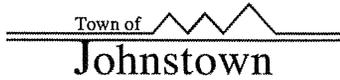


***TOWN COUNCIL***  
***MEETING***  
***PACKET***

**September 5, 2018**



## Town Council

*Agenda*  
Wednesday, September 5, 2018  
Town Hall, Council Chambers  
450 So. Parish Avenue  
7:00 PM



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**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)**

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*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.*

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- 6) **CONSENT AGENDA**
    - A) Town Council Meeting –August 20, 2018
    - B) Utility and Emergency Access Easements – Inline Shops at 2534
    - C) Agreement with Xylem Water Solutions Zelianople, LLC for DAF Saturator
  - 7) **STAFF REPORTS**
  - 8) **OLD BUSINESS**
  - 9) **NEW BUSINESS**
    - A) Water and Sewer Service Agreement for Liberty Development Office at 2534
    - B) Water and Sewer Service Agreement for Liberty Development Flex Building at 2534
    - C) Discussion of Town Manager's Contract with the Town of Johnstown
  - 10) **COUNCIL REPORTS AND COMMENTS**
  - 11) **MAYOR'S COMMENTS**
  - 12) **ADJOURN**
- 

### WORKSESSION

- 1) Joint Meeting with Front Range Fire Rescue



### 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 – August 20, 2018**
- **Utility/Emergency Access Easements**
  - **Agreement**  
**(Saturator Tank)**  
**(Xylem Water Solutions Zelianople, LLC)**

**TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** September 5, 2018

**ITEM NUMBER:** 6A-B

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk

---

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

- A) Council Meeting Minutes – August 20, 2018
- B) \*Utility and Emergency Access Easements – Inline Shops at 2534
- C) \*\* Agreement with Xylem Water Solutions Zelenople (Xylem), LLC for DAF Saturator

\*The property owner, Drake Johnstown Partners, LLC, requests approval of required utility and emergency access easements associated with the construction of a retail building near Thompson Parkway and U.S. Highway 34 in the 2534 development. The Town Attorney prepared the easement document forms.

\*\*The Town currently utilizes Dissolved Air Flotation (DAF) technology at the water treatment plant to clarify the Town's drinking water. Dissolved Air Flotation is a water treatment process that removes suspended solids from the water by using air. The separation is achieved by dissolving air into the water under pressure in a saturator tank, and then releasing the air at atmospheric pressure into a flotation basin. The Town presently has one (1) saturator tank which is able to treat up to five (5) million gallons of water per day. As the Town's water consumption sometimes exceeds this amount, a second saturator is needed to meet the increased demand. The second saturator will allow the plant to treat up to a maximum of ten (10) million gallons of water per day. The saturator tank is to be manufactured by Xylem, which is the same company that fabricated the Town's current tank. A total of \$65,000 was allotted in the 2018 Water Fund budget. Additional funds will need to be allocated in the 2019 budget for the remainder of the parts and installation of the tank to make it operational. According to the Town Treasurer, sufficient funds are available for the acquisition of the tank. The Town Attorney has reviewed the attached agreement. Staff recommends approval of the agreement with Xylem in a total amount not to exceed **\$58,684**, and authorize the Mayor to sign the agreement.

---

**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

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**RECOMMENDED ACTION:** Approve Consent Agenda

---

**SUGGESTED MOTION:**

**For Approval:** I move to approve the Consent Agenda.

**For Denial:**

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**Reviewed:**

  
Town Manager

**COUNCIL  
MINUTES**

The Town Council of the Town of Johnstown met on Monday, August 20, 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 were: Councilmembers Lebsack, Lemasters, Tallent and Young

Those absent were: Councilmembers Mellon 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 Lebsack made a motion seconded by Councilmember Young to amend the Agenda to remove Item 9.D. and reschedule the item for the September 5, 2018 council meeting. Motion carried with a unanimous vote.

#### Public Comments

Blair Howell, Vice President of Front Range Fire Protection District, addressed the Council about working together with the district and the possibility of expanding into Larimer County.

#### Consent Agenda

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

- July 16, 2018 Council Meeting Minutes
- Payment of Bills
- July Financial Statements
- Appointment of Planning Commissioner
- 2<sup>nd</sup> Reading – Annexation Ordinance No. 2018-152, Annexing Certain Incorporated Lands Located in the Northeast ¼ of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> P.M. County of Weld, State of Colorado, and Known as the US Engineering Annexation, and Containing Approximately (12) Acres.
- 2<sup>nd</sup> Reading – Annexation Ordinance No. 2018-153, Approval of Gateway Zoning of the Property Known as US Engineering Annexation Located in the Northeast ¼ of Section 3, Township 4 North, Range 68 West of the 6<sup>th</sup> P.M., County of Weld, State of Colorado, and Containing Approximately Twelve (12) Acres.

Motion carried with a unanimous vote.

#### New Business

A. Presentation of Larimer County Report (2017-2018) Commissioner Donnelly of Larimer County presented the Council with Larimer County's annual report.

B. Presentation of 2017 Annual Audit Report – Mr. John Cutler, CPA of John Cutler & Associates, LLC presented the audit report for the year ending December 31, 2017. Councilmember Lemasters made a motion seconded by Councilmember Tallent to accept the annual audit report for the year ending December 31, 2017. Motion carried with a unanimous vote.

C. Discussion of Johnstown Mosquito Control Program – Dr. Broox Booze, Ph.D., Northern Colorado Operations Manager, Vector Disease Control International – Dr. Booze gave a presentation on mosquito spraying in the town.

There being no further business to come before the Council the meeting adjourned at 8:53 p.m.

Mayor

Town Clerk/Treasurer

**UTILITY/EMERGENCY  
ACCESS  
EASEMENTS**

## GRANT OF UTILITY EASEMENT

THIS INDENTURE, made this 15 day of August, 2018, by and between Drake Johnstown Partners LLC, a Colorado limited liability company, (“Grantor”) whose address is 496 S. Broadway, Denver, CO 80209, and the TOWN OF JOHNSTOWN, COLORADO, a municipal corporation, (“Town”), whose address is 450 S. Parish Ave., Johnstown, Colorado 80534.

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, Grantor has this day bargained and sold, and by these presents does bargain, sell, convey, transfer and deliver unto the Town, its successors and assigns, a permanent nonexclusive easement in, over and across the real estate hereinafter described to access, construct, maintain, repair, replace, remove, enlarge, operate and/or inspect the hydrant and appurtenances hereinafter depicted by the Town and local water district entities (“Easement”).

The Easement hereby granted, situated in Larimer County, Colorado is described as follows:

*See Attached Exhibit A for Legal Description and Exhibit B for Depiction*

TO HAVE AND TO HOLD said Easement unto the Town, its successors and assigns, forever. The Grantor does hereby covenant with the Town that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the Easement herein granted, that the said easement is free and clear of all encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

The Grantor covenants and agrees to construct the water main and appurtenances across the Easement. Prior to construction, Grantor shall prepare and submit plans and specifications for the water main and appurtenances to the Town and such plans and specifications shall be subject to approval by the Town of Johnstown. Grantor, for itself and its successors and assigns, covenants and agrees that it shall not modify the water main or appurtenances without the prior written approval from the Town.

The Grantor further covenants and agrees not to construct any permanent building or similar structure within the Easement and not to make any change to the grade of the real property without the Town’s prior written approval. The Town, its successors and assigns, shall be permitted to cut, trim, control, and remove trees, brush and other obstructions located within the Easement that injure or interfere with the Easement.



