

***TOWN COUNCIL***

***MEETING***

***PACKET***

**April 1, 2019**



**Town Council**

**Agenda**  
**Monday, April 1, 2019**  
**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 –**
  - Parkinson’s Awareness Month Proclamation
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

---

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

---

- 6) **CONSENT AGENDA**
  - A) Town Council Meeting Minutes - March 18, 2019
  - B) Resolution 2019-12, Approving the Preliminary Plat and the Preliminary Development Plan for Vista Commons PUD, Located in the Southwest Quarter of Section 2, Township 4 North, Range 68 West of the 6<sup>th</sup> principal Meridian, Town of Johnstown, County of Weld, State of Colorado, Consisting of Approximately 149 Acres.
  - C) Resolution 2019-13, A Resolution Opposing Enactment of Senate Bill 19-181, Regarding New Regulation of Oil and Gas Development
  - D) Water and Sewer Service Agreement – UPD Johnstown Industrial LLC
- 7) **TOWN MANAGER REPORT**
- 8) **TOWN ATTORNEY REPORT**
- 9) **OLD BUSINESS**
- 10) **NEW BUSINESS**
  - A) **Public Hearing 1<sup>st</sup> Reading** – Ordinance Number 2019-159, An Ordinance Authorizing the Conveyance of Tract C, Clearview PUD, Second Filing, to the Weld County Reorganized School District RE5J
  - B) Consider Facility Management Agreement between the Town of Johnstown and the Young Men’s Christian Association of Boulder Valley (YMCA)
  - C) Resolution 2019-14, A Resolution of the Town of Johnstown, Colorado, Supporting the Application for an Energy Impact Grant from the State of Colorado Department of Local Affairs

11) EXECUTIVE SESSION

12) COUNCIL REPORTS AND COMMENTS

13) MAYOR'S COMMENTS

14) 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 ITEM 4**

**PROCLAMATION  
(Parkinson's Awareness Month)**



**TOWN OF JOHNSTOWN PROCLAMATION**

WHEREAS, Parkinson's disease is a chronic, progressive, neurological disease and is the second most common neurodegenerative disease in the United States;

WHEREAS, Parkinson's disease is estimated to affect approximately one million people in the United States and the prevalence will more than double by 2040;

WHEREAS, Parkinson's disease is the 14<sup>th</sup> leading cause of death in the United States according to the Centers for Disease Control and Prevention;

WHEREAS, it is estimated that the economic burden of Parkinson's disease is at least \$14.4 billion annually, including indirect costs to patients and family members of \$6.3 billion;

WHEREAS, research suggests the cause of Parkinson's disease is a combination of genetic and environmental factors, but the exact cause and progression of the disease is still unknown;

WHEREAS, there is no objective test or biomarker for Parkinson's disease, and there is no cure or drug to slow or halt the progression of the disease;

WHEREAS, the symptoms of Parkinson's disease vary from person to person and can include tremors; slowness of movement and rigidity; difficulty with balance, swallowing, chewing, and speaking; cognitive impairment and dementia; mood disorders; and a variety of other non-motor symptoms;

WHEREAS, volunteers, researchers, caregivers, and medical professionals are working to improve the quality of life of persons living with Parkinson's disease and their families;

WHEREAS, increased research, education, and community support services such as those provided by the Parkinson's Foundation and other organizations are needed to find more effective treatments and to provide access to quality care to those living with the disease today;

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT I**, Gary Lebsack, Mayor on behalf of the Town Council of the Town of Johnstown, hereby:

Proclaim April, as Parkinson's Awareness Month, in 2019, in the Town of Johnstown; and call this observance to the attention of our citizens

PASSED, SIGNED, APPROVED AND ADOPTED this 1<sup>st</sup> day of April, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

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

By: \_\_\_\_\_  
Gary L. Lebsack, Mayor

## **AGENDA ITEM 6A-D**

### **CONSENT AGENDA**

- **Council Minutes – March 18, 2019**
  - **Resolution 2019-12**
  - **Resolution 2019-13**
- **Water and Sewer Service Agreement  
(UPD Johnstown Industrial LLC)**

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** April 1, 2019

**ITEM NUMBER:** 6A-D

**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) Town Council Meeting Minutes – March 18, 2019
- B) \*Resolution 2019-12, Approving the Preliminary Plat and the Preliminary Development Plan for Vista Commons PUD, Located in the Southwest Quarter of Section 2, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, Consisting of Approximately 149 Acres
- C) \*\*Resolution 2019-13, A Resolution Opposing Enactment of Senate Bill 19-181, Regarding New Regulation of Oil and Gas Development
- D) \*\*\*Water and Sewer Service Agreement – UPD Johnstown Industrial LLC

\* On December 12, 2018, the Planning and Zoning Commission held a hearing, reviewed the request and recommended that the Town Council approve the Preliminary Plat and Preliminary Development Plan for Vista Commons PUD with conditions.

On March 18, 2019, based on an application submitted by Vista Commons PUD and after a public hearing, Town Council approved the Preliminary Plat and Preliminary Development Plan for Vista Commons PUD. Attached is the resolution recognizing approval of the Preliminary Plat and Preliminary Development Plan and requiring the developer work with Town staff to satisfy the Planning and Zoning Commission's conditions prior to submission of a final plat for the development.

\*\*Enclosed for your consideration is a resolution that would express opposition to Senate Bill 181 which proposes to make changes to the Colorado Oil and Gas Commission and provide local control on an industry already heavily regulated at the State level. The overall impact of this bill is currently not crystal clear, but it certainly has various entities in the State concerned about its repercussions. One of the primary drivers of the State of Colorado and Johnstown's economy is the Oil and Gas industry. Changing the rules without considering the impacts, thoughtful debate, and collaboration on both sides of the political spectrum is short sighted for the industry, the State, and our community. Passage of this resolution and upon signing would then be provided to the Governor's Office.

\*\*\*In compliance with the Town's water rights dedication ordinance, UPD Johnstown Industrial LLC at 2534, submitted to the Town a Water and Sewer Service Demand Analysis on or about March 20, 2019, and it has been accepted by the Town upon review by the Town's Water Resources engineer. Based upon the analysis with the proposed construction of approximately a 131,000 square foot warehouse/office facility average in-building water demand is calculated to be 0.45± acre feet per year. The landscaping (raw water) irrigation demand is calculated to be 6.48± acre feet per year

The total water requirement for this project is 6.93± 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. The Water and Sewer Service Agreement was drafted by the Town's Water Attorney, Pete Ampe.

---

**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:**

**COUNCIL  
MINUTES**

The Town Council of the Town of Johnstown met on Monday, March 18, 2019 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Lebsack led the Pledge of Allegiance.

### Roll Call

Those present were: Councilmembers Lemasters, Mellon, Tallent and Young

Those absent were: Councilmembers Berg and Molinar Jr.

