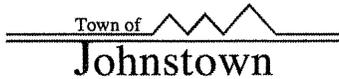


TOWN COUNCIL
MEETING
PACKET

March 6, 2017



Town Council

Agenda
Monday, March 6, 2017
Town Hall, Council Chambers
450 So. Parish Avenue
7:00 PM



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

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

- 1) **CALL TO ORDER**
 - A) Pledge of Allegiance
- 2) **ROLL CALL**
- 3) **AGENDA APPROVAL**
- 3) **RECOGNITIONS AND PROCLAMATIONS**
 - A) Mayor's Please Do Good Stuff Award
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

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

- 6) **CONSENT AGENDA**
 - A) Special Council Meeting Minutes-February 13, 2017
 - B) Town Council Meeting Minutes -February 22, 2017
 - 7) **STAFF REPORTS**
 - 8) **OLD BUSINESS**
 - 9) **NEW BUSINESS**
 - A) ***Public Hearing** – New Beer and Wine License for LUX Nailbar
 - B) Consider Retail Liquor Store License Renewal for Johnstown Liquor, Inc.
 - C) ***Public Hearing** – Amendment to 2534 Design Guidelines Proposed Land Use Plan – Lot 2, 2534 West Filing No. 1
 - D) Consider Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc.
 - E) Consider Resolution No. 2017-05, Authorizing the Town of Johnstown to Enter into an Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25 and Intergovernmental Agreement with the State of Colorado
 - 10) **COUNCIL REPORTS AND COMMENTS**
 - 11) **MAYOR'S COMMENTS**
 - 12) **ADJOURN**
-



NOTICE OF ACCOMODATION

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

AGENDA ITEMS 6A-B

CONSENT

AGENDA

- **Special Council Minutes – February 13, 2017**
- **Council Minutes-February 22, 2017**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 6, 2017

ITEM NUMBER: 6A-B

SUBJECT: Consent Agenda

ACTION PROPOSED: Approve Consent Agenda

PRESENTED BY: Town Clerk

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

- Special Council Meeting Minutes – February 13, 2017
- Council Meeting Minutes – February 22, 2017

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

FINANCIAL ADVICE: N/A

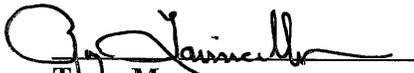
RECOMMENDED ACTION: Approve Consent Agenda

SUGGESTED MOTION:

For Approval: I move to approve the Consent Agenda.

For Denial:

Reviewed:


Town Manager

**COUNCIL
MINUTES**

The Town Council of the Town of Johnstown met in Special Council Meeting on Monday, February 13, 2017 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor James led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Davis, Mellon, Mitchell, Molinar Jr. and Young

Those absent: Councilmember Lebsack

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

Agenda Approval

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

New Business

A. Swire Pacific Holdings, Inc.'s Impact Fee Protest – Swire Pacific Holdings, Inc. filed a protest regarding the assessment of Impact Fees for their new facility in 2534. The impact fees for the facility were calculated based upon two primary uses – warehouse and office. The applicant would like the entire facility be calculated upon warehouse use only which would result in a lower impact fee.

Swire Pacific Holdings, Inc.'s Attorney Scott Ross of the firm Fox Rothschild, LLP, spoke on their behalf.

Councilmember Mitchell made a motion seconded by Councilmember Davis to approve to grant Swire Pacific Holdings, Inc.'s Impact Fee Protest. Councilmember Mitchell, Davis and Mayor James voted in favor. Councilmembers Molinar Jr., Mellon and Young voted against the motion. The motion failed.

There being no further business to come before Council the meeting adjourned at 8:00 p.m.

Mayor

Town Clerk/Treasurer

The Town Council of the Town of Johnstown met on Wednesday, February 22, 2017 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor James led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers Davis, Lebsack, Mellon, Mitchell and Molinar Jr.

Those absent: Councilmember Young

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

Agenda Approval

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

Consent Agenda

Councilmember Mellon made a motion seconded by Councilmember Molinar Jr. to approve the Consent Agenda with the following item included:

- February 6, 2017 Town Council Meeting Minutes
- Payment of Bills
- January Financial Statements

Motion carried with a unanimous vote.

New Business

A. Public Hearing – Amended Subdivision Development and Improvement Agreement – Thompson River Ranch, Filing No. 5 – The Final Plat and Development Agreement for Thompson River Ranch Filing No. 5 was approved in 2015. The Developer, Oakwood Homes has requested that Exhibit B-3 to the Agreement be amended to change the completion date for the River Ranch Community Park/Pool from June 30, 2017 to the “500th building permit”. Also to continue the completion of the neighborhood park until a school is built on the school site.

Mayor James opened the Public Hearing at 7:07 p.m. After hearing from the applicant and numerous residents of Thompson River Ranch subdivision Mayor James closed the Public Hearing at 8:06 p.m. A motion was made by Councilmember Davis and seconded by Councilmember Lebsack to reopen the Public Hearing at 8:29 p.m. Motion carried with a unanimous vote. After hearing additional comments from the applicant and residents The Public Hearing was closed at 8:50 p.m.

Councilmember Mitchell made a motion seconded by Councilmember Lebsack to approve the amended subdivision development and improvement agreement for Thompson River Ranch Filing No. 5 with conditions: 1. The date to build the community building and swimming pool moved to 6/30/2018 if the Board of Directors of the appropriate metro district provides supporting financial documents to verify if the district has the funds to operate the building and pool, 2. Neighborhood park to be completed by 12/31/2019 or the 250th building permit; and upon the Developer obtaining the 120th building permit in the Thompson River Ranch Development, exclusive of Filing Nos 1,2,3 and 4, Developer shall have completed construction to improve Larimer County Road 3. Motion carried with a unanimous vote.

B. Consider Water and Sewer Service Agreement – Thompson River Ranch, Filing No. 6 – The Developer submitted a Water and Sewer Demand Analysis, and based upon the analysis with the proposed construction of 29 residential lots with landscape irrigation, the average water demand for Filing No. 6 with 6.18 Acres is calculated at 11.9 acre feet per year. The Developer, Oakwood Homes will dedicate sufficient water shares of Home Supply. Councilmember Lebsack made a motion seconded by Councilmember Mitchell to approve the Water and Sewer Service Agreement for Thompson River Ranch Filing No. 6. Motion carried with a unanimous vote.

C. Public Hearing – Thompson River Ranch PUD Filing No. 6 Final Plat – Oakwood Homes has submitted a request for approval of a final subdivision plat for approximately 6 acres in the WRFG Annexation and part of the approved Thompson River Ranch Preliminary Plat. Filing No. 6 includes 29 lots and is zoned Planned Unit Development-Mixed Use for residential.

Mayor James opened the Public Hearing at 9:06 p.m. Mayor James closed the hearing at 9:15 p.m.

Councilmember Lebsack made a motion seconded by Councilmember Davis to approve the Thompson River Ranch PUD, Filing No. 6 Final Plat. Motion carried with a unanimous vote.

D. Consider Subdivision Development and Improvement Agreement – Thompson River Ranch, Filing No. 6 – Councilmember Mellon made a motion seconded by Councilmember Lebsack to approve the public improvements development agreement for Thompson River Ranch Filing #6 with the condition that the completion of the River Ranch Community Building, Pool and Park on Exhibit B-3 is consistent with the revised Exhibit B-3 for Filing #5 which was approved earlier in the meeting. Motion carried with a unanimous vote.

E. Consider Resolution No. 2017-03, Approving and Adopting of Johnstown Model Multiple District Service Plan – 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 – Councilmember Lebsack made a motion seconded by Councilmember Mitchell to have the Town Attorney amend the Model Service Plan to reflect the Town Council may impose an Operating and Maintenance (O & M) mill levy cap. Motion carried with a unanimous vote.

F. Consider Award of Contract to Concrete Express Inc. for North Second Street Improvement Project – The North Second Street project encompasses Parish Avenue west to Greeley Avenue and consists of water line replacement, removal of existing concrete sidewalks, curb and gutter, and asphalt to include furnishing and installing new concrete walks, access ramps, curb and gutter and asphalt. Councilmember Mitchell made a motion seconded by Councilmember Mellon 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 include Alternate A (high school sidewalk) and Alternate B (concrete crosswalks) and also, authorize the Town Manager to approve change orders in an amount not to exceed ten (10%) percent of the contract amount. Motion carried with a unanimous vote.

G. Consider Professional Services Agreement with Sink Combs Dethlefs for Architect Design Services for the Johnstown Community Recreation Center – The proposed agreement is a modified version of the American Institute of Architect's Standard Form of Agreement between Owner and Architect. The Agreement provides that the fee for the architectural services, including services for landscape, engineering and aquatic design, shall total \$1,098,000 plus reimbursable expenses shall not exceed \$33,099 based on the proposal submitted to the Town of Johnstown on January 19, 2017. Councilmember Lebsack made a motion seconded by Councilmember Davis to approve the Agreement between the Town of Johnstown and Sink Combs Dethlefs, P.C, and authorize the Mayor to sign it. Motion carried with a unanimous vote.

H. 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 – Councilmember Mitchell made a motion seconded by Councilmember Mellon to approve Resolution No. 2017-04. Motion carried with a unanimous vote.

Mayor's Comments

Councilmember Mitchell made a motion seconded by Councilmember Davis to have the Town Attorney draft a Non –Binding Memorandum with UC Health as an operating partner for the Johnstown Community Recreation Center. Motion carried with Mayor James and Councilmembers Mitchell and Davis voting in favor. Councilmember Lebsack opposed and Councilmembers Mellon and Molinar Jr. did not cast a vote.

There being no further business to come before Council the meeting adjourned at 10:33 p.m.

Mayor

Town Clerk/Treasurer

AGENDA ITEM 9A

**NEW
BEER AND WINE
LICENSE
(LUX Nailbar)**

*NEW LIQUOR LICENSE PUBLIC HEARING PROCEDURE – _____

1. Open public hearing.
2. Receive information from staff.
3. Receive information from applicant.
4. Receive information from “parties in interest.” Parties in interest may also cross-examine the applicant.

(Parties in interest include adult residents of the designated neighborhood, the owner or manager of any business located within the designated neighborhood and the representative of any school within 500 feet of the proposed license. The representative of any organized neighborhood group within the designated neighborhood may present evidence, but may not cross-examine witnesses.)

5. Discretionary: Receive information from “others.” (*Only if the testimony would aid Council in considering the application.*)
6. Additional questions from Council, if any.
6. Close the public hearing. (*No more questions from Council.*)
7. Discussion and deliberation among Council.
8. Make a decision and/or motion from Council.

SUGGESTED MOTIONS

For Approval: I move to approve the Application for a Beer and Wine License for LUX Nailbar.

For Denial: I move to deny approval of the Application for a Beer and Wine License for LUX Nailbar.

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 6, 2017

ITEM NUMBER: 9A

SUBJECT: *Public Hearing – LUX Nailbar– New Beer and Wine License

ACTION PROPOSED: Consider Issuance of a New Beer and Wine License

PRESENTED BY: Town Attorney, Town Clerk

AGENDA ITEM DESCRIPTION: This item is a public hearing to receive comments regarding the proposed new beer and wine license for LUX Nailbar, located at 4924 Thompson Parkway, Johnstown, CO. When approving or denying an application, the Council acts as the local licensing authority and must consider if the reasonable requirements of the defined neighborhood are not presently being met by existing establishments, the desires of the adult inhabitants, and the number, type and availability of other similar liquor establishments located in or near the petitioned neighborhood as well as the moral character of the applicants.

LEGAL ADVICE: The Town Attorney has reviewed the documents submitted and will be available at the meeting to answer questions.

FINANCIAL ADVICE: The applicant has paid all applicable fees for both the State and the Town.

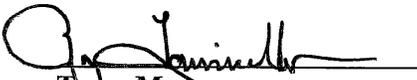
RECOMMENDED ACTION: Consider issuance of a new beer and wine license for LUX Nailbar.

SUGGESTED MOTION:

For Approval: I move to approve the issuance of a new beer and wine license for LUX Nailbar.

For Denial: I move to deny the issuance of a new beer and wine license for LUX Nailbar.

Reviewed:


Town Manager

APPLICATION

Colorado Liquor Retail License Application

New License **New-Concurrent** **Transfer of Ownership** **State Property Only**

- All answers must be printed in black ink or typewritten
- Applicant must check the appropriate box(es)
- Applicant should obtain a copy of the Colorado Liquor and Beer Code: www.colorado.gov/enforcement/liquor

1. Applicant is applying as a/an

<input type="checkbox"/> Corporation	<input type="checkbox"/> Individual
<input type="checkbox"/> Partnership (includes Limited Liability and Husband and Wife Partnerships)	<input checked="" type="checkbox"/> Limited Liability Company
	<input type="checkbox"/> Association or Other

2. Applicant If an LLC, name of LLC; if partnership, at least 2 partner's names; if corporation, name of corporation

LUX Nailbar	FEIN Number
	81-4437110

2a. Trade Name of Establishment (DBA)

LUX Nailbar	State Sales Tax Number	Business Telephone
	32515113-0000	720-550-1483

3. Address of Premises (specify exact location of premises, include suite/unit numbers)

4924 Thompson Parkway

City	County	State	ZIP Code
Johnstown	Larimer County	CO	80534

4. Mailing Address (Number and Street)	City or Town	State	ZIP Code
1730 Stardance Circle	Longmont	CO	80504

5. Email Address

luxnailbarco@gmail.com

6. If the premises currently has a liquor or beer license, you must answer the following questions

Present Trade Name of Establishment (DBA)	Present State License Number	Present Class of License	Present Expiration Date

Section A Nonrefundable Application Fees	Section B (Cont.) Liquor License Fees
<input checked="" type="checkbox"/> Application Fee for New License \$1950.00	<input type="checkbox"/> Lodging & Entertainment - L&E (County) \$500.00
<input type="checkbox"/> Application Fee for New License w/Concurrent Review \$2050.00	<input type="checkbox"/> Manager Registration - H & R \$75.00
<input type="checkbox"/> Application Fee for Transfer \$1950.00	<input type="checkbox"/> Manager Registration - Tavern \$75.00
Section B	<input type="checkbox"/> Manager Registration - Lodging & Entertainment \$75.00
Liquor License Fees	<input type="checkbox"/> Master File Location Fee \$25.00 X Total
<input type="checkbox"/> Add Optional Premises to H & R \$100.00 X Total	<input type="checkbox"/> Master File Background \$250.00 X Total
<input type="checkbox"/> Add Related Facility to Resort Complex \$75.00 X Total	<input type="checkbox"/> Optional Premises License (City) \$500.00
<input type="checkbox"/> Arts License (City) \$308.75	<input type="checkbox"/> Optional Premises License (County) \$500.00
<input type="checkbox"/> Arts License (County) \$308.75	<input type="checkbox"/> Racetrack License (City) \$500.00
<input checked="" type="checkbox"/> Beer and Wine License (City) \$351.25	<input type="checkbox"/> Racetrack License (County) \$500.00
<input type="checkbox"/> Beer and Wine License (County) \$436.25	<input type="checkbox"/> Resort Complex License (City) \$500.00
<input type="checkbox"/> Brew Pub License (City) \$750.00	<input type="checkbox"/> Resort Complex License (County) \$500.00
<input type="checkbox"/> Brew Pub License (County) \$750.00	<input type="checkbox"/> Retail Gaming Tavern License (City) \$500.00
<input type="checkbox"/> Club License (City) \$308.75	<input type="checkbox"/> Retail Gaming Tavern License (County) \$500.00
<input type="checkbox"/> Club License (County) \$308.75	<input type="checkbox"/> Retail Liquor Store License-Additional (City) \$227.50
<input type="checkbox"/> Distillery Pub License (City) \$750.00	<input type="checkbox"/> Retail Liquor Store License-Additional (County) \$312.50
<input type="checkbox"/> Distillery Pub License (County) \$750.00	<input type="checkbox"/> Retail Liquor Store (City) \$227.50
<input type="checkbox"/> Hotel and Restaurant License (City) \$500.00	<input type="checkbox"/> Retail Liquor Store (County) \$312.50
<input type="checkbox"/> Hotel and Restaurant License (County) \$500.00	<input type="checkbox"/> Tavern License (City) \$500.00
<input type="checkbox"/> Hotel and Restaurant License w/one opt premises (City) \$600.00	<input type="checkbox"/> Tavern License (County) \$500.00
<input type="checkbox"/> Hotel and Restaurant License w/one opt premises (County) \$600.00	<input type="checkbox"/> Vintners Restaurant License (City) \$750.00
<input type="checkbox"/> Liquor-Licensed Drugstore (City) \$227.50	<input type="checkbox"/> Vintners Restaurant License (County) \$750.00
<input type="checkbox"/> Liquor-Licensed Drugstore (County) \$312.50	
<input type="checkbox"/> Lodging & Entertainment - L&E (City) \$500.00	

Questions? Visit: www.colorado.gov/enforcement/liquor for more information

Do not write in this space - For Department of Revenue use only

Liability Information

License Account Number	Liability Date	License Issued Through (Expiration Date)	Total

7. Is the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers under the age of twenty-one years? Yes No

8. Has the applicant (including any of the partners if a partnership; members or managers if a limited liability company; or officers, stockholders or directors if a corporation) or managers ever (in Colorado or any other state):
 (a) Been denied an alcohol beverage license?
 (b) Had an alcohol beverage license suspended or revoked?
 (c) Had interest in another entity that had an alcohol beverage license suspended or revoked?
 If you answered yes to 8a, b or c, explain in detail on a separate sheet.

