing contracts for construction.

**§ 3.5.2 COMPETITIVE BIDDING**

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by

- .1 facilitating the reproduction of Bidding Documents for distribution to prospective bidders,
- .2 participating in a pre-bid conference for prospective bidders, and
- .3 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents in the form of addenda.

§ 3.5.2.3 The Architect shall consider requests for substitutions, if the Bidding Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective bidders.

### § 3.5.3 NEGOTIATED PROPOSALS

§ 3.5.3.1 Proposal Documents shall consist of proposal requirements and proposed Contract Documents.

§ 3.5.3.2 The Architect shall assist the Owner in obtaining proposals by

- .1 facilitating the reproduction of Proposal Documents for distribution to prospective contractors, and requesting their return upon completion of the negotiation process;
- .2 participating in selection interviews with prospective contractors; and
- .3 participating in negotiations with prospective contractors.

§ 3.5.3.3 The Architect shall consider requests for substitutions, if the Proposal Documents permit substitutions, and shall prepare and distribute addenda identifying approved substitutions to all prospective contractors.

### § 3.6 CONSTRUCTION PHASE SERVICES

#### § 3.6.1 GENERAL

§ 3.6.1.1 The Architect shall provide administration of the Contract between the Owner and the Contractor as set forth below and in AIA Document A201™–2007, General Conditions of the Contract for Construction. If the Owner and Contractor modify AIA Document A201–2007, those modifications shall not affect the Architect’s services under this Agreement unless the Owner and the Architect amend this Agreement.

§ 3.6.1.2 The Architect shall advise and consult with the Owner during the Construction Phase Services. The Architect shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Architect shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, nor shall the Architect be responsible for the Contractor’s failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect shall be responsible for the Architect’s negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the Work.

§ 3.6.1.3 Subject to Section 4.3, the Architect’s responsibility to provide Construction Phase Services commences with the award of the Contract for Construction and terminates on the date the Architect issues the final Certificate for Payment.

#### § 3.6.2 EVALUATIONS OF THE WORK

§ 3.6.2.1 The Architect shall visit the site at intervals appropriate to the stage of construction, which shall at a minimum consist of bi-weekly visits, or as otherwise required in Section 4.3.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and report to the Owner (1) known deviations from the Contract Documents and from the most recent construction schedule, and (2) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor,

Subcontractors, material and equipment suppliers, their agents or employees or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201-2007, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

### § 3.6.3 CERTIFICATES FOR PAYMENT TO CONTRACTOR

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated and that the quality of the Work is in accordance with the Contract Documents. The foregoing representations are subject (1) to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) to results of subsequent tests and inspections, (3) to correction of minor deviations from the Contract Documents prior to completion, and (4) to specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and material suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

### § 3.6.4 SUBMITTALS

§ 3.6.4.1 The Architect shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review.

§ 3.6.4.2 In accordance with the Architect-approved submittal schedule, the Architect shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Architect, of any construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review shop drawings and other submittals related to the Work designed or certified by the design professional retained by the Contractor

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that bear such professional's seal and signature when submitted to the Architect. The Architect shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to the provisions of Section 4.3, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth in the Contract Documents the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

### § 3.6.5 CHANGES IN THE WORK

§ 3.6.5.1 The Architect may authorize minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to the provisions of Section 4.3, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

### § 3.6.6 PROJECT COMPLETION

§ 3.6.6.1 The Architect shall conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion; receive from the Contractor and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and assembled by the Contractor; and issue a final Certificate for Payment based upon a final inspection indicating the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When the Work is found to be substantially complete, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance and prepare a warranty punch list for items of work to be completed by the Contractor.

§ 3.6.6.6 The Architect shall conduct observations related to each warranty punch list item. An eleven-month observation shall be required following preparation of the above-referenced warranty punch list and a twenty-two month observation shall thereafter be required. These observations shall be conducted at a time mutually acceptable to the Owner, Contractor, and Architect and shall involve the Owner, Contractor, and Architect.

§ 3.6.6.7 When construction is complete the Architect shall obtain from the Contractor one complete set, in hard copy and electronic versions of Drawings and Specifications upon which the Contractor has marked in red (on hard copies) and clouded (electronically), all modifications made during construction so as to represent the as-built condition of the Project and shall deliver same to the Owner, along with the Architect's original tracings or permanent reproducible and electronic copies of the Drawings and Specifications.



- .1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including, but not limited to, size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method, or bid packages in addition to those listed in Section 1.1.6;
- .2 Services necessitated by the Owner's request for extensive environmentally responsible design alternatives, such as unique system designs, in-depth material research, energy modeling, or LEED® certification;
- .3 Changing or editing previously prepared Instruments of Service necessitated by the enactment or revision of codes, laws or regulations or official interpretations;
- .4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;
- .5 Preparing digital data for transmission to the Owner's consultants and contractors, or to other Owner authorized recipients;
- .6 Preparation of design and documentation for alternate bid or proposal requests proposed by the Owner;
- .7 Preparation for, and attendance at, a public presentation, meeting or hearing;
- .8 Preparation for, and attendance at a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;
- .9 Evaluation of the qualifications of bidders or persons providing proposals;
- .10 Consultation concerning replacement of Work resulting from fire or other cause during construction; or
- .11 Assistance to the Initial Decision Maker, if other than the Architect.

§ 4.3.2 To avoid delay in the Construction Phase, the Architect shall provide the following Additional Services, notify the Owner in writing with reasonable promptness, and explain the facts and circumstances giving rise to the need. If the Owner subsequently determines that all or parts of those services are not required, the Owner shall give prompt written notice to the Architect, and the Owner shall have no further obligation to compensate the Architect for those services:

- .1 Reviewing a Contractor's submittal out of sequence from the submittal schedule agreed to by the Architect;
- .2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;
- .3 Preparing Change Orders, and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;
- .4 Evaluating an extensive number of Claims as the Initial Decision Maker;
- .5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom; or
- .6 To the extent the Architect's Basic Services are affected, providing Construction Phase Services 60 days after (1) the date of Substantial Completion of the Work or (2) the anticipated date of Substantial Completion identified in Initial Information, whichever is earlier.

§ 4.3.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

- .1 Two ( 2 ) reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor
- .2 Forty-eight ( 48 ) visits to the site by the Architect over the duration of the Project during construction
- .3 Two ( 2 ) inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents
- .4 One ( 1 ) inspections for any portion of the Work to determine final completion

§ 4.3.4 If the services covered by this Agreement have not been completed within Thirty ( 30 ) months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

## ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, schedule, constraints and criteria, including space requirements and relationships, flexibility, expandability, special equipment, systems and site requirements. Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of or enforce lien rights.

*(Paragraph deleted)*

§ 5.3 The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall furnish the services of a Construction Manager/General Contractor that shall be responsible for preparing all estimates of the Cost of the Work for all phases subsequent to Schematic Design. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the budget for the Cost of the Work or in the Project's scope and quality.

§ 5.3.1 The Owner acknowledges that accelerated, phased or fast-track scheduling provides a benefit, but also carries with it associated risks. Such risks include the Owner incurring costs for the Architect to coordinate and redesign portions of the Project affected by procuring or installing elements of the Project prior to the completion of all relevant Construction Documents, and costs for the Contractor to remove and replace previously installed Work. If the Owner selects accelerated, phased or fast-track scheduling, the Owner agrees to include in the budget for the Project sufficient contingencies to cover such costs.

§ 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations. The Architect shall review the tests and advise the Owner about any concerns related to the sufficiency of any such tests and information derived therefrom.

§ 5.7 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided.

§ 5.8 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 5.9 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

§ 5.10 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. The Architect shall similarly provide prompt written notice to Owner if Architect becomes aware of any defect in the Project or non-conformance under the Contract Documents.

§ 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Contractor and the Architect's consultants through the Architect about matters arising out of or relating to the Contract Documents. The Owner shall promptly notify the Architect of any direct communications that may affect the Architect's services.

§ 5.12 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.13 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

## ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work does not include the compensation of the Architect, the costs of the land, rights-of-way, financing, contingencies for changes in the Work or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and may be adjusted throughout the Project as required under Sections 5.3 and 6.4. Evaluations of the Owner's budget for the Cost of the Work represent the Architect's judgment as a design professional.

§ 6.3 The Owner shall require the Cost Consultant to include appropriate contingencies for design, bidding or negotiating, price escalation, and market conditions in estimates of the Cost of the Work. The Architect shall be entitled to rely on the accuracy and completeness of estimates of the Cost of the Work the Cost Consultant prepares as the Architect progresses with its Basic Services. The Architect shall prepare, as an Additional Service, revisions to the Drawings, Specifications or other documents required due to the Cost Consultant's inaccuracies or incompleteness in preparing cost estimates. The Architect may review the Cost Consultant's estimates solely for the Architect's guidance in completion of its services, however, the Architect shall report to the Owner any material inaccuracies and inconsistencies noted during any such review.