EXHIBIT "A"  
LAND DESCRIPTION

SHEET 1 OF 2

A PARCEL OF LAND BEING A PORTION OF LOT 2, BLOCK 3, 2534 SUBDIVISION AND SITUATED IN THE NORTHWEST 1/4 OF SECTION 14, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

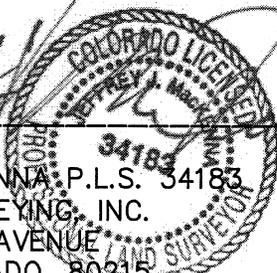
COMMENCING AT THE NORTHEAST QUARTER CORNER OF SECTION 14 FROM WHENCE THE NORTH QUARTER CORNER OF SAID SECTION 14 BEARS NORTH 89°30'35" EAST A DISTANCE OF 2634.10 FEET WITH ALL BEARINGS HEREIN RELATIVE THERETO.

THENCE SOUTH 34°33'05" EAST A DISTANCE OF 520.19 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 50°38'10" EAST A DISTANCE OF 8.45 FEET;  
THENCE 20.21 FEET ALONG A NON-TANGENT CURVE TO THE LEFT WITH A RADIUS OF 180.00 FEET, A DELTA OF 06°26'01", AND A CHORD WHICH BEARS S31°15'59" WEST, 20.20 FEET;  
THENCE NORTH 50°38'10" WEST A DISTANCE OF 11.30 FEET;  
THENCE NORTH 39°21'50" EAST A DISTANCE OF 20.00 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING: 194 SQUARE FEET, OR 0.004 ACRES, MORE OR LESS.

  
PREPARED BY: JEFFREY J. MACKENNA, P.L.S. 34183 DATE: 07/24/2018  
FOR FALCON SURVEYING, INC.  
9940 WEST 25TH AVENUE  
LAKEWOOD COLORADO, 80215  
(303)202-1560



# EXHIBIT "A"

SITUATED IN THE NORTHWEST 1/4, SECTION 14, T5N, R68W, OF THE 6TH P.M.  
TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO

SHEET 2 OF 2

POINT OF COMMENCEMENT

NE 1/4 CORNER

SEC14-T5N-R68W

FOUND 2 1/2" ALUMINUM CAP

STAMP ILLEGIBLE

IN MONUMENT BOX 0.8' BELOW GRADE

SOUTH LINE OF THE SW 1/4 OF SEC11-T5N-R68W

NORTH LINE OF THE NW 1/4 OF SEC14-T5N-R68W

BASIS OF BEARINGS

N89°30'35"E

2634.10'

NORTH 1/4 CORNER

SEC14-T5N-R68W

FOUND 3 1/2" ALUMINUM CAP

STAMPED "CDOT 2008 36061"

IN MONUMENT BOX

0.3' BELOW GRADE

LOT 3

BLOCK 3

2534 SUBDIVISION

REC. NO. 2005-008616

TIE LINE  
S34°33'05"E  
520.19'

N00°44'58"E  
2654.32'

EAST LINE OF THE NE 1/4 OF SEC15-T5N-R68W  
WEST LINE OF THE NW 1/4 OF SEC14-T5N-R68W

THOMPSON PARKWAY

100' RIGHT OF WAY

25' LANDSCAPE EASEMENT  
REC. NO. 2005-008616

75' UTILITY EASEMENT  
REC. NO. 2005-008616

30' EMERGENCY ACCESS EASEMENT  
REC. NO. 20070028958

UTILITY EASEMENT  
REC. NO. 2006-008980

LOT 2  
BLOCK 3  
2534 SUBDIVISION  
REC. NO.  
2005-0048616

POINT OF BEGINNING  
194 SQ. FT.,  
OR 0.004 ACRES ±

N39°21'50"E

20.00'

N50°38'10"W

11.30'

S50°38'10"E

8.45'

W 1/4 CORNER

SEC14-T5N-R68W

FOUND 2 1/2" ALUMINUM CAP

STAMPED "PETROLEUM FIELD SERVICES"

0.5' ABOVE GRADE

ADDRESS: 4940  
THOMPSON PARKWAY  
SCHEDULE #: 1660186

Δ=6°26'01"

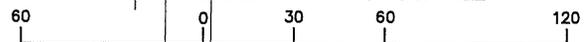
R=180.00'

L=20.21'

ChB=S31°15'59"W

ChL=20.20'

GRAPHIC SCALE



( IN US SURVEY FEET )

1 inch = 60 ft.

THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED SURVEY.  
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

**GRANT OF EMERGENCY ACCESS EASEMENT**  
(Johnstown, Colorado)

THIS INDENTURE, made this 4<sup>th</sup> day of August, 2018, by and between Drake Johnstown Partners LLC, a Colorado limited liability company, ("Grantor"), whose address is 496 S. Broadway, Denver, CO 80209, and the TOWN OF JOHNSTOWN, COLORADO, a municipal corporation ("Town"), whose address is 450 S. Parish Ave., Johnstown, Colorado 80534.

WITNESSETH:

FOR GOOD AND VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, the Grantor has this day bargained and sold, and by these presents does bargain, sell, convey, transfer and deliver unto the Town, its successors and assigns, a permanent nonexclusive easement in, over and across the real estate hereinafter described, for purposes of access by local, state or federal emergency response agencies and any entity accessing the easement at the direction of such an agency.

The easement hereby granted, situated in Larimer County, Colorado is described as follows:

***SEE ATTACHED EXHIBIT A FOR LEGAL DESCRIPTION AND DEPICTION***

located at ***4930 THOMPSON PARKWAY, JOHNSTOWN, CO 80534***

TO HAVE AND TO HOLD said easement unto the Town, its successors and assigns forever. The Grantor does hereby covenant with the Town that it is lawfully seized and possessed of the real property above described, that it has a good and lawful right to convey the easement herein granted, that the said easement is free and clear of all encumbrances, and that it will forever warrant and defend the title thereto against lawful claims of all persons whomsoever.

The Grantor further covenants and agrees to construct and maintain in good repair and unobstructed at all times, a permanent all-weather emergency access road capable of supporting fire apparatus over and across the easement. Prior to construction, the Grantor shall prepare and submit plans and specifications for the emergency access road to the Town and such plans and specifications shall be subject to approval by Loveland Fire Rescue Authority. The Grantor, for itself and its successors and assigns, covenants and agrees that it shall not modify the width, location, or configuration of the emergency access road without the prior written approval from the Town.



EXHIBIT "A"  
LAND DESCRIPTION

SHEET 1 OF 2

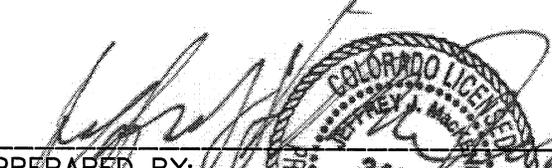
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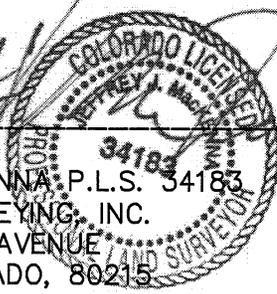
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THENCE SOUTH 52°39'24" EAST A DISTANCE OF 217.21 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 45°48'57" EAST A DISTANCE OF 16.58 FEET;  
THENCE SOUTH 00°49'12" EAST A DISTANCE OF 245.57 FEET;  
THENCE NORTH 45°01'20" WEST A DISTANCE OF 19.12 FEET;  
THENCE NORTH 06°42'15" WEST A DISTANCE OF 6.30 FEET;  
THENCE NORTH 00°16'32" WEST A DISTANCE OF 237.33 FEET TO THE TRUE POINT OF BEGINNING;

CONTAINING: 3,157 SQUARE FEET, OR 0.072 ACRES, MORE OR LESS.