Also present: Matt LeCerf, Interim Town Manager, Avi Rocklin, Town Attorney, Chief Brian Phillips, Marco Carani, Public Works Director, Mitzi McCoy, Finance Director and Diana Seele, Town Clerk

### Agenda Approval

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

### Public Comments

Residents Mike Gaylord and Zach Allen requested the Council consider installing speed bumps on Dee Road and Expedition in Johnstown Farms Subdivision.

### Consent Agenda

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

- February 20, 2019 Town Council Meeting Minutes (amend the Public Hearing for the Johnstown Plaza Design Book Guidelines Land Use Plan was continued not closed)
- Second Reading Ordinance Number 2019-155, An Ordinance Amending Chapter 13 of the Johnstown Municipal Code to Include Article VIII Concerning Adoption of a Cross-Connection Control Program
- Second Reading Ordinance Number 2019-156 – An Ordinance Amending Chapter 6 of the Johnstown Municipal Code to Include Article X, Contractor Licenses
- Resolution 2019-07, A Resolution Identifying Issues with the Zero Emission Vehicle Mandate Proposal
- Consider 2019 Three Mile Plan

Motion carried with a unanimous vote.

### New Business

A. Public Hearing – Amendment to Johnstown Plaza Design Book Guidelines Proposed Land Use Plan – Lot 1 from B1. To B.2 – The applicant, Johnstown Plaza, LLC file an application for an amendment to the Land Use Plan contained in the Design Handbook, to designate Lot 1, 2534

Subdivision, Filing No. 16, from a B.1. designation (Office, Flex and Retail) to a B.2. designation (Office, Flex Retail and Multi-Family Residential).

Mayor Lebsack opened the Public Hearing at 7:23 p.m. Councilmember Mellon made a motion seconded by Councilmember Young to continue the Public Hearing to Monday April 15, 2019 at 7:00 p.m. Motion carried with a unanimous vote.

B. Public Hearing – Vista Commons Preliminary Development Plan and Preliminary Subdivision Plat – The applicant Vista Ag, LLC is requesting Town Council approve a preliminary site development plan and preliminary subdivision plat for single-family development and mixed use tracts for multi-family/retail/office/institutional/commercial/hospitality and business tech park uses. The property is zoned PUD-MU as the Pratt Technology Campus Annexation. The residential development will consist of 115 single family dwelling units, 36 attached single-family units, and 360 multi-family units.

Mayor Lebsack opened the Public Hearing at 7:24 p.m. Josh McCarn of the Fronterra Group, representing the applicant was present to answer questions. Having no public comments, Mayor Lebsack closed the hearing at 8:03 p.m. Councilmember Tallent made a motion seconded by Councilmember Lemasters to approve the Vista Commons PUD, Preliminary Development Plan and Preliminary Plat as submitted with the following conditions as recommended by Planning and Zoning Commission: 1) Comments from Town staff, Town Engineer, Traffic Engineer and outside agencies including CDOT, Johnstown Fire District and RE5-J School District shall be resolved or addressed as special development provisions in the public improvement development agreement(s) presented to Town Council with the Final Plat for consideration, 2) Variances to standards shall follow the recommendations of the Town Engineer and Traffic Engineer. The collector street parking variance will be considered for the adjoining multi-family if adequate off-street parking for commercial uses is provided and sightlines on the curved road are sufficient, 3) Street names for the overall property shall be provided by the developer for Town approval with first final plat. Motion carried with Councilmembers Lemaster, Tallent, Young and Mayor Lebsack voting yes, Councilmember Mellon voted no.

C. Resolution Number 2019-09, A Resolution Appropriating Additional Sums of Money to Defray Expenses and Transfers in Excess of Amounts Budgeted for the Town of Johnstown, Colorado – This resolution modifies the Fiscal Year 2019 Budget and appropriates additional expenditures in the 2019 Budget. Funds are available in the unappropriated or unrestricted reserves. Councilmember Tallent made a motion seconded by Councilmember Young to approve Resolution 2019-09 Budget Amendment. Motion carried with a unanimous vote.

D. Approval of the Town of Johnstown Capital Improvement Plan – The development and implementation of a capital improvement plan is important for financial planning and is considered a best practice by the Government Finance Officers Association. Councilmember Mellon made a motion seconded by Councilmember Lemasters to approve the FY 2019-2018 Capital Improvement Plan as presented. Motion carried with a unanimous vote.

E. Resolution 2019-11, A Resolution of the Town of Johnstown, Colorado, Water Activity Enterprise, Increasing the Water Tap Fees Set Forth In Section 13-42(d) of the Johnstown Municipal Code, and of the Town of Johnstown, Colorado, Sewer Activity Enterprise, Increasing the Sewer Tap Fees Set Forth in Section 13-27 of the Johnstown Municipal Code – Based on data collected and an analysis performed, staff is recommending sewer tap fees be raised by 20%, from \$4,400 to \$5,280 and water tap fee increase 10% from \$5,852 to \$6,437 for “In-Town” and from \$7,200 to \$7,920 for “Out of Town”. Councilmember Mellon made a motion seconded by Councilmember Young to approve Resolution 2019-11 as presented. Motion carried with a unanimous vote.

F. Employment Agreement for Town Manager with Matthew S. LeCerf – The Agreement provides that Matt LeCerf will perform the functions and duties specified by Colorado law, Article 8 of the Home Rule Charter for the Town of Johnstown, Section 2.45 of the Johnstown Municipal Code and all other applicable laws, ordinance or regulations of the Town of Johnstown. The Agreement also address salary, benefits and residency requirements. Councilmember Young made a motion seconded by Councilmember Mellon to approve the Town of Johnstown Employment Agreement for Town Manager with Matthew S. LeCerf and authorize the Mayor to sign it. Motion carried with a unanimous vote.

There being no further business to come before Council the meeting adjourned at 8:58 p.m.

Mayor

Town Clerk

# **RESOLUTION**

**No. 2019-12**

**TOWN OF JOHNSTOWN, COLORADO  
RESOLUTION NO. 2019-12**

**APPROVING THE PRELIMINARY PLAT AND THE PRELIMINARY DEVELOPMENT PLAN FOR VISTA COMMONS PUD, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 2, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 149 ACRES.**

**WHEREAS**, George Seward, the property owner, submitted an application to the Town of Johnstown for approval of a Preliminary Plat and Preliminary Development Plan for Vista Commons (Pratt Property), being located in the Southwest Quarter of Section 2, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, and consisting of approximately 149 acres; and

**WHEREAS**, on December 12, 2018, the Planning and Zoning Commission held a hearing, reviewed the request and recommended that the Town Council approve the Preliminary Plat and Preliminary Development Plan for Vista Commons PUD with conditions; and

**WHEREAS**, on March 18, 2019, the Town Council held a public hearing concerning approval of the Preliminary Plat and Preliminary Development Plan and, after considering the Planning and Zoning Commission's recommendations, reviewing the file and conducting such hearing, finds that the Preliminary Plat and Preliminary Development Plan meet the data requirements and design standards of the Johnstown Municipal Code Subdivision Regulations for preliminary approval, subject to the conditions stated below.

