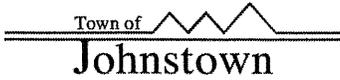


TOWN COUNCIL
MEETING
PACKET

February 5, 2018



Town Council

Agenda
Monday, February 5, 2018
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**
- 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 –January 17, 2018
 - B) Resolution No. 2018-01, Approving the Final Plat for Mountain View West Subdivision
 - C) Resolution No. 2018-02, Approving the Amended Plat for Johnstown Heights Third Filing and Granting a Variance to Allow Emergency Access
 - 7) **STAFF REPORTS**
 - 8) **OLD BUSINESS**
 - 9) **NEW BUSINESS**
 - A) ***Public Hearing** – Amendment to Iron Horse Design Guidelines
 - B) Consider Agreement to Provide Building Department Services between the Town of Johnstown and ProCode, Inc.
 - C) Consider Intergovernmental Agreement with the Loveland Fire Rescue Authority for the Assessment, Collection and Remittance of Emergency Service Impact Fees
 - 10) **EXECUTIVE SESSION** – A Conference with the Town Attorney Pursuant to C.R.S. Section 24-6-402(4) (b) to Discuss Water Dedicated to the Town per the Water and Sewer Service Agreement between the Town and WR Investment LLC Dated January 4, 2006
 - 11) **COUNCIL REPORTS AND COMMENTS**
 - 12) **MAYOR'S COMMENTS**
 - 13) **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-C

**CONSENT
AGENDA**

- **Council Minutes – January 17, 2018**
 - **Approval of Final Plat
(Mountain View West Subdivision)
(Resolution No. 2018-01**
 - **Approval of Amended Plat
(Johnstown Heights 3rd Filing)
(Resolution No. 2018-02)**
-

TOWN COUNCIL AGENDA COMMUNICATIONS

AGENDA DATE: February 5, 2018

ITEM NUMBER: 6A-C

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 – January 17, 2018
- *Resolution No. 2018-01, Approving the Final Plat for Mountain View West Subdivision
- **Resolution No. 2018-02, Approving the Amended Plat for Johnstown Heights 3rd Filing

*The attached Resolution merely memorializes the action of the Town Council which approved the final plat for the Mountain View West Subdivision on December 4, 2017.

**The attached Resolution memorializes the action of the Town Council which approved the amended plat and variance to allow emergency access on January 17, 2018.

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

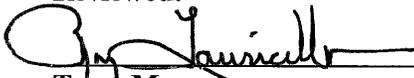
RECOMMENDED ACTION: Approve Consent Agenda

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 Wednesday, January 17, 2018 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: Councilmembers Lebsack, Mellon, Tallent and Young

Those absent: Councilmembers Davis and Molinar Jr.

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. Motion carried with a unanimous vote.

Consent Agenda

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

- December 18, 2017 - Town Council Meeting Minutes
- Payment of Bills
- December Financial Statements

Motion carried with a unanimous vote.

New Business

A. Continued Public Hearing - Resubdivision of a portion of Johnstown Heights 3rd Filing – Final Plat – Town Council continued this Public Hearing from November 6, 2017. Gillam Development Corporation submitted a request for approval of a final re-subdivision plat for a parcel of land located at West Park Avenue and south of North 3rd Street. The resubdivision plat consists of 9 single family lots.

Mayor James opened the Public Hearing at 7:10 p.m. and heard from the applicant. The right of way of North 2nd Street is removed within the boundaries of the plant and an emergency access easement established on the east side of W. Park Avenue to connect North 2nd with West Park Avenue. Numerous neighbors within the area supported removing the right of way of North 2nd Street and making it an emergency access only. A few other neighborhood residents expressed concerns with West Park becoming a through street from North 3rd to North Park.

Mayor James closed the Public Hearing at 7:55 p.m. Councilmember Mellon made a motion seconded by Councilmember Lebsack to approve the Resubdivision of a Portion of Johnstown Heights 3rd Filing – Final Plat and to grant a variance to the Subdivision Design Standards to allow the emergency access in lieu of a circular turnaround and the emergency access will be

completed to staff's satisfaction. Motion carried with a roll call vote.

B. Consider Designation of Public Posting Areas – Councilmember Young made a motion seconded by Councilmember Tallent to designate the front entryway of Johnstown Town Hall as a public notice posting area. Motion carried with a unanimous vote.

There being no further business to come before Council the meeting adjourned at 8:14 p.m.

Mayor

Town Clerk/Treasurer

RESOLUTION

No. 2018-01

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2018-01**

**APPROVING THE FINAL PLAT FOR MOUNTAIN VIEW WEST SUBDIVISION
LOCATED IN THE NORTHWEST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH,
RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE
OF COLORADO, CONSISTING OF APPROXIMATELY 60.079 ACRES.**

WHEREAS, Parish, LLC, a Colorado limited liability company (“Developer”), submitted an application to the Town of Johnstown for approval of a Final Plat for the Mountain View West Subdivision, a subdivision of certain lands located in the Northwest Quarter of Section 9, Township 4 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, consisting of approximately 60.079 acres; and

WHEREAS, on August 23, 2017, the Planning and Zoning Commission held a hearing and reviewed the request and recommended that the Town Council approve the Final Plat for the Mountain View West Subdivision with conditions, certain of which have been satisfied; and

WHEREAS, on December 4, 2107, the Town Council held a hearing concerning approval of the Final Plat and, after considering the Planning Commission recommendations, reviewing the file, and conducting such hearing, finds that the data requirements, design standards and required improvements meet the requirements of the Johnstown Municipal Code Subdivision Regulations with regard to the Final Plat.

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

Section 1. Final Plat Approval: The Final Plat for the Mountain View West Subdivision, a subdivision located in the Northwest Quarter of Section 9, Township 4 North, Range 67 West of the 6th P.M., County of Weld, State of Colorado, consisting of approximately 60.079 acres, is hereby approved, subject to the following conditions:

- a. The Developer shall work with the residents adjoining Molinar Street (South Street) to ensure access during development;
- b. The Developer shall obtain approval from the Front Range Fire Rescue Authority prior to the commencement of construction;
- c. Development of the Mountain West Subdivision shall comply with approved design guidelines; and
- d. The Developer shall dedicate sufficient water for development of the Mountain West Subdivision as set forth in duly executed water and sewer service agreements between the Town and the Developer.

Section 2. Recording: The Town Clerk is hereby directed to obtain the appropriate signatures for the Final Plat and to have it properly recorded at the Office of the Weld County Clerk and Recorder.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS ____ day of _____, 2018.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

RESOLUTION

No. 2018-02

**TOWN OF JOHNSTOWN, COLORADO
RESOLUTION NO. 2018-02**

APPROVING THE AMENDED PLAT OF LOT 1 BLOCK 4, LOTS 1 AND 2 BLOCK 5, LOTS 1 AND 2 BLOCK 6, LOT 1 THRU LOT 4 AND OUTLOT "A" BLOCK 7 OF JOHNSTOWN HEIGHTS THIRD FILING, A SUBDIVISION LOCATED IN THE SOUTH HALF OF THE SOUTHWEST QUARTER OF SECTION 5, TOWNSHIP 4 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO AND GRANTING A VARIANCE TO ALLOW EMERGENCY ACCESS.

WHEREAS, Gillam Development Corporation, a Colorado corporation ("Developer"), submitted an application to the Town of Johnstown for approval of an Amended Plat of Lot 1 Block 4, Lots 1 and 2 Block 5, Lots 1 and 2 Block 6, Lot 1 thru Lot 4 and Outlot "A" Block 7 of Johnstown Heights Third Filing, a subdivision located in the South Half of the Southwest Quarter of Section 5, Township 4 North, Range 67 West of the 6th Principal Meridian, County of Weld, State of Colorado ("Amended Plat"); and

WHEREAS, Developer also sought a variance from the Town's subdivision design guidelines, or, more specifically, from the requirements of Section 17-102(b)(2) of the Johnstown Municipal Code, to permit an emergency access in lieu of a circular turnaround on the west end of North Second Street; and

WHEREAS, on October 11, 2017, the Planning and Zoning Commission held a hearing, reviewed the request and recommended that the Town Council approve the Amended Plat for Johnstown Heights, Third Filing, with conditions, and that Town Council approve the request for a variance; and

WHEREAS, on November 6, 2107 and on January 17, 2018, the Town Council held a public hearing concerning approval of the Amended Plat and the variance request and, after considering the Planning Commission recommendations, reviewing the file, and conducting such hearing, found that the data requirements, design standards and required improvements met the requirements of the Johnstown Municipal Code Subdivision Regulations with regard to the Amended Plat, subject to conditions, and that the variance request is acceptable.