§ 6.4 If, prior to the conclusion of the Design Development Phase, the Cost Consultant's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect, in consultation with the Cost Consultant, shall make appropriate recommendations to the Owner to adjust the Project's size, quality or budget, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.5 If the estimate of the Cost of the Work at the conclusion of the Design Development Phase exceeds the Owner's budget for the Cost of the Work, the Owner shall

- .1 give written approval of an increase in the budget for the Cost of the Work;
- .2 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or
- .3 implement any other mutually acceptable alternative.

§ 6.6 If the Owner chooses to proceed under Section 6.5.2, the Architect, without additional compensation, shall incorporate the required modifications in the Construction Documents Phase as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Design Development Phase Services, or the budget as adjusted under Section 6.5.1. The Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility as a Basic Service under this Article 6.

§ 6.7 After incorporation of modifications under Section 6.6, the Architect shall, as an Additional Service, make any required revisions to the Drawings, Specifications or other documents necessitated by subsequent cost estimates that

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exceed the Owner's budget for the Cost of the Work, except when the excess is due to changes initiated by the Architect in scope, basic systems, or the kinds and quality of materials, finishes or equipment.

## **ARTICLE 7 COPYRIGHTS AND LICENSES**

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project. If the Owner and Architect intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 Upon execution of this Agreement, the Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under this Agreement. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and material or equipment suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Notwithstanding the foregoing provisions of Article 7, the Owner may disclose Instruments of Service, or any other information, if required by law.

## **ARTICLE 8 CLAIMS AND DISPUTES**

### **§ 8.1 GENERAL**

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 To the extent damages are covered by property insurance, the Owner and Architect waive all rights against each other and against the contractors, consultants, agents and employees of the other for damages, except such rights as they may have to the proceeds of such insurance as set forth in AIA Document A201-2007, General Conditions of the Contract for Construction. The Owner or the Architect, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

§ 8.1.3 Architect shall indemnify, save and hold harmless the Owner, Owner's consultants, employees and agents, or any of them, from and against any and all liabilities, claims, damages, actions judgments, losses, costs and expenses, including but not limited to reasonable attorneys' fees, to the extent such claims are caused by any negligent act or omission of, or breach of contract by, the Architect, its employees, consultants, sub-consultants or assignees pursuant to the terms of this Contract, regardless of whether or not such claim is caused in part by a party indemnified hereunder.

§ 8.1.4 The Architect and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 9.7.

§ 8.2 MEDIATION

§ 8.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to mediation as a condition precedent to binding dispute resolution. If such matter relates to or is the subject of a lien arising out of the Architect's services, the Architect may proceed in accordance with applicable law to comply with the lien notice or filing deadlines prior to resolution of the matter by mediation or by binding dispute resolution.

§ 8.2.2 The Owner and Architect shall endeavor to resolve claims, disputes and other matters in question between them by mediation which, unless the parties mutually agree otherwise, shall be administered by the Judicial Arbitrator Group in Denver, Colorado or JAMS in Denver, Colorado, or another mutually agreeable mediator or mediation group. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order.

§ 8.2.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

§ 8.2.4 If the parties do not resolve a dispute through mediation pursuant to this Section 8.2, the method of binding dispute resolution shall be the following:

- Arbitration pursuant to Section 8.3 of this Agreement
- Litigation in a court of competent jurisdiction
- Other (*Specify*)

(Paragraphs deleted)

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Architect shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for the reasonable expenses directly incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted, if warranted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 In the event of termination not the fault of the Architect, the Architect shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 9.7.

§ 9.7 Termination Expenses are in addition to compensation for the Architect's services and include expenses directly attributable to termination for which the Architect is not otherwise compensated, plus an amount for the Architect's anticipated profit on the value of the services not performed by the Architect. If termination is for cause or arises from an Act of God or other cause for which Owner has no control, no amount for anticipated profit shall be paid. If termination is for Owner's convenience and without cause, Owner agrees to pay an amount for anticipated profit equal to 5% of the remaining unbilled contract amount, in a total amount not to exceed \$5,000. If termination relates in whole or in part to the Owner's failure to acquire land to construct the community recreation center, no amount for anticipated profit shall be paid.

§ 9.8 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 11.9.

#### ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the place where the Project is located, except that if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 8.3.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201-2007, General Conditions of the Contract for Construction.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's

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confidential or proprietary information if the Owner has previously advised the Architect in writing of the specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project.

§ 10.8 If the Architect or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except to (1) its employees, (2) those who need to know the content of such information in order to perform services or construction solely and exclusively for the Project, (3) its consultants and contractors whose contracts include similar restrictions on the use of confidential information, or (4) as otherwise required by law.

**ARTICLE 11 COMPENSATION**

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

See Exhibit A.

§ 11.2 For Additional Services designated in Section 4.1, the Owner shall compensate the Architect as follows:

See Exhibit A.

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.3, the Owner shall compensate the Architect as follows:

As mutually agreed upon by Owner and Architect prior to commencement of Additional Services.

§ 11.4 Compensation for Additional Services of the Architect's consultants when not included in Sections 11.2 or 11.3, shall be the amount invoiced to the Architect plus percent ( %), or as otherwise stated below:

As mutually agreed upon by Owner and Architect prior to commencement of Additional services.

§ 11.5 Where compensation for Basic Services is based on a stipulated sum or percentage of the Cost of the Work, the compensation for each phase of services shall be as follows:

Schematic Design Phase	Fifteen	percent (	15	%)
Design Development Phase	Twenty	percent (	20	%)
Construction Documents Phase	Forty	percent (	40	%)
Bidding or Negotiation Phase	Five	percent (	5	%)
Construction Phase	Twenty	percent (	20	%)
<b>Total Basic Compensation</b>	<b>one hundred</b>	<b>percent (</b>	<b>100</b>	<b>%)</b>

The Owner acknowledges that with an accelerated Project delivery or multiple bid package process, the Architect may be providing its services in multiple Phases simultaneously. Therefore, the Architect shall be permitted to invoice monthly in proportion to services performed in each Phase of Services, as appropriate.

§ 11.6 When compensation is based on a percentage of the Cost of the Work and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions, in accordance with the schedule set forth in Section 11.5 based on (1) the lowest bona fide bid or negotiated proposal, or (2) if no such bid or proposal is received, the most recent estimate of the Cost of the Work for such portions of the Project. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.  
*(Paragraph deleted)*

Employee or Category	Rate
Dethlefs, Barnard, Kastelic	\$275
Harvey, Joyner, Stephens	\$250
Associate Principal	\$200
Sr. Project Manager/Sr. Associate	\$160
Project Manger/Associate	\$135
Architect/Team Lead II	\$100
Architect/Team Lead I	\$90
Architectural Intern	\$75
Senior Interior Designer	\$100
Interior Designer	\$70
Senior Visualization	\$110
Visualization	\$80
Senior Admin	\$80
Admin	\$60

**§ 11.8 COMPENSATION FOR REIMBURSABLE EXPENSES**

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Long distance services, dedicated data and communication services, teleconferences, Project Web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 Architect's Consultant's expense of professional liability insurance dedicated exclusively to this Project, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Architect's consultants;
- .9 All taxes levied on professional services and on reimbursable expenses;
- .10 Site office expenses; and
- .11 Other similar Project-related expenditures.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus Zero percent ( 0.00 %) of the expenses incurred.

**§ 11.9**

*(Paragraphs deleted)*

The Town Manager may provide written approval of compensation for Additional Services referenced in Section 11.2 and Section 11.3 in a total amount not to exceed five-percent (5%) of the compensation for Architect's Basic Services as set forth in Exhibit A.

**§ 11.10 PAYMENTS TO THE ARCHITECT**

§ 11.10.1 An initial payment of Zero Dollars and Zero Cents (\$ 0.00 ) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 11.10.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Amounts unpaid Ninety ( 90 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Architect.

3.00 % monthly

§ 11.10.3 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

## ARTICLE 12 SPECIAL TERMS AND CONDITIONS

§ 12.1 Special terms and conditions that modify this Agreement are as follows:

Appropriation of Funds: Pursuant to C.R.S. § 24-91-103.6, as may be amended from time to time, the Owner has appropriated the money necessary to fund this Project and compensate the Architect as set forth herein. No change order or other form of directive shall be issued by the Owner requiring additional compensable work to be performed by Architect, which causes the aggregate amount payable under this Agreement to exceed the amount appropriated for the original contract amount, unless the Architect is given written assurance by the Owner that lawful appropriations have been made by the Owner to cover the cost of the additional work or unless such work is covered under the remedy-granting provisions of this Agreement.