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

**Section 1. Preliminary Plat Approval:** The Preliminary Plat for Vista Commons, located in the Southwest Quarter of Section 2, Township 4 North, Range 68 West of the 6<sup>th</sup> Principal Meridian, Town of Johnstown, County of Weld, State of Colorado, and consisting of approximately 149 acres, attached hereto and incorporated herein by reference at **Exhibit A**, is hereby approved, subject to the conditions of approval set forth in Section 3.

**Section 2. Preliminary Development Plan Approval:** The Preliminary Development Plan for Vista Commons, attached hereto and incorporated herein by reference at **Exhibit B**, is hereby approved, subject to the conditions of approval set forth in Section 3.

**Section 3. Conditions of Approval.** The Preliminary Plat and Preliminary Development Plan are approved subject to the following conditions:

1. Comments from Town Staff, the Town Engineer, the Traffic Engineer and outside agencies, including, but not limited to, the Colorado Department of Transportation, the Front Range Fire Rescue Fire Protection District and the Weld County Reorganized School District RE-5J, shall

be resolved or addressed as special development provisions in the public improvement development agreement(s) presented to Town Council with the final plat(s);

2. Variances to Town standards shall follow the recommendations of the Town Engineer and Traffic Engineer. The collector street parking variance will be considered for the adjoining multi-family development if adequate off-street parking for commercial uses is provided and sightlines on the curved road are sufficient; and
3. Street names for the overall property shall be provided by the Developer for Town review and approval with the first final plat.

PASSED, SIGNED, APPROVED, AND ADOPTED THIS \_\_\_\_ day of April, 2019.

**ATTEST:**

**TOWN OF JOHNSTOWN, COLORADO**

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

By: \_\_\_\_\_  
Gary Lebsack, Mayor

# **RESOLUTION**

**No. 2019-13**

**TOWN OF JOHNSTOWN, COLORADO  
RESOLUTION NO. 2019-13**

**A RESOLUTION OPPOSING ENACTMENT OF SENATE BILL 19-181, REGARDING NEW  
REGULATION OF OIL AND GAS DEVELOPMENT**

**WHEREAS**, Senate Bill 19-181 is under consideration by the Colorado House of Representatives; and

**WHEREAS**, Senate Bill 19-181 would impose new regulations on the Oil and Gas industry that would have a chilling effect on Oil and Gas development in Colorado; and

**WHEREAS**, Johnstown is home to over nearly 250 employees of the energy sector who are directly dependent on Oil and Gas operations for their income; and

**WHEREAS**, the more than 232,000 jobs in Colorado are supported by oil and natural gas development, equivalent to 6.5% of total employment in the state, according to a 2017 study by globally renowned account firm Pricewaterhouse Cooper; and

**WHEREAS**, according to the same study, oil and natural gas development in Colorado supports more than \$31 billion in economic activity, equivalent to almost 10% of the state's economy; and

**WHEREAS**, Colorado voters defeated a state-wide ballot measure with potentially similar intent and consequences in the November 2018 general election; and

**WHEREAS**, during the 2017 calendar year, oil and natural gas development generated approximately \$220,000 in severance tax revenue for the Town, which funds were, or are being used to support the Town's municipal services.

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

The Johnstown Town Council strongly opposes the Senate Bill 19-181 including its language, purpose, and intent, as it undermines the health of the Oil and Gas Industry, threatens the livelihood of hundreds of Johnstown residents and Johnstown municipal revenue, thereby jeopardizing the delivery of premium services, economic health and sustainability of our community and the State of Colorado.

**PASSED AND ADOPTED, SIGNED AND APPROVED THIS 1<sup>st</sup> DAY OF APRIL,  
2019.**

ATTEST:

TOWN OF JOHNSTOWN, COLORADO:

\_\_\_\_\_  
Diana Seele, City Clerk

\_\_\_\_\_  
Gary Lebsack, Mayor

**WATER AND SEWER**

**SERVICE AGREEMENT**

**(UPD Johnstown Industrial, LLC)**

## WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this 27<sup>th</sup> day of March, 2019, by and between **UPD JOHNSTOWN INDUSTRIAL LLC**, a Minnesota Limited Liability Corporation (“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 comprised of approximately 8.8 acres at 4150 Ronald Regan Blvd on Lot 1, 2534 Filing No. 12, more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed as a distribution center for US Auto Force, known as United Properties Development at 2534 (“Project”); 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 for the Project. 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 March 20, 2019, 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	0.45	0.023
Landscape Irrigation (non-potable)	6.48	5.508
Total	6.93	5.531

**2. Water Rights Dedication.**

**a. Potable Supply.** As a result of prior dedications and adjustments associated with the 2534 Development, there is currently a surplus dedication credit with the Town of approximately 22.16 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 175.34 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 Project up to 0.45 acre-feet per year of potable water supply together with the corresponding sewer service and up to 6.48 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 Project, 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:

TO DEVELOPER:

Mr. Kevin C. Kelley  
UPD JOHNSTOWN INDUSTRIAL, LLC  
1331 17<sup>th</sup> St., #604  
Denver, CO 80202

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.

**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. Venue for any claim, proceeding or action shall be in Larimer or Weld County, State of Colorado.

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

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

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

*Signatures follow on separate pages*



TOWN OF JOHNSTOWN, COLORADO,  
a municipal corporation

By: \_\_\_\_\_  
Gary Lebsack, Mayor

ATTEST:

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

APPROVED AS TO FORM:

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

**AGENDA ITEM 7**

**TOWN MANAGER**

**REPORT**



# TOWN OF JOHNSTOWN

## MEMORANDUM

---

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Interim Town Manager

DATE: April 1, 2019

CC: Town Staff  
Local Media

SUBJECT: Departmental Report

---

Upcoming Town Council Work Sessions – If there are topics that the Council would like staff to schedule for discussion, please let me know. The following topics are recommended for Council discussion (all meetings will be held in the Town Council Chambers unless otherwise indicated):

- 04/01/2019 – Regular Town Council Meeting
  - 04/08/2019 – Work Session (Johnstown Housing Authority)
  - 04/15/2019 – Regular Town Council Meeting
  - 04/22/2019 – Work Session (School District)
  - 04/29/2019 – Work Session (None Planned)
- 

### **Police Department**

#### ***Training:***

- March 11-13 2019 Officer Brandon Dudley attended Standard Field Sobriety Testing
- March 20, 2019 Blue side qualified with their duty-weapon, off-duty weapon and patrol rifle
- March 20, 2019 Blue side reviewed Policies pertaining to Use of Force

#### ***Community Policing, Outreach & Miscellaneous Items:***

- The department has reached full staffing levels with the addition to Officer Kendall Zoss.

### **Administration, Finance, & Planning**

- *DOLA Energy Impact Grant Application* – Town Staff submitted an application for the April 1 cycle for the DOLA Energy Impact Grant. This was a collaborative application between the Town, Larimer, and Weld Counties. The application was for \$1 million to make improvements on WCR50/LCR14 from Colorado Blvd. to the East Frontage Road. A presentation will be required to the Grant Committee in July with awards being

**The Community That Cares**

determined in late August or early September. Each entity in the application is contributing financial dollars to the project's success.