PREPARED BY:   
JEFFREY J. MACKENNA, P.L.S. 34183 DATE: 05/31/2018  
FOR FALCON SURVEYING, INC.  
9940 WEST 25TH AVENUE  
LAKEWOOD COLORADO, 80215  
(303)202-1560

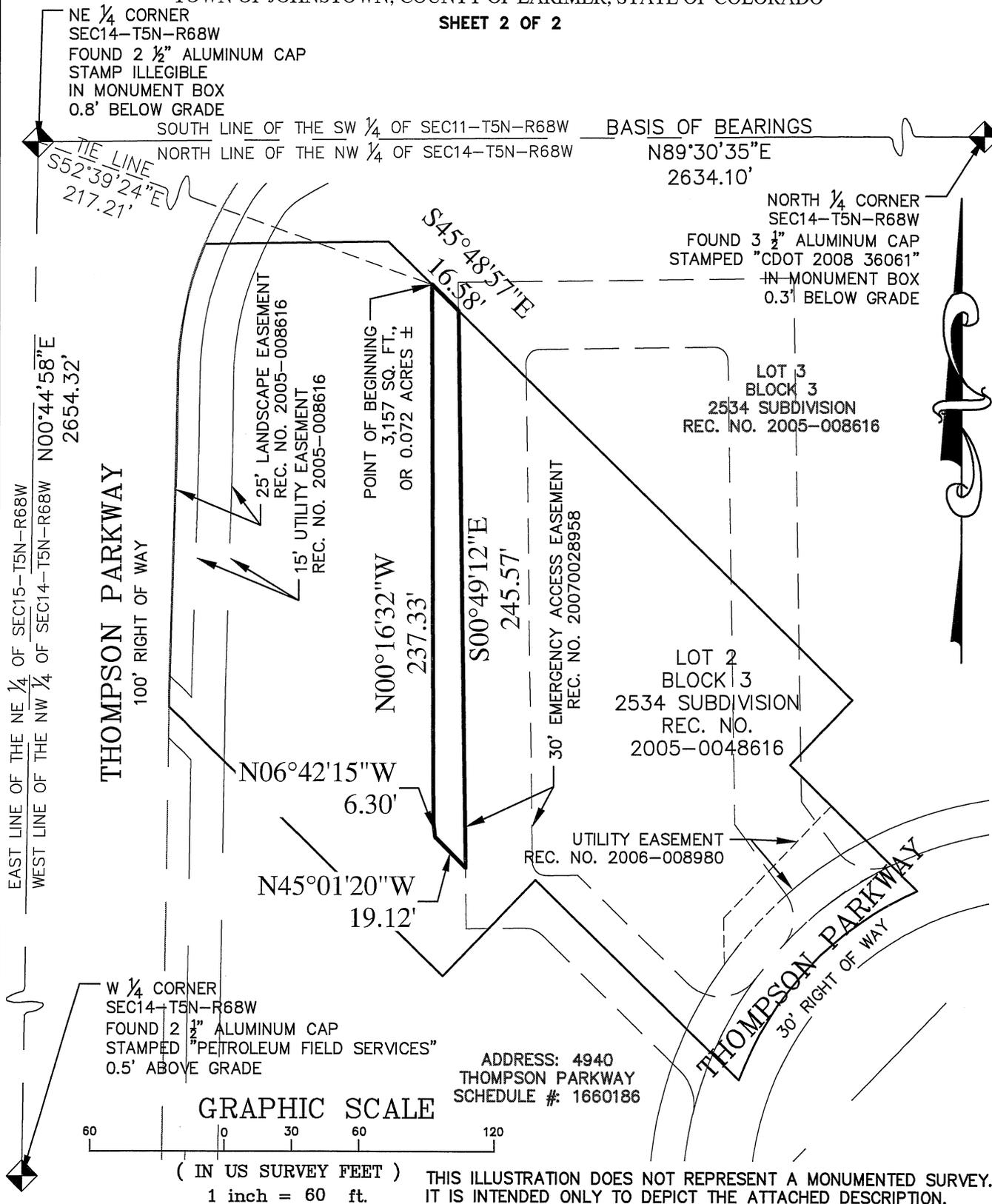


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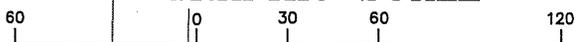
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SITUATED IN THE NORTHWEST 1/4, SECTION 14, T5N, R68W, OF THE 6TH P.M.  
TOWN OF JOHNSTOWN, COUNTY OF LARIMER, STATE OF COLORADO

SHEET 2 OF 2



GRAPHIC SCALE



( IN US SURVEY FEET )  
1 inch = 60 ft.

THIS ILLUSTRATION DOES NOT REPRESENT A MONUMENTED SURVEY.  
IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.



INFORMATION ONLY



Professional Stamp

PROJECT LOCATION:  
**IN LINE SHOPS AT 2534**  
**HIGHWAY 34 & THOMPSON PKWY**  
**JOHNSTOWN, COLORADO**



REVISIONS:      DATE:


NAMA PROJECT #: 18-104.03  
 DRAWN BY:  
 REVIEWED BY:  
 SCALE: AS SHOWN  
 DATE: 06.01.2018  
 SHEET TITLE:  
 LANDSCAPE PLAN  
 SHEET NUMBER:  
 L1.0

### PLANT LIST

KEY	QTY	COMMON NAME	BOTANIC NAME	SIZE	REMARKS
<b>DECIDUOUS SHADE TREES</b>					
EO	5	Quercus robur	English Oak	2" Cal.	B&B, Full head, single-stem, straight trunk
HB	6	Celtis occidentalis	Hackberry	2" Cal.	
HL	7	G. tricanthos 'Inermis' 'Shademaster'	Shademaster Honeylocust	2" Cal.	
<b>EVERGREEN TREES</b>					
AP	2	Pinus nigra	Austrian Pine	6' Ht.	B&B, Full head, straight trunk
BP	5	Pinus heldreichii (leucodermis)	Bosnian Pine	6' Ht.	
<b>DECIDUOUS SHRUBS</b>					
BM	13	Caryopteris clandonensis 'Blue Mist'	Blue Mist Spirea	24-30" ht.	#5 container
DL	23	Syringa patula 'Miss Kim'	Miss Kim Dwarf Lilac	24-30" ht.	#5 container
DN	14	Physocarpus opulifolius 'Diablo'	Diablo Ninebark	30-36" ht.	#5 container
GL	9	Rhus aromatica 'Gro-low'	Gro-low Sumac	12-18" ht.	#5 container
LD	23	Physocarpus opulifolius 'Little Devil'	Little Devil Ninebark	24-30" ht.	#5 container
LO	30	Ligustrum vulgare 'Lodense'	Lodense Privet	18-24" ht.	#5 container
NV	10	Viburnum lentago	Nannyberry Viburnum	30-36" ht.	#5 container
PS	12	Potentilla fruticosa 'Prairie Snow'	Prairie Snow Potentilla	9x12" ht.	#5 container
SM	14	Philadelphus x 'Snowbelle'	Snowbelle Mockorange	24-30" ht.	#5 container
<b>EVERGREEN SHRUBS</b>					
BH	15	Juniperus horizontalis 'Bar Harbor'	Bar Harbor Juniper	9-12" ht.	#5 container
SJ	2	Juniperus chinensis 'Spartan'	Spartan Juniper	30-36" ht.	#5 container
TM	3	Pinus mugo 'Tannenbaum'	Tannenbaum Mugo Pine	30-36" ht.	#5 container
WB	12	Pinus mugo 'White Bud'	White Bud Mugo Pine	24-30" ht.	#5 container
<b>ORNAMENTAL GRASSES</b>					
BA	12	Helictotrichon sempervirens	Blue Avena Grass	12-18" ht.	#5 container
MG	25	Miscanthus sinensis 'Gracillimus'	Maiden Grass	24-30" ht.	#5 container
VG	23	Miscanthus sinensis 'Variegatus'	Variegated Maiden Grass	24-30" ht.	#5 container

### SITE DATA

Site Area:	69,128 SF
Building Area:	7,086 SF
Parking/Hardscape:	50,334 SF
Landscape Area:	11,707 SF (16.9%)
Irrigated Turf (spray):	4,501 SF (38.4%)
Plant bed (drip):	7,206 SF (61.6%)
Total Trees:	27 (1 per 434 SF)
Total Shrubs:	211 (1 per 56 SF)

### PARKING PERIMETER

Length / Area	Trees Req. / Prov.	Shrubs Req. / Prov.
North: 517' / 382 sf	1/2	5 / 15
West: 607' / 564 sf	1/2	3 / 13
Southwest: 457' / 354 sf	5/11	3 / 13
South: 327' / 247 sf	5/11	3 / 13

\* = Easement between walk & curb. Existing tree in tree lawn.