9. Has a liquor license application (same license class), that was located within 500 feet of the proposed premises, been denied within the preceding two years? If "yes", explain in detail.

10. Are the premises to be licensed within 500 feet, of any public or private school that meets compulsory education requirements of Colorado law, or the principal campus of any college, university or seminary?
 or
 Waiver by local ordinance?
 Other: _____

11. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of greater than (>) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.

12. Is your Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of less than (<) 10,000? NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.

13a. For additional Retail Liquor Store only. Was your Retail Liquor Store License issued on or before January 1, 2016?

13b. Are you a Colorado resident?

14. Has a liquor or beer license ever been issued to the applicant (including any of the partners, if a partnership; members or manager if a Limited Liability Company; or officers, stockholders or directors if a corporation)? If yes, identify the name of the business and list any current financial interest in said business including any loans to or from a licensee.
 Saigon Express

15. Does the applicant, as listed on line 2 of this application, have legal possession of the premises by ownership, lease or other arrangement?
 Ownership Lease Other (Explain in Detail) _____
 a. If leased, list name of landlord and tenant, and date of expiration, exactly as they appear on the lease:

Landlord	Tenant	Expires
Johnstown Plaza, LLC	LUX Development, LLC	04/28/27

b. Is a percentage of alcohol sales included as compensation to the landlord? If yes, complete question 16.

c. Attach a diagram designates the area to be licensed in black bold outline (including dimensions) which shows the bars, brewery, walls, partitions, entrances, exits and what each room shall be utilized for in this business. This diagram should be no larger than 8 1/2" X 11".

16. Who, besides the owners listed in this application (including persons, firms, partnerships, corporations, limited liability companies) will loan or give money, inventory, furniture or equipment to or for use in this business; or who will receive money from this business? Attach a separate sheet if necessary.

Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage
Last Name	First Name	Date of Birth	FEIN or SSN	Interest/Percentage

Attach copies of all notes and security instruments and any written agreement or details of any oral agreement, by which any person (including partnerships, corporations, limited liability companies, etc.) will share in the profit or gross proceeds of this establishment, and any agreement relating to the business which is contingent or conditional in any way by volume, profit, sales, giving of advice or consultation.

17. Optional Premises or Hotel and Restaurant Licenses with Optional Premises:
 Has a local ordinance or resolution authorizing optional premises been adopted?

Number of additional Optional Premise areas requested. (See license fee chart) _____

18. Liquor Licensed Drugstore (LLDS) applicants, answer the following:
 (a) Is there a pharmacy, licensed by the Colorado Board of Pharmacy, located within the applicant's LLDS premise?
 If "yes" a copy of license must be attached.

19. Club Liquor License applicants answer the following: Attach a copy of applicable documentation

(a) Is the applicant organization operated solely for a national, social, fraternal, patriotic, political or athletic purpose and not for pecuniary gain?
 (b) Is the applicant organization a regularly chartered branch, lodge or chapter of a national organization which is operated solely for the object of a patriotic or fraternal organization or society, but not for pecuniary gain?

(c) How long has the club been incorporated? _____
 (d) Has applicant occupied an establishment for three years (three years required) that was operated solely for the reasons stated above?

20. Brew-Pub, Distillery Pub or Vintner's Restaurant applicants answer the following:
 (a) Has the applicant received or applied for a Federal Permit? (Copy of permit or application must be attached)

21. For all on-premises applicants.
 a. Hotel and Restaurant, Lodging and Entertainment or Tavern License, the Registered Manager must also submit an Individual History Record - DR 8404-I and fingerprints.

b. For all Liquor Licensed Drugstores (LLDS) the Permitted Manager must also submit an Manager Permit Application - DR 8000 and fingerprints.

Last Name of Manager	First Name of Manager

22. Does this manager act as the manager of, or have a financial interest in, any other liquor licensed establishment in the State of Colorado?

Name	Type of License	Account Number
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23. Tax Distraint information. Does the applicant or any other person listed on this application including its partners, officers, directors, stockholders, members (LLC) or managing members (LLC) and any other persons with a 10% or greater financial interest in the applicant currently have an outstanding tax distraint issued to them by the Colorado Department of Revenue?
 If yes, provide an explanation and include copies of any payment agreements.

Yes No

24. If applicant is a corporation, partnership, association or limited liability company, applicant must list all Officers, Directors, General Partners, and Managing Members. In addition, applicant must list any stockholders, partners, or members with ownership of 10% or more in the applicant. All persons listed below must also attach form DR 8404-I (Individual History Record), and submit fingerprint cards to the local licensing authority.

Name Long Nguyen	Home Address, City & State 1730 Stardance Cir. Longmont, CO 80504	DOB 04/09/72	Position Owner	%Owned 100
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned
Name	Home Address, City & State	DOB	Position	%Owned

** If applicant is owned 100% by a parent company, please list the designated principal officer on above.
 ** Corporations - the President, Vice-President, Secretary and Treasurer must be accounted for above (include ownership percentage if applicable)
 ** If total ownership percentage disclosed here does not total 100%, applicant must check this box:
 Applicant affirms that no individual other than those disclosed herein owns 10% or more of the applicant and does not have financial interest in a prohibited liquor license pursuant to Title 47 or 48, C.R.S.

Oath Of Applicant

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct, and complete to the best of my knowledge. I also acknowledge that it is my responsibility and the responsibility of my agents and employees to comply with the provisions of the Colorado Liquor or Beer Code which affect my license.

Authorized Signature 	Printed Name and Title Long Nguyen	Date 01/10/17
-------------------------------------------------------------------------------------------------------------	---------------------------------------	------------------

Report and Approval of Local Licensing Authority (City/County)

Date application filed with local authority	Date of local authority hearing (for new license applicants; cannot be less than 30 days from date of application)
---------------------------------------------	--------------------------------------------------------------------------------------------------------------------

The Local Licensing Authority Hereby Affirms that each person required to file DR 8404-I (Individual History Record) or a DR 8000 (Manager Permit) has been:

Fingerprinted
 Subject to background investigation, including NCIC/CCIC check for outstanding warrants

That the local authority has conducted, or intends to conduct, an inspection of the proposed premises to ensure that the applicant is in compliance with and aware of, liquor code provisions affecting their class of license

(Check One)

Date of inspection or anticipated date _____
 Will conduct inspection upon approval of state licensing authority

<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 1,500 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of > 10,000?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
<input type="checkbox"/> Is the Liquor Licensed Drugstore (LLDS) or Retail Liquor Store (RLS) within 3,000 feet of another retail liquor license for off-premises sales in a jurisdiction with a population of < 10,000?	Yes <input type="checkbox"/>	No <input type="checkbox"/>
NOTE: The distance shall be determined by a radius measurement that begins at the principal doorway of the LLDS/RLS premises for which the application is being made and ends at the principal doorway of the Licensed LLDS/RLS.		
<input type="checkbox"/> Does the Liquor-Licensed Drugstore (LLDS) have at least twenty percent (20%) of the applicant's gross annual income derived from the sale of food, during the prior twelve (12) month period?	Yes <input type="checkbox"/>	No <input type="checkbox"/>

The foregoing application has been examined; and the premises, business to be conducted, and character of the applicant are satisfactory. We do report that such license, if granted, will meet the reasonable requirements of the neighborhood and the desires of the adult inhabitants, and will comply with the provisions of Title 12, Article 46 or 47, C.R.S., and Liquor Rules. **Therefore, this application is approved.**

Local Licensing Authority for	Telephone Number	<input type="checkbox"/> Town, City <input type="checkbox"/> County
Signature	Print	Title
Signature	Print	Title
		Date

SUMMARY

REPORTS

(Detailing results of the petition)

OedipusTM, Inc.

Empirical Data Services

P.O. BOX 1012
LAFAYETTE, CO 80026
303 661 0638
303 604 2862 FAX

21 February 2017

Ms. Diana Seele, CMC, Town Clerk
Town of Johnstown
450 S. Parish Johnstown, CO

LUX Nailbar, LLC, dba LUX Nailbar
4924 Thompson Parkway, Johnstown, CO 80534
Beer & Wine Liquor License

- PETITION & TELEPHONE SURVEYS
 - Liquor & 3.2 Beer Licensing
 - Rezoning
 - Opinion Poll
 - Venue
 - Special Tax Districts
- LIQUOR LICENSE SITE & ECONOMIC ANALYSIS

Dear Ms. Seele,

Find enclosed two (2) petition packets circulated by Oedipus, Inc., together with our Report. Generally, our results are:

Beer & Wine Liquor License

118	Signatures Favoring Issuance Businesses: 17; Residences: 101	/	3 Deleted
7	Signatures Opposing Issuance Businesses: 0; Residences: 7	/	0 Deleted
125	Total Signatures	/	3 Deleted

Max Scott will be attending the public hearing scheduled for the 6th of March 2017 at 7:00 p.m. to testify on the survey methodology and results. Should you have any questions, please call.

Respectfully,



Tina L. Scott
Oedipus, Inc.

Encl: Two (2) Petition Packets + 1 Copy
Original Report + 1 Copy

cc: Mr. Long Nguyen

Via: Hand Delivery

*Oedipus, Inc.*TM

Empirical Data Services

LUX Nailbar, LLC

dba

LUX Nailbar

**4924 Thompson Parkway
Johnstown, CO 80534**

**Beer & Wine
Liquor License**

OedipusTM, Inc.

Empirical Data Services

P.O. BOX 1012
LAFAYETTE, CO 80026
303 661 0638
303 604 2862 FAX

6 March 2017

Local Licensing Authority
Johnstown, Colorado

Re: Petition/Opinion Poll to Determine Needs and Desires
of the Defined Neighborhood in the Application of:

LUX Nailbar, LLC, dba LUX Nailbar
4924 Thompson Parkway, Johnstown, CO 80534
Beer & Wine Liquor License

- PETITION & TELEPHONE SURVEYS
 - Liquor & 3.2 Beer Licensing
 - Rezoning
 - Opinion Poll
 - Venue
 - Special Tax Districts
- LIQUOR LICENSE SITE & ECONOMIC ANALYSIS

PETITION/OPINION POLL PROCEDURE

1. Under the direction and control of Oedipus, Inc. management, the Oedipus, Inc. employee was briefed on the application.
2. The employee carried a clipboard with the following:
 - A. A map of the area denoting the proposed location of the license and the boundaries of the defined neighborhood;
 - B. Petitions allowing individuals contacted to indicate their opinion with instructions and qualifications for signing;
 - C. A stat sheet to record the opinion of those not signing and not-at-homes.
3. This petition/opinion poll was performed on Wednesday, 15 February 2017 (businesses) and Wednesday, Thursday and Friday, 15, 16 and 17 February 2017 (residences), within the neighborhood defined as a 1/4 -mile radius surrounding the proposed license location (see map). The circulation packets have a cover map, and the areas in which each petition circulation/polling took place are outlined in highlighter. Included in this Report is a master circulation map outlining all areas where circulation/polling was conducted.
4. Individuals were contacted on a random sampling basis, were screened to identify them as parties in interest, and were asked their opinion after they had been informed of the applicant, site location, and type of license being applied for. Their opinion was either recorded on the petition format or on the stat sheet.
5. Two (2) petition packets (one packet representing businesses, one packet representing residences), together with a Summary Letter and this Report were prefiled via courier on 21 February 2017 with the office of Ms. Diana Seele, Town Clerk, to comply with the prefiling deadline.

PETITION/OPINION POLL RESULTS

1. Total Doorknocks:

Not-at-Homes and/or Business Owners/Managers Not Available	112
Not Qualified to Sign	2
Preferred to Not Participate	20
Parties in Interest that Participated	125
Deleted Signatures	<u>3</u>
Total Base Figure	262

2. Qualified Contacts:

A. Signatures and Those Not Signing

Signatures Favoring Issuance		118
Businesses	17	
Residences	101	
Not Signing/Favoring Issuance		0
Signatures Opposing Issuance		7
Businesses	0	
Residences	7	
Not Signing/Opposing Issuance		<u>0</u>
Total Contacts		125

B. Breakdown of Reasons of Signatures in Opposition:

No Need	0
Abhorrence of Alcohol	3
Religious Objections	0
Usage Objections	1
Miscellaneous Reasons	0
No Reason Given	<u>3</u>
Total Signatures	7

C. <u>Breakdown of Signatures Favoring and Opposing:</u>			
Favoring Issuance (Based on Needs/Desires)	118	=	94.40%
Signatures	118		
Not Signing	0		
Opposing Issuance (Based on Needs/Desires)	0	=	0.00%
Signatures	0		
Not Signing	0		
Abhorrence of Alcohol	3	=	2.40%
Signatures	3		
Not Signing	0		
Religious Objections	0	=	0.00%
Signatures	0		
Not Signing	0		
Usage Objections (Commercial, Traffic, Parking, Crime)	1	=	0.80%
Signatures	1		
Not Signing	0		
Other Miscellaneous Reasons	0	=	0.00%
Signatures	0		
Not Signing	0		
No Reason Given	<u>3</u>	=	<u>2.40%</u>
Signatures	3		
Not Signing	0		
Total Base Figure	125	=	100.00%

3. <u>Needs and Desires Signatures:</u>			
Signatures Favoring Issuance (Based on Needs/Desires)	118		
Favoring Issuance/Not Signing (Based on Needs/Desires)	0	}	118 = 100.00%
Signatures Opposing Issuance (Based on Needs/Desires)	0		
Opposing Issuance/Not Signing (Based on Needs/Desires)	0	}	<u>0</u> = <u>0.00%</u>
Total Base Figure	118	=	100.00%

The petition packets are presented as follows: Cover map, petitions, and affidavit.

#1 & #2 / Mark Steffek / Businesses & Residences

CATEGORIES OF SIGNATURES IN OPPOSITION

NN NEEDS & DESIRES CRITERIA:

Individuals opposed to the license application based on needs and desires criteria per the Colorado Liquor/Beer Codes (currently existing licensed establishments of a same or similar type of license now located within the defined neighborhood are meeting the reasonable requirements of the adult inhabitants of the defined neighborhood at this time).

NON NON-USAGE OF ALCOHOL / ABHORRENCE OF ALCOHOL:

Individuals opposed to the license application because they do not drink alcohol beverages, do not approve of alcohol consumption, and/or abhor alcohol.

RO RELIGIOUS OBJECTIONS:

Individuals opposed to the license application based on religious beliefs/reasons.

OBJ USAGE OBJECTIONS:

Individuals opposed to the license application because of their fear or concern for the potential of parking problems, traffic problems, crime, noise, littering, undesirable people drawn to the area, loss of property value; or individuals who opposed this type of business or applicant, any type of commercial usage in the neighborhood, any new growth in the neighborhood; or, individuals who think this type of business (if issued a liquor/beer license) should not be located near a residential neighborhood, church, or school, etc.; or, individuals who opposed because they are against any alcohol service at this type of facility, location, or atmosphere; or, individuals who favor the service of beer and wine but oppose the service of distilled spirits (on H&R applications).