Illegal Aliens: Architect certifies, warrants, and agrees that it shall not knowingly employ or contract with an illegal alien to perform work under this contract and shall 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 Department of Labor and Employment program. Architect shall not knowingly employ or contract with an illegal alien to perform work under this contract or enter into a contract with a sub-consultant that fails to certify to Architect that the sub-consultant shall not knowingly employ or contract with an illegal alien to perform work under this contract. Architect (a) shall not use E-Verify Program or Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while this contract is being performed, (b) shall notify the sub-consultant and the Owner within three days if Architect has actual knowledge that a sub-consultant is employing or contracting with an illegal alien for work under this contract, (c) shall terminate the subcontract if a sub-consultant does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to C.R.S. § 8-17.5-102(5), by the Colorado Department of Labor and Employment. If Architect fails to comply with any requirement of this provision or C.R.S. § 8-17.5-101 et seq., the Owner may terminate this contract for breach and, if so terminated, Architect shall be liable for actual and, notwithstanding provisions to the contrary in this Agreement, consequential damages.

Governmental Immunity: Nothing herein shall be construed as a waiver of the limitations on damages or any of the privileges, immunities or defenses provided to, or enjoyed by, Owner under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as from time to time amended.

Colorado Public Works Act: Notwithstanding any other provision of the Contract Documents, the Owner may withhold funds to pay the Contractor if required to do so pursuant to the Colorado Public Works Act, C.R.S. §§38-26-101, et seq.

Costs and Attorney Fees: In the event of litigation enforcing or interpreting the terms of the Agreement, the prevailing party shall be entitled an award of reasonable attorney fees and all costs of suit, including expert witness fees, court reporter fees and similar litigation expenses, except that the Owner shall only be required to pay such fees to the extent permitted by law.

## ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents listed below:

.1 AIA Document B103™-2007, Standard Form Agreement Between Owner and Architect  
(Paragraphs deleted)

.2 Other documents:

Exhibit A: SCD Proposal dated January 19, 2017

This Agreement entered into as of the day and year first written above.

**OWNER**

**ARCHITECT**

\_\_\_\_\_  
(Signature)

Scott James, Mayor

\_\_\_\_\_  
(Printed name and title)

\_\_\_\_\_  
(Signature)

Christopher Kastelic, Vice President

\_\_\_\_\_  
(Printed name and title)

**ATTEST**

\_\_\_\_\_  
Diana Seele, Town Clerk



**SINKCOMBSDETHLEFS**  
SPORTS ARCHITECTURE

DENVER | CHICAGO | ANN ARBOR | LOS ANGELES

January 19, 2017

Diana Seele, Town Clerk  
Town of Johnstown  
450 S. Parish Avenue  
Johnstown, Colorado 80534

Dear Mayor Scott James and members of Town Council,

It should go without saying that we are very excited about the opportunities the new Community Recreation Center offers to the Town of Johnstown, but we are very excited about the project as well. After our interview on January 10th, we left with a new understanding of the project goals, and expectations of Town Council to deliver a cost-effective, functional and timeless center for generations of Johnstown residents and visitors alike.

Now we must convey to you that we are the right team to help bring this project to a successful reality. We have prepared this formal proposal to demonstrate that we will provide comprehensive design services, with an experienced team, and a proposed competitive fee that shows just how serious we are about wanting to work on this project. We will also commit to a design schedule, and construction management services that will deliver the completed project by late 2018. We have provided a detailed schedule and work plan that demonstrates how we will accomplish this requirement.

We organized our interview around the idea that a great project should be "rooted in the past, but look forward to the future". We very much look forward to the opportunity to work with you on this landmark project, to show you what a great process we are capable of managing, and what a great design we will together create for the future of Johnstown.

If you have any questions regarding the information in this proposal, or any of the services we have listed, please do not hesitate to contact us.

Sincerely,

Chris Kastelic, AIA, LEED AP  
Principal | Vice President  
Sink Combs Dethlefs  
kastelic@sinkcombs.com  
303.249.6446 cell

EXHIBIT A



# Formal Proposal

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## **OUR UNDERSTANDING OF THE PROJECT**

In our interview in Johnstown on the night of January 10th, we feel that we gained a new insight into the goals of the project, as well as renewed enthusiasm for the great center that Johnstown has in its future. The questions posed by Town Council and the selection committee were thoughtful, and gave us a better understanding of the project challenges and concerns of the Town. In particular, questions related to cost management, budget control, and the desire to be in the building by late 2018, set the priorities pretty clearly. In response, we have prepared a proposal that is responsive to the values - a highly competitive fee proposal and a fast-tracked schedule.

We have reviewed the 2013 Recreation Center Feasibility report, including the citizens' survey results, and the PB&A Marketplace Intelligence report outlining the amenities and features that citizens' most want to see in their new center. Based on the findings of these studies, we have prepared a more detailed program statement, aligned with current construction costs, to help visualize the project parameters. We believe we are prepared to help guide this project to a successful completion, and very much look forward to assisting the Town to this goal.

## **PROJECT PROGRAM**

In our review of the citizens' preference survey and the feasibility report, we developed a program that is responsive to the facility already outlined. We made a few slight adjustments to help clarify the list of spaces, and better reflect current trends in aquatics, fitness and user comfort. We were also very conscious of building operations such as storage and support spaces, and made sure that those were adequately represented. In short, we believe the program Johnstown envisions is readily achievable in the current budget and the program we developed demonstrates our knowledge. As part of the project, we intend to have in-depth conversations with Town staff and other stakeholders to ensure that the program ultimately reflects the expectations of the citizens.

## **FEE PROPOSAL**

We have prepared a very competitive fee proposal that demonstrates our desire to be part of this landmark project. We carefully evaluated the schedule, work plan, and anticipated tasks and developed our fee accordingly. We are also working with a team of consultants that we have partnered with on countless projects, and requested the same competitive fee approach. Knowing that they all value client service and quality work product, we have every confidence that they will deliver their best work. It is incumbent upon us to manage a smooth project, with timely decisions and meet the fast-paced schedule to allow our fee to be most efficiently dedicated to the work ahead.

## **SCOPE OF SERVICES**

We have outlined a thorough list of our services, by phase and discipline to demonstrate that the fee we have provided is inclusive of all the services necessary to deliver a state-of-the-art community recreation center. We have attempted to cover every nuance of the project tasks, but if we have overlooked any items, rest-assured it does not mean that we will not provide the service, and would ask for the opportunity to discuss.

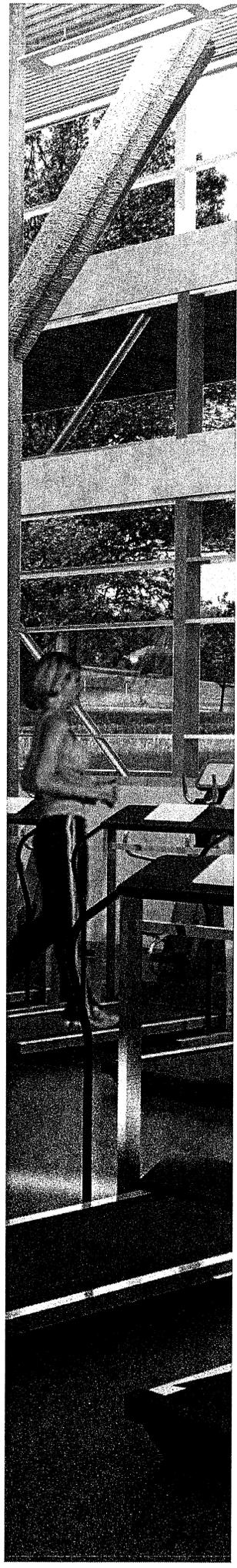


EXHIBIT A

**OUR COST CONTROL APPROACH**

- 1) We maintain thorough and detailed construction cost averages for recreation center projects across the region, that are regularly updated with market conditions, escalation and other factors to ensure, that at a fundamental level, our buildings are cost effective.
- 2) We employ the services of independent cost consultant, Dave Hoffman, formerly head of preconstruction for Saunders Construction, to analyze our projects. His estimates are some of the best in the industry, and allow us to have independent corroboration of our numbers, and the costs ultimately established by the selected Contractor. We pay his fees out of our architectural fee, because we believe the value of the information is worth the out-of-pocket expense.
- 3) We work with all of the largest Contractors in the region, and can also draw on their feedback for specific cost questions and challenges as the project warrants.
- 4) We track costs on the project on an ongoing basis, adjusting in real-time, as the drawings change to always have a picture of the costs at any point in the process. This is vastly preferred to waiting until project milestones to perform cost estimates, only to find the costs have strayed from the budget. In this way, we are better able to track costs throughout the project, without the surprise of cost overruns at any point in the design.

Below is a chart showing our project cost control of budget versus actual bid amounts.