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

Section 1. Amended Plat Approval: The Amended Plat of Lot 1 Block 4, Lots 1 and 2 Block 5, Lots 1 and 2 Block 6, Lot 1 thru Lot 4 and Outlot "A" Block 7 of Johnstown Heights Third Filing, a subdivision located in the South Half of the Southwest Quarter of Section 5, Township 4 North, Range 67 West of the 6th Principal Meridian, County of Weld, State of Colorado, is hereby approved, subject to the following conditions:

- a. Development of Johnstown Heights, Third Filing, as set forth on the Amended Plat, shall be subject to Town Engineer approval of the civil drawings;

- b. The Developer shall enter into a Public Improvements Development Agreement with the Town of Johnstown prior to the commencement of construction; and
- c. The Developer shall limit the ability of motor vehicles to access the emergency connect on the west end of North Second Street in a manner that is satisfactory to Town staff.

Section 2. Variance: A variance is hereby granted, permitting the Developer to construct an emergency access on the west end of North Second Street rather than a circular turnaround.

Section 3. Recording: The Town Clerk is hereby directed to obtain the appropriate signatures for the Amended Plat and have it properly recorded at the Office of the Weld County Clerk and Recorder.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS ____ day of _____, 2018.

ATTEST:

TOWN OF JOHNSTOWN, COLORADO

By: _____
Diana Seele, Town Clerk

By: _____
Scott James, Mayor

AGENDA ITEM 9A

**AMENDMENT
TO
DESIGN
GUIDELINES
(Iron Horse)
(*Public Hearing)**

*** PUBLIC HEARING PROCEDURE- *Amendment to Iron Horse Design Guidelines***

- 1. Reopen public hearing**
- 2. Receive information from staff**
- 3. Ask to hear from anyone who supports the amendment to the design guidelines.**
- 4. Ask to hear from anyone who opposes the amendment to the 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 design guidelines**

(SUGGESTED MOTIONS):

For Approval:

I move to approve the amendment to the Iron Horse Design Guidelines.

For Denial:

I move to deny approval of the amendment to the Iron Horse Design Guidelines.

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 5, 2018

ITEM NUMBER: 9A

SUBJECT: *Public Hearing - Amendment to the Iron Horse Design Guidelines

ACTION PROPOSED: Consider the Amendment to the Iron Horse Design Guidelines

PRESENTED BY: John Franklin, Town Planner

AGENDA ITEM DESCRIPTION: The owner of the industrial and commercial property known as Iron Horse has requested an amendment to the Iron Horse Design Guidelines. The amendment would delete Section 2.2.2.G and thus remove the 20% maximum restriction on exterior metal as described in Subsection G., and instead allow architectural and prefabricated metal panels. The property is located south of US Hwy 34 and east of High Plains Boulevard (LCR 3).

The Planning and Zoning Commission held a public hearing on September 13, 2017 and voted unanimously to recommend approval of amendment, subject to the inclusion in the Guidelines of photos representing both appropriate and undesirable building designs.

LEGAL ADVICE: N/A

FINANCIAL ADVICE: N/A

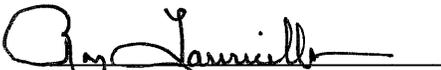
RECOMMENDED ACTION: The Planning and Zoning Commission has recommended conditional approval of the Amendment to the Iron Horse Design Guidelines

SUGGESTED MOTIONS:

For Approval: I move to approve the amendment to the Iron Horse Design Guidelines.

For Denial: I move to deny approval of the amendment to the Iron Horse Design Guidelines.

Reviewed:


Town Manager

**PLANNING AND ZONING
COMMISSION**

SUMMARY MINUTES

**SUMMARY MINUTES
PLANNING & ZONING COMMISSION
WEDNESDAY, SEPTEMBER 13, 2017
COUNCIL CHAMBERS
450 S. PARISH AVE.**

1. **CALL TO ORDER:** *Vice-Chair Montez opened the meeting at 7:00 pm.*
2. **ROLL CALL:** *Present were Commissioners Tepper, Eady, Montez and Geisendorfer. Absent were Commissioners Dowling, Kingsolver and Storms.*
3. **PUBLIC COMMENTS REGARDING ITEMS NOT ON THE AGENDA:** *None*

4. **PUBLIC HEARINGS:**

A. Amended Design Guidelines for Iron Horse PUD: *Vice-Chair Montez opened the public hearing at 7:05pm. Town Planner Franklin introduced the item and presented the staff report and recommendation. Kim Perry, Vice President Community Design & Neighborhood Development, McWhinney, presented the request and answered questions.*

Commissioner questions:

- *Will these buildings withstand the high (110mph) wind loading in the area? (Yes)*
- *What controls will be in place to guard against inferior design? (Photos of desirable building designs are proposed)*

Public Comment: None.

Vice-Chair Montez closed the hearing at 7:31pm and called for discussion and a motion. Motion by Commissioner Geisendorfer, seconded by Commissioner Eady to recommend approval of the Amendment to the Iron Horse Design Guidelines to change the restrictions on exterior metal, subject to the condition that photos of appropriate and undesirable building designs be included in the Design Guidelines.

Unanimous.

5. **NEW BUSINESS:**

A. Approval of Minutes of August 23, 2017: *Motion by Commissioner Tepper, seconded by Commissioner Eady to approve the minutes as presented. Unanimous.*

B. County Referrals: None: *Tow Planner Franklin reported that the Stroh gravel pit application may be scheduled for a Larimer County Planning Commission hearing in November.*

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

A. Recent Town Council Actions

B. Applications in Review

C. Project and Program Updates: *Larimer Parkway signal at US Hwy 34; Recreation Center site selection.*

7. **COMMISSIONERS' ITEMS:** *None*

8. **ADJOURN:** *Vice-Chair Montez adjourned the meeting at 8:05pm.*

Respectfully submitted by John Franklin as Secretary to the Planning and Zoning Commission

**STAFF REPORT
TO
PLANNING AND ZONING
COMMISSION**

AGENDA MEMORANDUM

TO: Johnstown Planning and Zoning Commission
FROM: John Franklin, AICP, Town Planner 
DATE: For September 13, 2017
SUBJECT: Public Hearing Regarding an Amendment to the Iron Horse Design Guidelines to Change the Restriction on Exterior Metal

Property Information

Applicant: McWhinney Enterprises

Owner: Iron Horse, LLC

Location: South of US Hwy 34 and east of High Plains Blvd.

Property Size: 173.9± acres

Comprehensive Plan Designation: Employment

Current Zoning: PUD-MU – Commercial and Industrial

Current Use(s) of Property: Warehouse/shipping center (FedEx), Canyon Bakehouse (formerly Fiberspar) and vacant land

Surrounding Land Uses/Zoning:

- North: US Hwy 34, agriculture/Encore PUD-MU – Retail, Office, Residential
- South: Great Western Railroad, agriculture/Maxfield PUD-MU – light industrial, residential
- East: Kelim township – light industrial and commercial, residential/Larimer F/A
- West: Light Industrial, Flex, Office and Retail/2534 PUD-MU

Summary of Application: The owner of the property has requested Town approval of a text amendment to the Iron Horse Design Guidelines. The amendment would delete Section 2.2.2.G remove the 20% maximum restriction on exterior metal as described in Subsection G. and instead allow architectural and prefabricated metal panels.

Prior Actions: The Iron Horse Design Guidelines were approved in 2006. Existing buildings are FedEx (2006) and Fiberspar (2012).

Existing and Proposed Land Use(s): The property is partially developed.

Design Guidelines: Iron Horse Design Guidelines.

Technical Analysis

Relationship to Town Vision and Strategic Plan: The Iron Horse development is envisioned by the Town as a major contributor to the local economy, with a large portion of the property designated for employment.

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

Access and Traffic: No changes.

Utilities: No changes.

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 is highly visible from US Hwy 34 and High Plains Blvd., and high-quality design and exterior materials are required in the Iron Horse Design Guidelines. The requested amendment to the Design Guidelines would be a significant departure from policy and, without additional requirements, would leave the development open to metal building designs with only minimum exterior features such as plain corrugated siding and exposed low-pitch roof eaves. One approach is to include photos of desirable building exteriors.

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

Fencing and Screening: No changes.

Lighting and Street Furniture: No changes.

Signage: Signage shall conform the Town Sign Code and Guidelines.

Phasing: The property is developing in phases.

Attachments: Written request narrative, presentation, existing guidelines, comments.

Crucial Referral Responses: None

Staff Report

Technical Findings:

1. The Owner and the Town have maintained a high standard of Architectural Design with the two projects in Iron Horse.
2. Iron Horse and 2534 have similar architectural standards. 2534 allows up to 30% metal.
3. Engineered metal frame structures are not prohibited in Iron Horse – the request addresses the exterior use of metal. When good overall design and exterior materials are employed, metal-clad buildings can be indistinguishable from others. However, minimalist exterior designs have a low-quality appearance and should be discouraged in the Guidelines.
4. Clear examples – photos- of desirable building exteriors would provide clear direction to architects and owners.

Staff Recommendation:

The Planning and Zoning Commission should carefully consider the effect of **unrestricted** use of exterior metal, and minimalist design.

Planning Commission Action

1. Recommendation:

“I move that the Commission recommend approval of the Amendment to the Iron Horse Design Guidelines to Change the Restrictions on Exterior Metal.”

