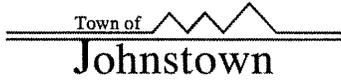


TOWN COUNCIL
MEETING
PACKET

August 7, 2017



Town Council

Agenda
Monday August 7, 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**
- 4) **RECOGNITIONS AND PROCLAMATIONS**
 - A) Recognition of National Champion Dance Dynamics Team
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

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

- 6) **CONSENT AGENDA**
 - A) Town Council Meeting Minutes – July 17, 2017
- 7) **STAFF REPORTS**
- 8) **OLD BUSINESS**
- 9) **NEW BUSINESS**
 - A) Consider Amendment to Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to Interstate 25
 - B) ***Public Hearing (First Reading)** – Ordinance No. 2017-148, An Ordinance Amending Section 16-242 of the Johnstown Municipal Code to Include "Food Store, Convenience with Vehicle Fuel Sales" as a Principal Use Permitted by Right in the Central Business District
 - C) Consider Water and Sewer Service Agreement for Visger Office at 2534
- 10) **COUNCIL REPORTS AND COMMENTS**
- 11) **MAYOR'S COMMENTS**
- 12) **ADJOURN**

WORK SESSION

- 1) Discussion of Johnstown Community Recreation Center Site



NOTICE OF ACCOMODATION

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

AGENDA ITEM 4A

RECOGNITION

(National Champion Dance Dynamics Team)

AGENDA ITEM 6A

CONSENT

AGENDA

- **Council Meeting Minutes – July 17, 2017**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: August 7, 2017

ITEM NUMBER: 6A

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:

- Council Meeting Minutes – July 17, 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 on Monday, July 17, 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, Molinar Jr. and Young

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

Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Molinar Jr. to approve the agenda as submitted. Motion carried with a unanimous vote.

Public Comments

Mr. Jim Hatfield, 345 Hickory Lane shared with Council ideas from residents for additional amenities to be added to Clearview Park i.e., soccer fields, basketball courts, tennis courts and splash park.

Consent Agenda

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

- June 19 and June 28, 2017 Town Council Meeting Minutes
- Payment of Bills
- June Financial Statements
- Award Professional Services Agreement to Ground Engineering for Geotechnical Services for the Larimer Parkway/U.S. 34 Traffic Signal Project

Motion carried with a unanimous vote.

New Business

A. Administer Oath of Office to Newly Appointed Council Member – Amy Tallent was sworn in as Councilmember to fill the vacancy from the resignation of KC Mitchell.

B. Public Hearing – Amendment to Johnstown Municipal Code Section 16-242, Sub-section (1) a.2. Central Business District Use Regulations to Include “Food Store, Convenience with Vehicle Fuels Sales” as a Permitted Use – The Town received a request from a property owner in the CB District to amend the text of Section 16-242, Sub-section (1).a.2. of the CB Central Business District regulations to include convenience food store with vehicle fuel sales as a permitted use.

Mayor James opened the Public Hearing at 7:11 p.m. Having no public comments the hearing closed at 7:16 p.m.

Councilmember Lebsack made a motion seconded by Councilmember Mellon to approve the Amendment to Johnstown Municipal Code Section 16-242, Sub-section (1).a.2. Central Business District Use Regulations to include "Food Store, Convenience with Vehicle Fuel Sales" as a Permitted Use and direct the Town Attorney to prepare an ordinance for approval. Motion carried with a unanimous vote.

C. Consider First Amendment to Standard Form of Agreement (AIA) Document B10-2007) Between Owner and Architect Regarding Design Services for the Johnstown Community Recreation Center – The Town entered an agreement with Sink Combs Dethlefs, for architectural services regarding the design of the Johnstown Community Recreation Center ("Recreation Center"). The Agreement contains a comprehensive design and construction schedule, with completion of design development scheduled to occur on or before July 31, 2017 and substantial completion of the Recreation Center to occur on or before November 30, 2018. The property the town selected to build the Recreation Center currently is not site-ready and may not be ready within the time frame planned for substantial completion as stated in the Agreement with the Architect. To protect taxpayer revenue, Town Council directed Town staff to request that Sink Combs Dethlefs temporarily cease performing the design services set forth in the Agreement until the Town obtains title to the property and is provided a financial guarantee that the infrastructure will be timely installed. The architect agreed to temporarily cease providing the design services, as reflected in the First Amendment to the Agreement. Councilmember Mellon made a motion seconded by Councilmember Davis to approve the First Amendment to Standard Form of agreement (AIA Document B10-2007) Between Owner and Architect Regarding Design Services for the Johnstown Community Recreation Center and authorize the Mayor to sign it. Motion carried with a unanimous vote.