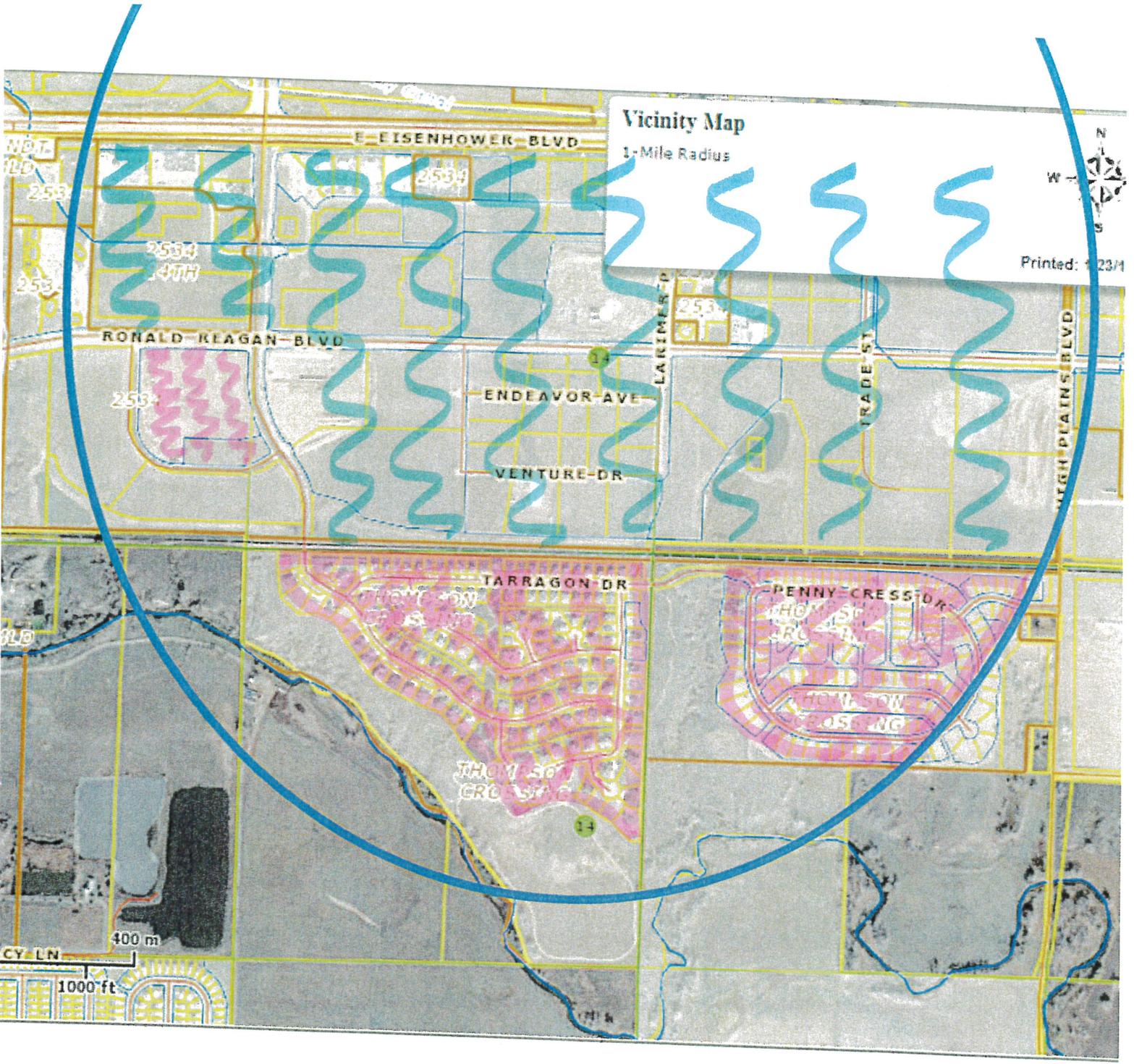
MS MISCELLANEOUS OBJECTIONS:

Individuals opposed to the license application for other miscellaneous reasons to include: fear or concern for the possibility of drunk drivers in the area, fear or concern of resulting behavioral problems, individuals who would purchase alcohol beverages then drink and drive, sales to minors/underaged drinking, the location becoming a teen hang-out and the problems that can arise from this, and the effect it could have on family values or their family in general because they have young children or teens; or, individuals who opposed because competition is not desired or how said business may affect the livelihood of existing businesses; or, individuals who compared the “needs and desires” criteria to existing licensed outlets other than the type of license applied for.

NR NO REASON GIVEN:

Individuals who preferred to not state a reason for opposing.

MAP



○ - BUSINESSES ● - RESIDENCES

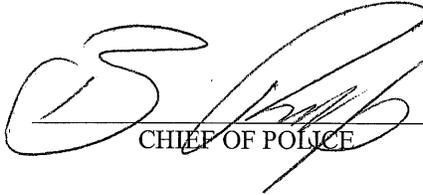
APPLICANT/TRADE NAME: LUX NAILBAR, LLC, dba LUX NAILBAR
APPLICATION FOR: BEER & WINE LIQUOR LICENSE [To sell beer & wine, by the drink, to be consumed ON the licensed premises only]
ADDRESS: 4924 THOMPSON PARKWAY, JOHNSTOWN, CO 80534
PUBLIC HEARING: MONDAY, 6 MARCH 2017, 7:00 P.M., JOHNSTOWN ADMINISTRATION OFFICES, 450 S. PARISH, JOHNSTOWN, CO
DEFINED NEIGHBORHOOD: ONLY THE AREA PERTAINING TO THE TOWN OF JOHNSTOWN WITHIN A 1-MILE RADIUS SURROUNDING THE PROPOSED LICENSE LOCATION

**POLICE
REPORT**

TOWN OF JOHNSTOWN POLICE DEPARTMENT

Information 3.2% Beer or Liquor Application

- Name and address of Applicant} LUX Nailbar
Long Nguyen
1730 Stardance Circle
Longmont, CO 80504
1. Trade Name and Address} LUX Nailbar
4924 Thompson Parkway
Johnstown, CO 80534
2. Date of Application: 01/28/2017
3. Type of Application: Beer and Wine
4. Documents Accompanying Application
- A. Local and State License Fees} Submitted with application
 - B. Evidence of Correct Zoning} CBD
 - C. Building Plans and or Sketch of Interior} N/A
 - D. Distance from School as per State} N/A
 - E. Deed or Lease or Assignment of Lease or Ownership} Lease
5. Evidence of Public Notice
- A. Posting of Premises} Posted February 15, 2017
 - B. Legal Publication } Johnstown Breeze February 16, 2017
6. Investigation: Police Department Case#}
- A. Applicant has made application for a new Beer and Wine License.
 - B. Background Investigation: Applicant has been fingerprinted and a background check was done.
8. Findings of fact:
- A. The required fees were submitted.
 - B. It is my recommendation the Beer and Wine license be approved.



CHIEF OF POLICE



DATE

AGENDA ITEM 9B

**RETAIL
LIQUOR STORE
LICENSE
RENEWAL
(Johnstown Liquor, Inc.)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 6, 2017

ITEM NUMBER: 9B

SUBJECT: Consider Retail Liquor Store License Renewal for Johnstown Liquor, Inc.

ACTION PROPOSED: Approve Retail Liquor License Renewal

PRESENTED BY: Town Clerk, Police Chief

AGENDA ITEM DESCRIPTION: Mr. Arnold Martinez, Operating Manager for Johnstown Liquor, Inc., has submitted a renewal application to the Town Clerk for a Retail Liquor Store License, located at 257 Johnstown Center Drive #101, 102, 103, Johnstown, CO. The required fees for the renewal application have been submitted to the Clerk's office. According to the Johnstown Police Department, the establishment has cooperated with law enforcement officials and there have been no violations of the liquor code during the last licensing period.

The Town Council acts as the Local Licensing Authority and is responsible for reviewing and issuing liquor licenses.

LEGAL ADVICE: N/A

FINANCIAL ADVICE: N/A

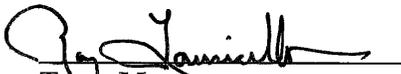
RECOMMENDED ACTION: Consider Approval of Retail Liquor Store License Renewal.

SUGGESTED MOTIONS:

For Approval: I move to approve the Retail Liquor Store License renewal for Johnstown Liquor, Inc.

For Denial: I move to deny approval of the Retail Liquor Store License renewal for Johnstown Liquor, Inc.

Reviewed:


Town Manager

**RENEWAL
APPLICATION**

Submit to Local Licensing Authority

Retail Liquor or 3.2 License Renewal Application

Fees Due	
Renewal Fee	
Storage Permit \$100 X _____	\$
Optional Premise \$100 X _____	\$
Amount Due/Paid	\$

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

Please verify & update all information below

Return to city or county licensing authority by due date

Licensee Name Johnstown Liquor, Inc.		Doing Business As Name (DBA) Johnstown Liquor		
Liquor License # 14-72739-0000	License Type Retail Liquor Store	Sales Tax License # 268029310000	Expiration Date 2/20/17	Due Date 1/06/17
Business Address 257 Johnstown Center Drive Units 101, 102, 103 Johnstown CO		City/State/Zip 80534	Phone Number (970) 302-4050	
Mailing Address 1325 42nd Ave Greeley CO 80634		Email arnoldm57@comcast.net		
Operating Manager Arnold Martinez	Date of Birth	Home Address 1325 42nd Ave Greeley CO 80634	Phone Number (970) 302-4050	
1. Do you have legal possession of the premises at the street address above? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Are the premises owned or rented? <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Rented* *If rented, expiration date of lease 5/17				
2. Since the date of filing of the last application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No				
3. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
4. Since the date of filing of the last application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
5. Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation. <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
Affirmation & Consent				
I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.				
Type or Print Name of Applicant/Authorized Agent of Business Arnold Martinez			Title President	
Signature <i>Arnold Martinez</i>			Date 1/24/17	
Report & Approval of City or County Licensing Authority				
The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S., and Liquor Rules.				
Therefore this application is approved.				
Local Licensing Authority For			Date	
Signature			Title	
			Attest	

ATTACHMENT TO LIQUOR LICENSE RENEWAL JOHNSTOWN LIQUOR, INC.

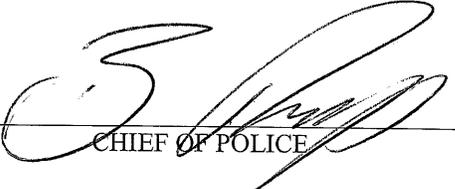
#2 Change in financial interest or organizational structure? Yes, Previous filed DR 8177 transferring 100% stock ownership from Ben Fisher to Arnold Martinez, which has been approved by the Town of Johnstown Liquor Authority pending approval by the Colorado Liquor Enforcement Division. Recent Amendments to the Documents transferring the Stock to Arnold Martinez are attached to this Renewal Application.

**POLICE
REPORTS**

TOWN OF JOHNSTOWN POLICE DEPARTMENT

Information 3.2% Beer or Liquor Application

- Name and address of Applicant} Johnstown Liquor, Inc.
1325 42nd Avenue
Greeley, CO 80634
1. Trade Name and Address} Johnstown Liquor
257 Johnstown Center Drive #101,102, 103
Johnstown, CO 80534
2. Date of Application: 01-27-2017
3. Type of Application: Retail Liquor Store License
4. Documents Accompanying Application
- A. Local and State License Fees} Submitted with application
 - B. Evidence of Correct Zoning} CBD
 - C. Building Plans and or Sketch of Interior} N/A
 - D. Distance from School as per State} N/A
 - E. Deed or Lease or Assignment of Lease or Ownership} Leased
5. Evidence of Public Notice
- A. Posting of Premises} N/A
 - B. Legal Publication } N/A
6. Investigation: Police Department Case#}
- A. Applicant has made application for renewal of their Retail Liquor Store License
 - B. Johnstown Liquor has operated legally during its last license period.
 - C. Cooperation with law enforcement has been good.
8. Findings of fact:
- A. Johnstown Liquor presently holds license 147239-0000 that expires February 20, 2017
 - B. The required fees were submitted.
 - C. It is my recommendation that the renewal be approved.



CHIEF OF POLICE

2/15/17

DATE

**JOHNSTOWN POLICE DEPT.
LIQUOR LICENSE RENEWAL INFORMATION SHEET**

APPLICANT: **Johnstown Liquor**

ADDRESS **257 Johnstown Center Drive Unites 101,102,103**

TYPE LICENSE: **Retail Liquor Store**

POLICE CALLS FOR SERVICE AT THIS LOCATION:

LIQUOR VIOLATIONS AT THIS LOCATION:

ARRESTS DUE TO ALCOHOL AT THIS LOCATION:

JPD RECOMMENDATION FOR RENEWAL: YES XXX NO _____

REPORTING OFFICER:

DATE:


B Papp

2/15/17

ADDITIONAL INFORMATION:

AGENDA ITEM 9C

AMENDMENT

TO

2534

DESIGN GUIDELINES

(Land Use Plan)

(Lot 2, 2534 West Filing No. 1)

(*Public Hearing)

**** PUBLIC HEARING PROCEDURE – Amendment to 2534 Design Guidelines
Proposed Land Use Plan-Lot 2, 2534 West Filing No. 1***

- 1. Open public hearing.**
- 2. Receive information from staff.**
- 3. Ask to hear from anyone who supports the Amendment to the 2534 Design Guidelines.**
- 4. Ask to hear from anyone who opposes the Amendment to the 2534 Design Guidelines.**
- 5. Close the public hearing.**
- 6. Ask for discussion.**
- 7. Make decision and/or motion from Council.**
 - a. Need motion to approve or deny the Amendment to the 2534 Design Guidelines.**

(SUGGESTED MOTIONS):

For Approval:

I move to approve the Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing from Retail, Office and Outdoor and Indoor Family Entertainment to A. Retail and Office (subject to the following condition(s)...).

For Denial:

I move to deny approval of the Amendment to the 2534 Design Guidelines Proposed Land Use Plan.

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 6, 2017

ITEM NUMBER: 9C

SUBJECT: *Public Hearing – Amendment to 2534 Design Guidelines Proposed Land Use Plan – Lot 2, 2534 West Filing No. 1.

ACTION PROPOSED: Consider Amendment to 2534 Design Guidelines

PRESENTED BY: Mr. John Franklin, Town Planner

AGENDA ITEM DESCRIPTION: This is a request by Blue Federal Credit Union, on property owned by 2534 Development, Inc., for approval of an amendment to the 2534 Design Guidelines Land Use Plan. The amendment would change the land use designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail and Outdoor and Indoor Family Entertainment to A. Retail and Office. The lot is located immediately north of Ronald Reagan Blvd. and east of I-25. The applicant proposes to develop an office complex on Lots 1 and Lot 2.

This property and the lot to the north have considerable exposure to Interstate 25 and US Hwy 3. Lot 2 was acquired by Boondocks Fun Center, and later taken back by the owner. The lots were later considered as a site for COSTCO, which located in Timnath. Most recently, the lots were to be developed as Phase II of Johnstown Plaza Retail Center, but Carson Development did not purchase the lots.

The 2534 Design Guidelines were approved by Town Council in 2004, amended in 2008 to include Commercial Outdoor Recreation Use in 2534 West for Boondocks, amended in 2013 for the Liberty Arms Institute gun range and the Gateway Apartments I, amended in February 2016 for the Gateway Apartments II, and amended in December 2016 for the Springs Apartments.

The Planning and Zoning Commission held a public hearing on February 8, 2016 and voted unanimously to recommend approval with the condition that every effort be made to include sales tax generating uses such as retail and restaurant.

LEGAL ADVICE: If approved, the Town Attorney will prepare a resolution for review at a subsequent meeting.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: The Planning and Zoning Commission has recommended approval of the amendment with one condition.

SUGGESTED MOTIONS:

For Approval: I move to approve the Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail, Office and Outdoor and Indoor Family Entertainment to A. Retail and Office (subject to the following condition(s)...).

For Denial: I move to deny approval of the amendment to 2534 Design Guidelines Proposed Land Use Plan.

Reviewed:


Town Manager

**PLANNING AND ZONING
COMMISSION**

SUMMARY MINUTES

**SUMMARY MINUTES
PLANNING & ZONING COMMISSION
WEDNESDAY, FEBRUARY 8, 2017
COUNCIL CHAMBERS
450 S. PARISH AVE.**

- 1. CALL TO ORDER:** *Chair Dowling called the meeting to order at 7:02pm*
- 2. ROLL CALL:** *Present were Commissioners Storms, Dowling, Kingsolver, Montez, Absent was Commissioners Tepper and Eady.*
- 3. PUBLIC COMMENTS REGARDING ITEMS NOT ON THE AGENDA:** *None*
- 4. PUBLIC HEARINGS:**

Conditional Use for Child Care in the SF-1 Single Family District – 1005 W. S. 1st Street: *Chair Dowling opened the public hearing at 7:05pm. Town Planner Franklin introduced the item and presented the staff recommendation. The operator Andrea Koenig presented the request and answered questions.*

Commissioner questions:

What are the proposed hours of operation? (6-6 M-F)

Employees? (5- she and her husband plus 3)

Timing for CDOT approval? (Short)

Curb/gutter? (By Town when needed in future for drainage management)

Possible second access from Jay Street? (No – major project to improve and not needed)

Basement Use? (Offices)

Playground? (Yes, plenty of space)

Public Comment:

Michelle Simon, business at 417 Charlotte, Suite A, is in favor as facilities are needed in Town. She has been attempting to start a similar business in Town.

Chair Dowling closed the public hearing at 7:22pm. Motion by Commissioner Kingsolver, seconded by Commissioner Montez to recommend approval with the condition that one paved parking space for each peak time staff member plus one space for parent /delivery and a drop-off/pick up driveway be provided. Unanimous

B. Amendment to 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail and Outdoor and Indoor Family Entertainment to A. Retail and Office: *Chair Dowling opened the hearing at 7:25pm. Town Planner Franklin introduced the item. The applicant's representative Lee Martin presented the request and answered questions.*

Commissioner questions: None.

Public Comment:

Gary Gerrard, 1559 Fulton Drive, Loveland Co, discussed the history of the property including interest by COSTCO, the Boondocks Fun Center and Carson Development [Johnstown Plaza Phase 2].



Chair Dowling closed the hearing at 7:36pm. Motion by Commissioner Kingsolver, seconded by Commissioner Dowling to recommend approval of the amendment with the condition that every effort be made to include sales tax generating uses such as retail and restaurant. . Unanimous.