Or,

2. Recommendation with Conditions:

“I move that the Commission recommend approval of the Amendment to the Iron Horse Design Guidelines to Change the Restrictions on Exterior Metal with the following condition(s):

- a) _____;
- b) Etc.”

Or,

3. Recommend denial:

“I move that the Commission recommend denial of the Amendment to the Iron Horse Design Guidelines to Change the Restrictions on Exterior Metal for the following reasons:

- a) _____;
- b) _____;
- c) Etc.”

APPLICATION

■ LILEY LAW OFFICES, LLC ■

June 14, 2017

Johnstown Town Council
c/o John Franklin, Town Planner
450 S. Parish Avenue
Johnstown, CO 80534

Re: Iron Horse Design Guidelines
Request for Modification

Mr. Franklin:

This firm represents Iron Horse, LLC, the developer of the Iron Horse Filing No. 1 and Iron Horse Filing No. 2 ("Developer"). Pursuant to Exhibit B-3 to the Public Improvements Development Agreement for both Filing No. 1 and Filing No. 2 of Iron Horse, development within Filing No. 1 and Filing No. 2 is subject to the Town approved Design Guidelines specifically for Iron Horse.

 Section 2.2.2 of the Iron Horse Design Guidelines dated October 29, 2006 (the "Design Guidelines") is a list of "Preferred Materials" for structures including, at Subsection G: "Metal, as an accent material, only comprising of a maximum of 20% of the total façade of a structure." The Developer requests that Section 2.2.2.G be deleted and replaced in its entirety with new language that reads as follows: "Architectural and prefabricated metal panels." In support of its request, the Developer offers the following for consideration:

1. Land uses allowed within the Iron Horse development are commercial, retail, light and heavy industrial, business and office uses. Because of the development's location in close proximity to major regional thoroughfares (I-25, US Hwy 34 and the Union Pacific and Great Western railway lines), and because of the size of the lots (ranging from approximately 1.4 acres to 17 acres), market demand for development within Iron Horse has been for large-scale industrial uses such as FedEx and FiberSpar. The Developer's research into market trends indicates that the demand for prime lots such as those in Iron Horse by large-scale industrial and commercial users will continue as the economy continues to improve.

2. Large-scale industrial and commercial users benefit from the wider, uninterrupted spans of building space within prefabricated metal buildings. Such spaces allow interior design flexibility and the creation of efficient and flexible work spaces.

3. Prefabricated metal buildings are a cost-efficient and time-efficient method of construction, compared to standard brick and mortar construction, and maintenance costs are significantly reduced.

4. Advancements in the design of prefabricated metal buildings have resulted in quality designs that are largely indiscernible from standard construction. Allowing the construction of prefabricated metal buildings within Iron Horse is consistent with the "desire to provide flexibility for architectural design and optimize site and building functions" as stated in Section 2.1 of the Design Guidelines, and it will not detract from the goals of the Design Guidelines recited at Section 2.1.A through E including the promotion of a high level of craftsmanship, encouraging new ideas, designing and building with durability and maintenance that continues the high level of quality. Attached to this request is a series of photographs of recently-constructed metal buildings that illustrate the intended level of quality to be achieved by utilizing architectural and prefabricated metal panels in the building design.

5. The ability to meet the market demands of large-scale industrial and commercial users for this strategic location, and the economic benefit thereof to the Town of Johnstown will promote the health, safety and welfare of the community.

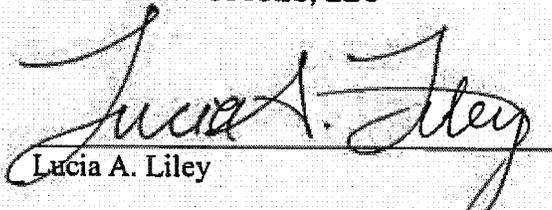
We request that this Request for Modification be scheduled for hearing at the same time as the Developer's request for amendments to the Spreng Annexation Agreement and the Public Improvements Development Agreements for Filing No. 1 and Filing No. 2.

Please let us know if you need additional information to process and evaluation this request. Thank you.

Sincerely,

LILEY LAW OFFICES, LLC

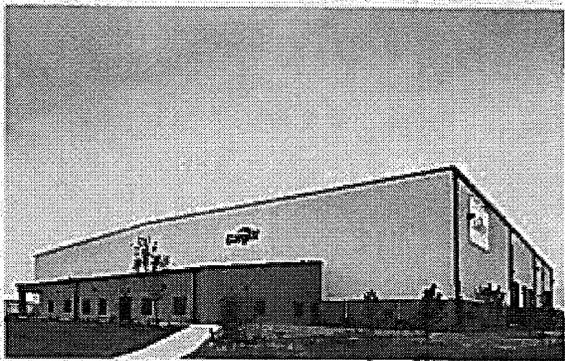
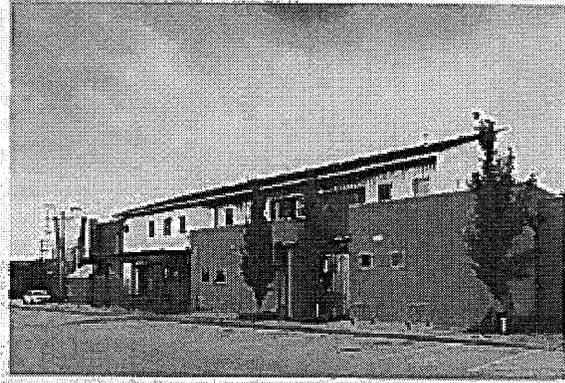
By:


Lucia A. Liley

LAL/jpk

Pc: Iron Horse, LLC

Allowable Metal Architecture Examples



2.0 DESIGN STANDARDS

2.1 DESIGN PRINCIPLES AND GOALS

The goal of the architectural standards is to provide design standards that promote high quality design through the Iron Horse Development. It is the desire to provide flexibility for architectural design and optimize site and building functions, while achieving and maintaining a sense of design integrity through the development. The design of each parcel will be assessed for its suitability and intent toward the long-term vision and commitment to the community.

Design principles, materials and landscaping will be selected to achieve the following goals:

- A. Create a timeless design that has enduring forms and qualities.
- B. Provide a high level of craftsmanship in the construction of new developments.
- C. Encourage new ideas and creative design.
- D. Design with the long view. Look ahead during design. Avoid getting caught up in the urgency of the here and now. Maintain a long-term commitment to the future of the community.
- E. Design and build with durability in mind. Establish a maintenance framework that ensures a continuing high level of quality in the future.

2.2 ARCHITECTURAL CHARACTER

The architectural character is intended to reflect a sense of high quality and timeless design. The language will be one that fits with the land and surrounding community. The materials will reflect the quality and the forms will reflect the timeless design. These standards are intended to promote the design of an urban environment that is built to human scale to encourage attractive street

fronts and other connecting walkways, while also accommodating vehicular movement.

2.2.1 Building Materials

Exterior materials shall be chosen for their suitability, durability, and visual continuity.

Building materials shall be selected to provide a variety of textures per building facade, create visual balance to avoid an excessive variety of materials that would result in a cluttered appearance.

Building materials shall provide greater visual and textural interest at building entrances and architectural embellishments and areas that are highly visible to the public.

Building materials shall concentrate on absorption rather than reflection of light.

2.2.2 Preferred Materials

- A. Brick.
- B. Textural concrete block, painted or integral color.
- C. Precast panels with painted and/or cast-in textures only.
- D. Site-cast concrete panels, with painted and/or cast-in textures only.
- E. Wood and wood composite materials, only comprising of a maximum of 60% of the entire façade of a structure.
- F. Natural stone and synthetic stone products.
- G. Metal, as an accent material, only comprising of a maximum of 20% of the total façade of a structure.
- H. Stucco.
- I. Non reflective glazing, comprising of a maximum of 60% of the entire façade of a structure.
- J. Smooth face concrete block, used in combination with other textural materials as accent material, only comprising of a maximum of 50% of the

DELETE



Architectural Precedent Presentation

Request for Modifications to the Design Standards for Iron Horse

September 13, 2017



McWHINNEY

Architectural Precedents

Metal buildings have come along way in recent years. They provide large column free spans for industrial and manufacturing users, while providing a multitude of exterior finish options. We believe by allowing for metal buildings as well as concrete tilt up architecture, Iron Horse will be able to compete with other neighboring properties.

Section 2.2.2 of the Iron Horse Design Guidelines dated October 29, 2006 (the "Design Guidelines") is a list of "Preferred Materials" for structures including, at Subsection G: "Metal, as an accent material, only comprising of a maximum of 20% of the total facade of a structure."

The Developer requests that Section 2.2.2.G be deleted and replaced in its entirety with new language that reads as follows: "Architectural and prefabricated metal panels."