### TREE DIVERSITY

Total Trees: 27	Proposed	Existing
Shade- (74.1%)	18	2
English Oak	5 (18.5%)	
Hackberry	6 (22.2%)	
Honeylocust	7 (33.3% w extg)	2
Evergreen (25.9%)	7	
Austrian Pine	2 (7.4%)	
Bosnian Pine	5 (18.5%)	

### PARKING ISLANDS

(Requirement: 1 tree & either 3 medium or 5 small shrubs per 9 x 18' island)

	Total	Trees Req. / Prov.	Shrubs Req. / Prov.
Double Islands:	4	8 / 8	24-40 / 60
Ex. Double Islands:	2	4 / 3* (2 ex.)	12-15 / 15*
Single Islands:	3	3 / 2**	9-12 / 26

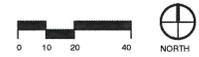
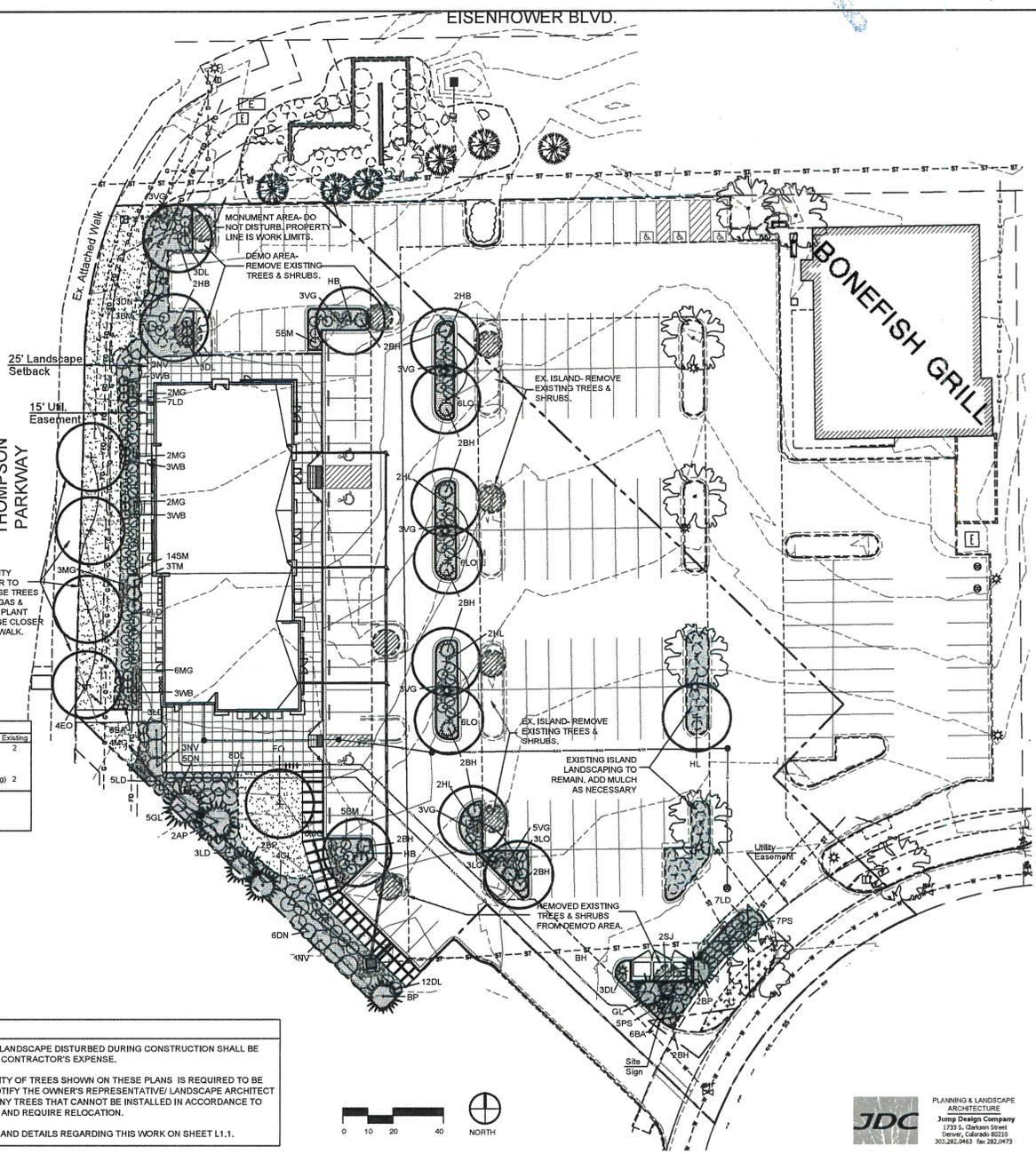
\* = Storm inlet & drain line in conflict.  
 \*\* = Light conflict.

### LEGEND

	DECIDUOUS TREE		IRRIGATED SOD
	ORNAMENTAL TREE		MULCHED BED
	EVERGREEN TREE		EX. EVERGREEN TREE
	DECIDUOUS SHRUB		EX. DECIDUOUS TREE
	EVERGREEN SHRUB		EX. TREE TO BE REMOVED
	ORNAMENTAL GRASS		EX. SHRUB / MASSING
			EDGER

NOTE:

- ANY R.O.W. LANDSCAPE DISTURBED DURING CONSTRUCTION SHALL BE REPLACED AT CONTRACTOR'S EXPENSE.
- THE QUANTITY OF TREES SHOWN ON THESE PLANS IS REQUIRED TO BE INSTALLED. NOTIFY THE OWNER'S REPRESENTATIVE/ LANDSCAPE ARCHITECT REGARDING ANY TREES THAT CANNOT BE INSTALLED IN ACCORDANCE TO THESE PLANS AND REQUIRE RELOCATION.
- SEE NOTES AND DETAILS REGARDING THIS WORK ON SHEET L1.1.



# AGREEMENT

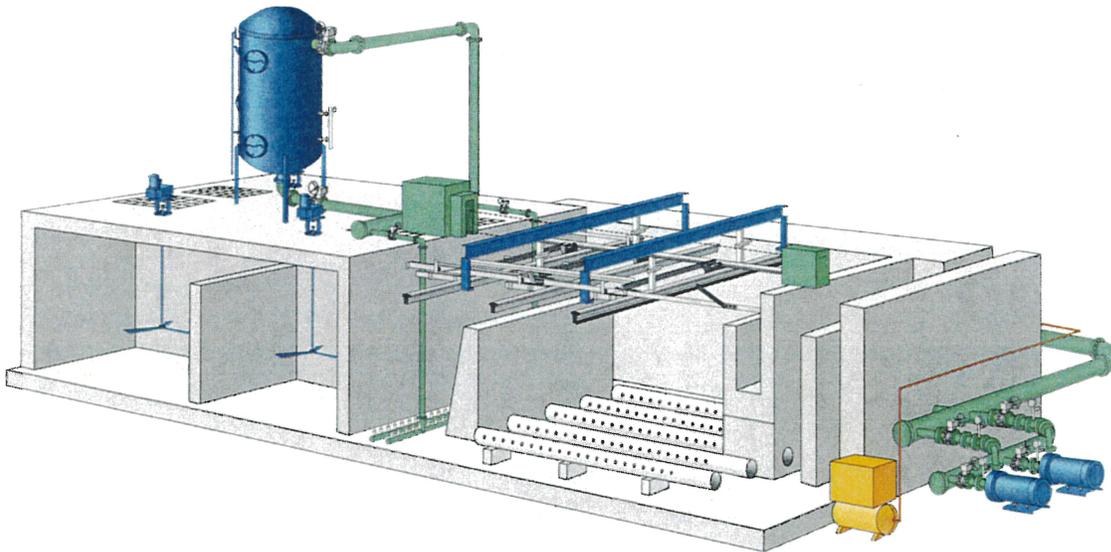


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Proposal Number: I18335

June 6, 2018

## Johnstown, CO



## Clari-DAF®

### Proposal Prepared for Johnstown, CO

Xylem — 227 South Division Street — Zelienople, PA 16063  
Phone (724) 452-6300 — Fax (724) 453-2122



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## Table of Contents

1. **Design Criteria**
2. **Scope of Supply**
  - 2.1 DAF Saturator
3. **Installation and Instruction Services**
4. **Pricing Information**



## 1. Design Criteria

The Clari-DAF equipment described here-in shall be furnished and installed as described in Section 2 - Scope of Supply. **Xylem will supply only the items specifically detailed within this proposal.** Xylem reserves the right to update equipment pricing in order to comply with any general equipment specifications provided after the date of this proposal.