PROJECT	AREA (SF)	PROJECT BUDGET	BID AMOUNT	COST (\$/SF)	CHANGE ORDERS (\$)	CHANGE ORDERS (%)
Southridge Recreation Center*	71,880	\$12,800,000	\$12,600,000	\$175	\$135,000	1.07%
Mesa State College Maverick Center*	216,155	\$39,500,000	\$39,086,180	\$181	\$295,084	0.75%
Parker Fieldhouse	99,296	\$12,700,000	\$12,405,369	\$125	\$99,856	0.80%
Fruita Community Recreation Center and Library*	55,000	\$12,300,000	\$12,109,248	\$220	\$56,500	0.47%
Greely Family FunPlex*	66,052	\$10,500,000	\$10,436,766	\$158	\$102,376	0.98%
Fraser Grand Park Community Recreation Center**	50,000	\$12,079,317	\$13,025,977	\$261	\$115,155	0.88%
CU Basketball Practice	43,661	\$9,224,438	\$8,661,123	\$198	\$94,224	1.09%
UNC Athletic Center Addition/Renovation	72,500	\$10,500,000	\$10,279,983	\$142	\$156,773	1.53%
Colorado School of Mines Student Recreation Center*	108,000	\$22,000,000	\$21,500,080	\$199	\$245,689	1.14%
Stapleton Central Park Recreation Center*	56,940	\$13,500,000	\$13,518,936	\$237	\$146,331	1.08%
Aurora Beck Recreation Center Addition/Renovation	58,795	\$7,500,000	\$7,553,000	\$128	\$126,587	1.68%
Eastern Washington Student Recreation Center	117,885	\$22,500,000	\$22,266,475	\$189	\$236,521	1.06%
UCCS Campus Recreation Center*	48,550	\$11,000,000	\$10,812,853	\$223	\$114,754	1.06%

\* Project includes indoor aquatics

\*\*The owner elected to contribute additional funds to the project rather than reducing cost, quality and scope

EXHIBIT A

**PROJECT SCHEDULE CONTROL**

We maintain a flawless track record of on-time performance through a rigorous process of regular meetings, issue tracking and management, critical path updates and overall commitment to the schedules of teams and users that will rely on this building when complete. We are acutely aware of the need to open the project well in advance, to ensure proper start-up and staff training, and we have never missed a deadline for the intended opening of a project. We maintain our design schedule through a variety of means and employ the following strategies.

1. We recognize that a key driver to the schedule is the decision process of key stakeholders. We believe that our role is to provide the most competent and informative tools to assist in the decision making process and make well informed decisions to build consensus and move the project forward. In other words, we can't blame the Town for delaying decisions if we haven't provided the right information to make those decisions quickly and with confidence.
2. Simply stated, we stay on schedule when we stay on budget. The most common schedule delay on a project is the time lost when a project stalls for redesign due to budget overruns. We believe that constant cost tracking, not just at milestones, allows for a smoother project and helps mitigate surprises and delays due to budget issues.
3. We also hold our consultant team to the same schedule commitments. Through regular consultant meetings, and specific action items for the team, we can better assist the entire team in reaching schedule milestones, and eliminate causes for delays.
4. We also understand that schedule control doesn't end at design. Our greatest risk in construction is not errors (these are few, and seldom reach the magnitude of a critical problem), it is the cost of delaying the contractor, and the value of their time on site. We respond in a timely manner to all requests for information, submittal review, and field responses to ensure that we are not responsible for any construction delays. If issues arise, we convene the consultant team, and tackle the solutions quickly and thoroughly. It cannot be stated enough, the importance of responsiveness during the building phase.

The following table shows a track record of project that opened on-time and without delays.

PROJECT	Drawings Issued for Bid On-Time	Initial Contract Duration (mos.)	Final Completion (mos.)
Highlands Ranch Southridge	Yes	13	13
Mesa State College Maverick Center	Yes	18	18
Parker Fieldhouse	Yes	9	9
Fruita Community Recreation Center and Library*	Yes	14.5	16
Greely Family FunPlex	Yes	13	13
Fraser Grand Park Community Recreation Center	Yes	16	15
Dickinson State Badland Activity Center	Yes	15	15
CU Basketball Practice	Yes	15	15
UNC Butler Hancock Athletic Center Addition/Renovation	Yes	14	13.5
Colorado School of Mines Student Recreation Center	Yes	18	19
Stapleton Central Park Recreation Center	Yes	14	13.5
Aurora Beck Recreation Center Addition/Renovation	Yes	10	9.5
Eastern Washington Student Recreation Center	Yes	15	15
UCCS Campus Recreation Center	Yes	11	12

\*Project was under budget, additional funds allowed scope added during construction

# Potential Program

## Base Support Spaces

	Area SF	\$/SF	Const. Cost
<b>Lobby Spaces</b>			
Entry Hall/Lobby/Vestibule	1,000	\$250	\$250,000
Casual Activity Lounge	400	\$250	\$100,000
Reception/Access Control	200	\$280	\$56,000
Public Restrooms (2)	240	\$290	\$69,600
Mech./Circ./Walls/Struct., etc.	368	\$230	\$84,640
<b>Total Lobby Spaces</b>	<b>2,208</b>		<b>\$560,240</b>

## Locker Rooms

Men's Locker Room	1,000	\$290	\$290,000
Women's Locker Room	1,100	\$290	\$319,000
Family Change Dressing Area	250	\$290	\$72,500
Family Change Stalls (4)	160	\$290	\$46,400
Family Changing Rooms (3)	300	\$290	\$87,000
Mech./Circ./Walls/Struct., etc.	562	\$230	\$129,260
<b>Total Locker Rooms</b>	<b>3,372</b>		<b>\$944,160</b>

## Administrative Staff Areas

Director's Office	150	\$250	\$37,500
Private Offices (3 @ 110 sf)	330	\$250	\$82,500
Open Workstations (4@80 sf)	320	\$250	\$80,000
Conference / Flex Office	180	\$250	\$45,000
Office Storage	50	\$250	\$12,500
Staff Break Room	150	\$300	\$45,000
Work/Copy Room	150	\$300	\$45,000
General Building Storage	300	\$230	\$69,000
Mech./Circ./Walls/Struct., etc.	326	\$230	\$74,980
<b>Total Staff Areas</b>	<b>1,956</b>		<b>\$491,480</b>

## Swimming Pools

	Area SF.	\$/SF	Const. Cost
<b>Aquatic Support</b>			
Aquatic Manager's Office	175	\$275	\$48,125
Lifeguard Room	200	\$275	\$55,000
Pool Storage	30	\$250	\$7,500
<b>Total Aquatic Support</b>	<b>405</b>		<b>\$110,625</b>

## Warm Water Leisure Pool

Natatorium (Pool Area, Decks)	11,153	\$300	
Warm Water Activity Pool	3,500	\$250	\$875,000
3 lap swimming lanes	1,688	\$250	\$421,875
Play Feature Allowance			\$360,000
Spa	180	\$500	\$90,000
Pool Party Room / Classroom	600	\$250	\$150,000
Pool Mechanical Rooms	1,297	\$250	\$324,219
Mech./Circ./Walls/Struct., etc.	1,985	\$230	\$456,435
<b>Total Warm Water Leisure Pool</b>	<b>15,215</b>		

## Gymnasium

### Multi-Activity Gymnasium

Gymnasium (3-44'x72 courts)	15,088	\$240	\$3,621,120
Gymnasium Seating for 350	1,050	\$240	\$252,000
Gymnasium Storage	600	\$240	\$144,000
Mech./Walls/Struct., etc.	2,421	\$230	\$556,761
<b>Total Gymnasium</b>	<b>19,159</b>		<b>\$4,573,881</b>

### Elevated Running Track

Running Track (3-lane, 1/8 mile)	5,940	\$120	\$712,800
Mech./Walls/Struct., etc.	0	\$0	\$0
<b>Total Running Track</b>	<b>5,940</b>		<b>\$712,800</b>

EXHIBIT A

**Fitness Spaces**

	Area SF	\$/SF	Const. Cost
<b>Fitness Center</b>			
Strength Training (10 stations)	1,000	\$275	\$275,000
Circuit Training (16 stations)	1,200	\$275	\$330,000
Cardiovascular Training (30 stations)	1,500	\$275	\$412,500
Stretching/Plyometrics/Cross Training	800	\$275	\$220,000
Supervisor	100	\$275	\$27,500
Mech./Walls/Struct., etc.	920	\$230	\$211,600
<b>Total Fitness Center</b>	<b>5,520</b>		<b>\$1,476,600</b>

**Group Exercise Studio**

Aerobics/Dance Studio (30 persons)	1,800	\$275	\$495,000
Aerobics Room Storage (shared)	250	\$250	\$62,500
Mech./Circ./Walls/Struct., etc.	410	\$230	\$94,300
<b>Total Group Exercise</b>	<b>2,460</b>		<b>\$651,800</b>

**Community Spaces**

**Multipurpose Meeting Rooms**

Multipurpose Room (120 seats, divisible)	1,500	\$275	\$412,500
Catering Kitchen	350	\$350	\$122,500
Storage	250	\$240	\$60,000
Mech./Walls/Struct.,etc.	370	\$230	\$85,100
<b>Total Multi-purpose Meeting Areas</b>	<b>2,470</b>		<b>\$680,100</b>