OMETEK

“

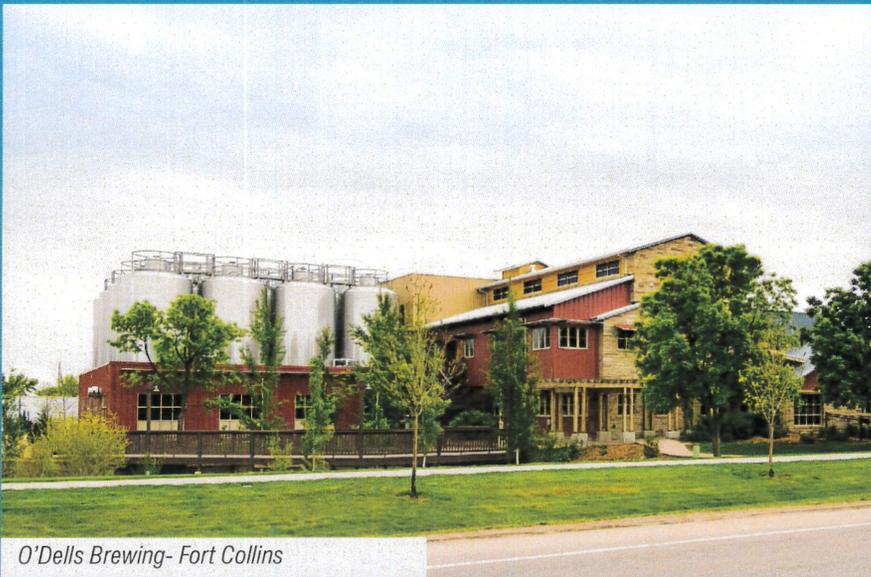
“Everyone likes being part of a growing community. Not only has McWHINNEY been supportive of our business, following our vision, having the flexibility we need to accommodate our growth but they are big supporters of making this a growing community. With that you attract high quality labor, you have nice parks, nice facilities for your employees to take advantage of.”

- James Donnan, Former CEO (Kroll Factual Data)



Weatherford Building- Longmont

Architectural Precedents



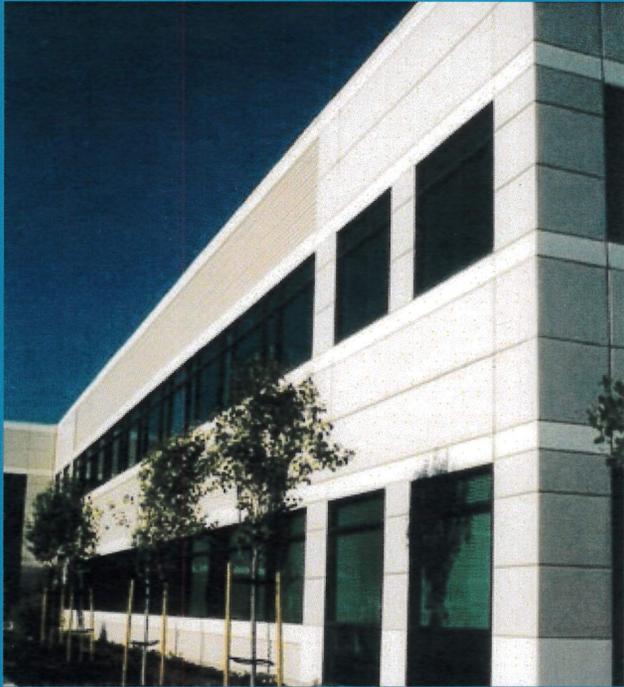
Other Examples



Other Examples



Other Examples



Other Examples





Thank You



The information contained in this proposal is conceptual in nature and provided for general information purposes only. The proposal is subject to change by McWhinney Real Estate Services, Inc. or its affiliates without notice. The final terms and conditions of any development or other matters related to the project will be set forth in the definitive agreements among the relevant parties. While we endeavor to provide information which is up to date and correct, we make no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability, suitability or availability with respect to the information or related graphics contained in this proposal. Financial information, expenses, and projections include estimates, assumptions, and forward looking statements which may not prove to be correct and which involve risks. Plans, specifications, amenities, features, availability, amounts, prices, land uses, timing, dimensions, materials and other elements are also subject to change, modification or cancellation. Scenes, pictures, drawings, illustrations and/or views shown may be artist renderings and may be locations or activities not on, or related to, the property or development. Actual views may vary, and views described or depicted cannot be relied upon. Maps are not to scale and are for relative location purposes only. There is no guarantee that the facilities, services, features, amenities, improvements, views, scenes or specifications described, shown or depicted in this proposal will be constructed or otherwise provided, and if constructed or provided, that they will be of the same type, style, size or nature as described or depicted. Ownership or lease of a space in a depicted community or mixed use development does not guarantee access to, or the right to use, amenities, which, if available, may require separate payment and may be subject to other conditions on use.

REVIEW COMMENTS

August 8, 2017

Liley Law Offices, LLC
419 Canyon Avenue, Suite 220
Fort Collins, Colorado 80521
Attn: Lucia A. Liley, Esq.

Re: Iron Horse PUD – Design Guidelines and Filing Nos. 1&2 Development Agreements

Initial review of the Guidelines application is completed, and comments are as follows.

1. Amend the Design Guidelines:



The Town Council has long been concerned about allowing corrugated-metal-clad, low-pitch-roof industrial buildings outside of our I-25 Gateway Center and the Marketplace development near Johnson's Corner. This concern is shared by Town staff. The requested amendment to the Design Guidelines would be a significant departure from policy and, without additional requirements, would leave the development open to metal building designs with only minimum exterior features such as plain corrugated siding, exposed low-pitch roof eaves (see attached mark-up photos) with ensuing arguments over exterior design with the JRC (Town) and possibly appeals to Town Council. Moreover, the 2534 Development owners would likely want to remove their restrictions. It is recommended that the request include examples of desirable, higher-finish designs and restrictions on low-quality building designs. (Please note that engineered steel structure framing is not prohibited in Iron Horse.)

2. Amend the Agreements:

Procedure: As requested, the proposed amendments to the Spreng Annexation Agreement, and the Filing Nos. 1&2 Development Agreements will be considered by Town Council at the same meeting as the Guidelines amendment. The Planning and Zoning Commission will not consider these agreements nor make a recommendation before they are presented to Town Council.

Deposit required: In order to proceed with Town Attorney review of the proposed changes to the agreements in preparation for Council consideration, and Town Engineer review of the proposed surety costs, the Iron Horse Developers' Review Cost Account will need to be re-activated with at least a \$5000 deposit. The Review Cost and Funds Deposit Agreements still apply.

Staff review:

To assist Council in its deliberation of the amendments, staff asks for a written, specific explanation for the requested amendments.

Spreng Annexation Agreement: Staff understands the uncertainty of a signalized intersection at High Plains Blvd. (CR 3) at/ US Hwy 34, but the development obligation should not go away until the alternative access is explored through CDOT's PEL study. The current alignment of High Plains and the railroad crossings may in fact preclude a signal, but not necessarily a phase 1

intersection. The US Hwy 34 Planning and Environmental Linkage (PEL) study – regarding widening of and access to US Hwy 34 will not be completed until 2018. The PEL Study will help determine the access for High Plains Blvd. The current requirement for a proportionate share of a signal plus any special access improvements is typical, but if the proportionality is a concern, the term could be defined using development trip generation.

Development agreements: The Town Council's major concern was -and is still - managing truck traffic. Industrial truck traffic should use High Plains to access Hwy 34 in the near future and not simply continue to divert to Larimer Parkway, which will join Thompson Parkway as high-traffic retail shopping access. It is recommended that the interim arterial section for High Plains Blvd. north of Ronald Reagan to US Hwy 34 including the railroad crossing remain an obligation of Iron Horse, pending the results of the PEL study in 2018. The staff is supportive of the Iron Horse development moving on with permits, but we will not recommend that the Town take cash and construct the obligatory public improvements on High Plains Blvd. Instead, we suggest that the 'escrow' be provided as a standard 110% completion surety, and that the responsibility remain with the development.

We suggest phasing the improvements as proposed with Phase 1 being the curb/gutter, sidewalk and landscaping along the Iron Horse frontage south of Ronald Reagan to the railroad crossing by a date certain or number of lots under permit. The Thompson Crossing Metro District completed the two-lane Interim Arterial street improvements, plus frontage curb and gutter from the GWRR railroad crossing to Ronald Reagan, triggered by the Swire Coca Cola project. (We anticipate that TCMD will ask for reimbursement from Iron Horse of the cost of one lane of the Interim Arterial.)

Phase 2, High Plains Blvd. from Ronald Reagan Blvd. to US Hwy 34 is essential for truck access. It is recommended that improvements be deferred with the surety in place and without withholding permits until CDOT concludes its PEL study. If the current alignment remains, the two-lane interim arterial roadway, railroad crossing, curb and gutter sidewalk and landscaping would be constructed to Town standards by a date certain. Should the PEL study not favor the current intersection, a new amendment would be warranted along with considerable discussions about alignment and investment in access improvements.

Town staff is available to discuss the above comments, and work with you on a response. The Design Guidelines can be scheduled for hearing and consideration by the Planning and Zoning Commission in September. The Council hearing on all items would follow, possibly in October.