5. NEW BUSINESS:

A. Approval of Minutes of January 25, 2017: *Motion by Commissioner Montez, seconded by Commissioner Storms to approve the minutes as presented. Unanimous.*

B. County Referrals: *None. Town Planner Franklin is monitoring the Stroh Pit USR in Larimer County. The judge ruled for Weld County in the martin Marietta case.*

6. STAFF REPORT: *Town Planner discussed the following items:*

A. Recent Town Council Actions (Attachment)

B. Applications in Review (Attachment)

C. Project and Program Updates:

7. COMMISSIONERS' ITEMS: *The commissioners agreed to meet with Commissioner Candidate Cody Geisendorfer on March 8.*

8. ADJOURN: *Chair Dowling adjourned the meeting at 8:15pm*

Respectfully submitted by John Franklin, Secretary.

**STAFF REPORT
TO
PLANNING AND ZONING
COMMISSION**

AGENDA MEMORANDUM

TO: Johnstown Planning and Zoning Commission
FROM: John Franklin, AICP, Town Planner
DATE: For February 8, 2017
SUBJECT: Public Hearing Regarding an Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail and Outdoor and Indoor Family Entertainment to A. Retail and Office

Property Information

Applicant: Blue Federal Credit Union

Owner: 2534 Development, Inc.

Location: North of Ronald Reagan Blvd. and east of I-25

Property Size: 10±acres

Comprehensive Plan Designation: Commercial

Current Zoning: PUD-MU

Current Use(s) of Property: Vacant

Surrounding Land Uses/Zoning:

- North: Vacant/PUD-MU - Retail and Office
- South: Ronald Reagan Blvd., Vacant/PUD-MU - Retail and Office
- East: Private Open Space, /PUD-MU – Retail and Office
- West: Interstate 25

Summary of Application: The owner of the property, along with the prospective developer have requested Town approval of an amendment to the 2534 Design Guidelines Proposed Land Use Plan. The amendment would allow Office, a Principal Use as described in Section 1.4.7, and Accessory uses as described in Section 1.4.8 of the Guidelines to be designated for Lot 2, Block 1, 2534 West Subdivision, 1st Filing which is currently designated for retail and entertainment uses. The applicant proposes to develop a mixed use office and retail development.

Prior Actions: The 2534 Design Guidelines were amended in 2008 for Lot 2 to allow Indoor and Outdoor Recreation Uses (Boondocks Family Fun Center). The Guidelines were also amended in 2013 for the Liberty Arms Institute gun range use and to allow the Gateway Apartments, and in 2016 to allow Gateway Apartments Phase II and Continental Properties multi-family.

Existing and Proposed Land Use(s): The property is presently vacant, and the proposal is for a mixed office and retail development on both Lots 1 and 2.

Design Guidelines: The 2534 Design Guidelines will apply.

Technical Analysis

Relationship to Town Vision and Strategic Plan:

The 2534 development is envisioned by the Town Council as a major contributor to the local economy, with a large proportion of the property designated for retail and the on-going generation of sales tax revenue. The first land use plan amendment for multi-family included a market review and assessment of the economic impact of this change, and offered that the additional residential will generate retail customers and not seriously impact the overall commercial growth or prospective sales tax revenue of the development. It is possible that the office development will also generate retail customers for the nearby businesses.

Public Health and Safety Impacts: No special public health and safety impacts are noted.

Access and Traffic: Primary access to the site will be from Ronald Reagan Blvd. (Arterial). In accordance with the development agreement, Ronald Reagan Blvd. will require widening, sidewalks and landscaping. Traffic management and access points are subject to Town Traffic Engineer review and recommendations at time of consideration of the Final Site Development Plan.

Utilities: The property is within the Town's service area. Sanitary sewer will be treated at the Low Point Wastewater Treatment Plant. Stormwater is to be collected, detained in the private, regional detention facility and then directed towards the Big Thompson River. A stormwater development fee has been paid for the site at time of plat. Water and sewer pipe capacities and fire flows will need to be confirmed.

Mineral Interests and Operations: There are no oil/gas wells or production facilities approved for the site.

Parks and Open Space: On-site, and adjoining private landscaped common areas are anticipated.

Architectural Design: The development will have high visibility from I-25 and US Hwy 34, and high-quality design and materials are required/anticipated. A preliminary concept design is provided. Final design review as part of the Site Development Plan will be by the owners group (DRC) and Town Staff (JRC) in accordance with the 2534 Design Guidelines.

Landscaping: Landscaping shall comply with Johnstown Landscape Standards and Specifications, and 2534 Design Guidelines.

Fencing and Screening: Not known – subject to Final Development Plan.

Lighting and Street Furniture: Not known – subject to Final Development Plan.

Signage: Signage shall conform the Town Sign Code.

Phasing: The property will be developed in one or more phases.

Attachments: Written request narrative, concept plan.

Crucial Referral Responses: None

Staff Report

Technical Findings:

- The proposed office and retail uses and related accessory uses are currently listed in the 2534 Design Guidelines.
- Architecture, site plan, civil engineering and traffic movements will be submitted for review as part of the required Final PUD development Plan process described in the 2534 Guidelines.
- The predominant office development proposed will generate no sales tax, and require Town services such as Police. Additional retail use of the property is encouraged.

Staff Recommendation:

Staff recommends approval of the Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail, Office and Outdoor and Indoor Family Entertainment to A. Retail and Office with the condition that every effort be made to include sales tax generating uses such as retail and restaurant.

Planning Commission Action

1. Recommendation:

“I move that the Commission recommend approval of the Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail and Outdoor and Indoor Family Entertainment to A. Retail and Office.”

Or,

2. Recommendation with Conditions:

“I move that the Commission recommend approval of the Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail and Outdoor and Indoor Family Entertainment to A. Retail and Office with the following condition(s):

- a) _____;
- b) Etc.”

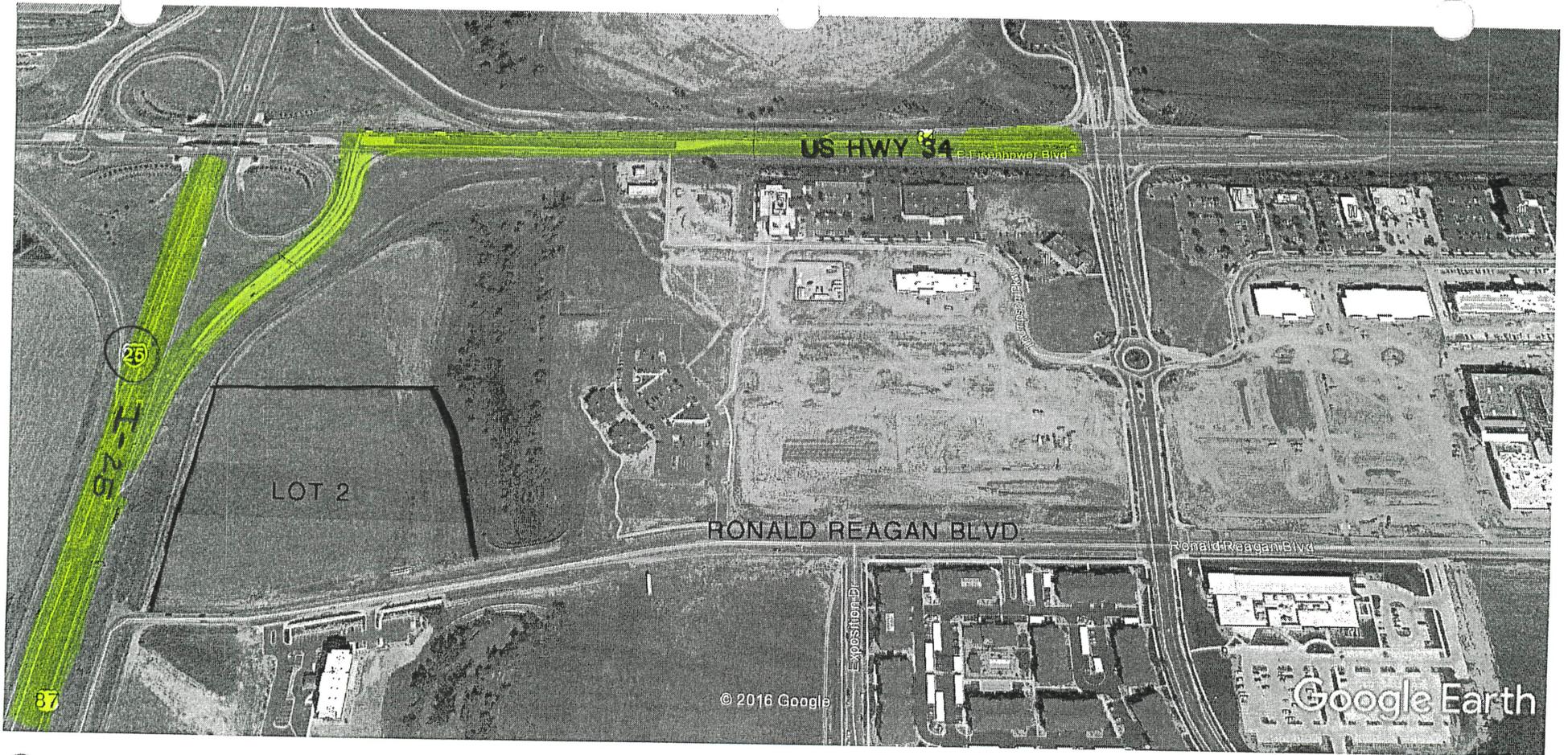
Or,

3. Recommend denial:

“I move that the Commission recommend denial of the Amendment to the 2534 Design Guidelines to Change the Land Use Designation of Lot 2, Block 1, 2534 West Subdivision 1st Filing, from H. Retail and Outdoor and Indoor Family Entertainment to A. Retail and Office for the following reasons:

- a) _____;
- b) _____;
- c) Etc.”

VICINITY MAP



Google Earth

feet
meters



APPLICATION



3521 West Eisenhower Blvd., Loveland, Colorado 80537
(970) 667-6286 Toll Free 1-866-379-6252 Fax (970) 667-6298
www.landmarkitd.com

January 24, 2017

John Franklin
Town Planner
Town of Johnstown
450 S Parish Avenue
Johnstown, CO 80534

RE: Proposed Land Use for 2534 West, Lot 2

Mr. Franklin,

On behalf of the Blue Federal Credit Union (BFCU), I am pleased to submit the following materials in support of changing the land use of 2534 West, Lot 2. This ±10.2-acre parcel is identified as No. 8515120002 by Larimer County, and has the street address of 5375 Ronald Reagan Boulevard.

After examining several properties throughout the region, BFCU identified Lot 2 – in addition to Lot 1 – as well-suited for its corporate office campus, based upon the BFCU service area of Northern Colorado and Southern Wyoming. Ultimately, BFCU anticipates relocating 150 – 250 employees to its campus on Lots 1 and 2, in about 200,000 square feet of multistory office buildings (Attachment 1). In addition to the executive leadership team, BFCU will populate its new headquarters with administrative staff, IT, Lending and Finance, Training, as well as Human Resources.

The property lays out very well for a corporate headquarters campus. Access will be from Ronald Reagan Boulevard, predominantly from Highway 34; ideally, the entry alignments will coincide with the existing Wyndham Hotel south of Ronald Reagan Boulevard. Because of the outstanding visibility, BFCU proposes quality architecture (Attachment 2), with a strong visual presence adjacent to Interstate 25 and visible from Highway 34. Parking will be obscured from I-25 by the buildings, and BFCU intends to work closely with the town to locate a "Welcome to Johnstown" sign to be prominent from I-25.

With construction of the first phase commencing early next year, the campus would be operational in early 2019, with full buildout most likely occurring over the following ten years. In the short term, BFCU anticipates that most employees will commute to the new headquarters; however, we believe many will move their families to Johnstown over time. Currently, the employees who will relocate to 2534 live along the Front Range from Cheyenne to Broomfield.

While the corporate headquarters will be the primary use for the two lots, BFCU is exploring options to provide a retail component as well to support the campus. At a minimum, a drive-through credit union branch is proposed adjacent to Ronald Reagan Blvd., along with a sit-down restaurant pad overlooking the open space in Tract A. Programming for this retail component is not yet complete, and will be market-driven. Architecture is expected to be compatible with the office buildings. Depending upon the market, additional pads and/or in-line retail may be proposed along the eastern boundary of Lot 2 near Ronald Reagan Boulevard. Because of the commute for many employees in the short term, other supporting convenience services, such as dry cleaning, child care, etc., may be proposed within the campus as well.

In conducting preliminary due diligence research before making a formal application to the 2534 Design Review Committee, we were surprised to discover that only "Retail and Outdoor and Indoor Family Entertainment" is allowed on Lot 2 (annotated as "H" on the Land Use Map on Page 6 of the current 2534 Design Guidelines). The

use is defined subsequently as "...a smaller amusement park geared towards family fun" (p. 45). While specific uses by right are not identified in the Guidelines, examples of uses allowed do not appear to allow office. In consultations with you, and followed by the 2534 Design Review Committee, we confirmed that this interpretation of the Guidelines was correct; only a Boondocks (or a similar facility) would be allowed without an action by the Town Council to amend the Guidelines and Land Use Map.

We believe that this amendment will be a net positive for Johnstown. While the Boondocks that had been proposed on Lot 2 would have ensured positive sales tax revenue if constructed, both Lots 1 and 2 have been vacant since the Land Use Map was amended in 2006 to allow the Boondocks on Lot 2. The development of such a facility appears unlikely in the foreseeable future in this location, as multiple competitors have opened nearby for business recently. An indoor recreation center – The Summit, which entails arcades, bowling, etc. – is about 1.5 miles driving distance north of Lot 1 at 4455 N. Fairgrounds Avenue, in Windsor. Glowgolf – an indoor miniature golf facility – is less than a mile north in The Promenade Shops at Centerra. Other indoor recreational facilities oriented to children and adolescents (Jumpin', Nerf Battle Zone Arena, Loveland Laser Tag) are within a ten-minute drive, also in Loveland. While the above are relatively small individually, combined they represent several thousand square feet of recreation already in place nearby, suggesting that the market for such services is saturated.

Therefore, we request formally that the Land Use Map designation of "H: Retail and Outdoor and Indoor Family Entertainment" for Lot 2 be adjusted to match the "A: Retail and Office" designation allowed on Lot 1 and the majority of the Highway 34 frontage. To that end, we have included an amended copy of the 2534 Design Guidelines (Attachment 3) to be included with Commissioners' and Board members' packets. Please note that we discussed this matter with the 2534 Design Review Committee in December, and received their letter of support as well (Attachment 4).

Again, we appreciate your time and attention to this matter. Representatives from BFCU and I would be happy to present the current Concept Plan and discuss all of the above at the next available Planning and Zoning Commission hearing, ideally on February 8. If at all possible, we'd like to have this matter resolved by the Town Board at the March 6, 2017 hearing. Of course, if this item can be considered on a consent agenda, we'd prefer to go that route. Once we move past this stage, we look forward to entering into the 2534 DRC application process.

Please let me know if you have any questions or concerns.