There being no further business to come before Council the meeting adjourned at 7:28 p.m.

Mayor

Town Clerk/Treasurer

AGENDA ITEM 9A

AMENDMENT
(Intergovernmental Agreement)
(State of Colorado)
(North I-25 Improvements)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: August 7, 2017

ITEM NUMBER: 9A

SUBJECT: Consider Amendment to Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25

ACTION PROPOSED: Approve Amendment to 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: On or about March 6, 2017, the Town entered into an intergovernmental agreement ("IGA") with the Colorado Department of Transportation ("CDOT") to provide funding in the amount of \$1,000,000 to support improvements to Interstate 25 ("I-25") in Northern Colorado between State Highway 14 and State Highway 402 ("Project"). Subsequent to execution of the IGA, CDOT requested that the Town contribute an additional \$6,000,000 to support improvements to the interchanges at I-25 and U.S. Highway 34 and State Highway 402. By Resolution 2017-07, adopted on April 3, 2017, the Town affirmed its financial commitment to provide the additional \$6,000,000.

While the Town committed to paying the initial \$1,000,000 in yearly increments of \$250,000 from April 30, 2017 through April 30, 2020, CDOT did not request that the \$6,000,000 be paid in annual increments. CDOT represented that the full \$6,000,000 may be paid on or before the completion of the Project.

To effectuate the parties' agreement regarding the additional financial commitment, CDOT has requested that the Town execute an amendment to the IGA. The Amendment primarily revises the scope of work to include the interchanges and sets out the timeline for the Town's payments. Except as modified by the amendment, the original IGA remains in full force and effect.

LEGAL ADVICE: The Amendment to Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25 was reviewed by the Town Attorney.

FINANCIAL ADVICE: The Amendment to the Intergovernmental Agreement involves an additional expenditure of \$6,000,000 payable in full by 2020.

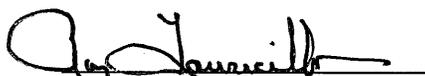
RECOMMENDED ACTION: Approve Intergovernmental Agreement with the State of Colorado, for the Use and Benefit of the Colorado Department of Transportation, for Improvements to North Interstate 25.

SUGGESTED MOTION:

For Approval: I move to approve the Amendment to the 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 it.

For Denial: I move to deny approval of the Amendment to the 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

AMENDMENT

STATE OF COLORADO AMENDMENT

Amendment #: 1

Project #: 21506

SIGNATURE AND COVER PAGE

State Agency Department of Transportation		Amendment Routing Number 17-HA4-XC-00077-M0002
Contractor TOWN OF JOHNSTOWN		Original Agreement Routing Number 17-HA4-XC-00077
Agreement Maximum Amount	N/A--Revenue Contract	Agreement Performance Beginning Date The later of the effective date or March 28, 2017
Initial term		Initial Agreement expiration date March 27, 2022
State Fiscal Year	\$0.00	
Extension terms		
State Fiscal Year	\$0.00	
State Fiscal Year	\$0.00	
State Fiscal Year	\$0.00	
Total for all state fiscal years	\$0.00	

THE PARTIES HERETO HAVE EXECUTED THIS AMENDMENT

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

<p style="text-align: center;">CONTRACTOR TOWN OF JOHNSTOWN</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">By: _____</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, Governor Department of Transportation Shailen P. Bhatt, Executive Director</p> <hr style="border: 0; border-top: 1px solid black; margin: 10px 0;"/> <p style="text-align: center;">Joshua Laipply, P.E., Chief Engineer</p> <p style="text-align: center;">Date: _____</p>
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In accordance with §24-30-202 C.R.S., this Amendment is not valid until signed and dated below by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____ N/A _____
Department of Transportation

Effective Date: _____

1) PARTIES

This Amendment (the "Amendment") to the Original Agreement shown on the Signature and Cover Page for this Amendment (the "Agreement") is entered into by and between the Contractor and the State.