Sincerely,



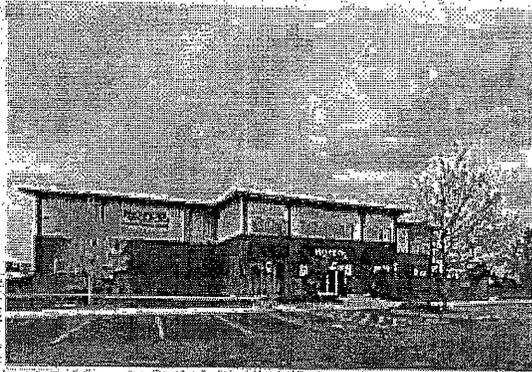
John Franklin
Town Planner

Attachments

Copy to:
Troy McWhinney
File

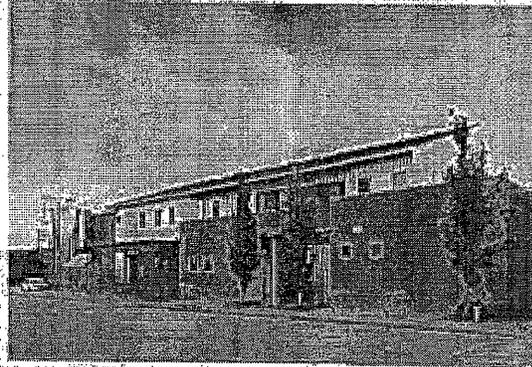
Allowable Metal Architecture Examples

Nice!



✓

Roof
No.



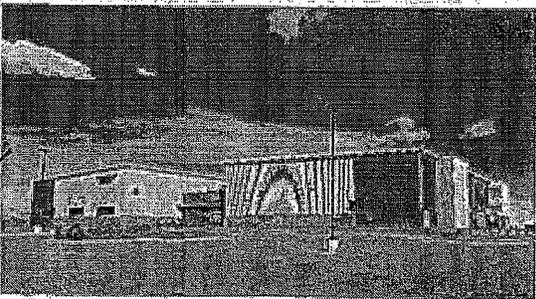
✓

✓

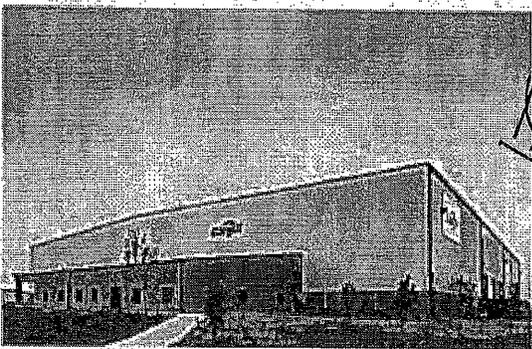


INTERESTING
Roof Lines

No



No



AGENDA ITEM 9B

AGREEMENT
(Building Department Services)
(ProCode, Inc.)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 5, 2018

ITEM NUMBER: 9B

SUBJECT: Agreement to Provide Building Department Services between the Town of Johnstown and ProCode, Inc.

ACTION PROPOSED: Approve Agreement to Provide Building Department Services between the Town of Johnstown and ProCode, Inc.

PRESENTED BY: Town Attorney, Avi Rocklin

AGENDA ITEM DESCRIPTION: On December 17, 2012, the Town of Johnstown ("Town") entered into an Agreement to Provide Building Services with Ken Kidd. Mr. Kidd currently provides building department services to the Town at the rate of \$45.00 per hour for 30 hours per week. On or about October 18, 2015, the Town approved an amendment to the agreement to allow Mr. Kidd to hire a subcontractor, Jonathan Gesick of ProCode, Inc., for 20 hours per week at the rate of \$40.00 per hour. Mr. Kidd desires to retire at some point during the 2018 calendar year. Mr. Kidd and Mr. Gesick propose to switch roles, with Mr. Gesick acting as the Town's building official for 30 hours per week and Mr. Kidd performing building official services for the Town for 20 hours per week as Mr. Gesick's subcontractor.

With that background, Town Council may consider the Agreement to Provide Building Services between the Town and ProCode, Inc. ("Agreement"). Per the Agreement, ProCode will designate Jonathan Gesick to provide building department services to the Town. The Town will pay ProCode at the rate of \$5,850 per month, which correlates to \$45.00 per hour for 30 hours per week. ProCode will be entitled to retain Mr. Kidd as a subcontractor for \$40.00 per hour for 20 hours per week. When Mr. Kidd retires, ProCode may, in its discretion, either hire an employee or another subcontractor to perform services for the Town for the 20 hour per week role. Notably, ProCode must obtain the approval of the Town Manager to retain a second person.

In addition, ProCode agrees that Mr. Gesick and any other person who provides service for the Town will maintain the appropriate building official certifications during the term of the Agreement and will carry the proper insurance. The Agreement may be terminated by either party with sixty (60) days' notice. If not terminated, the Agreement is subject to automatic annual renewal and is effective on January 1, 2018.

LEGAL ADVICE: The Town Attorney prepared the Amendment to Agreement to Provide Building Department Services.

FINANCIAL ADVICE: The Town Treasurer indicated that sufficient funds are available.

RECOMMENDED ACTION: Approve Agreement to Provide Building Department Services between the Town of Johnstown and ProCode, Inc.

SUGGESTED MOTION:

For Approval: I move to approve the Agreement to Provide Building Department Services between the Town of Johnstown and ProCode, Inc., and authorize the Mayor to sign the agreement.

For Denial: I move to deny approval of the Agreement to Provide Building Department Services between the Town of Johnstown and ProCode, Inc.

Reviewed:


Town Manager

AGREEMENT

AGREEMENT TO PROVIDE BUILDING DEPARTMENT SERVICES

THIS AGREEMENT made this _____ day of _____, 20____, by and between the TOWN OF JOHNSTOWN, COLORADO, a home-rule municipal corporation of the State of Colorado ("Town"), and PROCODE, INC., a Colorado corporation.

WHEREAS, the Town does not have a building department and does not employ a building official; and

WHEREAS, the Town desires to utilize the services of ProCode, Inc. to perform building department services for the Town; and

WHEREAS, at the time of the execution of this Agreement, the parties anticipate that Jonathan Gesik of ProCode, Inc. shall be primarily responsible for providing the services described herein for thirty (30) hours per week and that Ken Kidd, who has acted as the building official for the Town, shall provide services to the Town as a subcontractor of ProCode, Inc. for up to twenty (20) hours per week; and

WHEREAS, the parties acknowledge that Ken Kidd intends to retire during the 2018 calendar year and, at that time, ProCode, Inc. may either retain an employee or a subcontractor to perform the services described herein for up to twenty (20) hours per week upon approval of the Town and on the conditions and in the manner set forth herein; and

WHEREAS, in order to set forth clearly the responsibilities, obligations, powers and rights of each of the parties, the Town and ProCode, Inc. (hereinafter, "Building Official") hereby enter into this Agreement.

NOW, THEREFORE, in consideration of recitals, promises, and covenants herein set forth, and other good and valuable consideration herein receipted for, the parties agree as follows:

1. **SERVICES** – The Town and Building Official agree that Building Official shall perform the following services for the Town: review plans, process permits, conduct inspections prepare certificates of occupancy, respond to phone referrals and attend conferences with building permit applicants. Building Official shall also inspect and investigate complaints of Code violations when so directed by an administrative officer of the Town, and be available for testimony in any proceeding regarding such violations. (Collectively, the foregoing shall be referred to as the "Services.") The Services shall be performed for residential and commercial properties within the incorporated boundaries of the Town and be based upon the Town's adopted Building Code, Mechanical Code, Plumbing Code, Electrical Code and any other related Uniform Codes adopted in Chapter 18 of the Johnstown Municipal Code. Building Official agrees to provide regular reports as may be required by the Town Manager concerning building activity

within the Town. Building Official agrees to designate Jonathan Gesick to be primarily responsible for providing, and/or coordinating for the provision of, the Services hereunder.

2. HOURS – The parties expect and agree that Building Official will work thirty (30) hours per week for the Town. The Town does not dictate Building Official's hours, but expects and requires that Building Official perform the Services in a timely manner and that such Services will be generally performed during regular business hours. If Building Official's hours exceed thirty (30) in any given week, Building Official must have prior written approval from the Town Manager. If Building Official is unavailable during any particular week, Building Official shall provide notice to the Town Manager. Rather than a subcontractor, as provided in Paragraph 6, Building Official may designate an employee to provide Services to the Town for up to twenty (20) hours per week upon written approval of the Town Manager, on the condition that such employee has and maintains the certifications set forth in Paragraph 3 and the remainder of the obligations set forth in this Agreement are satisfied.

3. CERTIFICATION – Building Official represents and agrees that Jonathan Gesick and, if applicable, all other persons providing Services pursuant to this Agreement are certified building official(s), with certifications in building, plumbing, mechanical and electrical disciplines for commercial and residential properties. Building Official shall maintain the appropriate certifications during the term of this Agreement.