Sincerely,

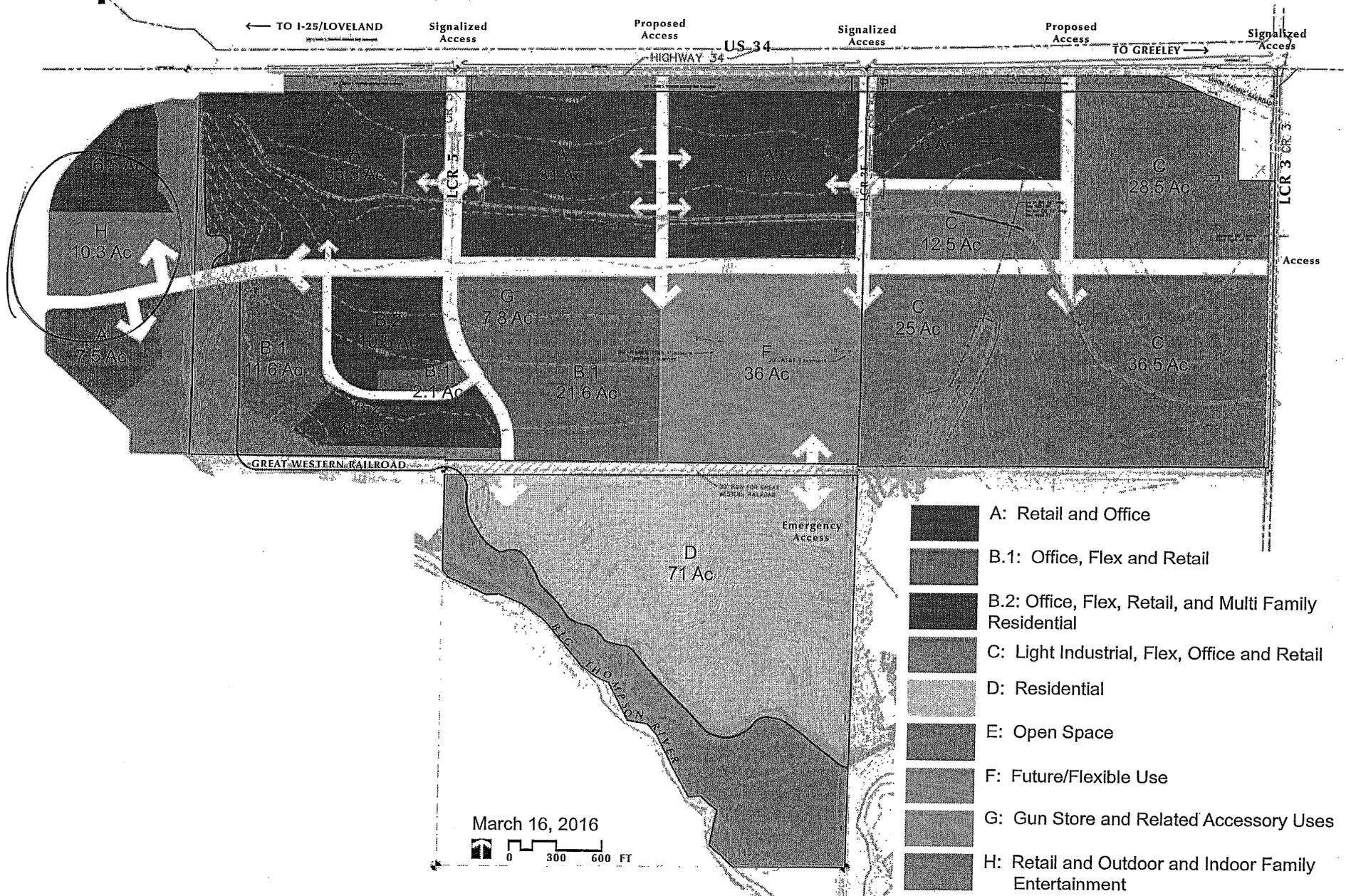


Lee Martin, RLA
Planner / Landscape Architect
Landmark Engineering, Ltd.
(970) 667 – 6286 x216
LMartin@LandmarkLTD.com

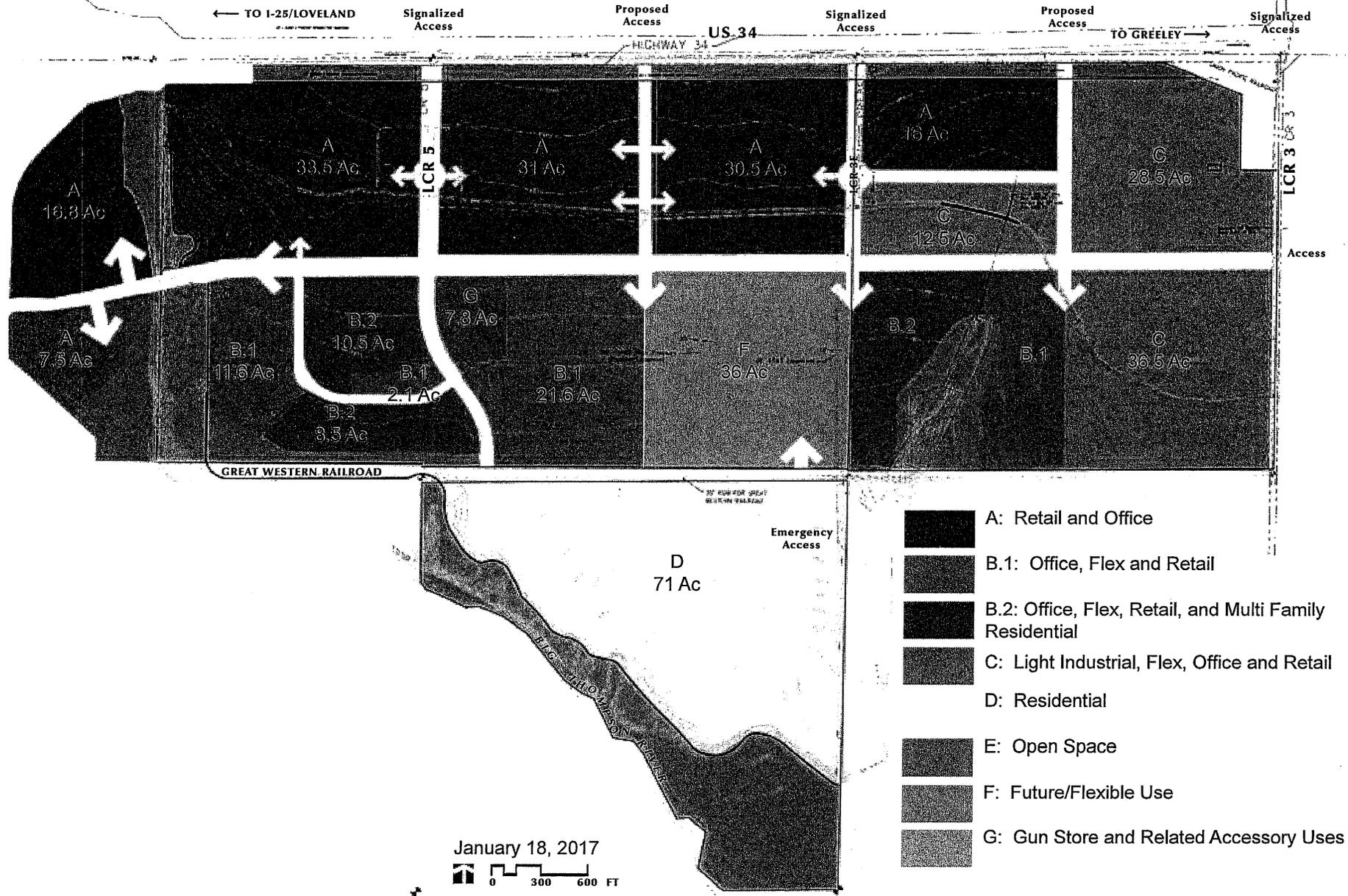
Attachment 1: Concept Plan (21 December 2016)
Attachment 2: 25|34 Corporate Campus Design Inspiration
Attachment 3: Proposed 2534 Design Guidelines (18 January 2017)
Attachment 4: 2534 DRC Letter of Support (23 January 2017)

Copies to: Lisa Herman, Blue Federal Credit Union
Todd Williams, Thompson Ranch Development Company

Proposed Land Use Plan



Proposed Land Use Plan

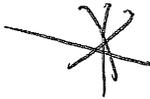


1.4.6 Retail Permitted Accessory Uses

- Garages for storage of vehicles used in conjunction with the operation of business
- Off-street parking and loading areas
- Signs
- Commercial parking facilities

**1.4.7 Office Principal Uses**

- Business and professional offices
- Banks and financial institutions
- Medical and dental clinics and other health care
- Public administrative offices and service buildings
- Public utility offices and installations
- Public library
- Private club or lodge
- Commercial lodging
- Passenger transportation terminals

**1.4.8 Office Permitted Accessory Uses**

- Garages for storage of vehicles used in conjunction with the operation of business
- Off-street parking and loading areas
- Signs
- Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right
- Commercial parking facilities

1.4.9 Light Industrial Principal Uses

- Manufacturing, assembly, processing and fabrication plants
- Transportation terminals, including trucking
- General warehousing
- Distribution centers
- Experimental, testing and research laboratories
- Printing and publishing houses and related activities
- Automobile repair shops
- Special trades contractor specializing in one or more trades of which the following are examples: plumbing and heating, painting and decorating, electrical work, glazing, insulation, carpentry and masonry
- Public utility offices and installations

1.4.10 Light Industrial Accessory Uses

- Office, storage, power supply and other such uses normally auxiliary to the principal industrial use
- Parking and service areas
- Signs
- Residential quarters for guards or caretakers
- Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right

1.4.11 Flex Principal Uses

- Manufacturing, assembly, processing and fabrication plants
- Experimental, testing and research laboratories
- Printing and publishing houses and related activities
- Special trades contractor
- Special trades contractor specializing in one or more trades of which the following are examples: plumbing and heating, painting and decorating, electrical work, glazing, insulation, carpentry and masonry
- Public utility offices and installations
- General administrative offices
- Business and professional offices
- Public administrative offices and service buildings
- Public utility offices and installations
- Call centers
- Passenger transportation terminals

1.4.12 Flex Accessory Uses

- Office, storage, power supply and other such uses normally auxiliary to the principal industrial use
- General warehousing
- Distribution centers
- Parking and service areas
- Signs
- Residential quarters for guards or caretakers
- Any other structure or use clearly incidental to and commonly associated with the operation of a principal use permitted by right



January 23, 2017

Mr. Todd Williams
2534 DRC
5255 Ronald Reagan Blvd, Ste. 220
Johnstown, CO 80534

RE: 2534 Design Guidelines - DRC Approval

Dear Mr. Williams:

The DRC has reviewed the revisions to the land use map (dated January 18, 2017) in the Design Guidelines and grants approval of the changes.

If you have any comments or require additional information, please feel free to contact me at (303) 770-8884.

GALLOWAY & COMPANY, INC.

Kristoffer Kenton, AIA, NCARB, LEED AP
Principal - Director of Architecture
Kristoffer.Kenton@gallowayUS.com



Proposed Headquarters 2534, Johnstown, Colorado

Prepared for:

Blue Federal Credit Union 2016
P.O. Box 2200 | Cheyenne, WY 82003
https://www.bluefcu.com/
800-368-7928

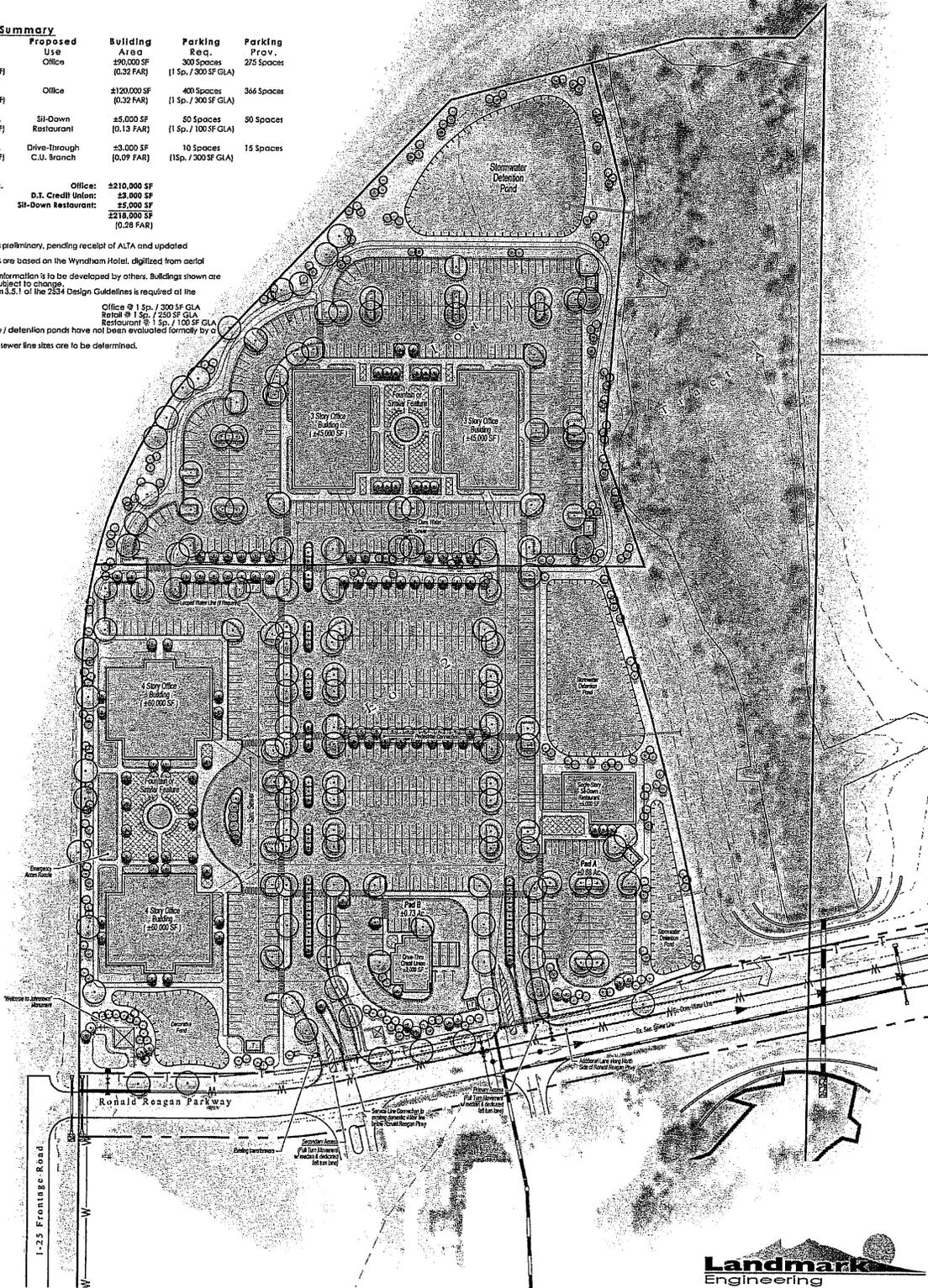
Development Summary

Area	Proposed Use	Building Area	Parking Req.	Parking Prov.
Lot 1 24.55 Ac. (285,481 SF)	Office	490,000 SF (0.32 FAR)	300 Spaces (1 Sp. / 300 SF GLA)	275 Spaces
Lot 2 28.70 Ac. (3379,053 SF)	Office	4120,000 SF (0.32 FAR)	400 Spaces (1 Sp. / 300 SF GLA)	366 Spaces
Pod A 20.88 Ac. (238,557 SF)	Sh-Down Restaurant	25,000 SF (0.13 FAR)	50 Spaces (1 Sp. / 100 SF GLA)	50 Spaces
Pod B 20.73 Ac. (231,914 SF)	Drive-through C.U. Branch	23,000 SF (0.09 FAR)	10 Spaces (1Sp. / 300 SF GLA)	15 Spaces
Project Totals 217.87 Ac.	Offices: D.T. Credit Union: Sh-Down Restaurant:	2210,000 SF 23,000 SF 25,000 SF		2210,000 SF (0.28 FAR)

Project Notes

1. Base information is preliminary, pending recital of ALTA and updated topography.
2. Entrance locations are based on the Wyndham Hotel, digitized from aerial photography.
3. Building program information is to be developed by others. Buildings shown are conceptual and subject to change.
4. Parking per Section 3.5.1 of the 2534 Design Guidelines is required at the following ratios:
Offices @ 1 Sp. / 300 SF GLA
Retail @ 1 Sp. / 250 SF GLA
Restaurant @ 1 Sp. / 100 SF GLA
Parking per Section 3.5.1 of the 2534 Design Guidelines is required at the following ratios:
5. Stormwater quality / detention ponds have not been evaluated formally by a civil engineer.
6. Proposed water & sewer line sizes are to be determined.