**Child Sitting**

Child Sitting Room (12 kids)	600	\$275	\$165,000
Office	100	\$250	\$25,000
Children's Restroom	50	\$290	\$14,500
Storage	50	\$230	\$11,500
Mech./Circ./Walls/Struct., etc.	160	\$230	\$36,800
<b>Total Child Care Center</b>	<b>960</b>		<b>\$252,800</b>

**Building Subtotal** 59,664 \$276 \$16,477,952

**Base Site Development**

Parking (240 spaces for 60,000 SF)	\$504,000
Entry Drives, site circulation	\$54,000
Plazas, paving, trails	\$240,000
Site Earthwork / Import Fill	\$100,000
Landscaping (50% of Dev'd Area)	\$381,150
Utilities Allowance	\$300,000
Site Lighting	\$75,000
<b>Total Base Site Development</b>	<b>\$1,654,150</b>

**Total Construction** \$18,132,102

EXHIBIT A



# Fee Proposal

<b>Total Proposed Fee:</b>	<b>\$1,098,000</b>	6.10% of construction value
<b>Total Reimbursable (NTE):</b>	<b>\$33,099</b>	
<b>Total Fee incl. Reimbursable :</b>	<b>\$1,131,099</b>	

Consultant Firm & Role	Basic Service Fees by Phase						Total Fee
	Program Verification/ Concept Design	Schematic Design	Design Development	Construction Documents	Bidding/ Negotiation	Construction Administration	Base Fee
Sink Combs Dethlefs Architecture and Interior Design	\$16,343	\$114,398	\$130,740	\$261,480	\$13,074	\$117,666	<b>\$653,700</b>
JVA Civil	\$0	\$7,000	\$14,000	\$24,000	\$6,000	\$9,000	<b>\$60,000</b>
Martin/Martin Structural	\$0	\$16,200	\$16,200	\$32,400	\$1,620	\$14,580	<b>\$81,000</b>
BHA Landscape	\$9,800	\$6,500	\$15,000	\$22,400	\$1,800	\$5,300	<b>\$60,800</b>
The Ballard Group Mechanical & Plumbing	\$0	\$11,750	\$35,250	\$50,525	\$1,975	\$18,000	<b>\$117,500</b>
IES Electrical, Lighting & Low Voltage	\$0	\$14,000	\$14,000	\$28,000	\$1,400	\$12,600	<b>\$70,000</b>
ADG Aquatic Design	\$0	\$5,500	\$13,750	\$27,500	\$2,750	\$5,500	<b>\$55,000</b>
<b>Team Total</b>	<b>\$26,143</b>	<b>\$175,348</b>	<b>\$238,940</b>	<b>\$446,305</b>	<b>\$28,619</b>	<b>\$182,646</b>	<b>\$1,098,000</b>
Per phase percentage of total fee	2.38%	15.97%	21.76%	40.65%	2.61%	16.63%	100.00%

Reimbursable Expenses	Not to Exceed Expense Limit
Sink Combs Dethlefs	\$16,343
JVA	\$1,500
Martin/Martin	\$800
BHA	\$4,000
The Ballard Group	\$956
IES	\$1,000
ADG	\$8,500
<b>Team Total</b>	<b>\$33,099</b>

Potential Additional Service Fee Ranges	
Property Survey	\$6,500-\$10,000
Geotechnical Investigation	\$9,000-\$12,000
LEED Certification Submittal Fees	\$56,500
Includes LEED specified energy modeling, preparation of submittal binders, submittal fees, and administering the approval process	
* If any of these services are desired, we will prepare final amounts based on a more specific scope of work.	

# Scope of Services

## MEETINGS

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- Conduct bi-weekly meetings with City Staff and/or their representatives and CM/GC, to be selected, with meeting minutes published by Sink Combs Dethlefs within (3) three business days following each meeting
- Lead public meetings during the Design, dates and number to be determined by the Owner, up to (5) meetings in the base fee.
- Meetings with review of design efforts with City review agencies including Planning and Zoning, development review, Building department, Fire Department and Public Works.
- Bi-weekly meetings with the architect and consulting engineers for project coordination and quality control
- Maximum 2-week owner review of drawings at each design phase, and follow up meeting to discuss concepts.

## PROGRAM VERIFICATION AND CONCEPT DESIGN

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- Review 2013 Feasibility Study and evaluate consensus program
- Meet with the project planning team and develop detailed program of spaces
- Conduct up to (2) public open house meetings to gather any necessary program and activity feedback
- Conduct a site analysis and selection process for up to (3) potential sites to include:
  - Information gathering, and on-site review of the subject sites
  - Thorough analysis of each potential site to include selection criteria to be coordinated with the Owner.
  - Graphic depiction of the potential program and future growth on each potential site.
  - Final site document to present the consensus site to the owner
- Develop preliminary site plan, landscape concepts, and site utilities analysis. A concept design of building and site will be developed which includes initial program and budget elements. It shall also show a future development plan and design of the facility's ultimate build out (within the confines of the proposed site) that includes items identified but not in the budget, referenced as "future" in the current program, or other recreational building elements identified by the Owner staff during this Phase. Future building elements shall be logical and easily integrated into initial construction and afford construction access, while minimizing effect on operations and community access.
- Concepts for connections to future trails, developments, and other notable Johnstown landmarks, views, orientation, massing, and primary building materials
- Building floor plans and elevations
- Preliminary site and building renderings for internal review and public meetings.
- Identification of sustainable design elements
- Preliminary Basis of Design Report (BODR) describing details of design not provided in drawings. This should include information on concept design from each design discipline required to complete the project,
- Preliminary documents for City Planning and Department Review
- Provide geotechnical boring locations for soils investigation.

## SCHEMATIC DESIGN

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### Architectural Services

- Architectural Plans, elevations, and building sections showing components reflecting the established program and support building systems
- Exterior renderings of the proposed design in computer Illustrative format, up to (5) exterior views
- Interior renderings of the proposed design in computer Illustrative format, up to (5) exterior views
- Preliminary documents necessary for City zoning preapplication application
- Meet and document preliminary review of project with City Building Department and local Fire Department

## EXHIBIT A

- A Basis of Design Report (BODR) describing details of design not provided in drawings such as the following:
  - Comparison of actual area to program area
  - Building Code review
  - Outline Specifications of materials, systems and equipment
  - Fixture, Furnishings and Equipment Draft List
- Geotechnical Report by others reviewed and recommendations incorporated into the design.
- Quality Control documentation and verification
- Preliminary LEED meeting to discuss goals and preliminary LEED checklist
- Schematic design cost estimate by Sink Combs Dethlefs and Dave Hoffman Consulting.

### Site Design, Civil and landscape

- Schematic grading plans
- Schematic site utility plans and calculations
- Schematic Landscape plan and concept sketches

### Structural Design

- Preliminary design criteria, code information and basic systems description
- Concept foundation design system description based on findings in geotechnical investigation.
- Preliminary floor and roof framing plans

### Mechanical, Plumbing and Electrical Design

- HVAC and Plumbing system narrative stipulating design criteria, controls, calculations and system explanation
- HVAC and Plumbing system plan diagrams and equipment locations
- Electrical narrative stipulating design criteria, calculations and system explanation
- Electrical system plan diagrams and one-line schematics
- Preliminary lighting plan and fixture types
- Descriptive narrative of low voltage systems including Information technology (IT), Audio/Video (A/V) and security.

### Aquatic Design

- Pool design meeting to identify design concepts and features
- Develop Swimming pool program
- Develop swimming pool schematic plans and preliminary estimate of probable cost

## **DESIGN DEVELOPMENT**

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### Architectural Services

- Architectural Drawings include:
  - Floor plans, roof plan
  - Exterior elevations and building sections
  - Interior elevations
  - Enlarged plans
  - Typical wall sections
  - Partition types
  - Ceiling plans and details
  - Door, window and hardware schedules
  - Preliminary building details
- Updates to exterior renderings depicting any changes to the design
- Updates to interior renderings depicting any changes to the design
- Prepare site approval submittal package
- Meet and document review of project with City Building Department and local Fire Department
- Update Code Analysis
- Quality Control documentation and verification
- LEED tracking of accepted design measures and documentation of systems
- Interior design workshop, present material, color and finish selections and incorporate into the design documents. Includes interior and exterior graphics concepts.
- Discuss any program for purchase or selection of public art
- Update furnishings, fixtures and equipment schedule. Select fitness equipment, office furnishings, building furniture, and other major purchases.
- Full CSI technical specifications
- Potential early Bid Package for site grading, utilities and foundation (at end of this phase or within Construction Document Phase development)

## EXHIBIT A

### Site Design, Civil and Landscape

- Civil grading plans with cut/fill calculations and drainage design
- Site utility plans and calculations, horizontal control
- Civil utility details
- Landscape plan
- Preliminary Irrigation plan

### Structural Design

- Preliminary design criteria, code information and basic systems description
- Concept foundation design system description based on findings in geotechnical investigation.
- Preliminary floor and roof framing plans
- Full CSI specifications for steel, concrete and structural masonry design.