4. COMPENSATION – In consideration of Building Official's high level credentials and ability to deliver the Services, the Town agrees to pay Building Official at the rate of \$5,850.00 per month, which is based on the expectation that Building Official will provide Services for thirty (30) hours per week to the Town. Any approved time beyond the thirty (30) hours in a single week shall be compensated at the rate of \$45.00 per hour. This compensation includes time involving meetings with contractors, developers and permit applicants. The compensation will be paid to Building Official within five (5) working days following the first regular Town business meeting of the month for all invoices submitted at least ten (10) days prior to such meeting. If Building Official retains an employee, rather than a subcontractor, to provide Services for up to twenty (20) hours per week, as described in Paragraph 2, Building Official shall be paid for such employee's services at the rate set forth in Paragraph 6.

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

6. SUBCONTRACTOR – Building Official may retain a subcontractor to perform Services for the Town and shall be responsible for directing the subcontractor to perform such Services. Retention of a subcontractor shall be subject to the following provisions.

(a) Subcontractor Services, Compensation and Hours. Subcontractor shall be entitled to work up to and including twenty (20) hours per week. Subcontractor's weekly work hours shall not exceed the twenty (20) hour limitation without prior written approval of the Town. If the Town, in its sole discretion, determines that a downward adjustment to the subcontractor's weekly hours is appropriate, the Town may provide written notice to Building Official that the subcontractor's maximum weekly work hours shall be reduced. Subcontractor shall be paid at the rate of \$40 per hour. To obtain compensation for subcontractor's services, Building Official shall include the number of hours worked by the subcontractor in his monthly invoices. The Town shall pay Building Official for those hours, and Building Official shall compensate subcontractor at the stated hourly rate.

(b) Subcontractor Qualifications. Subcontractor shall be qualified to perform the Services for the Town and have appropriate certifications. Prior to retaining a subcontractor, Building Official shall provide the name and qualifications of subcontractor to the Town. Subcontractor may not perform Services for the Town until the Town, in its discretion, provides written approval of the retention of subcontractor.

(c) Subcontractor Obligations. Building Official shall require that subcontractor: (1) agrees to be bound by the terms of the Agreement; (2) be fully insured to the minimum extent provided in Paragraph 11 of this Agreement and maintain, through Building Official or independently, worker's compensation insurance in accordance with the lawful requirements of the State of Colorado; and (3) understands and agrees that he or she is not an employee of the Town, is not entitled to unemployment compensation coverage by the Town, is not entitled to benefits provided to Town employees, is not entitled to insurance coverage provided to Town employees and that he or she is obligated to pay federal and state income taxes on moneys earned with respect to work for the Town, unless the taxes are otherwise paid by an employer. Subcontractor shall not perform Services for the Town until the foregoing obligations are satisfied.

7. LIABILITIES –

(a) The Town shall not be liable for the direct payment of any salaries, wages or other compensation to any personnel, including but not limited to subcontractors, performing services herein for Building Official or for the Town at the request of Building Official.

(b) Building Official or his employees shall not be deemed to assume any liability for intentional or negligent acts of said Town or any officer, agent, or employee thereof, and the Town agrees, to the extent permitted by law, to indemnify and hold Building Official harmless for any and all claims, losses and damages arising out of such acts.

(c) The Town or its employees shall not be deemed to assume any liability for intentional or negligent acts of Building Official, his agents, subcontractors or employees, and Building Official agrees to indemnify and hold the Town harmless for any and all claims, losses and damages, including reasonable attorney's fees, arising out of such acts.

8. TERM AND RENEWAL – The term of this Agreement shall be one year from its anniversary date. The Agreement shall be automatically renewed annually on its anniversary date unless either party provides written notice of termination at least sixty (60) days prior to the termination.

9. TERMINATION – Either party may terminate this Agreement by providing sixty (60) days advanced written notice. In such case, Building Official shall complete all outstanding obligations to the Town within thirty (30) days. After providing a reasonable opportunity to cure, either party may terminate this Agreement based on a breach of the Agreement without providing sixty (60) days advanced written notice. Upon termination, the remainder of Building Official responsibilities will be transferred to the Town.

10. NOTICES –

(a) All notices to Building Official shall be sent certified or registered mail, return receipt requested, and first class mail, postage prepaid, to ProCode, Inc., Attention: Jonathan Gesick, 360 Walnut Avenue, Eaton, CO 80615.

(b) All notices to the Town shall be sent certified or registered mail, return receipt requested, and first class mail, postage prepaid, to Town Manager, 450 South Parish, P. O. Box 609, Johnstown, CO 80534.

11. INSURANCE – Building Official shall maintain the following insurance coverage during the term of this Agreement and any subsequent renewals.

(a) Building Official shall maintain errors and omissions liability insurance, the terms of which shall be subject to approval by the Town, and shall provide that any notices of cancellation or non-renewal be provided to the Town. The minimum coverage of errors and omissions liability insurance shall be one million dollars (\$1,000,000.00) with five hundred thousand dollars (\$500,000.00) per occurrence.

(b) Building Official shall maintain one million dollars (\$1,000,000.00) general liability insurance, the terms of which shall be subject to approval by the Town, and shall provide that any notice of cancellation or non-renewal be provided to the Town.

(c) Building Official shall maintain worker's compensation insurance in accordance with lawful requirements of the State of Colorado. Any notice of cancellation or non-renewal shall be provided to the Town.

(d) All insurance policies shall include the Town of Johnstown as an additional insured.

12. CODE MODIFICATIONS AND UPDATES – In addition to the Services set forth herein, Building Official shall make periodic recommendation to the Town for modifying, improving or updating the relevant Uniform Codes in effect pursuant to Chapter 18 of the Johnstown Municipal Code.

13. LAWS – The validity, interpretation, performance, and enforcement of this Agreement shall be governed by the laws of the State of Colorado, and venue shall be in Weld County, Colorado, for any litigation.

14. DISPUTE RESOLUTION – In the event of any dispute arising under this Agreement, the Parties shall submit the matter to mediation prior to commencing legal action. The cost of the mediation shall be split equally between the Parties.

15. SEVERABILITY – If any portion of this Agreement shall be or becomes illegal, invalid or unenforceable in whole or in part for any reason, such provision shall be ineffective only to the extent of such illegality, invalidity or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement. If any court of competent jurisdiction should deem any covenant herein to be invalid, illegal or unenforceable because its scope is considered excessive, such covenant shall be modified so that the scope of the covenant is reduced only to the minimum extent necessary to render the modified covenant valid, legal and enforceable.

16. NON-APPROPRIATION OF FUNDS – Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

17. RETURN OF RECORDS – Upon termination of this Agreement, Building Official shall return to Town all records, notes, documents and other items that were used, created or controlled by Building Official during the term of this Agreement.

18. ASSIGNMENT AND BINDING EFFECT – Building Official shall not transfer or assign its interest in this Agreement. Nothing herein shall be construed as giving any rights or benefits hereunder to anyone other than the Town and the Building Official.

19. NO PUBLIC OFFICIAL PERSONAL LIABILITY – Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town.

20. NO PRESUMPTION – Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the

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

21. AMENDMENT – This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

22. ENTIRE AGREEMENT – This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.

23. HEADINGS – The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

24. EFFECTIVE DATE – This Agreement shall be effective on January 1, 2018.

IN WITNESS WHEREOF, the Town, by motion duly adopted by its governing body, caused this Agreement to be signed by its Mayor and attested by its Clerk. Likewise, Building Official has subscribed to this Agreement by affixing his signature.

PROCEDURE, INC.


By: Jonathan Gesick, President

TOWN OF JOHNSTOWN, COLORADO

By: _____
Scott James, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

AGENDA ITEM 9C

**INTERGOVERNMENTAL
AGREEMENT
(Loveland Fire Rescue Authority)
(Impact Fees)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: February 5, 2018

ITEM NUMBER: 9C

SUBJECT: Consider Intergovernmental Agreement with the Loveland Fire Rescue Authority for the Assessment, Collection and Remittance of Emergency Service Impact Fees

ACTION PROPOSED: Approve Intergovernmental Agreement with the Loveland Fire Rescue Authority for the Assessment, Collection and Remittance of Emergency Service Impact Fees

PRESENTED BY: Town Attorney

AGENDA ITEM DESCRIPTION: In 2016, the Colorado General Assembly amended the Public Safety Fairness Act to permit a local government to impose impact fees for fire protection districts that provide fire protection, rescue and emergency services for new development. C.R.S. § 29-10-104.5. If a local government, in its sole discretion, elects to impose an impact fee, then the local government and the fire protection district are required to enter into an intergovernmental agreement. C.R.S. § 29-10-104.5(2)(c).