I - 2 - 5



Concept Plan

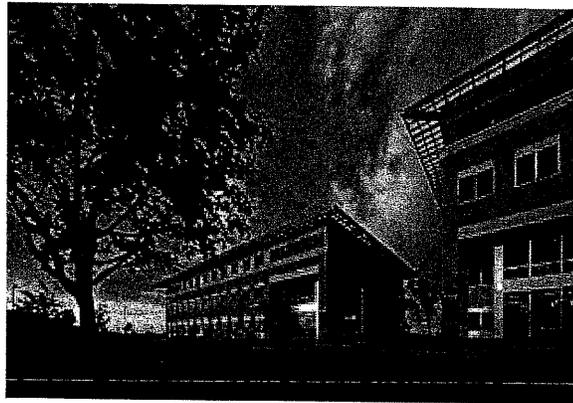
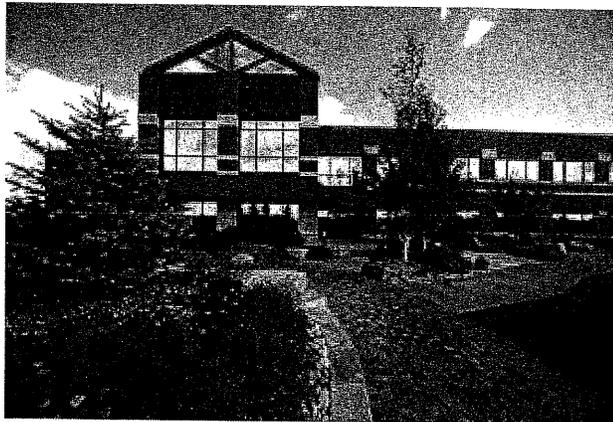
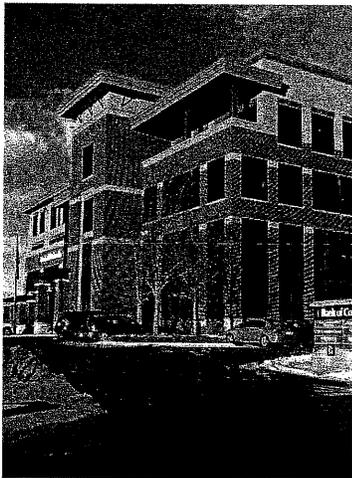
Landmark Engineering
3521 West Eisenhower Blvd., Loveland, Colorado 80537
(970) 667-6286 • Toll Free (866) 379-6152 • Fax (970) 667-6298
www.landmarkllc.com

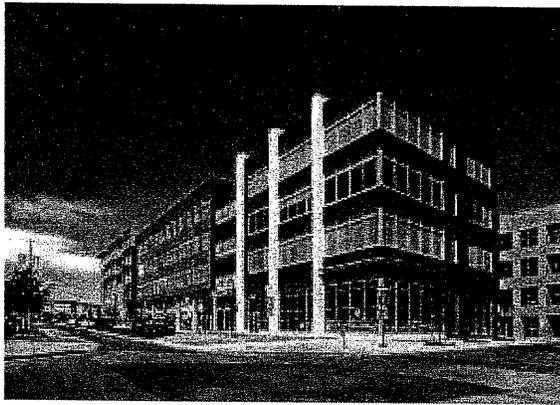
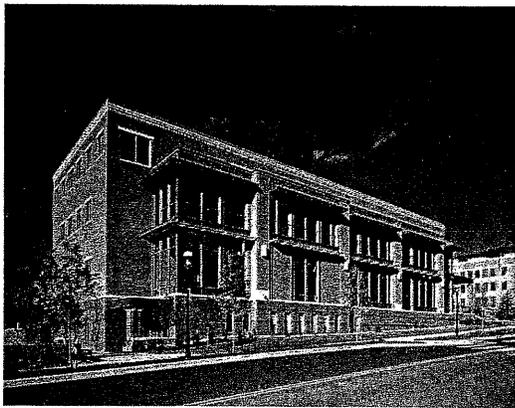
0 30 60 120
SCALE: 1 inch = 60 feet
Prepared: 21 December 2016

25 | 34 Corporate Campus Design Inspiration

Blue Federal Credit Union, along with its architectural and engineering partners, will design a corporate campus with buildings up to four stories tall that complement office buildings in the 2534 Development. The Credit Union will adhere to the 2534 Design Guidelines and utilize exterior materials such as glazing, brick, natural stone and/or decorative precast concrete. The neutral color palette will complement the surrounding native areas and be reflective of the Colorado-style architecture popular in the Northern region.

Below are sample photos from area office buildings that generally reflect the style preferences of Blue Federal Credit Union.





AGENDA ITEM 9D

PROFESSIONAL

SERVICES

AGREEMENT

(No. Second Street Improvements)

(TTG Engineers, Inc.)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 6, 2017

ITEM NUMBER: 9D

SUBJECT: Consider Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc.

ACTION PROPOSED: Approve Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc.

PRESENTED BY: Town Attorney

AGENDA ITEM DESCRIPTION: On or about February 22, 2017, the Town retained a contractor, Concrete Express, Inc., to construct improvements to North Second Street. TTG Engineers, Inc. ("TTG") completed the design of the improvements. TTG proposes to act as the Town's representative during the construction phase of the project, requiring, among other obligations, TTG to: observe the work in progress; attend weekly progress meetings with the contractor; interpret the contract documents, when necessary, and prepare change orders; approve shop drawings; require special inspections or testing, when necessary; assist in the resolution of disputes between the Town and the contractor, if any; approve the contractor's applications for payment; and inspect the work to determine substantial completion and final completion.

To obtain those services, the Town would enter into the Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc. ("Agreement"). TTG seeks payment based on an hourly rate plus expenses, in an amount not to exceed cost \$89,274.00, excepting the cost of additional services, if needed and as defined in the Agreement. TTG shall provide monthly invoices to the Town. TTG shall act as an independent contractor and carry insurance. Either party may terminate the Agreement for cause; the Town may terminate the Agreement for convenience. The parties anticipate that the construction will commence in March of 2017 and will take approximately 160 days for substantial completion.

LEGAL ADVICE: The Agreement was reviewed and revised by the Town Attorney.

FINANCIAL ADVICE: The Agreement involves an expenditure of approximately \$89,274.00 in 2017.

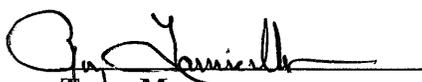
RECOMMENDED ACTION: Approve Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc.

SUGGESTED MOTION:

For Approval: I move to approve the Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc.

For Denial: I move to deny approval of the Agreement for Professional Services for North Second Street Improvements between the Town of Johnstown and TTG Engineers, Inc.

Reviewed:


Town Manager

AGREEMENT

AGREEMENT FOR
PROFESSIONAL ENGINEERING SERVICES FOR
NORTH SECOND STREET IMPROVEMENTS – TOWN OF JOHNSTOWN

Project No. 0127066.00

THIS IS AN AGREEMENT made as of March ____, 2017 between Town of Johnstown, a home rule municipality of the State of Colorado (OWNER), and TTG ENGINEERS, Inc., a Colorado corporation (ENGINEER or TTG).

The OWNER intends to construct street improvements on North Second Street between Greeley Avenue and Parish Avenue. The design of the street improvements has already been completed by TTG. The construction of the streetscape improvements for the several phases will hereinafter be referred to as the Project.

This Scope of Work defines the ENGINEER's work for the following phases and shall be deemed to be the Basic Services as that term is used in this AGREEMENT:

A. Construction Phase

OWNER and ENGINEER in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by ENGINEER and the payment for those services by OWNER as set forth below.

SECTION 1 - BASIC SERVICES OF ENGINEER

1.1 GENERAL

1.1.1 ENGINEER shall provide for OWNER professional engineering services in all phases of the Project to which this AGREEMENT hereinafter provides. These services will include serving as OWNER's professional engineering representative for the Project, providing professional engineering consultation and advice and furnishing customary civil engineering services and customary landscape services incidental thereto.

1.2 CONSTRUCTION PHASE

1.2.1 General Administration of Construction Contract. Engineer shall consult with and advise OWNER and act as OWNER's representative during the construction phase of this project.

1.2.2 Visits to Site and Observation of Construction. In connection with observations of the work of Contractor(s) while it is in progress:

- a. ENGINEER shall provide the services of a Resident Project Representative (and assistants as agreed) at the site to assist ENGINEER and to provide more continuous observation of such work. Based on information obtained during such visits and on such observations, ENGINEER shall endeavor to determine in general if such work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the work.
- b. The Resident Project Representative will be ENGINEER's agent or employee and

under ENGINEER's supervision.

- c. The purpose of ENGINEER's representation by the Resident Project Representative (and assistants, if any) at the site will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed work of Contractor(s) will conform generally to the Contract Documents and that the integrity of the design concept as reflected in the Contract Documents has been implemented and preserved by Contractor(s).

- 1.2.3 ENGINEER shall attend the pre-construction conference prior to start of construction. ENGINEER shall prepare meeting minutes.
- 1.2.4 ENGINEER/Resident Project Representative shall conduct weekly progress meetings with Contractor to discuss schedules and coordinate construction progress. The OWNER will be informed of the construction progress at the weekly meetings. ENGINEER/Resident Project Representative shall prepare meeting minutes.
- 1.2.5 ENGINEER/Resident Project Representative will meet with the business owners to discuss and resolve issues that arise when construction interferes with their customers' access.
- 1.2.6 Interpretations and Clarifications. ENGINEER shall issue necessary interpretations and clarifications of the Contract Documents and, in connection therewith, prepare work directive changes and change orders as required.
- 1.2.7 Shop Drawings. ENGINEER shall review and approve (or take other appropriate action in respect of) Shop Drawings samples and other data which Contractor(s) are required to submit, but only for conformance with the design concept of the Project and compliance with the information given in the Contract Documents. Such reviews and approvals or other action shall not extend to means, methods, techniques, sequences or procedures of construction or to safety precautions and programs incident thereto.
- 1.2.8 Inspections and Tests completed by Others. ENGINEER shall have authority, as OWNER's representative, to require special inspection or testing of the work, and shall receive and review all certificates of inspections, testings and approvals required by laws, rules, regulations, ordinances, codes, orders or the Contract Documents (but only to determine generally that their content complies with the requirements of, and the results certified indicate compliance with, the Contract Documents).
- 1.2.9 Disputes between OWNER and Contractor. ENGINEER/Project Representative may act as initial interpreter of the requirements of the Contract Documents and judge of acceptability of the work thereunder and make decisions on all claims of OWNER and Contractor(s) relating to the acceptability of the work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of the work.
- 1.2.10 Applications for Payment. Based on ENGINEER's on-site observations as an experienced and qualified design professional, and on review of applications for payment and the accompanying data and schedules, ENGINEER shall determine the amounts owing to Contractor(s) and recommend in writing to OWNER payments to Contractor(s) by OWNER

in such amounts.

- 1.2.11 Contractor(s)' Completion Documents. ENGINEER shall receive and review maintenance and operating instructions, schedules, guarantees, bonds and certificates of inspection, tests and approvals which are to be assembled by Contractor(s) in accordance with the Contract Documents (but such review will only be to determine that their content complies with the requirements of, and in the case of certificates of inspection, tests and approvals, the results certified indicate compliance with, the Contract Documents); and shall transmit them to OWNER with written comments.
- 1.2.12 Inspections. ENGINEER shall conduct an inspection to determine if the work is substantially complete and a final inspection to determine if the completed work is acceptable so that ENGINEER may recommend, in writing to OWNER, final payment to Contractor(s) and may give written notice to OWNER and the Contractor(s) that the work is acceptable (subject to any conditions therein expressed).
- 1.2.13 One month prior to expiration of the Contractor's one-year warranty, ENGINEER shall, without additional compensation, inspect the project to ensure that the work is satisfactory. ENGINEER shall report its findings to OWNER. If the work is not satisfactory and there are warranty punch-list items to be completed by Contractor, ENGINEER shall facilitate the completion of those items by Contractor and report to OWNER when the work is satisfactory.

SECTION 2 - ADDITIONAL SERVICES OF ENGINEER

2.1 SERVICES REQUIRING AUTHORIZATION IN ADVANCE

If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed in paragraphs 2.1.1 through 2.1.10, inclusive. These services are not included as part of Basic Services.

- 2.1.1 Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the project; preparation or review of environmental assessments and impact statements; review and evaluation of the effect on the design requirements of the project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the project.
- 2.1.2 Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
- 2.1.3 Services resulting from significant changes in the general scope, extent or character of the project or its design including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction or method of financing; and revising previously accepted studies, reports, design documents or Contract Documents when such revisions are required by changes in laws, rules, regulations, ordinances, codes or orders enacted subsequent to the preparation of such studies, reports or documents, or are due to any other causes beyond ENGINEER's control.

- 2.1.4 Preparing documents for alternate bids requested by OWNER for Contractor(s)' work which is not executed or documents for out-of-sequence work.
- 2.1.5 Services during out-of-town travel required of ENGINEER other than visits to the site or OWNER's office as required by Section 1.
- 2.1.6 Assistance in connection with bid protests, rebidding or renegotiating contracts for construction, materials, equipment or services.
- 2.1.7 Providing any type of property surveys or related engineering services needed for the transfer of interests in real property and field surveys for design purposes and engineering surveys; and providing other special field surveys.
- 2.1.8 Public Meetings:
 - a. Preparation of meeting material for Public Meetings.
 - b. Participate and attend Public Meetings.
 - c. Follow up on assignments that evolve from Public Meetings.
 - d. Prepare meeting minutes and distribute.
- 2.1.9 Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration or other legal or administrative proceeding involving the project except where ENGINEER is a named party to such litigation, etc.
- 2.1.10 Additional services in connection with the project, including services which are to be furnished by OWNER and services not otherwise provided for in this AGREEMENT.
 - a. Materials Testing shall be furnished by separate contract between Geotech Engineer and OWNER.

2.2 REQUIRED ADDITIONAL SERVICES

Upon the written consent of OWNER, ENGINEER shall furnish or obtain Additional Services of the types listed in paragraphs 2.2.1 through 2.2.6 from others when required by the Contract Documents in circumstances beyond ENGINEER's control. If ENGINEER has a reasonable, good faith belief that an emergency exists and the Additional Services must be imminently obtained, ENGINEER may obtain the Additional Services without waiting for specific authorization from OWNER, but shall promptly provide written notice to OWNER of the procurement of the Additional Services and the basis for the decision to authorize the services without OWNER's prior consent. These services are not included as part of Basic Services.

- 2.2.1 Services in connection with work directive changes and change orders to reflect changes requested by OWNER if the resulting change in compensation for Basic Services is not commensurate with the additional services rendered.
- 2.2.2 Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitutions proposed by Contractor(s); and services after the award of each contract in

evaluating and determining the acceptability of an unreasonable or excessive number of substitutions proposed by Contractor.

- 2.2.3 Services resulting from significant delays, changes or price increases occurring as a direct or indirect result of material, equipment or energy shortages.
- 2.2.4 Additional or extended services during construction made necessary by (1) work damaged by fire or other cause during construction, (2) a significant amount of defective or neglected work of any Contractor, (3) acceleration of the progress schedule involving services beyond normal working hours, and (4) default by any Contractor.
- 2.2.5 Services (other than Basic Services during the Operational Phase) in connection with any partial utilization of any part of the project by OWNER prior to Substantial Completion.
- 2.2.6 Evaluating an unreasonable or extensive number of claims submitted by Contractor(s) or others in connection with the work.

SECTION 3 - PERIODS OF SERVICE

- 3.1 The provisions of this Section 3 and the various rates of compensation for ENGINEER's services provided for elsewhere in this AGREEMENT have been agreed to in anticipation of the orderly and continuous progress of the Project. ENGINEER's obligation to render services hereunder will extend for a period which may reasonably be required for the design, award of contracts, construction and initial operation of the Project including extra work and required extensions thereto. If specific periods of time for additional services rendered are set forth or specific dates by which additional services are to be completed are provided and if such dates are exceeded through no fault of ENGINEER, all rates, measures and amounts of compensation provided herein shall be subject to equitable adjustment.
 - 3.1.1 Construction Phase:
 - Award Contract – February 2017
 - Start Construction – March 2017
 - Work is estimated to be substantially complete within 160 calendar days after the date when the Contract time commences to run and shall hit final completion within 180 calendar days after the date when the Contract time commences to run. The observation of this project is assumed to be part-time inspection (as needed).
- 3.2 After acceptance by OWNER and/or other Governing Agencies of the ENGINEER's Drawings, Specifications and other Final Design Phase documentation including the most recent opinion of probable Total Project Cost, the Final Design Phase shall be complete. Upon written agreement for future phases and authorization to proceed, ENGINEER shall proceed with performance of the services called for in the Construction Phase.
- 3.3 If OWNER has requested significant modifications or changes in the general scope, extent or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- 3.4 If ENGINEER's services for design or during construction of the Project are delayed or suspended in whole or in part by OWNER for more than three months for reasons beyond ENGINEER's control, ENGINEER shall on written demand to OWNER (but without termination of this AGREEMENT) be paid for the services that have been rendered to the date of the suspension of the work. If such delay or suspension extends for more than one year for reasons beyond ENGINEER's control, or if

ENGINEER for any reason is required to render Construction Phase services in respect of any prime contract for construction, materials or equipment more than one year after Substantial Completion is achieved under the contract, the various rates of compensation provided for elsewhere in this AGREEMENT shall be subject to equitable adjustment.

- 3.5 In the event that the work designed or specified by ENGINEER is to be furnished or performed under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Bidding or Negotiating and Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate contracts. This schedule is to be prepared whether or not the work under such contracts is to proceed concurrently.

SECTION 4 - COMPENSATION

4.1 METHODS OF PAYMENT FOR SERVICES AND EXPENSES OF ENGINEER

- 4.1.1 For Basic Services. OWNER shall pay ENGINEER for Basic Services rendered under Section 1 as follows:

- 4.1.1.1 An hourly plus expenses, not to exceed as designated by Project Phase for designated services.

Construction Phase	<u>\$89,274.00</u>
Total (Not to Exceed)	<u>\$89,274.00</u>

- 4.1.2 For Additional Services. OWNER shall pay ENGINEER for Additional Services rendered under Section 2 as follows:

- 4.1.2.1 General. For Additional Services of ENGINEER's principals and employees engaged directly on the Project and rendered pursuant to paragraph 2.1 on the basis of ENGINEER's hourly rates attached hereto as Exhibit A.

- 4.1.2.2 Professional Associates and Consultants. For services and Reimbursable Expenses of independent professional associates and consultants employed by ENGINEER to render Additional Services pursuant to paragraph 2, the amount billed to ENGINEER times a factor of 1.1.