The system has been designed based on Leopold contract number M4-4442.

## 2. Scope of Supply

### 2.1 DAF Saturator:

- (1) **Packed tower air saturation tank.** It shall be constructed of steel plates and shapes conforming to ASTM A36, with the interior shell being epoxy lined. Saturation tank shall be constructed as per latest revision of Section VIII, Division 1 of the ASME code and stamped for 150 psig. Also included is the saturator pressure retention valve, pressure regulating valve, level indicator, pressure gauge, pressure transmitter, liquid level sight glass, pressure relief valve, drain valve, polypropylene packing, and internal distribution piping fabricated from type 304 stainless steel.



#### 4. Pricing Information

##### BASIS of PRICING:

Any items and/or accessories not specifically called out in this quotation must be construed as being furnished by others.

This quotation is considered firm for 90 days. Orders received more than 90 days after the date of this quotation is reviewed by Xylem before acceptance and is subject to changes in prices or delivery depending on conditions existing at the time of entry. Quoted prices are firm for delivery within 12 months from the delivery date stipulated in the plans & specifications or mutually agreed upon by Xylem and Purchase Order issuer at time of order placement.

We do not include any applicable taxes.

Orders resulting from this quotation should be addressed to Xylem Water Solutions Zelienople LLC 227 S. Division St., Zelienople, PA, 16063, USA.

We propose to furnish the material described in this document for a **total selling price of \$58,684.00, DAP jobsite with full truck freight allowed to jobsite.**

For final pricing and further information pertaining to the equipment contained in this proposal, please contact our area representative, who is:

isiWest  
4175 Mulligan Dr.  
Longmont, CO 80504  
Phone: (970) 535-0571  
Cell: (970) 460-0125

Attention: Frank Henderson

##### Pricing is based on the following payment terms (net 30 days):

- 10% following initial submittal for approval
- 80% following the date of the respective shipments of the product
- 5% following installation, not to exceed 150 days after shipment of the product (*whichever comes first*)
- 5% following start-up, not to exceed 180 days after shipment of the product (*whichever comes first*)

Respectfully submitted,

Xylem

Bruce Wolfe  
Sr. Sales Engineer, Xylem

Attachments: Terms and Conditions

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## Commercial Terms & Conditions

### DELIVERY SCHEDULE

#### Production schedule

Delivery of fabricated items 16 to 18 weeks after drawing approval.

### T&C'S FOR PROPOSAL

**1. Agreement, Integration and Conflict of Terms.** These terms and conditions, together with any special conditions expressly incorporated thereto in the quotation or sales form, are to govern any sale between the Seller and Buyer. The Seller shall mean the applicable affiliate of Xylem Inc. that is party to the Agreement ("Seller"). The Buyer shall mean the entity that is party to the Agreement with Seller. This writing is an offer or counteroffer by Seller to sell the goods and/or services set forth on the quotation or sales form subject to these terms and conditions and is expressly made conditional on Buyer's assent to these terms and conditions. Acceptance by Buyer is expressly limited to these terms and conditions. Any additional or different terms and conditions contained in Buyer's purchase order or other communication shall not be effective or binding upon Seller unless specifically agreed to in writing by Seller; Seller hereby objects to any such conditions, and the failure of Seller to object to specific provisions contained in any purchase order or other communication from Buyer shall not be construed as a waiver of these terms and conditions nor an acceptance of any such provisions. Neither Seller's commencement of performance nor delivery shall be deemed or construed as acceptance of Buyer's additional or different terms and conditions. Buyer agrees that these terms and conditions, together with any accompanying quotation and any special conditions or limited process guarantees or documents referred to or included within the quotation and expressly made a part of this agreement, (e.g., drawings, illustrations, specifications, or diagrams), is the complete and final agreement between Buyer and the Seller ("Agreement"). This Agreement supersedes all prior negotiations, representations, or agreements, either written or oral, between the parties and, further, can only be altered, modified or amended with the express written consent of the parties.

**2. Quotation, Withdrawal, Expiration.** Quotes are valid for ninety (90) calendar days from the date of issuance unless otherwise provided therein. Seller reserves the right to cancel or withdraw the quotation at any time with or without notice or cause prior to acceptance by Buyer. There is no Agreement if any conditions specified within the quotation *or* sales form are not completed by Buyer to Seller's satisfaction within thirty (30) calendar days of Seller's acknowledgement in writing of an order. Seller nevertheless reserves its right to accept any contractual documents received from Buyer after this 30-day period.

**3. Prices.** Prices apply to the specific quantities stated on the quotation or sales form. Unless otherwise agreed to in writing by the parties, all prices are delivery at place ("DAP") and include transportation costs and charges relating to transportation. Prices include standard packing according to Seller's specifications for delivery. All costs and taxes for special packing requested by Buyer, including packing for exports, shall be paid by Buyer as an additional charge.

**4. Taxes.** The price for the goods does not include any applicable sales, use, excise, GST, VAT, or similar tax, duties or levies. Buyer shall have the responsibility for the payment of such taxes if applicable.

**5. Payment Terms.** Seller reserves the right to require payment in advance or C.O.D. and otherwise modify credit terms should Buyer's credit standing not meet Seller's acceptance. Unless different payment terms are expressly set forth in the quotation or sales form or order acknowledgment or Sales Policy Manual, goods will be invoiced upon shipment. Payment shall be made in U.S. Dollars. Payment is due as set forth in the quotation or sales form. In the event payment is not made when due, Buyer agrees to pay Seller a service or finance charge of the lesser of (i) one and one-half percent (1.5%) per month (18% per annum), or (ii) the highest rate permitted by applicable law, on the unpaid balance of the invoice from and after the invoice due date. Buyer is responsible for all costs and expenses associated with any checks returned due to insufficient funds. All credit sales are subject to prior approval of Seller's credit department. Export shipments will require payment prior to shipment or an appropriate Letter of Credit. If, during the performance of the contract with Buyer, the financial responsibility or condition of Buyer is such that Seller in good faith deems itself insecure, or if Buyer becomes insolvent, or if a material change in the ownership of Buyer occurs, or if Buyer fails to make any payments in accordance with the terms of its contract with Seller, then, in any such event, Seller is not obligated to continue performance under the contract and may stop goods in transit and defer or decline to make delivery of goods, except upon receipt of satisfactory security or cash payments in advance, or Seller may terminate the order upon written notice to Buyer without further obligation to Buyer whatsoever. If Buyer fails to make payments or fails to furnish security satisfactory to Seller, then Seller shall also have the right to enforce payment to the full contract price of the work completed and in process. Upon default by Buyer in payment when due, Buyer shall immediately pay to Seller the entire unpaid amounts for any and all shipments made to Buyer irrespective of the terms of said shipment and whether said shipments are made pursuant to this Agreement or any other contract of sale between Seller and Buyer, and Seller may withhold all subsequent shipments until the full amount is settled. Acceptance by Seller of less than full payment shall not be a waiver of any of its rights hereunder. Buyer shall not assign or transfer this Agreement or any interest in

it, or monies payable under it, without the written consent of Seller and any assignment made without such consent shall be null and void.