- *2018 Audit* – Preparation for the 2018 audit is well underway. The fieldwork for the 2018 audit will conclude the week of April 22, 2019.
- *Utility Billing* – Staff is working on updating the contact information for our residents so that we have current information should an emergency situation arise and we need to contact residents.
- *GIS Program Development* – Staff has started to get estimates and bids for the needed equipment and software to kick-off the recently approved GIS program – to provide the Town and Staff with mapping and better asset-management capabilities.
- *Development Review* – Staff and ancillary reviewers received five additional development projects since March 18. Review work is ongoing, with approximately 18 active projects currently in the review/revision process. Staff also hosted several informal meetings with prospective developers for projects anticipated in the near future.
- *On-call* – Staff fielded 24 walk-in/call-in inquiries from residents, brokers, and development professionals.
- *Healthcare Committee* – Several staff members have volunteered to participate in a health committee that will be led by Diana to evaluate our current benefits and explore if there are other healthcare options and choices that we may want to explore for 2020. We expect to get quotes from other vendors and staff will make a recommendation to the Town Manager that will be included in the proposed FY 2020 budget. Any changes will be shared with the Council during the budget work session(s) tentative scheduled for late September or early October.

## **Public Works Department**

### ***Streets, Storm water & Parks***

- *Community Cleanup Day* – Community Cleanup Day is set for April 27<sup>th</sup>.
- *Fleet* – Staff serviced three police cars and had two windshields replace on police cars. One water department truck and one street department vehicle were also serviced.
- *Lake* – Inlet repairs were completed at the lake including a new 24” pipe section installed and area that was washed out has been backfilled and placed back to the normal grade. New LED lights were also installed at the west playground at Town Lake.
- *Senior center* – The Senior center requested assistance with better lighting in the area of the parking lot on the west side. Crews installed a new LED fixture under the awning that shines more light down and out to help with visibility at night.
- *Streets* – Approximately 1000 lbs. of pot holes were repaired around town. Some of the areas include: Fox Meadows, CR 48 & Commerce, Colorado Blvd, Parish Ave, Parkwood, Wind gate, Holden & Carlson Blvd, Podtburg Cir & Nicholas, Edgewood & Couples and Alabaster & Rocksbury.
- *Signs* – Sign maintenance is an ongoing task in Town. Crews are straightening and replacing signs on a regular basis. If you see any that need adjustments, please let us know. Final signs are being installed on Thompson Parkway and should be finished this week.
- *Public Comment Speeding* – Last Council meeting residents expressed concerns related to speeding on Expedition and Dee Street. The Police Chief, Public Works Director and Town Manager reviewed the area and will be changing Expedition and Settler's Way to a

3 way stop intersection along with Territory and Settler's way. We hope this slows down traffic in the area and creates a safer area for kids in the park. We also will be lowering the speed limit to 20 MPH on those streets near the parks, as well as adding slow children playing signs. We are hopeful by adding these signs will address the residents' concerns and make the area safe for the kids in the area.

- *Crosswalks* – We have purchased crosswalk lights to be installed on either side of Parish Ave. One will be located by the Veteran's Brewery and the other on Charlotte and Parish Avenue. These additions are based on a request during the budget work session and after a discussion with our Police Chief he recommended one more be added just south on Charlotte and Parish.

### ***Water & Wastewater***

- *Water plant* – Pipe work at the water treatment plant has been completed and the system is back on line. Plant was shut down from Monday the 18<sup>th</sup> at 10a.m. to Monday the 25<sup>th</sup> at 12 p.m. This was the first phase of the plant improvements. The second phase will be installing the DAF saturator system. The second phase should begin the first week of April.
- *Cross Connection* – The Town hosted a Cross Connection Control certification class at the public works facility the week of March 25<sup>th</sup>. By hosting this class the Town received one free registration. Saul Herrera will be took the class for free and we paid for Tim Callender who takes care of our parks irrigation. By having certified technicians the town will be able to test all our facilities in-house and save money in testing. Also, having certified testers will allow us to stay on top of all potential backflow issues and keep the Town in compliance.
- *Wastewater* – We had two sanitary sewer backups. One located on a private line and the other was due to a contractor's mistake. Neither incident was the fault of the Town's system.
- *Cemetery* – Annual cleanup day is scheduled for April 1<sup>st</sup>. All old flowers and decorative ornaments will be removed. This has been advertised in the Johnstown Breeze and on our social media sites.

**AGENDA ITEM 10A**

**PUBLIC HEARING**

**1<sup>st</sup> Reading**

**Ordinance Number 2019-159**

**PUBLIC HEARING PROCEDURE** – Ordinance No. 2019-159, An Ordinance Authorizing the Conveyance of Tract C, Clearview PUD, Second Filing to the Weld County Reorganized School District RE5J.

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

**(SUGGESTED MOTIONS):**

**For Approval:**

**I move to approve Ordinance No. 2019-159, An Ordinance Authorizing the Conveyance of Tract C, Clearview PUD, Second Filing, to the Weld County Reorganized School District RE5J.**

**For Denial:**

**I move to deny approval of Ordinance No. 2019-159.**

**TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** April 1, 2019

**ITEM NUMBER:** 10A

**SUBJECT: \*Public Hearing – (First Reading)** Consider Ordinance No. 2019-159, an Ordinance Authorizing the Conveyance of Tract C, Clearview PUD, Second Filing, to the Weld County Reorganized School District RE-5J

**ACTION PROPOSED:** Approve Ordinance No. 2019-159 on first reading

**PRESENTED BY:** Town Attorney

---

**AGENDA ITEM DESCRIPTION:** On or about October 18, 2002, Clearview Development of Johnstown, LLC, a Colorado limited liability company, and Michael Harroun, the property owners, dedicated approximately ten acres of land to the Town for use as a school site, designated as Tract C on the Final Plat for Clearview PUD, Second Filing, located in the Northeast Quarter of Section 12, Township 4 North, Range 68 West of the 6<sup>th</sup> P.M., Town of Johnstown, County of Weld, State of Colorado (“Property”). In addition, on or about May 6, 2002, the Town and Clearview Development of Johnstown, LLC entered into a Public Improvement Development Agreement (“PIDA”) for Clearview, Filing No. 2, wherein the Town agreed to hold the Property for the Weld County Reorganized School District RE-5J (“School District”) for the construction of an elementary school and agreed, upon the School District’s request, to deed the Property to the School District. The PIDA further provided that, if the School District did not desire to construct a school within ten years, then the Town had the option to use the Property for a neighborhood park, which would be in addition to the 6-acre park adjoining the Property.

In addition to the conveyance on the plat, Clearview Land, LLC, a Colorado limited liability company, executed a quit claim deed transferring the Property to the Town by deed on February 17, 2009.

On March 4, 2019, the superintendent of the School District appeared before Town Council and indicated that the School District has a desire to construct an elementary school on the Property and requested that the Town deed the Property to the School District.