- 4.1.3 For Reimbursable Expenses. In addition to payments provided for in paragraphs 4.1.1 and 4.1.2, OWNER shall pay ENGINEER the actual costs of all Reimbursable Expenses incurred in connection with all Basic and Additional Services times a factor of 1.1.

- 4.1.4 Additional Services per Public Meeting **\$750**

4.2 TIMES OF PAYMENTS

- 4.2.1 ENGINEER shall submit monthly invoices for the hourly plus expenses for services actually completed at the time of billing for Section 4.1. OWNER shall make prompt monthly payments in response to ENGINEER's monthly invoices.

4.3 OTHER PROVISIONS CONCERNING PAYMENTS

- 4.3.1 If OWNER fails to make any payment due ENGINEER for services and expenses within forty-five (45) days after receipt of ENGINEER's invoice, the amounts due ENGINEER will be increased at the rate of 1.0% per month from said forty-fifth (45th) day, and in addition, ENGINEER may, after giving seven (7) days' written notice to OWNER, suspend services under this AGREEMENT until ENGINEER has been paid in full all amounts due for services, expenses, and charges. If it is necessary to retain an attorney to enforce collection, reasonable attorney's fees and court costs will be added to the amount otherwise due ENGINEER.
- 4.3.2 In the event of termination by OWNER under paragraph 6.1.2 upon the completion of any phase of the Basic Services, progress payments due ENGINEER for services rendered through such phase shall constitute total payment for such services. In the event of such termination by OWNER during any phase of the Basic Services, ENGINEER will be paid for services rendered during that phase on the basis of ENGINEER's hourly rates based on current Schedule of Fees for services rendered during that phase to date of termination by ENGINEER's principals and employees engaged directly in work on the Project, such amount not to exceed, however, the amount that would be due for completion of the phase. In the event of any such termination, ENGINEER also will be reimbursed for the charges of independent professional associates and consultants employed by ENGINEER to render Basic Services and for all unpaid Additional Services and unpaid Reimbursable Expenses.
- 4.3.3 It is understood and agreed that any appropriation of funds or other arrangements for funds necessary for covering payments due ENGINEER under the various Sections of this AGREEMENT have been made or will be made by the OWNER as the work progresses. It is further agreed that the OWNER shall inform the ENGINEER regarding any pertinent arrangements for funds as the work proceeds.

SECTION 5 - OWNER'S RESPONSIBILITIES

OWNER shall do the following in a timely manner so as not to delay the services of ENGINEER:

- 5.1 Designate in writing a person to act as OWNER's representative with respect to the services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret and define OWNER's policies and decision with respect to ENGINEER's services for the Project. OWNER hereby designates:

Roy Lauricello, Town Manager
Town of Johnstown
450 S. Parish Avenue
Johnstown, CO 80534
Phone: 970-587-4664

- 5.2. Provide all criteria and full information as to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications.
- 5.3 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the Project including previous reports and any other data relative to design or construction of the Project.
- 5.4 Furnish to ENGINEER, as required for performance of ENGINEER's Basic Services, the following documents if in possession or available to OWNER:
 - 5.4.1 Data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials, and equipment;
 - 5.4.2 Appropriate professional interpretations of all of the foregoing;
 - 5.4.3 Environmental assessment and impact statements;
 - 5.4.4 Property, boundary, easement, right-of-way, topographic and utility surveys;
 - 5.4.5 Property descriptions;
 - 5.4.6 Zoning, deed and other land use restriction; and
- 5.5 Provide engineering surveys to establish reference points for construction to enable Contractor(s) to proceed with the layout of the work.
- 5.6 Arrange for access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under this AGREEMENT.
- 5.7 Examine all studies, reports, sketches, Drawings, Specifications, proposals and other documents presented by ENGINEER, obtain advice of an attorney, insurance counselor and other consultants as OWNER deems appropriate for such examination and render in writing decisions pertaining thereto within reasonable time so as not to delay the services of ENGINEER.
- 5.9 [Intentionally omitted.]
- 5.10 Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect or nonconformance in the work of any Contractor.
- 5.11 Bear all costs incident to compliance with the requirements of this Section 5.

SECTION 6 – GENERAL CONSIDERATIONS

6.1 TERMINATION

- 6.1.1 The obligation to provide further services under this AGREEMENT may be terminated by either party upon thirty days' written notice in the event of substantial failure by the other party

to perform in accordance with the terms hereof through no fault of the terminating party. Upon receipt of the written notice to terminate the defaulting party shall have ten days to cure the default to the satisfaction of the terminating party.

6.1.2 Termination for convenience: OWNER shall, at its sole option and discretion, have the right to terminate this AGREEMENT for any reason whatsoever by providing ENGINEER with a written notice to terminate to be effective upon five (5) days after notifying ENGINEER by registered mail, return receipt requested.

6.2 INSURANCE

6.2.1 ENGINEER agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against liability, claims, damages and other obligations of ENGINEER. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law. ENGINEER shall not be relieved of any liability, claims, damages or other obligations by reason of its failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types.

6.2.2 ENGINEER shall procure and maintain, and shall cause any subconsultant of ENGINEER to procure and maintain, the minimum insurance coverages listed below. Such coverages shall be procured and maintained with forms and insurers acceptable to the OWNER. All coverages shall be continuously maintained to cover liability, claims, damages and other obligations of ENGINEER. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage.

6.2.2.1 Worker's compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of services under this Agreement, and Employer's Liability insurance with minimum limits of Five Hundred Thousand Dollars (\$500,000) each claim, Five Hundred Thousand Dollars (\$500,000) disease - policy limit, and Five Hundred Thousand Dollars (\$500,000) disease - each employee.

6.2.2.2 Commercial general liability insurance with minimum combined single limits of One Million Dollars (\$1,000,000) each occurrence and Two Million Dollars (\$2,000,000) general aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, products and completed operations. The policy shall contain a severability of interests' provision.

6.2.2.3 Professional liability insurance with minimum limits of One Million Dollars (\$1,000,000) each claim and Two Million Dollars (\$2,000,000) annual aggregate, and ENGINEER shall maintain such coverage for at least three (3) years from the termination of this Agreement.

6.2.2.4 The policy required by Paragraph 6.2.2.2, above shall be endorsed to include the OWNER and the OWNER's officers, employees and consultants as additional insureds. Every policy required above shall be primary insurance, with the exception of Professional Liability and Worker's Compensation, and any insurance carried by the OWNER, its officers, its employees or its consultants shall be excess and not contributory insurance to that provided by ENGINEER. No additional insured endorsement to the policy required by Paragraph 6.2.2.1, above shall contain any

exclusion for bodily injury or property damage arising from completed operations. ENGINEER shall be solely responsible for any deductible losses under any policy required above.

6.2.2.5 The certificate of insurance provided for the OWNER shall be completed by ENGINEER'S insurance agent as evidence that policies providing the required coverages, conditions and minimum limits are in full force and effect, and shall be reviewed and approved by the OWNER prior to commencement of the Agreement. No other form of certificate shall be used. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be cancelled, or terminated until at least thirty (30) days' prior written notice has been given to the OWNER. In addition, should there be any change in coverage or carrier, ENGINEER will promptly notify OWNER. The completed certificate of insurance shall be sent to:

Town of Johnstown
ATNN: Town Manager
450 So. Parish
Johnstown, CO 80534

6.2.2.6 Failure on the part of ENGINEER to procure or maintain policies providing the required coverages, conditions and minimum limits shall constitute a material breach of agreement upon which the OWNER may immediately terminate this Agreement or, at its discretion, the OWNER 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 ENGINEER to the OWNER upon demand, or the OWNER may offset the cost of the premiums against any monies due to ENGINEER from the OWNER.

6.2.2.7 The OWNER reserves the right to request and receive a certified copy of any policy and any endorsement thereto.

6.2.2.8 The parties hereto understand and agree that the OWNER, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently Three Hundred Fifty Thousand Dollars (\$350,000) per person and Nine Hundred and Ninety Thousand Dollars (\$990,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, Colo. Rev. Stat. §24-10-101, et seq., 10 Colo. Rev. Stat., as from time to time amended, or otherwise available to the OWNER, its officers or its employees.

6.3 CONTROLLING LAW

This AGREEMENT is to be governed by the law of the State of Colorado. Venue for any disputes shall be in Weld County, Colorado.

6.4 SUCCESSORS AND ASSIGNS

6.4.1 OWNER and ENGINEER each is hereby bound, and the partners, successors, executors, administrators, assigns, and legal representatives of OWNER and ENGINEER are hereby bound to the other party to this AGREEMENT and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this AGREEMENT.

6.4.2 Neither OWNER nor ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated by law or the effect of this limitation may be restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent ENGINEER from employing such independent professional associates and consultants as ENGINEER may deem appropriate to assist him in the performance of services hereunder. Costs and expenses for such independent professional associate or consultant shall be absorbed by ENGINEER.

6.4.3 Nothing under this AGREEMENT shall be construed to give any rights or benefits in this AGREEMENT to anyone other than OWNER and ENGINEER, and all duties and responsibilities undertaken pursuant to this AGREEMENT will be for the sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party.

6.5 ENFORCEMENT

In the event that suit is brought upon this AGREEMENT to enforce its terms, the prevailing party shall be entitled to its reasonable attorneys' fees and related court costs, to the extent permitted by law.

6.6 EQUAL OPPORTUNITY EMPLOYER

ENGINEER will not discriminate against any employee or applicant for employment because of race, color, religion, age, sex, sexual orientation, disability or national origin. ENGINEER will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, age, sex, sexual orientation, disability, or national origin. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ENGINEER agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided by an agency of the federal government, setting forth the provisions of the Equal Opportunity Laws.

6.7 INDEPENDENT CONTRACTOR

6.7.1 ENGINEER and any persons employed by ENGINEER for the performance of Work hereunder shall be considered independent contractors and not employees or agents of the OWNER.

6.7.2 ENGINEER shall have the right to employ such assistance as may be required for the performance of Work under this Agreement. ENGINEER shall be responsible for the compensation, insurance, and all clerical detail pertaining to such assistants, and shall be solely responsible for providing any training, tools, benefits, materials, and equipment.

6.7.3 THE PARTIES HERETO UNDERSTAND THAT THE ENGINEER AND ENGINEER'S EMPLOYEES AND SUBCONTRACTORS ARE NOT ENTITLED TO WORKERS' COMPENSATION BENEFITS UNDER ANY WORKERS' COMPENSATION INSURANCE POLICY OF THE OWNER, AND THAT ENGINEER IS OBLIGATED TO PAY FEDERAL

AND STATE INCOME TAX AND OTHER APPLICABLE TAXES AND OTHER AMOUNTS
DUE ON ANY MONEYS PURSUANT TO THIS AGREEMENT.

SECTION 7 - SPECIAL PROVISIONS, EXHIBITS AND SCHEDULES

- 7.1 This AGREEMENT is subject to the following special provisions:
- 7.1.1 None
- 7.2 The following Exhibits are attached to and made a part of this AGREEMENT:
- 7.2.1 Exhibit A, "TTG, CONSULTING ENGINEERS Schedule of Fees" consisting of 1 page.
- 7.2.2 Exhibit B, "Required Provisions for Contract for Services Prohibiting Employment of Illegal Aliens" consisting of 1 page.
- 7.2.3 Exhibit C, "Task List", consisting of 1 page.
- 7.3 This AGREEMENT (consisting of pages 1 to 13, inclusive), together with the Exhibits and Schedules identified above constitute the entire AGREEMENT between OWNER and ENGINEER and supersede all prior written or oral understandings. This AGREEMENT and said Exhibits and schedules may only be amended, supplemented, modified or cancelled by a duly executed written instrument.
- 7.4 Notwithstanding any other provision of this AGREEMENT, pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the OWNER payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This AGREEMENT shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.
- 7.5 ENGINEER shall indemnify, save and hold harmless 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, ENGINEER, its employees, consultants, sub-consultants or assignees pursuant to the terms of this AGREEMENT, regardless of whether or not such claim is caused in part by a party indemnified hereunder.
- 7.6 Unless otherwise mutually agreed by the parties, 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. 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.
- 7.7 Unless otherwise defined herein, the terms used in this AGREEMENT shall have the meaning ascribed to them in the Standard General Conditions of the Construction Contract contained in the Project Manual for North Second Street Improvements, Town of Johnstown.

IN WITNESS WHEREOF, the parties hereto have made and executed this AGREEMENT as of the day and year first above written.

TOWN OF JOHNSTOWN (OWNER)

By: _____
Scott James

Title: Mayor

ATTEST:

Diana Seele, Town Clerk

TTG ENGINEERS, INC.
(ENGINEER)

By: _____
[Signature]

Title: Vice - President

ATTEST:

[Signature]

AGENDA ITEM 9E

IGA

STATE OF COLORADO

(Colorado Department of Transportation)

(Improvements to North Interstate 25)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 6, 2017

ITEM NUMBER: 9E

SUBJECT: Consider (1) Resolution No. 2017-05, Authorizing the Town of Johnstown to Enter into an Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25 and (2) Intergovernmental Agreement with the State of Colorado.

ACTION PROPOSED: Approve Resolution No. 2017-05, Authorizing the Town of Johnstown to Enter into an Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25.

PRESENTED BY: Town Attorney

AGENDA ITEM DESCRIPTION: The Colorado Department of Transportation (“CDOT”) intends to make improvements to Interstate 25 (“I-25”) in Northern Colorado between State Highway 14 and State Highway 402 (“Project”). CDOT requested local contributions from jurisdictions that will be positively impacted by the Project due to the increased capacity along I-25 in Northern Colorado. On or about May 16, 2016, by Resolution No. 2016-07, Town Council affirmed its support for the Project and indicated its intent to provide funds to support the Project in the total amount of **\$1,000,000**, payable in increments of \$250,000 per year during the 2017-2020 calendar years.

To implement the foregoing, CDOT requested that the Town execute an intergovernmental agreement with the State of Colorado, for the use and benefit of CDOT, identified as “Contract for Project: I-25 North: SH 402-SH 14 (21506); Region 4” (“Intergovernmental Agreement”). Per the Intergovernmental Agreement, the Town agrees to pay \$250,000 to CDOT by the end of April for the 2017-2020 calendar years. The first payment is due on April 25, 2017. CDOT agrees to provide an annual accounting to the Town documenting funds expended for the Project. The Intergovernmental Agreement is subject to annual appropriation by both the State and the Town, and is terminable for the failure to appropriate. The agreement may also be terminated by the State if the State does not complete the Project or if the Town fails to fulfill its obligations.

The Intergovernmental Agreement provides that the Town adopt a resolution authorizing the Town to enter into the Intergovernmental Agreement and authorizing the expenditure of funds for the Project.

LEGAL ADVICE: The Resolution was drafted by the Town Attorney and the Intergovernmental Agreement was reviewed by the Town Attorney.

FINANCIAL ADVICE: The Intergovernmental Agreement involves an expenditure of **\$250,000 per year through 2020**.

RECOMMENDED ACTION: Approve Resolution No. 2017-05, Authorizing the Town of Johnstown to enter into an Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25.

SUGGESTED MOTION:

For Approval: I move to approve the Resolution No. 2017-05, Authorizing the Town of Johnstown to Enter into an Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25 and authorize the Mayor to sign the Intergovernmental Agreement with the State of Colorado.

For Denial: I move to deny approval of the Resolution No. 2017-05, Authorizing the Town of Johnstown to enter into an Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25.

Reviewed:


Town Manager

RESOLUTION

No. 2017-05

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2017-05**

**AUTHORIZING THE TOWN OF JOHNSTOWN TO
ENTER INTO AN INTERGOVERNMENTAL AGREEMENT
WITH THE STATE OF COLORADO, FOR THE USE AND BENEFIT OF
THE COLORADO DEPARTMENT OF TRANSPORTATION,
FOR IMPROVEMENTS TO NORTH INTERSTATE 25**

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, Interstate 25 (“I-25”) serves as the primary north-south highway connection for Northern Colorado, including the Town, and is the primary route for the Town’s connectivity to commerce, health care, education and employment; and

WHEREAS, the Colorado Department of Transportation (“CDOT”) intends to make improvements to I-25 in Northern Colorado between State Highway 14 and State Highway 402 (“Project”); and

WHEREAS, CDOT requested local contributions from jurisdictions that will be positively impacted by the Project due to the increased capacity along I-25 in Northern Colorado; and

WHEREAS, the Town desires to provide funds to CDOT to support the Project in the total amount of \$1,000,000, payable in increments of \$250,000 per year during the 2017-2020 calendar years; and

WHEREAS, CDOT requests that the Town execute an intergovernmental agreement with the State of Colorado, for the use and benefit of CDOT, identified as “Contract for Project: I-25 North: SH 402-SH 14 (21506); Region 4” (“Intergovernmental Agreement”), affirming the Town’s support for the Project and authorizing the expenditure of funds for the Project; and

WHEREAS, Colorado Revised Statutes §29-1-201, *et seq.*, authorizes and enables governmental entities to enter into cooperative agreements for efficient and effective use of their powers and responsibilities; and

WHEREAS, the Town Council finds that it is in the best interest of the Town to adopt and execute the Intergovernmental Agreement and authorize the expenditure of funds for the Project.