**6. Delivery, Risk of Loss.** Seller acknowledges that time is a material element and agrees to provide equipment in accordance with a mutually agreed upon schedule. All shipments will be made DAP Title and risk of loss will transfer to Buyer upon delivery. Seller shall not be responsible to Buyer for any loss, whether direct, indirect, incidental or consequential in nature, including without limitation loss of profits, arising out of or relating to any failure of the goods to be delivered by the specified delivery date. In the absence of specific instructions, Seller will select the carrier. Buyer shall reimburse Seller for the additional cost of its performance resulting from inaccurate or lack of delivery instructions, or by any act or omission on Buyer's part. Any such additional cost may include, but is not limited to, storage, insurance, protection, re-inspection and delivery expenses.

Buyer grants to Seller a continuing security interest in and a lien upon the products and the proceeds thereof (including insurance proceeds), as security for the payment of all such amounts and the performance by Buyer of all of its obligations to Seller pursuant to the order and all such other sales, and Buyer shall have no right to sell, encumber or dispose of the products. Buyer shall execute any and all financing statements and other documents and instruments and do and perform any and all other reasonable acts and things which Seller may consider necessary, desirable or appropriate to establish, perfect or protect Seller's title, security interest and lien

**7. Warranty.** For goods sold by Seller to Buyer that are used by Buyer for personal, family or household purposes, Seller warrants the goods to Buyer on the terms of Seller's limited warranty available on Seller's website. For goods sold by Seller to Buyer for any other purpose, Seller warrants that the goods sold to Buyer hereunder (with the exception of membranes, seals, gaskets, elastomer materials, coatings and other "wear parts" or consumables all of which are not warranted except as otherwise provided in the quotation or sales form) will be (i) be built in accordance with the specifications, if any, referred to in the quotation or sales form and (ii) free from defects in material and workmanship for a period of one (1) year from the date of installation and start-up, if subsequent to installation, unless an alternate period of time is provided by law or is specified in the product documentation from Xylem (the "Warranty").

Except as otherwise provided by law, Seller shall, at its option and at no cost to Buyer, either repair or replace any product which fails to conform with the Warranty. Seller shall have complete discretion as to the method or means of repair or replacement. Buyer's failure to comply with Seller's written repair or replacement directions shall constitute a waiver of its rights and render all warranties void, on the conditions that the directions are reasonable and that Buyer is reasonably capable of undertaking such task(s). The Warranty is conditioned on Buyer giving written notice to Seller of any defects in material or workmanship of warranted goods within twenty (20) days of the date when any defects are first manifest. Seller shall have no warranty obligations to Buyer with respect to any product or parts of a product that: (a) have been repaired by third parties other than Seller or without Seller's written approval; (b) have been subject to misuse, misapplication, neglect, alteration, accident, or physical damage; (c) have been used in a manner contrary to Seller's instructions for installation, operation and maintenance; (d) have been damaged from ordinary wear and tear, corrosion, or chemical attack; (e) have been damaged due to abnormal conditions, vibration, failure to properly prime, or operation without flow; (f) have been damaged due to a defective power supply or improper electrical protection; or (g) have been damaged resulting from the use of accessory equipment not sold by Seller or not approved by Seller in connection with products supplied by Seller hereunder.

**THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, CONDITIONS OR TERMS OF WHATEVER NATURE RELATING TO THE GOODS PROVIDED HEREUNDER, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. EXCEPT AS OTHERWISE PROVIDED BY LAW, BUYER'S EXCLUSIVE REMEDY AND SELLER'S AGGREGATE LIABILITY FOR BREACH OF ANY OF THE FOREGOING WARRANTIES ARE LIMITED TO REPAIRING OR REPLACING THE PRODUCT AND SHALL IN ALL CASES BE LIMITED TO THE AMOUNT PAID BY THE BUYER HEREUNDER. IN NO EVENT IS SELLER LIABLE FOR ANY OTHER FORM OF DAMAGES, WHETHER DIRECT, INDIRECT, LIQUIDATED, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY OR LOSS OF REPUTATION.**

**8. Inspection.** Buyer shall have the right to inspect the goods upon their receipt. When delivery is to Buyer's site or to a project site ("Site"), Buyer shall notify Seller in writing of any visible nonconformity of the goods with this Agreement within ten (10) days from receipt by Buyer. For all other deliveries, Buyer shall notify Seller in writing of any nonconformity with this Agreement within fourteen (14) days from receipt by Buyer. Failure to give such applicable notice shall constitute a waiver of Buyer's right to inspect and/or reject the goods for nonconformity and shall be equivalent to an irrevocable acceptance of the goods by Buyer, except for latent defects in materials or workmanship covered under warranty.

**9. Seller's Limitation of Liability.** EXCEPT AS OTHERWISE PROVIDED BY LAW, IN NO EVENT SHALL SELLER'S LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNT PAID BY BUYER UNDER THIS AGREEMENT. SELLER SHALL HAVE NO LIABILITY FOR LOSS OF PROFIT, LOSS OF ANTICIPATED SAVINGS OR REVENUE, LOSS OF INCOME, LOSS OF BUSINESS, LOSS OF PRODUCTION, LOSS OF OPPORTUNITY, LOSS OF REPUTATION, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR EXEMPLARY DAMAGES.

**10. Force Majeure.** Seller may cancel or suspend this Agreement and Seller shall have no liability for any failure to deliver or perform, or for any delay in delivering or performing any obligations, due to acts or omissions of Buyer and/or its contractors, or due

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to circumstances beyond Seller's reasonable control, including but not limited to acts of God, fire, flood or other natural disasters, war and civil disturbance, riot, acts of governments, terrorism, disease, currency restrictions, labor shortages or disputes, unavailability of materials, fuel, power, energy or transportation facilities, failures of suppliers or subcontractors to effect deliveries, in which case the time for performance shall be extended in an amount equal to the excused period, provided that Seller shall have, as soon as reasonably practicable after it has actual knowledge of the beginning of any excusable delay, notified Buyer of such delay, of the reason therefor and of the probable duration and consequence thereof. Seller shall use its best efforts to eliminate the cause of the delay, interruption or cessation and to resume performance of its obligations hereunder with the least possible delay.

**11. Cancellation.** Except as otherwise provided in this Agreement, no order may be cancelled on special or made-to-order goods or unless otherwise requested in writing by either party and accepted in writing by the other. In the event of a cancellation by Buyer, Buyer shall, within thirty (30) days of such cancellation, pay Seller a cancellation fee, which shall include all costs and expenses incurred by Seller prior to the receipt of the request for cancellation including, but not limited to, all commitments to its suppliers, subcontractors and others, all fully burdened labor and overhead expended by Seller, plus a reasonable profit charge." Return of goods shall be in accordance with Seller's most current Return Materials Authorization and subject to a fifteen percent (15%) restocking fee.

Notwithstanding anything to the contrary herein, in the event of the commencement by or against Buyer of any voluntary or involuntary proceedings in bankruptcy or insolvency, or in the event Buyer shall be adjusted bankrupt, make a general assignment for the benefit of its creditors, or if a receiver shall be appointed on account of Buyer's insolvency, or if Buyer fails to make payment when due under this Agreement, or in the event Buyer does not correct or, if immediate correction is not possible, commence and diligently continue action to correct any default of Buyer to comply with any of the provisions or requirements of this Agreement within ten (10) calendar days after being notified in writing of such default by Seller, Seller may, by written notice to Buyer, without prejudice to any other rights or remedies which Seller may have, terminate its further performance of this Agreement. In the event of such termination, Seller shall be entitled to receive payment as if Buyer has cancelled the Agreement as per the preceding paragraph. Seller may nevertheless elect to complete its performance of this Agreement by any means it chooses. Buyer agrees to be responsible for any additional costs incurred by Seller in so doing. Upon termination of this Agreement, the rights, obligations and liabilities of the parties which shall have arisen or been incurred under this Agreement prior to its termination shall survive such termination.