### Mechanical, Plumbing and Electrical Design

- HVAC and Plumbing system design criteria and mechanical equipment schedules.
- HVAC and Plumbing system plans depicting equipment locations, duct size and routing, and devices.
- Energy usage calculations
- Mechanical and plumbing details.
- Fire sprinkler performance design specification
- Electrical narrative stipulating design criteria, calculations and system explanation
- Electrical system power plans for all levels
- Lighting design with fixture locations and specifications cut sheets.
- Plans of low voltage systems including Information technology (IT), Audio/Video (A/V) and security devices and systems
- Full mechanical, plumbing and electrical specifications

### Aquatic Design

- Pool Plan and feature drawings and renditions
- Pool cross-sections and gutter and rail details.
- Pool equipment room layout of filters, pumps, chemical controllers, and other pool equipment
- Provide coordination drawings including equipment room sizing, water, sewer, gas and electrical requirements
- Pool CSI specifications
- Update pool estimate of probable cost.

## **CONSTRUCTION DOCUMENTS (BID DOCUMENTS)**

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### Architectural Services

- All drawings prepared in the Design Development phase are finalized
- Finalize site approval, respond to planning comments and approved site.
- Incorporate all comments from review of project with City Building Department and local Fire Department
- Final Code Plans and Analysis
- Quality Control documentation and verification
- Finalize LEED tracking of accepted design measures and documentation of systems
- Finalize interior design selections of materials, colors and other products
- Finalize furnishings, fixtures and equipment schedule. Select fitness equipment, office furnishings, building furniture, and other major purchases.
- Finalize CSI technical specifications
- Issue drawings to the building department for building permit
- Issue all Contract Documents (drawings and specifications) for Bidding

### Site Design, Civil and Landscape

- Final Civil grading plans with cut/fill calculations and drainage design
- Final Site utility plans and calculations, horizontal control
- Final Civil utility and site construction details
- Final Landscape plan, planting types, and details
- Final Irrigation plan and Controls

### Structural Design

- Finalize all structural design, and code calculations
- Final foundation design plan and details
- Final floor and roof framing plans and details
- Full CSI specifications for steel, concrete and structural masonry design.

## EXHIBIT A

### Mechanical, Plumbing and Electrical Design

- HVAC and Plumbing system design criteria and mechanical equipment schedules.
- HVAC and Plumbing system plans depicting equipment locations, duct size and routing, and devices.
- Energy usage calculations
- Mechanical and plumbing details.
- Fire sprinkler performance design specification
- Finalize all electrical design
- Electrical system power plans for all levels
- Final Lighting design with fixture locations and specifications cut sheets.
- Final Plans of low voltage systems including Information technology (IT), Audio/Video (A/V) and security devices and systems
- Mechanical and Electrical system Com Check for code approval
- Final mechanical, plumbing and electrical specifications

### Aquatic Design

- Final Pool Plan and feature drawings and details
- Final Pool cross-sections and gutter and rail details.
- Final Pool equipment room layout of filters, pumps, chemical controllers, and other pool equipment
- Pool CSI specifications

### **CONSTRUCTION ADMINISTRATION SERVICES**

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- Digital drawing and model files will be provided to the selected Contractor and subcontractors for use in preparing shop drawing submittals
- Review Contractor Schedule of Values
- Review and comment on Contractors Critical path Schedule
- Review and Approve all construction shop drawing submittals in a timely manner within the duration stipulated in the Contract for Design Services, typically 10 business days.
- Respond to Contractor Requests for Information (RFIs) in a timely manner within the duration stipulated in the Contract for Design Services.
- Issue Bulletins for supplemental information or construction change directives for necessary modifications to the contract documents (drawings and specifications)
- Conduct regular on-site observation for consistency with the intent of the Contract Documents and issuance of field reports to document the findings.
- Issuance of a letter of substantial completion
- Punchlist job walk to identify repairs and quality control necessary for final sign-off of the work, in compliance with the contract documents. Pre-punch walks are acceptable to the Architect in an effort to mitigate later repairs, particularly for systems that may be covered, or may be difficult to remedy once finishes are complete.
- 11 Month warranty walk to identify items that need remedied under the implied 1 year warranty by the Contractor.

### **ADDITIONAL SERVICES NOT INCLUDED IN THE BASE SCOPE OF SERVICES**

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However, additional services could be added for negotiated additional fee

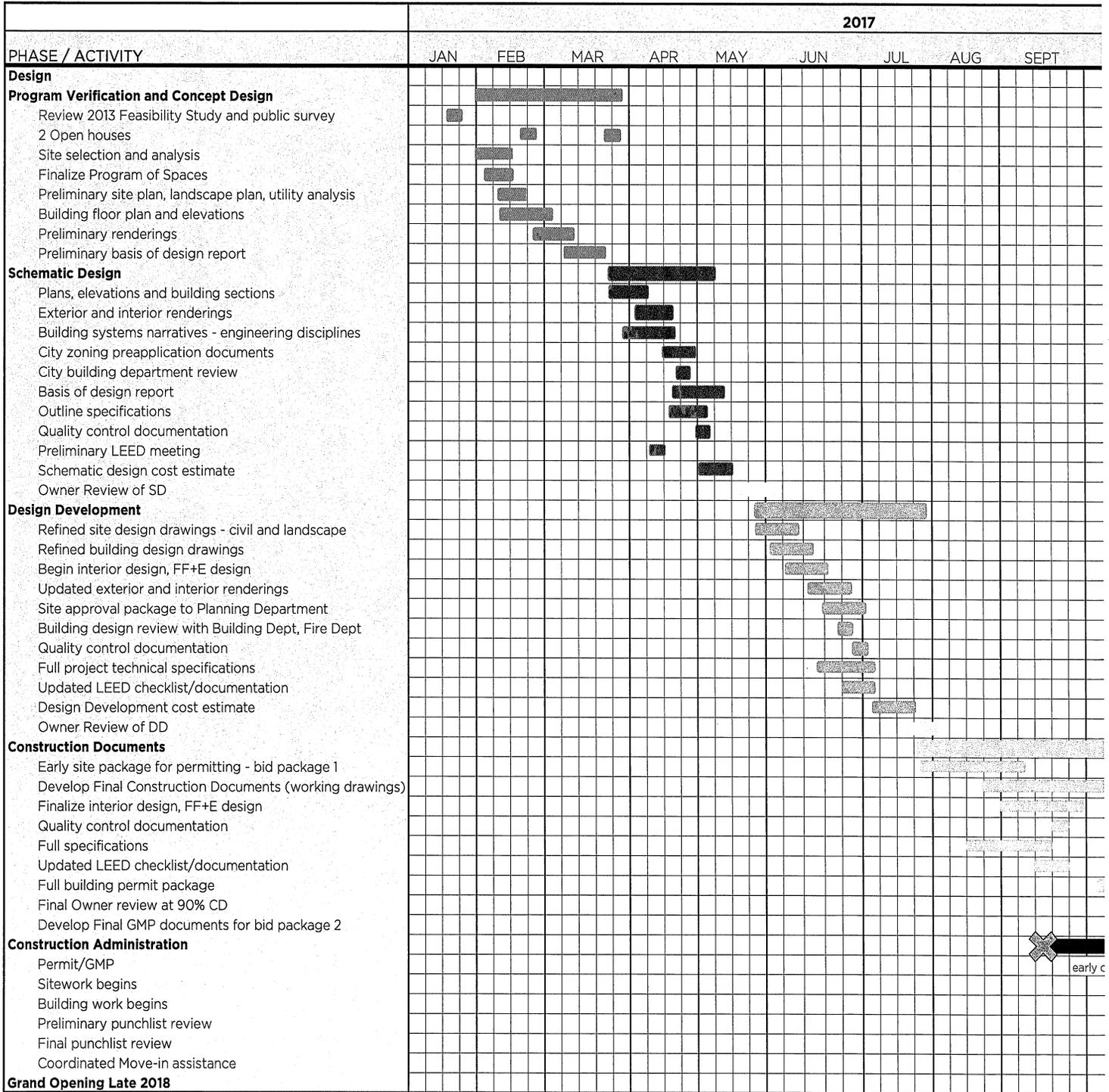
- Building system commissioning
- Site property survey
- Geotechnical investigation
- LEED Certification submittal
- Wetlands surveying and/or mitigation

### **SERVICES SPECIFICALLY EXCLUDED FROM OUR SERVICES**

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- Survey and abatement of hazardous materials of any existing structures on subject properties
- Brownfield site analysis or mitigation
- Design of public utilities beyond the boundaries of the subject property
- Special inspection, and review of contractor's means and methods