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

Section 1: The Town Council hereby approves and authorizes the execution of the Intergovernmental Agreement with the State of Colorado, for the use and benefit of the Colorado Department of Transportation.

Section 2: The Town Council hereby approves the expenditure of funds for the Project.

Section 3: The Town of Johnstown has appropriated sufficient funds to cover the Town's local share contribution for the 2017 calendar year.

Section 4: This Resolution shall be effective as of the date of its adoption

PASSED, SIGNED, APPROVED, AND ADOPTED this ___ day of March, 2017.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

AGREEMENT

(Local \$CDOTWRK)
PROJECT: I-25 North: SH 402 – SH 14 (21506)
REGION 4 (dz)

Routing # 17-HA4-XC-00077
SAP # 331001582
FOR CDOT TRACKING PURPOSES
(subject to change).

CONTRACT

THIS CONTRACT made this ___ day of _____ 20 ___, (the “Contract”) by and between the State of Colorado for the use and benefit of the Colorado Department of Transportation (the “State”) and the Town of Johnstown (the “Local Agency”), the State and the Local Agency together shall be referred to as the “Parties” and individually as “Party.”

RECITALS

1. The Local Agency has made funds available for Project SH 402 – SH 14 (21506), which shall consist of improvements to North Interstate-25 (the “Project” or “Work”) and desires to contribute funds for the Project, as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this Contract and to expend its funds for the Project. A copy of this ordinance or resolutions is attached hereto and incorporated herein as **Exhibit B**.
2. Required approval, clearance, and coordination have been accomplished from and with appropriate agencies.
3. This Contract is executed under the authority of CRS §§ 29-1-203, 43-1-110, 43-1-116, 43-2-101(4)(c), 43-2-144, and **Exhibit B**.
4. The Local Agency has funds available and desires to provide the funding for the improvements, as described in Section 4.
5. Pursuant to CRS § 43-2-104.5, as amended, the State may contract with Local Agencies to provide maintenance and construction of highways that are part of the State or Local Agency highway system.
6. The Local Agency anticipates design and construction improvements to North Interstate-25. The State has completed and submitted a preliminary Scope of Work describing the general nature of the Work. The Local Agency understands that before the Work begins, the Scope of Work may be revised as a result of design changes made by the State, in coordination with the Local Agency, in its internal review process.
7. The Parties hereto desire to agree upon the division of responsibilities with regard to the Project.

THE PARTIES NOW AGREE THAT:

Section 1. Scope of Work

The Work under this Contract shall consist of improvements to North Interstate-25, for which the Local Agency shall provide funding and the State shall be responsible for the design and construction of the improvements. The Project will take place from approximately just north of State Highway 402 to just south of State Highway 14, between Johnstown/Loveland and Fort Collins, Colorado. The Work includes improvements, constructions and replacements, as described in **Exhibit A**.

Section 2. Order of Precedence

In the event of conflicts or inconsistencies between this Contract and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. This Contract
2. **Exhibit A** (Scope of Work)
3. Other Exhibits in descending order of their attachment.

Section 3. Term

This Contract shall be effective upon approval of the State Controller or designee. The term of this Contract shall continue through the completion and final acceptance of the Project by the State, the Federal Highway Administration ("FHWA"), and the Local Agency.

Section 4. Project Funding Provisions

A. The Local Agency is prepared to provide their portion of the funding for the Work, as provided in §4.B and as evidenced by an appropriate ordinance or resolution duly passed and adopted by the authorized representatives of the Local Agency, which expressly authorizes the Local Agency to enter into this Contract and to expend its funds for the Project. A copy of this ordinance or resolution is attached hereto and incorporated herein as **Exhibit B**.

B. **The maximum amount payable by the Local Agency under this Contract shall be 1,000,000.00**, unless such amount is increased by an appropriate written modification to this Contract executed before any increased cost is incurred. It is understood and agreed by the Parties that the total cost of the Work stated herein is the best estimate available, based on the design data as approved at the time of execution of this Contract, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the Parties prior to bid and award.

C. The Parties agree that this Contract is contingent upon all funds designated for the Project being budgeted, appropriated and made available from State and State sources, as applicable. Should State and/or State sources fail to budget, appropriate and make available necessary funds for Work as agreed upon herein, the Contract may be terminated by either Party, provided that State shall be responsible for payment for Work incurred up to the date of termination.

Section 5. Project Payment Provisions

A. The Local Agency shall remit to the State a payment of \$250,000.00 by April 30 of each year (2017 -2020) during the term of this agreement, as shown in the Payment Schedule in Exhibit A.

B. The State shall prepare and submit to the Local Agency, no more than annually, documentation for costs incurred relative to the Project. The State's documentation shall include a description of the amounts of services performed, the dates of performance and the amounts and description of expenses. The documentation shall be prepared in accordance with the State's standard policies, procedures and standardized billing format.

C. The Parties agree that this Contract is contingent upon Local Agency funds designated for the Project herein being budgeted, appropriated and made available from Local Agency and municipal sources, as applicable. Should Local Agency and/or municipal sources fail to budget, appropriate and make available necessary funds for Local Agency as agreed upon herein, the Contract may be terminated by either Party.

Section 6. State and Local Agency Commitments

A. Design [if applicable]

1. If the Work includes preliminary design or final design (the "Construction Plans"), or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), CDOT shall comply with the following requirements, as applicable:
 - a. perform or provide the Plans, to the extent required by the nature of the Work.
 - b. prepare final design (Construction Plans) in accord with the requirements of the latest edition of the American Association of State Highway Transportation Officials ("AASHTO") manual or other standard, such as the Uniform Building Code, as approved by CDOT.
 - c. prepare special provisions and estimates in accord with the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction.
 - d. include details of any required detours in the Plans, in order to prevent any interference of the construction work and to protect the traveling public.
 - e. stamp the Plans produced by a Colorado Registered Professional Engineer.
 - f. provide final assembly of Plans and Contract documents.
 - g. be responsible for the Plans being accurate and complete.
 - h. make no further changes in the Plans following the award of the construction contract except by agreement in writing between the Parties. The Plans shall be considered final when approved and accepted by the Parties hereto, and when final they shall be deemed incorporated herein.

B. Construction [if applicable]

1. If the Work includes construction, CDOT shall perform the construction in accordance with the approved design plans. Such administration shall include project inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement.
2. If the State is the responsible Party:
 - a. it shall appoint a qualified professional engineer, licensed in the State of Colorado, as the State Agency Project Engineer ("SAPE"), to perform that administration. The SAPE shall administer the Project in accordance with this Contract, the requirements of the construction contract and applicable State procedures.
 - b. if bids are to be let for the construction of the Project, the State shall, in conjunction with the Local Agency, advertise the call for bids and upon concurrence by the Local Agency will award the construction contract(s) to the low responsive, responsible bidder(s).
 - (1) in advertising and awarding the bid for the construction of a federal-aid project, the State shall comply with applicable requirements of 23 USC § 112, 23 CFR 633 and 635, and CRS § 24-92-101 *et seq.* Those requirements include, without limitation, that the State and Local Agency shall incorporate Form 1273 in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 CFR 633.102(e).
 - (2) the Local Agency has the option to concur or not concur in the proposal of the apparent low bidder for work on which competitive bids have been received. The Local Agency must declare its concurrence or non-concurrence within 3 working days after said bids are publicly opened.
 - (3) by indicating its concurrence in such award, the Local Agency, acting by or through its duly authorized representatives, agrees to provide additional funds, subject to their availability and appropriation for that purpose, if required to complete the Work under this Project if no additional federal-aid funds will be made available for the Project.
 - c. If all or part of the construction work is to be accomplished by State personnel (i.e. by force account), rather than by a competitive bidding process, the State will ensure that all such force account work is

accomplished in accordance with the pertinent State specifications and requirements with 23 CFR 635 (B), Force Account Construction.

Section 7. ROW Acquisition and Relocation [if applicable]

If the Project includes a right of way, prior to this project being advertised for bids, the State will certify in writing that all right of way has been acquired in accordance with the applicable state and federal regulations, or that no additional right of way is required. The Work to be designed and constructed by CDOT under the Project shall be on CDOT right of way ("ROW").

Any acquisition/relocation activities must comply with: all applicable federal and State statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended (P.L. 91-646) and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 CFR P24); CDOT's Right of Way Manual; and CDOT's Policy and Procedural Directives.

Allocation of Responsibilities are as follows:

- Federal participation in right of way acquisition (3111 charges), relocation (3109 charges) activities, if any, and ROW incidentals (expenses incidental to acquisition/relocation of right of way – 3114 charges);
- Federal participation in ROW acquisition (3111 charges), relocation (3109 charges) but no participation in incidental expenses (3114 charges); or
- No federal participation in ROW acquisition (3111 charges) and relocation activities (3109 expenses).

Regardless of the option selected above, the State retains oversight responsibilities. The Local Agency's and the State's responsibilities for each option is specifically set forth in CDOT's Right of Way Manual. The manual is located at http://www.dot.state.co.us/ROW_Manual/.

If ROW is purchased for a State highway, including areas of influence of the State highway, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.

Section 8. Utilities

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

Section 9. Railroads

Reserved.

Section 10. Environmental Obligations

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

Section 11. Maintenance Obligations

The State shall maintain and operate the improvements constructed under this Contract at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. The State will make proper provisions for such maintenance obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances, and regulations. The State and FHWA shall make periodic inspections of the Project to verify that such improvements are being adequately maintained.

Section 12. Record Keeping

The State shall maintain a complete file of all records, documents, communications, and other written materials, which pertain to the costs incurred under this Contract. The State shall maintain such records for a period of 6 years after the date of termination of this Contract or final payment hereunder, whichever is later, or for such further period as may be necessary to resolve any matters which may be pending. The State shall make such materials available for inspection at all reasonable times and shall permit duly authorized agents and employees of the Local Agency and FHWA to inspect the Project and to inspect, review, and audit the Project records.

Section 13. Termination Provisions

This Contract may be terminated as follows:

A. Termination for Convenience. The State may terminate this Contract at any time the State determines that the purposes of the distribution of moneys under the Contract would no longer be served by completion of the Project. The State shall effect such termination by giving written notice of termination to the Local Agency and specifying the effective date thereof, at least 20 days before the effective date of such termination.

B. Termination for Cause. If, through any cause, the Local Agency shall fail to fulfill, in a timely and proper manner, its obligations under this Contract, or if the Local Agency shall violate any of the covenants, agreements, or stipulations of this Contract, the State shall thereupon have the right to terminate this Contract for cause by giving written notice to the Local Agency of its intent to terminate and at least 10 days opportunity to cure the default or show cause why termination is otherwise not appropriate. In the event of termination, all finished or unfinished documents, data,

studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by the Local Agency under this Contract shall, at the option of the State, become its property, and the Local Agency shall be entitled to receive just and equitable compensation for any services and supplies delivered and accepted. The Local Agency shall be obligated to return any payments advanced under the provisions of this Contract.

Notwithstanding the above, the Local Agency shall not be relieved of liability to the State for any damages sustained by the State by virtue of any breach of the Contract by the Local Agency, and the State may withhold payment to the Local Agency for the purposes of mitigating its damages until such time as the exact amount of damages due to the State from the Local Agency is determined.

If after such termination it is determined, for any reason, that the Local Agency was not in default or that the Local Agency's action/inaction was excusable, such termination shall be treated as a termination for convenience, and the rights and obligations of the Parties shall be the same as if the Contract had been terminated for convenience, as described herein.

Section 14. Legal Authority

The Local Agency warrants that it possesses the legal authority to enter into this Contract and that it has taken all actions required by its procedures, by-laws, and applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Contract and to bind the Local Agency to its terms. The person(s) executing this Contract on behalf of the Local Agency warrants that such person(s) has full authorization to execute this Contract.

Section 15. Representatives and Notice

All communications relating to activities for the Work shall be exchanged between representatives of the State's Transportation Region 4 and the Local Agency. All communication, notices, and correspondence shall be addressed to the individuals identified below. Either Party may from time to time designate in writing new or substitute representatives.

If to the State:

Katrina Kloberdanz
CDOT Region 4
10601 W. 10th St.
Greeley, Colorado 80634
970.350.2211
Katrina.Kloberdanz@state.co.us

If to the Local Agency:

Roy Lauricello, Town Manager
Town of Johnstown
PO Box 609
Johnstown, Colorado 80534
970.587.4664
rcello@townofjohnstown.com

Section 16. Successors

Except as herein otherwise provided, this Contract shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns.

Section 17. Third Party Beneficiaries

It is expressly understood and agreed that the enforcement of the terms and conditions of this Contract and all rights of action relating to such enforcement, shall be strictly reserved to the State and the Local Agency. Nothing contained in this Contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the State and the Local Agency that any such person or entity, other than the State or the Local Agency receiving services or benefits under this Contract shall be deemed an incidental beneficiary only.

Section 18. Governmental Immunity

Notwithstanding any other provision of this Contract to the contrary, no term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS § 24-10-101, *et seq.*, as now or hereafter amended. The Parties understand and agree that liability for claims for injuries to persons or property arising out of negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of CRS § 24-10-101, *et seq.*, as now or hereafter amended and the risk management statutes, CRS § 24-30-1501, *et seq.*, as now or hereafter amended.

Section 19. Severability

To the extent that this Contract may be executed and performance of the obligations of the Parties may be accomplished within the intent of the Contract, the terms of this Contract are severable, and should any term or provision hereof be declared invalid or become inoperative for any reason, such invalidity or failure shall not affect the validity of any other term or provision hereof.

Section 20. Waiver

The waiver of any breach of a term, provision, or requirement of this Contract shall not be construed or deemed as a waiver of any subsequent breach of such term, provision, or requirement, or of any other term, provision or requirement.

Section 21. Entire Understanding

This Contract is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein by writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a writing executed and approved pursuant to the State Fiscal Rules.

Section 22. Survival of Contract Terms

Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Contract and the exhibits and attachments hereto which may require continued

performance, compliance or effect beyond the termination date of the Contract shall survive such termination date and shall be enforceable by the State as provided herein in the event of such failure to perform or comply by the Local Agency.

Section 23. Modification and Amendment

This Contract is subject to such modifications as may be required by changes in federal or State law, or their implementing regulations. Any such required modification shall automatically be incorporated into and be part of this Contract on the effective date of such change as if fully set forth herein. Except as provided above, no modification of this Contract shall be effective unless agreed to in writing by both Parties in an amendment to this Contract that is properly executed and approved in accordance with applicable law.

Section 24. Disputes

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

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THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

<p align="center">THE LOCAL AGENCY Town of Johnstown</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center"><u>STATE OF COLORADO</u> <u>John W. Hickenlooper, GOVERNOR</u> Colorado Department of Transportation Shailen P. Bhatt, Executive Director</p> <p>_____</p> <p align="center">By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
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<p align="center">2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p align="center">*Signature</p> <p>Date: _____</p>	<p align="center">LEGAL REVIEW Cynthia H. Coffman, Attorney General</p> <p>By: _____</p> <p align="center">Signature - Assistant Attorney General</p>
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ALL CONTRACTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Contract is not valid until signed and dated below by the State Controller or delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

Exhibit A -- Scope of Work

North Interstate 25 Phase 1 Project

Scope of Work

The Colorado Department of Transportation ("CDOT") will complete the North Interstate 25 Phase 1 Project (Hereinafter referred to as "this work"). The project is located on I-25 approximately from just north of State Highway 402 to just south of State Highway 14, covering 14 miles in length between Johnstown/Loveland and Fort Collins, Colorado.

I-25 is the primary north-south route through Colorado, and is the only continuous north-south interstate route in the state, providing access to, through, and from northern Colorado. This segment of I-25 currently has two general purpose lanes in each direction. The project adds a third travel lane in both directions to be operated as a tolled express lane which will accommodate high occupancy vehicles and charge tolls.

Elements of Project Scope:

- Increase capacity by adding an express lane in both directions
- Provide a painted buffer to separate the express lane from general purpose travel
- Construct wider shoulders
- Replace or rehabilitate aging bridges, and widen additional structures
- Improve multi-modal access to regional transit to promote mode shift
- Improve bus service performance and reduce each total trip time by adding new bus slip ramps to access a new Park-n-Ride
- Create new pedestrian and bicycle access under I-25 at Kendall Parkway
- Connect the Cache la Poudre River Regional Trail under I-25, also to serve as a wildlife corridor

By way of a Design Build (DB) contract and using a best value evaluation method, CDOT will select a contractor that will Design and Build this project, including innovations to save time and resources. This approach leaves exact elements intentionally undefined.

Local Agencies have contributed funds for improvements to I-25 included in this work.

Exhibit B

Exhibit B

LOCAL AGENCY
ORDINANCE
or
RESOLUTION

Exhibit B