Ordinance 2019-159 authorizes the Town to convey the Property to the School District, authorizes the Mayor to sign the deed and authorizes the Town Manager to take any other action necessary to effectuate the transfer of the Property.

---

**LEGAL ADVICE:** Ordinance No. 2019-159 was prepared by the Town Attorney and reviewed by the School District’s attorney.

---

**FINANCIAL ADVICE:** N/A.

---

**RECOMMENDED ACTION:** Approve Ordinance No. 2019-159 on first reading.

---

**SUGGESTED MOTION:**

**For Approval:** I move to approve Ordinance No. 2019-159, an Ordinance Authorizing the Conveyance of Tract C, Clearview PUD, Second Filing, to the Weld County Reorganized School District RE-5J.

**For Denial:** I move to deny approval of Ordinance No. 2019-159.

---

**Reviewed:**

---

**Town Manager**

# **Ordinance No. 2019-159**

**TOWN OF JOHNSTOWN, COLORADO  
ORDINANCE NO. 2019-159**

**AN ORDINANCE AUTHORIZING THE CONVEYANCE OF TRACT C, CLEARVIEW PUD, SECOND FILING, TO THE WELD COUNTY REORGANIZED SCHOOL DISTRICT RE-5J, LOCATED IN THE NORTHEAST QUARTER OF SECTION 12, TOWNSHIP 4 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M., TOWN OF JOHNSTOWN, COUNTY OF WELD, STATE OF COLORADO, CONSISTING OF APPROXIMATELY 10 ACRES.**

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

**WHEREAS**, on or about October 18, 2002, Clearview Development of Johnstown, LLC, a Colorado limited liability company, and Michael Harroun, the property owners, dedicated approximately ten acres of land to the Town for use as a school site, designated as Tract C on the Final Plat for Clearview PUD, Second Filing, located in the Northeast Quarter of Section 12, Township 4 North, Range 68 West of the 6<sup>th</sup> P.M., Town of Johnstown, County of Weld, State of Colorado, Weld County Clerk and Recorder Reception No. 3024732, as more particularly described on Exhibit A attached hereto and incorporated herein by reference (“Property”); and

**WHEREAS**, consistent therewith, on or about May 6, 2002, the Town and Clearview Development of Johnstown, LLC entered into a Public Improvement Development Agreement for Clearview, Filing No. 2, wherein the Town agreed to hold the Property for the Weld County Reorganized School District RE-5J (“School District”) for the construction of an elementary school and agreed, upon the School District’s request, to deed the Property to the School District; and

**WHEREAS**, the School District has indicated a desire to construct an elementary school on the Property and has requested that the Town deed the Property to the School District; and

**WHEREAS**, consistent with the foregoing, the Town desires to convey the Property to the School District.

**BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, AS FOLLOWS, THAT:**

**Section 1.** The Town of Johnstown is hereby authorized to convey the following described real property to the Weld County Reorganized School District RE-5J:

Tract C, Clearview PUD, Second Filing, located in the Northeast Quarter of Section 12, Township 4 North, Range 68 West of the 6<sup>th</sup> P.m., Town of Johnstown, County of Weld, State of Colorado, consisting of approximately ten (10) acres.

**Section 2.** Upon the effective date of this Ordinance, the Town Attorney is directed to prepare a deed transferring the real property described above for execution by the Mayor, and the Town Manager, or his designee, is authorized and directed to take any other and further action in furtherance of the conveyance.

**Section 3.** This Ordinance, after its passage on final reading, shall be numbered, recorded, published and posted as required by the Town Charter and the adoption, posting and publication shall be authenticated by the signature of the Mayor and the Town Clerk and by the Certificate of Publication. This Ordinance shall become effective upon final passage as provided by the Home Rule Charter of the Town of Johnstown, Colorado. Copies of the entire Ordinance are available at the office of the Town Clerk.

**INTRODUCED, AND APPROVED** on first reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

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

By: \_\_\_\_\_  
Gary Lebsack, Mayor

**PASSED UPON FINAL APPROVAL AND ADOPTED** on second reading by the Town Council of the Town of Johnstown, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

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

By: \_\_\_\_\_  
Gary Lebsack, Mayor

**AGENDA ITEM 10B**

**CONSIDER FACILITY MANAGEMENT  
AGREEMENT**

**(YMCA)**

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** April 1, 2019

**ITEM NUMBER:** 10B

**SUBJECT:** Facility Management Agreement between the Town of Johnstown and the Young Men's Christian Association of Boulder Valley

**ACTION PROPOSED:** Approve Facility Management Agreement between the Town of Johnstown and the Young Men's Christian Association of Boulder Valley

**PRESENTED BY:** Town Attorney, Avi Rocklin

---

**AGENDA ITEM DESCRIPTION:** Based on its extensive experience and knowledge, the Town Council selected the Young Men's Christian Association ("YMCA") to operate and manage the community recreation center ("Facility"). For consideration is the proposed Facility Management Agreement between the Town of Johnstown and the Young Men's Christian Association of Boulder Valley d/b/a YMCA of Northern Colorado, a Colorado nonprofit corporation ("Agreement"). The key provisions of the Agreement are as follows:

- The Facility Expenses, meaning all costs and expenses necessary to operate and manage the Facility, will be paid from Facility Revenue and the Operating Subsidy and include an administrative fee payable to the YMCA in the approximate amount of 15.3% of the overall expenses. "Facility Revenue" means all revenues of any sort earned or derived from activities and services offered at the Facility and includes grants and donations. "Operating Subsidy" means \$500,000 per year payable by the Town to the YMCA in monthly installments of \$41,666, except that the Operating Subsidy will be less during the first six months of the Agreement when the Facility is not yet open to the public. The Facility Revenue and Operating Subsidy are collectively referred to as the "Operating Funds." *See* Article 2.
- The YMCA will prepare an annual budget and provide the budget to the Town by October 1 of each year, and will obtain annual audits. The YMCA agrees to operate the Facility in a commercially reasonable manner and to endeavor to remain within the budgeted amounts. The YMCA will maintain accounting records that reflect the revenues and expenses related specifically to the Facility and provide monthly reports to the Town containing financial information related to the Facility. *See* Article 6.
- If the Facility Revenue and the Operating Subsidy are not sufficient to cover the Facility expenses, the YMCA will advise Town staff. If the YMCA and staff are not able to reach agreement, the matter will be presented to Town Council. The YMCA will not be obligated to contribute its own funds toward the Facility Expenses. After three full operational years, in 2024, the parties are obligated to meet to discuss the Operating Subsidy and whether it should be adjusted based on actual Facility Revenue and Facility Expenses. If Town Council is not agreeable to an adjustment reasonably satisfactory to the YMCA, the YMCA would be entitled to terminate the Agreement. *See* Paragraph 6.2.
- If the Facility Revenue and the Operating Subsidy are more than sufficient to cover the Facility Expenses, the YMCA will be entitled to retain 21.3% of the difference between \$500,000 and the actual Operating Subsidy as an incentive bonus. Any other surplus funds may be returned to the Town or used as otherwise directed by the Town. *See* Paragraph 6.2.