2) TERMINOLOGY

Except as specifically modified by this Amendment, all terms used in this Amendment that are defined in the Agreement shall be construed and interpreted in accordance with the Agreement.

3) EFFECTIVE DATE AND ENFORCEABILITY

A. Amendment Effective Date

This Amendment shall not be valid or enforceable until the Amendment Effective Date shown on the Signature and Cover Page for this Amendment. The State shall not be bound by any provision of this Amendment before that Amendment Effective Date, and shall have no obligation to pay Contractor for any Work performed or expense incurred under this Amendment either before or after of the Amendment term shown in §3.B of this Amendment

B. Amendment Term

The Parties' respective performances under this Amendment and the changes to the Agreement contained herein shall commence on the Amendment Effective Date shown on the Signature and Cover Page for this Amendment and shall terminate on the termination of the Agreement.

4) PURPOSE

A. The Parties entered into the Agreement for Local Agency making funds available for improvements to North Interstate-25, Project SH 402 - SH 14 (21506).

B. The Parties now desire to delete Exhibit A in its entirety. This will be replaced with Exhibit A-1 with an updated TOWN OF JOHNSTOWN not to exceed reimbursement amount.

5) MODIFICATIONS

Exhibit A – Scope of Work

Exhibit A – Scope of Work is removed and replaced in its entirety with Exhibit A-1 attached hereto and incorporated herein by reference. Upon execution of this Amendment, all references in the Agreement to Exhibit A will be replaced with Exhibit A-1.

6) LIMITS OF EFFECT

This Amendment is incorporated by reference into the Agreement, and the Agreement and all prior amendments or other modifications to the Agreement, if any, remain in full force and effect except as specifically modified in this Amendment. Except for the Special Provisions contained in the Agreement, in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this Amendment and any of the provisions of the Agreement or any prior modification to the Agreement, the provisions of this Amendment shall in all respects supersede, govern, and control. The provisions of this Amendment shall only supersede, govern, and control over the Special Provisions contained in the Agreement to the extent that this Amendment specifically modifies those Special Provisions.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK

EXHIBIT A-1 – SCOPE OF WORK

North Interstate 25 Phase 1 Project Scope of Work specifics

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.

North Interstate 25 Interchange Project Scope of Work specifics

The Basic Configuration will include all work necessary to widen US 34 from west of Rocky Mountain Avenue to east of Centerra Parkway to improve traffic operations within existing state right of way. The widening work will include a combination of median and outside widening to provide a minimum of three through lanes through the US 34 intersections with Rocky Mountain Avenue, I-25 Southbound Off-Ramp, I-25 Northbound On-Ramp and Centerra Parkway. The work will require earthwork, full depth pavement construction, pavement milling and overlay of existing lanes, curb and gutter, median concrete work, pavement marking, traffic signal modifications and signing.

The Basic Configuration will include reconstruction of the existing diamond interchange at I-25 and State Highway 402, including reconstruction of the ramps, bridges, State Highway 402 and the

Exhibit A-1, Scope of Work, Continued

parking lot in the southwest quadrant. State Highway 402 will be reconstructed to a configuration with four through lanes, with a raised median, and pedestrian and bicycle facilities.

Technical Requirements:

Design:

- CDOT shall consult with the Local Agency throughout the preparation of the Plans and submit to the Local Agency for its review the proposed Plans prior to CDOT's acceptance of Release for Construction Plans. The Local Agency must provide comments on the proposed Plans within 10 calendar days after the proposed Plans are referred to it. CDOT will require the Design Build Contractor to address all issues identified by the Local Agency provided those issues are not in conformance with the Contract Documents.
- The Local Agency shall waive all review fees for design.
- The Local Agency shall not require additional design reviews beyond those required by the contract.