# Project Schedule





# Project Work Plan

Task Description	SINK COMBS DETHLEFS			Consulting Engineers
	Chris Kastelic Principal-In-Charge	Hillary Andren-Wise Project Manager	Jamie Benairo Job Captain	
<b>1.0 Team Participation Plan / Pre-Design and Program Refinement</b>				
1.1 Project Kick-off, establish Work Plan, Schedule, Tasks, Roles & Responsibilities				
1.2 Develop process with SFM for City Council, Staff, and the Public to give input				
1.3 Collaborate with SFM to discuss similar facilities, trends, alternate programs				
1.4 Potential tours of nearby similar facilities				
1.5 Document detailed activity areas, uses, adjacencies				
1.6 Present refined program and cost magnitude schedule to City/SFM				
<b>2.0 Conceptual Plan Update</b>				
2.1 Programming				
Confirm conceptual program consensus, make any necessary adjustments				
2.2 Site Planning				
Site selection - evaluate alternatives				
Pedestrian, vehicular and loading patterns				
Drainage and Utility Infrastructure				
Sustainable design elements matrix				
Conceptual Master Plan				
Infrastructure Coord. (road/utility/stormwater/geotech)				
2.3 Conceptual Building Design				
Confirm building program and areas				
Staffing and operations discussions				
Generate and refine floor plan layouts and exterior design concepts				
Produce refined exterior renderings				
2.4 Present Final Conceptual Design to City/SFM				
<b>3.0 Schematic Design (SD)</b>				
3.1 Translate Program into detailed space layouts				
3.2 Schematic Architectural Plan Design				
3.3 Schematic Site Design				
3.4 Schematic Design Deliverables				
Develop Consensus Floorplans				
Develop Schematic Site Design				
Building Exterior Elevations and Building Sections				
Preliminary Materials and finishes, interior and exterior				
Outline Specifications				
Preliminary Code plan and study				
Preliminary Fixture, Furnishings and Equipment				
LEED Sustainable Design Charrette				
ADA analysis and compliance study				
Code compliance study including Life Safety, systems, exiting				
3.5 Computer 3D Modeling Images				
3.6 Coordinate engineering narratives and drawings				
Bi-weekly consultant coordination meetings				
Preliminary meetings with Utilities, public works				
Preliminary meeting with building department				
3.7 Develop Schematic Cost Estimate Model				
3.8 Submit Schematic design to City/SFM				
<b>4.0 Design Development (DD)</b>				
4.1 DD Kick-off to review costs and City/SFM comments				
4.2 Finalize Consensus Floorplans and Exterior				
4.3 Design Development Deliverables				
Detailed Floorplans, enlarged floorplans)				
Finalize Site Design				
Final Code Plan and Analysis				
Detailed Exterior Drawings (elevations, sections, materials)				
Finalize Materials and Finishes, interior and exterior				
Detailed Specifications				
Building Details				
Update computer renderings to design				
4.4 Coordinate engineering drawings, details and specs				
Develop detailed engineering drawings (MEP, Struct)				
Develop building systems descriptions				
Bi-weekly consultant coordination meetings				
4.5 Finalize Site Design, Landscape and Civil				
4.6 Preliminary Site Plan submittal (if desired)				
4.7 Updated Design Development Cost Model (CMGC)				

EXHIBIT A

Task Description	SINK COMBS DETHLEFS			Consulting Engineers
	Chris Kastelic Principal-In-Charge	Hillary Andren-Wise Project Manager	Jamie Benallo Job Captain	
<b>5.0 Construction Documents (CD)</b>				
5.1 CD Kick-off to review costs and City/SFM comments				
5.2 Construction Documents Deliverables				
5.3 Finalize Building Drawings				
All required drawings for Construction, GMP & Permit				
Final Detailed Floorplans, enlarged plans, plan details				
Finalize all exterior design, detailing and materials				
Define all building products, equipment, doors, windows,				
All Building Details, roof, walls, etc.				
5.4 Final Detailed Specifications				
5.5 Finalize engineering drawings, details and specs				
Final eng. Drawings & specs				
Develop building systems descriptions				
Bi-weekly consultant coordination meetings				
5.6 Final Code and Permit submittal to City				
5.7 Work with SFM/CMGC to Develop Final GMP				
Answer bidding and subcontractor questions				
Issue drawing clarifications				
5.8 Complete Final Construction Documents				
5.9 Interior details, interior materials, equipment, signage, graphics				
5.11 Produce Final Conformance Construction Document Set				
<b>6.0 Construction Administration (CA)</b>				
6.1 Submittal Review				
6.2 Weekly Owner/SFM, Architect, Contractor Meetings				
6.3 Field Reports from Site Visits				
6.4 Respond to Requests for Information				
6.5 Generate Bulletins to reflect proposed changes				
6.6 Final Punchlists and review				
6.7 Warranty walk and ongoing follow-up				

# Our Project Team

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## Martin/Martin

STRUCTURAL ENGINEER  
75+ PROJECTS WITH SCD

12499 W. Colfax Avenue  
Lakewood, CO 80215  
303.431.6100  
martinmartin.com

Martin/Martin, Inc. is a full-service structural and civil consulting engineering firm that has been a leader in the Rocky Mountain region since the 1940s. We provide engineering services to a broad range of clients including architects, building/property owners, contractors, developers, government sector clients, and manufacturing companies. Our civil & structural engineering experience includes meeting design requirements for a variety of facilities including higher education academic facilities, recreation centers, gymnasiums, and fitness facilities.

### RELEVANT PROJECTS

- Fort Lupton Recreation Center
- Charles Whitlock Recreation Center, Lakewood, CO
- Cottonwood Creek Recreation Center
- Eastridge Recreation Center, Highlands Ranch, CO
- Gunnison Community and Recreation Center | Gunnison, CO

## BHA Design

LANDSCAPE ARCHITECT  
8 PROJECTS WITH SCD

1603 Oakridge Drive  
Fort Collins, CO 80525  
970.223.7577  
bhadesign.com

BHA Design Inc. is a landscape architecture and planning firm established in January of 1993. As landscape architects, we have a responsibility to craft design solutions that are fitting, artful, interesting, and appropriate given the context. We understand that successful outcomes in the higher education realm, requires balancing the needs of the students, administration, staff, maintenance and operations. In recent years, we have had the good fortune of working with several higher education institutions on some interesting and challenging projects.

### RELEVANT PROJECTS

- Philip S Miller Community Park and Field House
- Snow Sports 365 Gravity Lodge & Base
- UNC Butler Hancock Sports Pavilion
- Windsor Community & Recreation Center | Windsor, CO
- Cheyenne Youth Activity Center | Cheyenne, WY
- Evans Community Center/Police Station | Evans, CO
- Boulder Jewish Community Center | Boulder, CO

## JVA

CIVIL ENGINEER  
10+ PROJECTS WITH SCD

1512 Larimer St., Suite 710  
Denver, CO 80202  
303.444.1951  
jvajva.com

JVA, Incorporated is a consulting structural, civil and environmental engineering firm headquartered in Boulder, Colorado with offices in Fort Collins, Winter Park, Glenwood Springs and Denver. JVA has a 60-year history of engineering experience serving architects and owners on building projects, site development and water/wastewater projects throughout the Rocky Mountain area and nationwide. Our current staff size is 95. The principals are registered in Colorado and every state across the country.

### RELEVANT PROJECTS

- Apex Simms Street Pickleball Courts
- Apex Recreation Center
- Apex Meyers Pool
- Margaret Carpenter Recreation Center
- East Recreation Center
- Oasis Aquatics Park
- Erie Community Park | Erie, Colorado

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## The Ballard Group

MECHANICAL &  
PLUMBING ENGINEER  
60+ PROJECTS WITH  
SCD SINCE 1998

2525 S. Wadsworth Blvd.,  
Suite 200  
Lakewood, CO 80203  
303.988.4514  
theballardgroup.com

The Ballard Group, Inc. was founded in 1978 to provide quality mechanical engineering services with specific emphasis on heating, ventilation, air conditioning, plumbing, fire protection and medical gas systems design. We maintain two offices in Colorado: our main office in Lakewood, a western suburb of Denver, and a branch office in Fort Collins. Our operating philosophy is to provide sound, innovative engineering services tailored to the needs of each client on time and within budget. We strive to be forward-thinking engineers who use our collective experience to deliver energy efficient and cost-effective mechanical systems.

### RELEVANT PROJECTS

- Second Creek Recreation Center, Commerce City, CO
- United States Olympic Center
- Ken Caryl Ranch Recreation Center Renovations | Littleton, Colorado
- Northern Arizona University, Aquatics & Tennis Center | Flagstaff, Arizona
- Beck Recreation Center | Aurora, Colorado

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## IES

ELECTRICAL ENGINEER  
18 PROJECTS WITH SCD

7550 West Yale Ave., Suite B-130  
Denver, CO 80227  
303.988.4514  
iesystems-inc.com

Innovative Electrical Systems is a full service electrical engineering firm who has been in business since December 1998. Its founder, Mr. Les E. Yingling has over 46 years of design experience on over 4,000 projects in all aspects of commercial construction. In the past 30 years as a Principal and Project Manager he has designed Community Recreation Centers and University Recreation Centers across the country. His firms have designed more than 70 sports related facilities.