- If the Town obtains new tax revenue earmarked to pay for or offset the Facility Expenses, the Agreement may be renegotiated. *See* Paragraph 6.6.
- The Agreement will be effective approximately 6 months prior to the date that the Facility opens to the public and will terminate on December 31, 2031. The Agreement will thereafter automatically renew for ten year terms. The Agreement may be terminated by providing 18 months' notice prior to the end of a term. If the Town were to terminate without providing 18 months' notice, the Town would be required to pay a termination fee in the amount of \$150,000. *See* Article 8.
- The Agreement contains a standard non-appropriation provision. Under current law, a penalty for failure to appropriate is void. The YMCA seeks to include a termination fee if the Town fails to appropriate in the amount of \$150,000 as an incentive to ensure that the Town continues to appropriate funds. *See* Paragraphs 8.5 and 12.9.
- The Town will purchase and own the initial furniture, fixtures, computers, IT system, telephones, fitness equipment (except that certain equipment may be leased), security system and related items. The YMCA will replace the items from the Operating Funds. *See* Article 4.
- The YMCA will pay for the routine maintenance of the Facility, including the exterior, from the Operating Funds. The Town will be responsible for non-routine maintenance, which includes items that cost more than \$2,500 to repair or replace and extend the life of the item beyond one-year. *See* Paragraph 5.1.
- The Facility personnel will be YMCA employees subject to YMCA policies and procedures. *See* Paragraph 5.1(e).
- While the Town will have an opportunity to provide input, the YMCA will prepare programming and membership information in its discretion and as it deems best. *See* Paragraph 5.1(h) & (i).
- The Town will be entitled to use the Facility up to 12 times per year for Town-related events without incurring an additional cost and may, upon agreement of the YMCA, use the Facility on additional occasions *See* Paragraph 5.1(i)(5).
- Town employees will be entitled to use the Facility upon the same terms, conditions and discounts, if any, that are offered to YMCA employees.
- CIRSA reviewed and approved the insurance/indemnity provisions. *See* Article 7.

---

**LEGAL ADVICE:** The Town Attorney and the YMCA's attorney prepared the Facility Management Agreement.

---

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

---

**RECOMMENDED ACTION:** Approve the Facility Management Agreement between the Town of Johnstown and the Young Men's Christian Association of Boulder Valley.

---

**SUGGESTED MOTION:**

**For Approval:** I move to approve the Facility Management Agreement between the Town of Johnstown and the Young Men's Christian Association of Boulder Valley, a Colorado nonprofit corporation, and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the Facility Management Agreement between the Town of Johnstown and the Young Men's Christian Association of Boulder Valley.

# **AGREEMENT**

FACILITY MANAGEMENT AGREEMENT

BETWEEN

THE TOWN OF JOHNSTOWN, COLORADO

AND

YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY  
D/B/A YMCA OF NORTHERN COLORADO

DATED: April \_\_\_\_, 2019

This FACILITY MANAGEMENT AGREEMENT (the "Agreement"), dated as of March \_\_\_\_, 2019, is made by and between the **TOWN OF JOHNSTOWN, COLORADO**, a Colorado home rule municipal corporation of the State of Colorado (the "Town"), and the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY, d/b/a YMCA of Northern Colorado**, a Colorado non-profit corporation (the "YMCA"), through its Board of Directors. Said "Parties" or a "Party," intending to be legally bound, and for the mutual benefits and good and sufficient considerations set out below, hereby agree as follows:

### **RECITALS**

- A. The Town is constructing a community recreation center consisting of approximately 64,000 square feet to provide its citizens a facility for recreation, meeting space and other traditional and progressive recreational and community service programs ("Facility"), which is anticipated to be completed on or about November of 2019.
- B. The YMCA has extensive experience in the areas of recreation and family-based community programs and is committed to building strong kids, strong families and strong communities.
- C. The YMCA has the resources, expertise and experience necessary to assist the Town in the management and operation of the Facility, and is ready, willing and able to provide the services contemplated herein.
- D. On May 15, 2017, the Town and the YMCA entered into a Memorandum of Understanding, wherein the YMCA agreed to provide consulting services to the Town relating to the design and construction of the Facility ("MOU").
- E. Until the Effective Date of this Agreement, as defined below, the Town and the YMCA intend to continue operating under the MOU. Upon the Effective Date, the Town and the YMCA desire to operate under this Agreement, providing for the exclusive management and operation of the Facility by the YMCA as set forth herein.
- F. The Town and the YMCA intend to share responsibilities reasonably and in good faith with a mutual intent to promote public welfare through the provision of recreation programs at the new community recreation center owned by the Town and managed by the YMCA as set out in this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### **ARTICLE 1** **RECITALS**

- 1.1 Recitals. The Recitals are incorporated as if fully set forth herein.

#### **ARTICLE 2** **DEFINITIONS**

- 2.1 Definitions. In addition to other terms defined in this Agreement, the following terms shall have the meanings specified below for purposes of this Agreement

“**Effective Date**” means the date that this Agreement shall be effective and shall be set forth on the Effective Date Amendment, as defined herein.

“**Facility Fiscal Year**” means a year beginning January 1 and ending on the following December 31.

“**Facility Revenues**” means all revenues and funds, of any sort, earned or derived from activities and services offered at the Facility. Facility Revenues include, but are not limited to, membership fees, program fees, donations provided or restricted to the Town or the Facility, grants provided or restricted to the Town or the Facility, Facility rental fees, preschool fees, personal trainer fees and other incidental revenue. Facility Revenues do not include capital gifts provided to the Town or the Facility, which shall be Town property.

“**Facility Expenses**” means all costs and expenses necessary to manage and operate the Facility. The Parties anticipate that the YMCA will charge an administrative fee totaling 15.3% of the costs and expenses related to the management and operation of the Facility, which amount is subject to subsequent periodic review and adjustment at least every three (3) years (“Administrative Fee”). The Parties anticipate that the Administrative Fee may decrease over time if, among other reasons, the YMCA manages additional operations. The Administrative Fee is included in the Facility Expenses and will be paid from the Operating Funds.

“**Operating Funds**” means the Facility Revenues and the Operating Subsidy needed to fund Facility Expenses during a given Facility Fiscal Year.

“**Operating Subsidy**” means the Operating Funds less the Facility Revenues and shall not exceed \$500,000 per Facility Fiscal Year, except as otherwise permitted herein.

### **ARTICLE 3** **EFFECTIVE DATE AND TERM**

3.1 **Effective Date.** The Parties shall continue to operate under the MOU until approximately six (6) months prior to the opening of the Facility. When the Parties are prepared to operate pursuant to this Agreement, the Parties shall execute a written amendment setting forth the Effective Date of the Agreement, in the form attached hereto and incorporated herein by reference as Exhibit A (the “Effective Date Amendment”). The Town Manager may execute Exhibit A on behalf of the Town.

3.2 **Initial Term.** This Agreement shall commence on the Effective Date and shall terminate as of midnight on December 31, 2031 (the “Term”).