**12. Drawings.** All drawings are the property of Seller. Seller does not supply detailed or shop working drawings of the goods; however, Seller will supply necessary installation drawings. The drawings and bulletin illustrations submitted with Seller's quotation show general type, arrangement and approximate dimensions of the goods to be furnished for Buyer's information only, except as set forth in quotation or sales form, all drawings, illustrations, specifications or diagrams form no part of this Agreement. Seller reserves the right to alter such details in design or arrangement of its goods which, in its judgment, constitute an improvement in construction, application or operation. All engineering information necessary for installation of the goods shall be forwarded by Seller to Buyer upon Buyer's acceptance of this Agreement. After Buyer's acceptance of this Agreement, any changes in the type of goods, the arrangement of the goods, or application of the goods requested by Buyer will be made at Buyer's expense. Instructions necessary for installation, operating and maintenance will be supplied when the goods are shipped.

**13. Proprietary Information, Injunction.** Seller's designs, illustrations, drawings, specifications, technical data, catalogues, "know-how", economic or other business or manufacturing information (collectively "Proprietary Information") disclosed to Buyer shall be deemed proprietary and confidential to Seller. Unless otherwise required by law, Buyer agrees not to disclose, use, or reproduce any Proprietary Information without first having obtained Seller's express written consent. Buyer's agreement to refrain from disclosing, using or reproducing Proprietary Information shall survive completion of the work under this Agreement. Buyer acknowledges that its improper disclosure of Proprietary Information to any third party will result in Seller's suffering irreparable harm. Seller may seek injunctive or equitable relief to prevent Buyer's unauthorized disclosure.

**14. Installation and Start-up.** Unless otherwise agreed to in writing by Seller, installation shall be the sole responsibility of Buyer. Where start-up service is required with respect to the goods purchased hereunder, it must be performed by Seller's authorized personnel or agents; otherwise, the Warranty is void. In the event Buyer has engaged Seller to provide an engineer for start-up supervision, such engineer will function in a supervisory capacity only and Seller shall have no responsibility for the quality of workmanship of the installation. In any event, Buyer understands and agrees that it shall furnish, at Buyer's expense, all necessary foundations, supplies, labor and facilities that might be required to install and operate the goods.

**15. Specifications.** Changes in specifications requested by Buyer are subject to approval in writing by Seller. In the event such changes are approved, the price for the goods and the delivery schedule shall be changed to reflect such changes.

**16. Buyer Warranty.** Buyer warrants the accuracy of any and all information relating to the details of its operating conditions, including temperatures, pressures, and where applicable, the nature of all hazardous materials. Seller can justifiably rely upon the accuracy of Buyer's information in its performance. Should Buyer's information prove inaccurate, Buyer agrees to reimburse Seller for any losses, liabilities, damages and expenses that Seller may have incurred as a result of any inaccurate information provided by Buyer to Seller, to the extent permitted by law.

**17. Minimum Order.** Seller reserves the right to refuse to process any order that does not meet quantity requirements that Seller may establish for any given product or group of products.

**18. Quality Levels.** Prices are based on quality levels commensurate with normal processing. If a different quality level is required, Buyer must specify its requirements, as approved in writing by Seller, and pay any additional costs that may be applicable.



19. **Product Recalls.** In cases where Buyer purchases for resale, Buyer shall take all reasonable steps (including, without limitation, those measures prescribed by the seller): (a) to ensure that all customers of the Buyer and authorised repairers who own or use affected products are advised of every applicable recall campaign of which the Buyer is notified by the Seller; (b) to ensure that modifications notified to Buyer by Seller by means of service campaigns, recall campaigns, service programmes or otherwise are made with respect to any products sold or serviced by Buyer to its customers or authorized repairers. The reimbursement of Buyer for parts and labor used in making those modifications shall be as set forth in the campaign or program instructions. Without the prior consent of the Seller, the Buyer shall not disclose to any third party the information contained in service campaign, recall campaign or service programme literature. Should Buyer fail to perform any of the actions required under this section, Seller shall have the right to obtain names and address of the Buyer's customers and shall be entitled to get into direct contact with such customers.

19. **GOVERNING LAW.** THE TERMS OF THIS AGREEMENT AND ALL RIGHTS AND OBLIGATIONS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF COLORADO (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS) AND VENUE SHALL BE IN WELD COUNTY, STATE OF COLORADO. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

20. **Titles.** The section titles are for reference only, and shall not limit or restrict the interpretation or construction of this Agreement.

21. **Waiver.** Seller's failure to insist, in any one or more instances, upon Buyer's performance of this Agreement, or to exercise any rights conferred, shall not constitute a waiver or relinquishment of any such right or right to insist upon Buyer's performance in any other regard. Buyer's failure to insist, in any one or more instances, upon Seller's performance of this Agreement, or to exercise any rights conferred, shall not constitute a waiver or relinquishment of any such right or right to insist upon Seller's performance in any other regard.

22. **Severability.** The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other.

AGREEMENT TO PURCHASE: BUYER agrees to purchase the equipment and services herein in accordance with the terms and conditions set forth above.

ACCEPTANCE:SELLER hereby accepts BUYER'S offer to purchase.

\_\_\_\_\_  
TOWN OF JOHNSTOWN

BY: Scott James, Mayor

ATTEST:

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

\_\_\_\_\_, 2018

Xylem Water Solutions USA, Inc.

BY: \_\_\_\_\_

**Susan M.  
Button**

Digitally signed by Susan M. Button  
DN: cn=Susan M. Button, o=Xylem Water Solutions USA Inc., ou=National Contracts Manager, email=susan.button@xyleminc.com, c=US  
Date: 2018.08.20 08:42:25 -04'00'

\_\_\_\_\_, 20\_\_\_\_



**AGENDA ITEM 9A**

**WATER/SEWER**

**SERVICE**

**AGREEMENT**

**(Liberty Development Office at 2534)**

**TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** September 5, 2018

**ITEM NUMBER:** 9A

**SUBJECT:** Consider Water and Sewer Service Agreement for Liberty Development Office at 2534

**ACTION PROPOSED:** Consider Approval of Water and Sewer Service Agreement for Liberty Development Office at 2534.

**PRESENTED BY:** Town Attorney

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**AGENDA ITEM DESCRIPTION:** In compliance with the Town's water rights dedication ordinance, Liberty Development, LLC submitted to the Town a Water and Sewer Demand Analysis on or about June 11, 2018, 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 Liberty Development Office at 2534 is calculated to be 4.30±acre-feet per year. The landscaping (raw water) irrigation demand is calculated to be 1.53±acre-feet per year.

The total water requirement for this project is 5.83± 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.

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

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**FINANCIAL ADVICE:** N/A

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

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Water and Sewer Service Agreement for Liberty Development 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 Liberty Development Office at 2534.

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**Reviewed:**

  
Town Manager

# **AGREEMENT**

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **LIBERTY DEVELOPMENT, LLC**, a Colorado Limited Liability Company (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer owns an interest in land within the Northeast  $\frac{1}{4}$  of Section 14, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., also known as Lot 3, Block 1, 2534 Filing No. 20 (“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 office building flex space (“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 (June 11, 2018). Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated June 20, 2018, is hereby accepted by the Town. 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	4.30	0.215
Landscape Irrigation (non-potable)	1.53	1.301
Total	5.83	1.516

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**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 39.37 acre-feet per year of potable water. The Parties and the Gerrard Family Partnership, LLLP and 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.