### RELEVANT PROJECTS

- Ken Caryl Community Center
- Fruita Recreation Center
- Fraser Grand Park Recreation Center
- McNeal Pavilion and Student Recreation Center Southern Oregon University
- Denver Tennis Club
- Parker Recreation Center Addition and Remodel

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## Aquatic Design Group

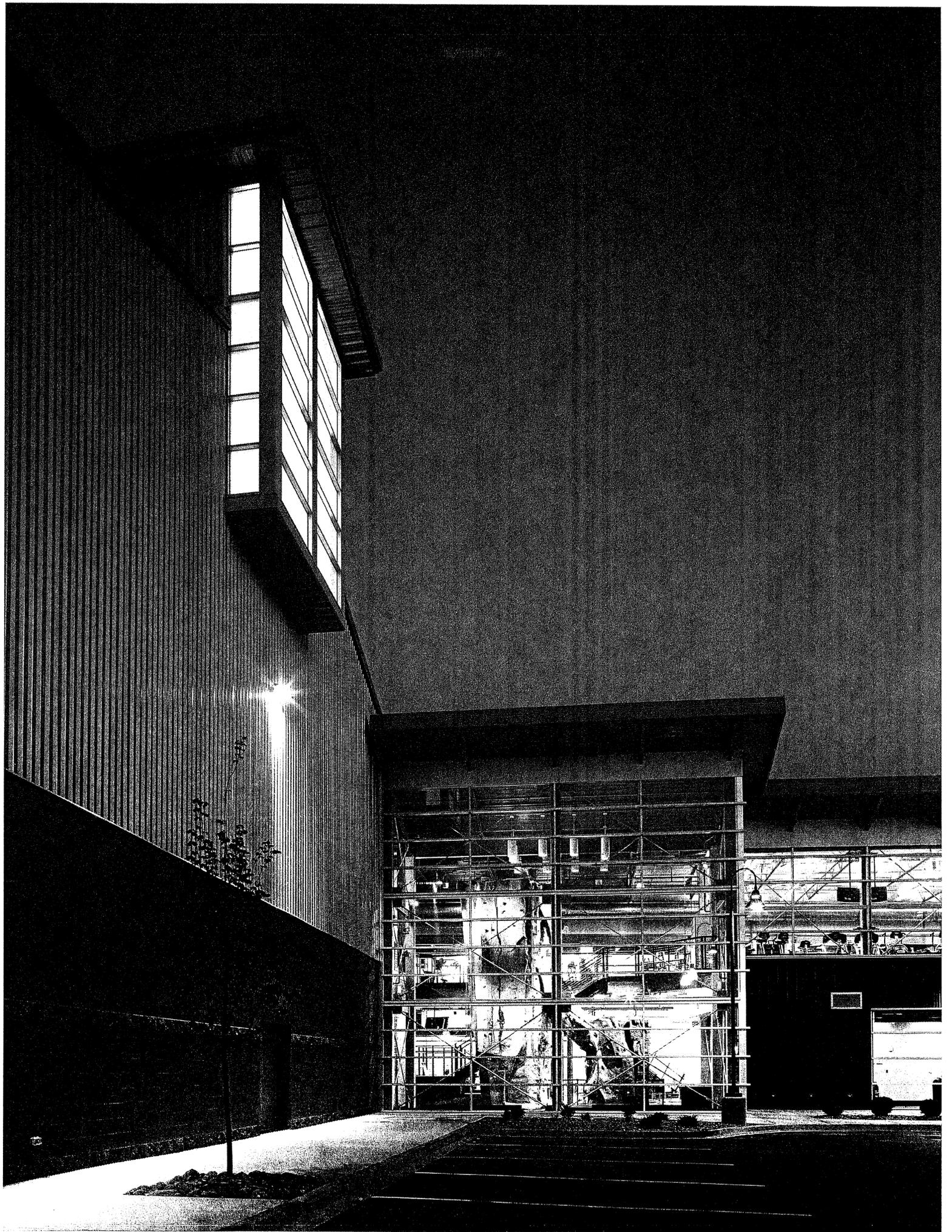
AQUATIC DESIGN  
1 PROJECT WITH SCD

2226 Faraday Ave.  
Carlsbad, CA 92008  
760.438.8400  
aquaticdesigngroup.com

For more than 30 years, Aquatic Design Group has set the standard for quality design and consulting services within the aquatics industry. Our goal is to provide this service with dedication and commitment to the highest possible level of customer satisfaction, delivered in a professional manner by a team of talented individuals who love what they do. Lead by our firm's Principals, Scott Ferrell, AIA, Dennis Berkshire, and Justin Caron, we have worked with clients from around the globe to help bring their dreams to reality. This experience results in quality, efficient design solutions that lead to projects delivered on time and on budget. We have worked on projects of all shapes and sizes in 38 states and 25 countries around the world.

### RELEVANT PROJECTS

- Parker Recreation Center Expansion and Renovation | Parker, Colorado
- CU Student Recreation Center Expansion | Boulder, Colorado
- Garside Pool and Bathhouse | Las Vegas, Nevada
- Hollywood Regional Park Aquatic Center | Clark County, Nevada
- Jurupa Valley Aquatic Center "The Cove" | Riverside, California
- Huntsville Aquatic Center | Huntsville, Texas







**AGENDA ITEM H**

**APPROPRIATION  
OF  
ADDITIONAL FUNDS  
(Resolution No. 2017-04)**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** February 22, 2017

**ITEM NUMBER:** 9H

**SUBJECT:** Consider Resolution No. 2017-04, A Resolution Appropriating Additional Sums of Money to Defray Expenses and Transfers in Excess of Amounts Budgeted for the Town of Johnstown, Colorado

**ACTION PROPOSED:** Approve Resolution No. 2017-04

**PRESENTED BY:** Town Clerk/Treasurer

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**AGENDA ITEM DESCRIPTION:** Budgets are a planning tool and with any plan it is difficult to perfectly anticipate the next year's revenue collections or expenditure needs. The Budget Law recognizes the need to amend or change annual budgets. The law defines three bases for budget amendments: the receipt of unanticipated revenues, budgetary transfers or a downward revision of the appropriation (Section 29-1-109, CRS). If necessary, a supplemental appropriation should be adopted within the budget year.

The Council adopted the 2017 budget on December 5, 2016. The Use Tax Fund is anticipated to exceed the adopted budget.

The adoption of a supplemental budget and appropriation must be formalized and made official by approval of Resolution No. 2017-04.

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**LEGAL ADVICE:** N/A

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**FINANCIAL ADVICE:** According to the Town Treasurer, sufficient funds are available in the Use Tax Fund unappropriated or unrestricted funds.

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**RECOMMENDED ACTION:** Approve Resolution No. 2017-04.

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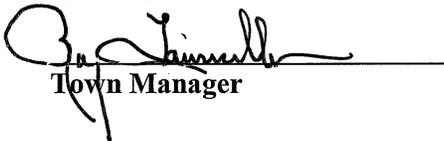
**SUGGESTED MOTIONS:**

**For Approval:** I move to approve Resolution No. 2017-04, A Resolution Appropriating Additional Sums of Money to Defray Expenses and Transfers in Excess of Amounts Budgeted for the Town of Johnstown, Colorado.

**For Denial:** I move to deny approval of Resolution No. 2017-04, A Resolution Appropriating Additional Sums of Money to Defray Expenses and Transfers in Excess of Amounts Budgeted for the Town of Johnstown, Colorado.

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**Reviewed:**

  
Town Manager

**RESOLUTION**  
**NO. 2017-04**

**TOWN OF JOHNSTOWN**

**RESOLUTION NO. 2017-04**

**A RESOLUTION APPROPRIATING ADDITIONAL SUMS OF MONEY TO  
DEFRAY EXPENSES AND TRANSFERS IN EXCESS OF AMOUNTS  
BUDGETED FOR THE TOWN OF JOHNSTOWN, COLORADO**

**WHEREAS**, on December 5, 2016 the Town Council, adopted, by Resolution No. 2016-12 the 2017 Budget, and;

**WHEREAS**, expenditures in the Use Tax Fund incurred for capital expenditures, operating expenditures and required transfers were not foreseen at the time of the adoption of the budget, and

**WHEREAS**, money is available in the Use Tax Fund and in the form of the unappropriated or unrestricted reserves.

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

Section 1. That the 2017 appropriation for the Use Tax Fund is hereby increased from \$2,203,500 to \$3,055,000.

Section 2. That estimated expenditures for the Use Tax Fund is as follows:

Use Tax Fund	\$3,055,000
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PASSED, SIGNED, APPROVED AND ADOPTED at a regular meeting of the Town Council of the Town of Johnstown on this 22nd day of February, 2017.

Town of Johnstown, Colorado

ATTEST

Town Clerk/Treasurer

Mayor