The Loveland Fire Rescue Authority (“Authority”) obtained an impact fee study on October 19, 2017, and thereafter, by and through Fire Chief Miller, made a presentation to Town Council requesting that the Town impose an impact fee on new development in the area of the Town served by the Authority. Town Council directed the Town Attorney to negotiate a proposed intergovernmental agreement (“IGA”) with the Authority’s counsel. The material terms of the proposed IGA are as follows:

- The Authority impact fee will be \$895 per single family home, \$622 per multi-family home, \$0.30 per square foot of commercial and \$0.03 per square foot of industrial;
- The Authority will obtain updated impact fee studies every three years and may request, subject to Town Council discretion, that the Town increase the Authority impact fee based on the updated study;
- Inflationary adjustments to the Authority impact fee are subject to Town Council discretion as provided in the Johnstown Municipal Code;
- The Town will collect the impact fee when the developer seeks a building permit in the form of a check made payable to the Authority; and
- The IGA may not be terminated by the Town during the first five years, after which time the IGA may be terminated in the following manner: if notice of termination is provided by the Town to the Authority in the first six months of a calendar year, then at the end of that calendar year, or, if notice is provided by the Town to the Authority in the second six months of a calendar year, then at the end of the next calendar year.

If Town Council approves the IGA, the Town will be required to pass an ordinance authorizing the imposition of the impact fee for the Authority. Once the ordinance is final, the Town will be required to commence collection of the Authority impact fee.

Loveland, who already collected an impact fee for these services, passed a similar form of IGA on November 21, 2017. Larimer County is currently negotiating an IGA with the Authority.

LEGAL ADVICE: The Intergovernmental Agreement for the Assessment, Collection and Remittance of Emergency Service Impact Fees was drafted by the Authority’s counsel and by the Town Attorney.

FINANCIAL ADVICE: N/A

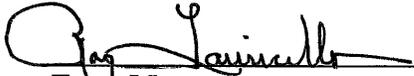
RECOMMENDED ACTION: Approve Intergovernmental Agreement for the Assessment, Collection and Remittance of Emergency Service Impact Fees.

SUGGESTED MOTIONS:

For Approval: I move to approve the Intergovernmental Agreement with the Loveland Fire Rescue Authority for the Assessment, Collection and Remittance of Emergency Service Impact Fees and authorize the Mayor to sign it.

For Denial: I move to deny approval of the Intergovernmental Agreement with the Loveland Fire Rescue Authority for the Assessment, Collection and Remittance of Emergency Service Impact Fees.

Reviewed:


Town Manager

AGREEMENT

**INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT,
COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES**

This INTERGOVERNMENTAL AGREEMENT FOR THE ASSESSMENT, COLLECTION, AND REMITTANCE OF EMERGENCY SERVICES IMPACT FEES ("*Agreement*") is entered into by and between the Town of Johnstown ("*Town*") and the Loveland Fire Rescue Authority ("*Authority*"). The Town and the Authority are referred to collectively as the "*Parties*" or individually as a "*Party*".

RECITALS

WHEREAS, the Town is a home rule municipality of the State of Colorado ("*State*"). The Authority is a public entity of the State established by the City of Loveland and the Loveland Rural Fire Protection District on August 19, 2011 pursuant to that certain Intergovernmental Agreement for the Establishment and Operation of the Loveland Fire Rescue Authority as a Separate Governmental Entity;

WHEREAS, the Authority was established to provide fire protection, rescue, and emergency services (collectively, "*Emergency Services*"), as well as other services, to the citizens and property within its jurisdiction, and to individuals passing through its jurisdiction. The Authority's jurisdiction encompasses property lying within the Town's jurisdictional boundaries;

WHEREAS, pursuant to C.R.S. § 29-20-104.5 ("*Impact Fee Act*"), the Authority is permitted to receive and spend impact fees or other similar development charges imposed pursuant to the provisions of, and for the purposes described in, the Impact Fee Act;

WHEREAS, the Authority obtained an Impact Fee Study dated October 19, 2017 to evaluate the nexus between new development within the Authority's jurisdictional boundaries and the projected impact that such development has on the Authority's Capital Facilities ("*Nexus Study*"). The Nexus Study quantified the reasonable impacts of both new residential and non-residential development on the Authority's Capital Facilities;

WHEREAS, on November 13, 2017, the Authority's Board of Directors ("*Board*") adopted a Resolution approving an impact fee schedule at levels no greater than necessary to defray the impacts directly related to development within the Authority's jurisdiction as determined by the Nexus Study ("*Impact Fee Schedule*"). A copy of the approved Impact Fee Schedule is attached as *Attachment 1*; and

WHEREAS, in accordance with C.R.S. § 29-20-104.5(2)(c), the Parties desire to enter into this Agreement to define the Authority Impact Fee, and the details of assessment, collection, and remittance, all in accordance with the requirements of the Impact Fee Act.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement, the Parties agree as follows:

AGREEMENT

1. Definitions. In addition to the definitions provided elsewhere in this Agreement, the terms "*Development Permit*" and "*Capital Facility(ies)*" shall be defined as provided in C.R.S. §§ 29-20-103(1) and 29-20-104.5(4), respectively, including any amendments thereto. The Parties agree that the Town's issuance of a building permit constitutes a "preliminary or final approval of an application"

as provided by C.R.S. § 29-20-103(1), such that, for purposes of this Agreement, a building permit issued by the Town is a "Development Permit".

2. Establishment of Authority Impact Fee.

a. The Town agrees to impose an impact fee on new development that currently is located within both the Town and the Authority, or that in the future becomes located within the Town and the Authority, in accordance with the attached Impact Fee Schedule, subject to inflation as set forth herein ("**Authority Impact Fee**"). The Authority Impact Fee shall be imposed on all new development for which a Development Permit application is submitted to the Town on or after the effective date as provided in Paragraph 4 below; provided, however, that the Town shall not be subject to the Authority Impact Fee for Town-owned developments. On January 1, 2019, and on January 1 of each year thereafter in which the Authority Impact Fee is in effect, the amount of the Authority Impact Fee per dwelling unit for residential development and/or per square feet for nonresidential development may be automatically adjusted to account for inflationary increases as provided in Section 17-223 of the Johnstown Municipal Code, as amended from time to time.

b. The Authority will update the Nexus Study no less frequently than every three years ("**Updated Nexus Study**"). If the Updated Nexus Study recommends any changes to the Impact Fee Schedule, then the Authority Board may, after considering such recommendations, adopt a Resolution seeking an updated Impact Fee Schedule at a level no greater than necessary to defray the impacts of new development on the Authority's Capital Facilities ("**Updated Impact Fee Schedule**"). The Authority shall thereafter submit to the Town a copy of: (i) the Updated Impact Fee Schedule; (ii) the Resolution seeking the Updated Impact Fee Schedule; and (iii) the Updated Nexus Study. Upon receipt and consideration of the foregoing, the Town may, in its discretion, adopt and impose the Updated Impact Fee Schedule as provided in the Impact Fee Act. In exercising its discretion, the Town may confer with the Authority with respect to the Updated Impact Fee Schedule, the Updated Nexus Study or any other matter related thereto. Notwithstanding the foregoing, if the Updated Nexus Study recommends a decrease to all or any part of the Impact Fee Schedule, the Parties shall take the requisite actions necessary to implement the Updated Impact Fee Schedule to reflect the recommended decrease.

c. The Town retains the right to waive the Authority Impact Fee on the development of low- or moderate-income housing or affordable employee housing as defined by the Town, as provided in C.R.S. § 29-20-104.5(5), and the right to defer payment of the Authority Impact Fee until the issuance of a certificate of occupancy, as provided in C.R.S. § 29-20-104.5(6). If waived, the Town shall not be required to backfill the Authority Impact Fee.

3. Procedures for Assessment, Collection, and Remittance.

a. As part of its Development Permit application process, the Town shall require the developer of any proposed new development within the Authority's jurisdictional boundaries to confer with the Authority regarding whether, under the Impact Fee Schedule (or any Updated Impact Fee Schedule), an Authority Impact Fee is owed and, if owed, the amount of the Authority Impact Fee. The developer and the Authority may mutually determine whether an in-kind contribution will be made by the developer to the Authority in lieu of paying all or any portion of an Authority Impact Fee ("**In-Kind Contribution**"). The developer and the Authority shall sign an Impact Fee Form that is substantially the same as the form attached as Attachment 2, stating one of the following: (i) an Authority Impact Fee is not owed; (ii) an Authority Impact Fee is owed and the amount of the Authority Impact Fee; or, (iii) the developer will make an In-Kind Contribution as described in the Impact Fee Form. The Authority shall be solely responsible for determining whether an Authority Impact Fee is

owed and the amount of such Authority Impact Fee and/or whether an In-Kind Contribution will be accepted in lieu of an Authority Impact Fee.

b. The developer shall submit the signed Impact Fee Form along with a check made payable to the "Loveland Fire Rescue Authority" in the amount of the Authority Impact Fee, if any is owed, with the other documentation required by the Town as part of the Development Permit application process. The Town shall hold the check until the Development Permit application is approved or denied.

c. In the event the Town is required to collect the Authority Impact Fee at any time other than concurrently with the fees collected as part of the Development Permit application process, then the Town may assess an administrative fee of up to 2% to cover the actual and reasonable costs related to the collection and remittance of Authority Impact Fees.

d. For purposes of subparagraphs (a) through (c) of this Paragraph 3, the "Development Permit application process" shall be deemed to mean the Town's building permit application process, unless the requirement to pay the Authority Impact Fee is deferred until the issuance of a certificate of occupancy as provided in subparagraph (c) of Paragraph 2.

e. If the Town denies the Development Permit application, the developer shall not be required to pay an Authority Impact Fee or make an In-Kind Contribution to the Authority. In that case, the developer may obtain the check from the Town. If the Town grants the application and issues a Development Permit, the Town will notify the Authority, and the Authority may obtain the check from the Town.

f. Notwithstanding the foregoing, if the developer will make an In-Kind Contribution in lieu of paying all or any portion of the Authority Impact Fee, then the Town will notify the Authority if it grants the application and issues a Development Permit, and the Authority shall be solely responsible for receiving the In-Kind Contribution.

g. The Authority shall not require a developer to provide any site-specific dedication or improvement to meet the same need for Capital Facilities for which the Authority Impact Fee is imposed. The Authority further agrees not to seek an Authority Impact Fee from a developer if the developer already is required to pay an impact fee or other similar development charge for another Capital Facility used to provide similar Emergency Services, or if the developer has voluntarily contributed money for such other Capital Facility.

h. The Authority shall account for all Authority Impact Fees in accordance with Part 8 of Article 1 of Title 29, Colorado Revised Statutes.