3.3 **Renewal Term(s).** Unless one party gives written notice to the other at least eighteen months prior to the end of the Term, or any renewal term then in effect, terminating this Agreement, then this Agreement shall automatically renew for additional ten (10) year terms upon the same terms and conditions as those set forth in this Agreement. “Term” shall include the then current renewal term.

### **ARTICLE 4** **FURNITURE, FIXTURES, COMPUTERS AND FITNESS EQUIPMENT**

4.1 **Furniture.** The Town shall purchase and own the furniture for the Facility. Prior to purchasing the furniture, the Town shall confer with the YMCA and the YMCA shall provide advice, based on its experience and expertise, regarding the furniture to be purchased. The Town shall take into

consideration the YMCA's recommendations and endeavor, without guaranteeing, to purchase the furniture recommended by the YMCA.

4.2 Fixtures. The Town shall purchase and own the fixtures for the Facility.

4.3 Computers and Telecommunications Equipment. The Town shall purchase and own the computers and telecommunications equipment for the Facility and ensure that such equipment is compatible with the YMCA's existing carrier infrastructure. Prior to purchasing such equipment, the Town shall confer with the YMCA and the YMCA shall provide advice, based on its experience and expertise, regarding the computers and telecommunications equipment to be purchased. The Town shall take into consideration the YMCA's recommendations and endeavor, without guaranteeing, to purchase the computers and telecommunications equipment recommended by the YMCA.

4.4 Exercise, Recreation and Sports Equipment. Except as set forth below, the Town shall purchase and own the exercise, recreation and sports equipment ("Wellness Equipment") for the Facility. Prior to purchasing the Wellness Equipment, the Town shall confer with the YMCA and the YMCA shall provide advice, based on its experience and expertise, regarding the Wellness Equipment to be purchased. The Town shall take into consideration the YMCA's recommendations and endeavor, without guaranteeing, to purchase the Wellness Equipment recommended by the YMCA.

Notwithstanding the foregoing, upon conferral with the Town as to the type and quantity, the YMCA may lease certain equipment ("Leased Wellness Equipment"). At this time, the Parties anticipate that the YMCA may lease the major cardiovascular and strength equipment. Within ninety (90) days after the Effective Date, the Parties shall set forth a list of the agreed-upon Leased Wellness Equipment, in the form attached hereto and incorporated herein by reference as Exhibit B. The Town Manager may execute Exhibit B on behalf of the Town. The cost of the Leased Wellness Equipment shall be paid from the Operating Funds. If this Agreement terminates for any reason, the YMCA shall endeavor to assign the leases to the Town and the Town shall, absent extraordinary circumstances, such as unacceptable or overly burdensome lease terms, assume the obligations thereunder.

4.5 Alternative Purchasing Arrangement. With respect to the purchases set forth in this Article 4, to the extent the YMCA is able to obtain a cost savings due to its existing relationships with vendors, the YMCA shall endeavor to pursue such cost savings on behalf of the Town. If the Town is not able to purchase the items directly from the vendors to achieve such cost savings, upon written approval of the Town, the YMCA agrees to purchase the items on behalf of the Town. The YMCA shall submit invoices to the Town for the purchases, and the Town shall pay or reimburse the same within forty-five (45) business days of the Town's receipt thereof.

4.6 Timing of Purchase; Removal of Items. Except for the Leased Wellness Equipment, the Town shall purchase the items set forth in this Article 4 in a timely manner so that they are delivered at least thirty (30) days prior to the opening of the Facility. The YMCA shall lease the Leased Wellness Equipment in a timely manner so that they are delivered at least thirty (30) days prior to the opening of the Facility. Upon termination or expiration of this Agreement, except for the Leased Wellness Equipment that is not otherwise assigned to the Town as set forth in Section 4.4, the items described in this Article 4 shall not be removed from the Facility.

4.7 Replacement. Subsequent to the initial purchase, the YMCA, shall replace any of the items described in this Article 4 from the Operating Funds. The Town shall own the replacement items.

**ARTICLE 5**  
**MANAGEMENT AND OPERATION**

5.1 Management and Operation by YMCA. Subject to the terms and conditions of this Agreement, including receipt of the payments described herein, the YMCA shall provide services as an independent contractor to the Town with respect to the management and operation of the Facility during the Term, as more particularly set forth in this Agreement, including:

a. Facility Management. The YMCA shall manage and operate the Facility, including the provision of programs and services, in accordance with the YMCA's general operating standards and procedures, and the rules, regulations and member standards adopted by, as amended from time to time, Y-USA. The YMCA shall have the exclusive right to operate the Facility and shall be solely responsible for the programs and services offered by it at the Facility and any services provided by the YMCA off the premises of, but incidentally related to, the Facility.

The YMCA agrees to operate the Facility generally during hours in accordance with similar facilities operated by the YMCA. Notwithstanding the foregoing, such hours and manner of operations may be reasonably adjusted on a temporary basis from time-to-time by the YMCA based on weather and demand for services at the Facility, upon prior written notice to the Town.

The YMCA may establish rules and regulations governing the use of the Facility (such as those set forth in a membership handbook, staff manual, operating policy and procedures or Y-USA guidelines). At least thirty (30) days prior to the implementation of rules and regulations, the YMCA shall provide a copy to the Town for review and comment.

b. Routine Maintenance and Repair. The YMCA shall be responsible for routine maintenance of the Facility. Routine maintenance shall mean, but necessarily be limited to, regular, normal upkeep in support of preventive maintenance and minor repair of the Facility and the associated equipment, as necessary to keep or return it to its intended use or prevent further damage. Such upkeep, maintenance and minor repair shall also include, but, not be limited to, changing of filters; removal of waste; adding consumables to the pool equipment; maintenance of and repairs to the heating and air conditioning system (HVAC); maintenance of and repairs to the plumbing system; maintenance of and repairs to any other appliance, equipment, fixture or device in the Facility; and replacement of electric lights inside and outside the Facility. The YMCA shall coordinate with the Town to utilize appropriate contractors for repairs while materials and equipment are under warranty. The YMCA shall also provide janitorial and custodial services for the Facility and shall maintain all vending machines within the Facility. The cost of all labor and materials with respect to the routine maintenance set forth herein shall be the YMCA's responsibility.

c. Exterior and Site Maintenance. The YMCA shall be responsible for, and shall maintain in good, safe and operable condition, the exterior of the Facility, as well as all maintenance, upkeep, security, pursuant to Section 5.2(c) below, and other obligations and liabilities regarding the exterior of the Facility, which shall include all exterior maintenance, including, but not limited to, lawn care, snow removal, fences, roofs, roofing membrane and parking lot and lighting maintenance.

d. Building and Equipment Maintenance. The YMCA's responsibilities shall include day-to-day maintenance of the Facility, its major systems, and all improvements located thereon, including all storm and sanitary sewers, gas, water, telephone, electrical facilities and other utilities, which shall be kept in good order, repair and operating condition. Except as provided in

Section 5.2 below, the YMCA shall promptly make all necessary repairs, replacements, renewals, alterations and additions to the Facility and all improvements to the fixtures and equipment located thereon, to Town standards, as articulated by the Town, and to YMCA brand standards and expectations. The YMCA shall, including other obligations, upgrade the Facility and all improvements and appurtenances located in the Facility to accommodate a change in function or purpose, new technology, or to make the Facility compliant with changes in laws, regulation, codes or standards. The YMCA shall make foundation and structural repairs, including, but not limited, to those required to keep the Facility and all other improvements and appurtenances located in the Facility operable in a safe manner, such as, but not limited to, upgrades or improvements to the roof, walls, supporting structures, pipes, heating/air-conditioning system, plumbing system, windows, glass, doors, surveillance and security equipment, fixtures, swimming pools, parking lots and all fixtures and other miscellaneous equipment necessary for the YMCA's operation of the Facility.