Construction:

- The Local Agency shall waive all permit fees for street use permits.
- CDOT shall consult with the Local Agency for its review of traffic control plans related to road closures.
- The Local Agency requires 7 calendar days of advance notification for road closures.

AGENDA ITEM 9B

AMENDMENT

TO

MUNICIPAL CODE

(Section 16-242)

(“Food Store, Convenience with Fuel Sales)

(Ordinance No. 2017-148)

(*First Reading – Public Hearing)

**** PUBLIC HEARING PROCEDURE –Ordinance No. 2017-148 (*First Reading) An Ordinance Amending Section 16-242 of the Johnstown Municipal Code to Include “Food Store, Convenience with Vehicle Fuel Sales” as a Principal Use Permitted by Right in the Central Business District***

- 1. Open public hearing.**
- 2. Receive information from staff.**
- 3. Ask to hear from anyone who supports the Amendment.**
- 4. Ask to hear from anyone who opposes the Amendment.**
- 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**

(SUGGESTED MOTIONS):

For Approval:

I move to approve Ordinance No. 2017-148, an Ordinance Amending Section 16-242 of the Johnstown Municipal Code to Include “Food Store, Convenience with Vehicle Fuel Sales” as a Principal Use Permitted by Right in the Central Business District.

For Denial:

I move to deny approval of Ordinance No. 2017-148.

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: August 7, 2017

ITEM NUMBER: 9B

SUBJECT: *Public Hearing – (First Reading) Consider Ordinance No. 2017-148, an Ordinance Amending Section 16-242 of the Johnstown Municipal Code to Include “Food Store, Convenience with Vehicle Fuel Sales” as a Principal Use Permitted by Right in the Central Business District

ACTION PROPOSED: Approve Ordinance No. 2017-148 on first reading

PRESENTED BY: Town Attorney and Town Planner

AGENDA ITEM DESCRIPTION: Chapter 16, Article XIV of the Johnstown Municipal Code establishes the zoning for the Central Business CB District (“CB District”). Section 16-242(1) sets forth the principal uses permitted by right in the CB District. Section 16-242(1)(a)(2) currently provides that “Food store, convenience without vehicle fuel sales” is a principal use permitted by right and Section 16-242(4)(b) provides that “Gasoline service stations” is a conditional use.

Mr. James Bret Jones, a property owner in the CB District, filed a community development application requesting that the Town include “Food store, convenience with vehicle fuel sales” as a principal use permitted by right in the CB District.

On May 10, 2017, the Planning and Zoning Commission held a public hearing and voted to approve the request to include “Food store, convenience with vehicle fuel sales” as a use permitted by right in the CB District. On July 17, 2017, the Town Council held a public hearing and heard evidence regarding the requested change in zoning. Among other evidence, Town Council was advised that the applicant’s property contained a food store with vehicle fuel islands from the 1930s until approximately 2007.

After considering the evidence, the Town Council voted to permit “Food store, convenience with vehicle fuel sales” as a principal use permitted by right in the CB District and directed the Town Attorney to prepare an Ordinance.

LEGAL ADVICE: Ordinance No. 2017-148 was prepared by the Town Attorney.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: Approve Ordinance No. 2017-148 on first reading.

SUGGESTED MOTION:

For Approval: I move to approve Ordinance No. 2017-148, an Ordinance Amending Section 16-242 of the Johnstown Municipal Code to Include “Food Store, Convenience with Vehicle Fuel Sales” as a Principal Use Permitted by Right in the Central Business District.

For Denial: I move to deny approval of Ordinance No. 2017-148.