4. Effective Date and Term. This Agreement shall be effective thirty (30) days after the Town Council approves and adopts an ordinance on second reading authorizing the Town to impose an impact fee for Emergency Services, and shall continue in effect until terminated in accordance with its terms. Notwithstanding the foregoing, this Agreement shall not apply to developments, or portions thereof, within the Town that, prior to the effective date of this Agreement, have obtained a footing and foundation permit even if the developer has not yet obtained a Development Permit.

5. Termination.

a. The Parties may at any time mutually agree in writing to terminate this Agreement.

b. The Authority may at any time terminate this Agreement upon 30 calendar days' prior written notice to the Town.

c. The Town may at any time provide written notice of intent to terminate this Agreement to the Authority; provided, that the Town shall not provide such written notice within the first five years of this Agreement. Upon receipt of the written notice, the Town and the Authority, or their authorized representatives, shall meet to discuss, in good faith, whether any amendments may be made to this Agreement or to the Authority Impact Fee upon which the Parties would mutually agree to continue this Agreement. If the Parties are unable to agree upon any such amendments, then the Town's notice of termination, if given in the first six months of a calendar year, shall be effective at the end of that calendar year and, if given in the second six months of a calendar year, shall be effective on December 31 of the calendar year after the year in which the notice is given.

6. Default. If either Party defaults in its performance under this Agreement, the non-defaulting Party shall provide written notification to the defaulting Party of the default. The defaulting Party shall have the right to cure, or to make substantial efforts to cure, the default within 30 calendar days after the non-defaulting Party's notice of default is given. If the defaulting Party fails to cure, or to make substantial efforts to cure, the default within the 30 day period, the non-defaulting Party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, then the non-defaulting Party shall have the right to bring an action for any remedy available to such Party in equity or at law; provided that any remedy of damages shall be limited to actual moneys owed and accrued interest.

7. Governmental Immunity. Nothing in this Agreement shall be construed as a waiver of the limitations on damages or any of the privileges, immunities, or defenses provided to, or enjoyed by, the Parties under common law or pursuant to statute, including but not limited to the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

8. Defense of the Town. To the extent permitted by law, the Authority shall indemnify and hold harmless the Town, its officers, agents, and employees from and against any and all claims, liabilities, costs, expenses, penalties, attorneys' fees, and defense costs (collectively, "Claims") arising from a denial of a certificate of occupancy or other Town-issued permit due to nonpayment of any Authority Impact Fee or failure to make an In-Kind Contribution or the failure of the Authority to comply with C.R.S. § 29-20-104.5, *et seq.* To the extent permitted by law, the Authority shall, at its own cost, investigate, handle, respond to, and defend against such liability, claims, or demands related thereto and shall bear all other related costs and expenses, including court costs and attorneys' fees. The Authority shall have the right to select legal counsel to represent it in connection with any Claims coming within this Paragraph 8.

9. Entire Agreement. This Agreement is the entire agreement between the Parties with respect to the matters covered by it, and supersedes any prior understanding or agreements, oral or written, with respect thereto.

10. Notices and Requests. Any notice permitted or required by this Agreement shall be in writing and shall be hand-delivered or sent by certified or registered mail, postage prepaid, return receipt requested, to the following addresses. Notices are effective upon receipt.

Town of Johnstown
Attn: Town Manager
450 S. Parish Avenue
Johnstown, CO 80534

Loveland Fire Rescue Authority
Attn: Fire Chief
410 E. 5th Street
Loveland, CO 80537

11. Financial Obligations of the Parties. Any financial obligation of a Party under this Agreement is contingent upon appropriation, budgeting, and availability of specific funds to discharge those obligations. Nothing in this Agreement constitutes a debt, a direct or indirect multiple fiscal year financial obligation, a pledge of a Party's credit, or a payment guarantee by one Party to the other.

12. Miscellaneous. Colorado law governs this Agreement. Jurisdiction and venue shall lie exclusively in the Larimer County District Court. This Agreement may be amended only by a document signed by the Parties. Course of performance, no matter how long, shall not constitute an amendment to this Agreement. If any provision of this Agreement is held invalid or unenforceable, all other provisions shall continue in full force and effect. Waiver of a breach of this Agreement shall not operate or be construed as a waiver of any subsequent breach of this Agreement. This Agreement shall inure to the benefit of and be binding upon the Parties and their legal representatives and successors. Notwithstanding any other provision of this Agreement to the contrary, in no event shall either of the Parties be required to exercise any power or take any action which is prohibited by applicable law. Neither Party shall assign this Agreement. This Agreement is not intended to, and shall not, confer rights on any person or entity not named as a party to this Agreement. This Agreement may be executed in counterparts and by facsimile or electronic PDF, each of which shall be deemed an original and all of which shall constitute one and the same instrument.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN, a home rule
municipality of the State of Colorado

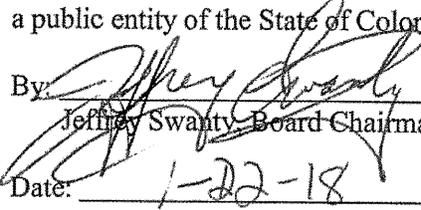
By: _____
Scott James, Mayor

Date: _____

ATTESTED:

Diana Seele, Town Clerk

LOVELAND FIRE RESCUE AUTHORITY,
a public entity of the State of Colorado

By: 
Jeffrey Swamy, Board Chairman

Date: 1-22-18

ATTESTED:


Kristen Cummings, Board Secretary

Attachment 1

LOVELAND FIRE RESCUE AUTHORITY
EMERGENCY SERVICES IMPACT FEE SCHEDULE
Effective _____, 2018

Residential	
Unit Type	Fee Per Dwelling Unit
Single Family	\$895.00
Multifamily	\$622.00

Nonresidential	
Use Type	Fee Per Square Foot
Commercial	\$0.30
Industrial	\$0.03

No developer will be required to provide any site specific dedication or improvement to meet the same need for capital facilities for which an impact fee is imposed pursuant to this schedule, and no impact fee will be imposed on a developer if the developer already is required to pay an impact fee or other similar development charge for another capital facility used to provide similar Emergency Services, or if the developer has voluntarily made a commensurate contribution of money for such other capital facility.

Attachment 2

LOVELAND FIRE RESCUE AUTHORITY
IMPACT FEE FORM

Developer Information			
Development Company		State of Incorporation	
Address			
Telephone		Fax	
Contact Person			
Name		Title	
Telephone		Cell Phone	
Email Address			
Development Information			
Name of Development		Location (Address or Cross Streets)	
Residential Units		Non-Residential Uses	
Single Family (\$895.00 per unit)		Commercial (\$0.30 per square foot)	
Multifamily (\$622.00 per unit)		Industrial (\$0.03 per square foot)	
Impact Fee			
Check one: <input type="checkbox"/> No impact fee owed <u>or</u> <input type="checkbox"/> Impact fee owed in the amount of \$ _____			
If applicable: <input type="checkbox"/> An in-kind contribution will be made in lieu of paying all or a portion of an impact fee. Description of the in-kind contribution (attach additional information if necessary) and amount of impact fee off-set:			

The developer must submit this signed Impact Fee Form with the other documentation required by the Town of Johnstown as part of its development permit application process. If the Town denies the application, the developer is not required to pay the Impact Fee or make an In-Kind Contribution to the Authority. If the Town grants the application and issues a development permit, the developer must pay the Impact Fee and/or make the In-Kind Contribution, or enter into a written agreement with the Authority to make the In-Kind Contribution before the Town will issue a Certificate of Occupancy in connection with the development.

DEVELOPER:

LOVELAND FIRE RESCUE AUTHORITY:

By: _____
Date: _____

By: _____, Fire Chief
Date: _____