**b. Non-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 189.61 acre-feet per year of non-potable water under shares from the Farmers Canal. The Parties and the Gerrard Family Partnership, LLLP and Thompson Ranch Development Company have agreed that this credit shall be applied to meet the non-potable water demands of the Project. Evidence of the agreement is attached as Exhibit B.

**3. 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 4.30 acre-feet per year of potable water supply together with the corresponding sewer service and up to 1.53 acre-feet per year non-potable water supply for landscape irrigation.

**4. 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.

**5. 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.

**6. 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:

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TO DEVELOPER:

Wayne Schmeeckle  
Liberty Development LLC  
17168 N. Frontage Road  
Fort Morgan, CO 80701

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  
1437 N. Denver Avenue, #330  
Loveland, CO 80538

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 and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after a ninety-day period, either Party may then commence an action in a court of competent jurisdiction in Larimer County, Colorado, and 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 Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

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**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*

**LIBERTY DEVELOPMENT LLC**

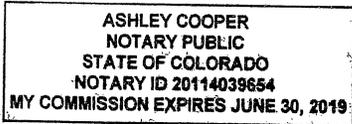
By: Wayne Schmeckle  
Wayne Schmeckle

Title: PARTNER

STATE OF COLORADO    )  
  ) SS  
COUNTY OF Larimer    )

SUBSCRIBED AND SWORN to before me this 27<sup>th</sup> day of June, 2018 by Wayne Schmeckle

Witness my hand and official seal.



Ashley Cooper  
Notary Public  
P.O. Box 270218  
Fort Collins, CO 80527  
Address  
970-212-2432  
Telephone

My Commission Expires: June 30, 2019

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TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Avi Rocklin  
Johnstown Town Attorney

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**EXHIBIT A**

LEGAL DESCRIPTION (Liberty Development Office)

Lot 3, Block 1, 2534 Filing No. 20, County of Larimer, Town of Johnstown, State of Colorado.

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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 Development Company 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 Liberty Development, Lot 3, 2534 Filing No. 20, and any successor occupant of the premises at the same location, pursuant to the Water and Sewer Service Agreement between Liberty Development LLC and the Town of Johnstown dated \_\_\_\_\_, 20\_\_ . The amount of such allocated raw water credit is calculated to be 4.30 acre-feet per year for In-Building Use and 1.53 acre-feet per year for Irrigation Use, subject to adjustment pursuant to the terms of the Water Sewer Service Agreement.

GERRARD FAMILY LIMITED PARTNERSHIP, LLLP

  
\_\_\_\_\_

Dated: 6/27/18

Nathan Gerrard, Partner  
Gerrard Family Limited Partnership, LLLP

THOMPSON RANCH DEVELOPMENT COMPANY

  
\_\_\_\_\_

Dated: 6/27/18

Todd Williams, Vice President  
Thompson Ranch Development Company



**AGENDA ITEM 9B**

**WATER/SEWER  
SERVICE  
AGREEMENT**

**(Liberty Development Flex Building at 2534)**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** September 5, 2018

**ITEM NUMBER:** 9B

**SUBJECT:** Consider Water and Sewer Service Agreement for Liberty Development Flex Building at 2534

**ACTION PROPOSED:** Consider Approval of Water and Sewer Service Agreement for Liberty Development Flex Building at 2534.

**PRESENTED BY:** Town Attorney

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**AGENDA ITEM DESCRIPTION:** In compliance with the Town's water rights dedication ordinance, Liberty Development, LLC submitted to the Town a Water and Sewer Demand Analysis on or about April 23, 2018, and it has been modified and accepted by the Town upon a review by the Town's Water Resources Engineer. Based upon the analysis with the proposed construction of a flex office-warehouse building, the average in-building water demand for Liberty Development Flex Building at 2534 is calculated to be 0.24±acre-feet per year. The landscaping (raw water) irrigation demand is calculated to be 0.98±acre-feet per year.

The total water requirement for this project is 1.22± 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.

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

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**FINANCIAL ADVICE:** N/A

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

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Water and Sewer Service Agreement for Liberty Development Flex Building and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the Water and Sewer Service Agreement for Liberty Development Flex Building.

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**Reviewed:**

  
Town Manager

# **AGREEMENT**

**WATER AND SEWER SERVICE AGREEMENT**

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **Liberty Development, LLC**, a Colorado Limited Liability Company (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer owns an interest in land within the Northeast ¼ of Section 14, Township 5 North, Range 68 West of the 6<sup>th</sup> P.M., also known as Lot 7, Block 1, 2534 Filing No. 20 (“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 office building flex space (“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 (April 23, 2018) and a site plan (April 23, 2018). Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated May, 5, 2018, is hereby accepted by the Town. 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	0.24	0.012
Landscape Irrigation (non-potable)	0.98	0.830
Total	1.22	0.842

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**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 39.61 acre-feet per year of potable water. The Parties and the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP 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.

**b. Non-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 190.59 acre-feet per year of non-potable water under shares from the Farmers Canal. The Parties and the Gerrard Family Limited Partnership, LLLP and Thompson Ranch, LLLP have agreed that this credit shall be applied to meet the non-potable water demands of the Project. Evidence of the agreement is attached as Exhibit B.

**3. 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 0.24 acre-feet per year of potable water supply together with the corresponding sewer service and up to 0.98 acre-feet per year non-potable water supply for landscape irrigation.

**4. 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.

**5. 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.

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**6. 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:

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TO DEVELOPER:

Tyler F. Texeira  
Beacon Construction LLC  
PO Box 270218  
Fort Collins, CO 80527

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  
1437 N. Denver Avenue, #330  
Loveland, CO 80538

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 and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after a ninety-day period, either Party may then commence an action in a court of competent jurisdiction in Larimer County, Colorado, and 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 Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

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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*

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TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

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

ATTEST:

By: \_\_\_\_\_  
Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Avi Rocklin  
Johnstown Town Attorney

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**EXHIBIT A**

LEGAL DESCRIPTION (Liberty Development Flex)

Lot 7, Block 1, 2534 Filing No. 20, County of Larimer, Town of Johnstown, State of Colorado.

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EXHIBIT B

RAW WATER CREDIT ALLOCATION ACKNOWLEDGMENT

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GERRARD FAMILY LIMITED PARTNERSHIP, LLLP

  
\_\_\_\_\_  
Nathan Gerrard, Partner  
Gerrard Family Limited Partnership, LLLP

Dated: 6/27/18

THOMPSON RANCH DEVELOPMENT COMPANY

  
\_\_\_\_\_  
Todd Williams, Vice President  
Thompson Ranch Development Company

Dated: 6/27/18



**AGENDA ITEM 9C**

**DISCUSSION  
OF  
TOWN MANAGER'S  
CONTRACT**

## Roy Lauricello

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**From:** Scott James  
**Sent:** Monday, August 20, 2018 11:53 AM  
**To:** Roy Lauricello; Diana Seele  
**Cc:** Avi Rocklin; Gary Lebsack; Amy Tallent; Troy Mellon; Kevin Lemasters; Jesse Molinar, Jr.; Chad Young  
**Subject:** Tonight's Agenda

Good afternoon, Roy,

I just heard from Councilor Molinar. His work will keep him away from this evening's meeting. Councilor Mellon is out of town on a pre-planned trip and will be unable to attend tonight, as well.

In light of these absences, I am requesting that Agenda Item 9D) Discussion of Town Manager's Contract with the Town of Johnstown be moved to the September 5, 2018, meeting so the entirety of council can be in attendance for this discussion.

Thank you!

Scott K. James, Mayor  
Town of Johnstown, Colorado  
970.227.8386



**WORK  
SESSION  
(Joint Meeting with Front Range Fire  
Rescue)**

**AGENDA**

**(Work Session)**

**(Front Range Fire Rescue)**

- 1) Discussion of Johnstown's intention/strategic direction in areas of town not served by FRFR
- 2) Discussion of Impact Fees
- 3) Discussion of FRFR Citizen's Group