Reviewed:


Town Manager

ORDINANCE

No. 2017-148

TOWN OF JOHNSTOWN, COLORADO

ORDINANCE NO. 2017-148

AN ORDINANCE AMENDING SECTION 16-242 OF THE JOHNSTOWN MUNICIPAL CODE TO INCLUDE “FOOD STORE, CONVENIENCE WITH VEHICLE FUEL SALES” AS A PRINCIPAL USE PERMITTED BY RIGHT IN THE CENTRAL BUSINESS DISTRICT

WHEREAS, the Town of Johnstown, Colorado is a municipal corporation duly organized and existing under its Home Rule Charter adopted pursuant to Article XX of the Constitution of the State of Colorado; and

WHEREAS, Chapter 16, Article XIV of the Johnstown Municipal Code establishes the zoning for the Central Business CB District (“CB District”); and

WHEREAS, Section 16-242(1) sets forth the principal uses permitted by right in the CB District; and

WHEREAS, on April 3, 2017, Mr. James Bret Jones, a property owner in the CB District, filed a community development application requesting that the Town include “Food store, convenience with vehicle fuel sales” as a principal use permitted by right in the CB District; and

WHEREAS, Section 16-242(1)(a)(2) currently provides that “Food store, convenience without vehicle fuel sales” is a principal use permitted by right and Section 16-242(4)(b) provides that “Gasoline service stations” is a conditional use; and

WHEREAS, on May 10, 2017, the Planning and Zoning Commission held a public hearing and voted to approve the request to include “Food store, convenience with vehicle fuel sales” as a use permitted by right in the CB District; and

WHEREAS, on July 17, 2017, the Town Council held a public hearing and heard evidence regarding the requested change in zoning; and

WHEREAS, among other evidence, Town Council was advised that the applicant’s property contained a food store with vehicle fuel islands from the 1930s until approximately 2007; and

WHEREAS, after considering the evidence, the Town Council finds that it is in the best interest of the Town of Johnstown to amend Section 16-242(1) of the Johnstown Municipal Code to include “Food store, convenience with vehicle fuel sales” as a principal use permitted by right in the CB District.

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

Section 1. Section 16-242(1)(a)(2) of the Johnstown Municipal Code is hereby amended to read as follows:

Sec. 16-242. Use regulations.

(1) Principal uses permitted by right.

a. Retail stores:

...

2. Food store, convenience with vehicle fuel sales;

Section 2. Publication and Effective Date. This Ordinance, after its passage on final reading, shall be numbered, recorded, published, and posted as required by the Town Charter and the adoption, posting, and publication shall be authenticated by the signature of the Mayor and the Town Clerk, and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

INTRODUCED, AND APPROVED on first reading by the Town Council of the Town of Johnstown, Colorado, this ____ day of _____, 2017.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

PASSED UPON FINAL APPROVAL AND ADOPTED on second reading by the Town Council of the Town of Johnstown, Colorado, this ___ day of _____, 2017.

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

AGENDA ITEM 9C

**WATER/SEWER
SERVICE AGREEMENT
(Visger Office at 2534)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: August 7, 2017

ITEM NUMBER: 9C

SUBJECT: Consider Water and Sewer Service Agreement for Visger Office at 2534

ACTION PROPOSED: Consider Approval of Water and Sewer Service Agreement for Visger Office at 2534

PRESENTED BY: Town Attorney

AGENDA ITEM DESCRIPTION: In compliance with the Town's water rights dedication ordinance, J and L Professional Properties submitted to the Town a Water and Sewer Demand Analysis on or about April 13, 2017, and it has been accepted by the Town upon a review by the Town's Water Resources Engineer. Based upon the analysis with the proposed construction of an office building, the average in-building water demand for Visger Office at 2534 is calculated to be 0.9±acre-feet per year. The landscaping (raw water) irrigation demand is calculated to be 0.95±acre-feet per year.

The total water requirement for this project is 1.85± acre-feet per year. Water credits for the in-building demand and the irrigation will come from Gerrard Family Limited Partnership LLLP and Thompson Ranch Development Company who previously dedicated water rights into a "water bank" under a prior agreement with the Town.

LEGAL ADVICE: The attached Water and Sewer Service Agreement was drafted by the Town's Water Attorney, Peter Ampe.

FINANCIAL ADVICE: N/A

RECOMMENDED ACTION: Approve the Water and Sewer Service Agreement as drafted.

SUGGESTED MOTIONS:

For Approval: I move to approve the Water and Sewer Service Agreement for Visger Office at 2534 and authorize the Mayor to sign it.

For Denial: I move to deny approval of the Water and Sewer Service Agreement for Visger Office at 2534.

Reviewed:


Town Manager

AGREEMENT

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 10 day of July, 2017, by and between J & L Professional Properties, 4818 Malibu Dr., Berthoud, CO 80513 (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer owns land within Lot 1, Block 10, 2534 Filing No. 6, Town of Johnstown, Weld County, Colorado (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town and was the subject of an Annexation Agreement dated December 17, 2000; and

WHEREAS, the Subject Property is being developed as an office building known as Visgar Office Building Phase 1 (“Project”) the location of which is more particularly described in Exhibit A; and

WHEREAS, on February 23, 2005 the Town Council of the Town of Johnstown approved the Final Plat for 2534; and

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

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

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-61 through 13-72, inclusive, of the Johnstown Municipal Code, as amended, (“Ordinance”), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis. Said analysis was received by the Town on or about _____, 2017, is on file with the Town and is hereby accepted by the Town as set forth in the April 25, 2017 Memorandum from the Town’s water engineer. The analysis provided by Developer addresses the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	0.90	0.045
Landscape Irrigation	0.95	0.808
Total	1.85	0.853

2. Water Rights Dedication.

a. Potable Supply. As a result of prior dedications associated with the 2534 Development, there is currently a surplus dedication credit with the Town of approximately 112.87 acre-feet per year of potable water. The Parties and the Thompson Ranch Development Company have agreed that this credit shall be applied to meet the potable water demands of the Project. Evidence of the agreement is attached as Exhibit B.

3. Surplus dedication credit.

a. Potable. The use of the prior surplus dedication credit of approximately 112.87 acre-feet per year of potable water will leave additional credit in the potable portion of the 2534 Water Bank. The potable portion of the Water Bank will have a surplus dedication credit with the Town of approximately 111.02 acre-feet per year of potable water. The credit is calculated as follows:

Prior Surplus Dedication Credit (Potable):	112.87 acre-feet
LESS Estimated demand:	1.85 acre-feet
Net current surplus credit:	111.02 acre-feet

Upon notice and written approval of the Town, said credit may be utilized to offset increased demands, if any, which are not currently projected, or for future development filings, subject to approval by the Town in subsequent agreement(s) in accordance with the requirements of the applicable Town's Ordinance.

4. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 1.85 acre-feet per year of potable water supply together with the corresponding sewer service for in-building uses.

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

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

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

TO DEVELOPER:

Paul Battista
3650 Wadsworth Blvd.
Wheat Ridge, CO 80033

TO THE TOWN:

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

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
19 Old Town Square, Suite 238
Fort Collins, CO 80524

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

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

8. **Default.** In the event of default by either Party hereunder the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

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

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

11. **Attorney's fees and costs.** If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or

damages, the prevailing Party shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

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

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

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

15. Choice of laws. This agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado.

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

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

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

Signatures follow on separate pages

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____
Scott James, Mayor

ATTEST:

By: _____
Town Clerk

APPROVED AS TO FORM:

Avi Rocklin
Johnstown Town Attorney

EXHIBIT B

RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

This is to acknowledge and agree that the Town of Johnstown may allocate raw water credit from the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP raw water credit account held by the Town of Johnstown, known as the "2534 Water Bank," to provide water service to the development known as Visger Office Building Phase I, and any successor occupant of the premises at the same location, pursuant to a Water and Sewer Service Agreement to be executed between the J&L Professional Properties and the Town of Johnstown. The amount of such allocated raw water credit is calculated to be 1.85 acre-feet per year for potable In-Building Use and Irrigation Use from previously dedicated shares of the Consolidated Home Supply Ditch and Reservoir Company, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.

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

GERRARD FAMILY LIMITED PARTNERSHIP, LLLP



Nathan Gerrard, Managing Partner
Gerrard Family Limited Partnership, LLLP

Dated: 7/25/17

THOMPSON RANCH, LLLP



Todd Williams, Vice President
Thompson Ranch, LLLP

Dated: 7/10/17