All repairs and alterations on buildings and fixtures shall be and remain the sole and exclusive property of the Town.

e. Personnel. The YMCA shall be responsible for the management, supervision, hiring and discharge of all staff employed at the Facility. Without limitation, the YMCA shall employ welcome desk staff, instructors, fitness center attendants, swim instructors, lifeguards, supervisory personnel, maintenance personnel and other personnel necessary to operate the Facility. With input from the Town, the YMCA shall employ a Facility Director to manage the Facility. YMCA employees shall receive benefits pursuant to the personnel policies developed for the Facility based on YMCA Association policy. Such benefits shall include, but are not limited to, worker's compensation and unemployment insurance.

f. Supplies. The YMCA shall be responsible for purchasing and paying for all consumable supplies related to the operation of the Facility.

g. Utilities. The YMCA shall be responsible for paying the utility costs associated with the normal operation of the Facility, including, but not limited to: electric, gas, phone, cable and refuse disposal.

h. Membership and Program Fees. The YMCA shall determine the membership fees for each level of membership and the program fees based upon the cost of program delivery. The YMCA shall endeavor to ensure that the membership fees support the possibility of membership for all members of the public regardless of income and, if deemed appropriate, may employ a graduated membership fee structure based on income level. The YMCA agrees to provide the same membership benefits to Town employees that it provides to YMCA employees. At least thirty (30) days prior to the implementation of the membership fee schedule, the YMCA shall provide such schedule to the Town. The YMCA shall keep the Town apprised of membership information in its Monthly Reports, as defined below.

i. Facility Programs.

1. Traditional Programs. The YMCA shall offer traditional YMCA programs and services at the Facility. The YMCA shall provide swimming instruction, water fitness activities, and other swimming related activities and offer classes and instruction for aerobics, strength training, cardiovascular workouts and stretching.

2. Non-Traditional Programs. In addition to the traditional programs, the YMCA may offer, but is not required to offer, non-traditional programs including, but not limited to, birthday parties, family programming, senior programming and teen services. In any event, the Facility shall be available to the public to rent for birthday parties, family events, senior programs and teen programs.
3. Community Programs. The YMCA may offer community programs that involve incidental utilization of the Facility. These programs may include, but are not limited to, youth sports, camping, summer child care and educational pre-school. Upon written notice and approval of the Town, which shall be provided absent a scheduling conflict, the YMCA shall have access to all Town parks to run such programs, at no additional fee to the YMCA.
4. Cost of Participation in Facility Programs. In its discretion, the YMCA shall determine the cost of the traditional, non-traditional and community programs. Such costs shall be paid by the program participants directly to the YMCA and be part of the Facility Revenues.
5. Town Use of Facility. The Town, in its discretion and subject to availability, may use the Facility to hold Town events and functions twelve (12) times per year without payment of a fee and may, upon agreement of the YMCA, use the Facility on additional occasions.
- j. Informational Meetings. Upon request of the Town, the Parties shall conduct informational meetings to discuss the status of the Facility, the programs and fees offered to members of the public and any other matters related to the operations and management of the Facility. The Parties anticipate that such discussions will, in any event, occur during the budgeting process.
- k. Financials. The YMCA shall keep separate financials for the Facility and such financials shall be available to the Town upon reasonable request.
- l. Marketing. The YMCA shall coordinate and produce basic membership and program marketing material, and the Town agrees to support such marketing efforts. Unless otherwise agreed, the Facility shall be named the "Johnstown Community YMCA." In signage and marketing material, the YMCA may indicate that the Facility is owned by the Town and operated by the YMCA. The Town reserves the right to sell naming rights to the Facility, to either a major individual or corporate donor. If the Town desires to sell the naming rights and omit the reference to the "YMCA," the Town shall be required to obtain the YMCA's prior written approval. The Town may, in its reasonable discretion, assign names to various rooms and/or areas in the Facility.
- m. Software Systems. The YMCA shall be responsible for all software programs for the computer system, including, but not limited to, SaaS products such as personnel and payroll software, financial and accounting software and membership and programming software.
- n. Illegal Use Prohibited. The YMCA may not use, or permit the use of, the Facility, or any part thereof, for any use or purpose that violates any applicable law, regulation or ordinance.
- o. Inspections. The YMCA shall permit the Town and the Front Range Fire Rescue Authority to inspect the Facility at all reasonable times and make modifications necessary to comply with any applicable law, regulation or ordinance.

5.2 Service Provided by the Town. The Town shall provide the following services:

a. Telephone. The Town shall install a standard phone line and handsets for the Facility for use by the YMCA. The YMCA may, in its discretion, install additional phone lines or phone systems. Once installed and operative, the YMCA shall maintain the phone lines and pay the associated fees for the phone system. Upon expiration or termination of this Agreement: (i) the Town, if appropriate, will be responsible for terminating its telephone services for the Facility, including fire and security alarm phone line services, and will cover any associated termination fees, and (ii) the YMCA will be responsible for terminating its telephone services for the Facility and will cover any associated termination fees.

b. Information Technology ("IT") System. The Town shall purchase and own a computer hardware system and/or provide wireless internet connections for the Facility for use by the YMCA. Such systems will be consistent with Town's standard configurations as if the Town were operating the Facility and will meet the YMCA's minimum operating requirements. In its discretion, the YMCA may enhance the minimum operating requirements. Once purchased and operative, the YMCA shall maintain the computer hardware systems. Upon expiration or termination of this Agreement: (i) the Town, if appropriate, will be responsible for terminating its IT services for the Facility, including fire and security alarm phone line services, and will cover any associated termination fees, and (ii) the YMCA will be responsible for terminating its IT services for the Facility and will cover any associated termination fees.

c. Security System. The Town shall provide an operating security system for the Facility, to include video surveillance across the Facility, including, but not limited to, cameras for the parking lots and child care areas, and, if appropriate, contract with a third-party provider for the required security system monitoring and maintenance services. Once installed and operative, the YMCA shall pay the associated fees for the security system.

d. Non-Routine Maintenance. The Town shall be responsible for the non-routine maintenance of the Facility, which, if the cost to repair or replace the item exceeds Two Thousand Five Hundred Dollars (\$2,500.00) and extends the life of the item beyond one-year, shall include: (1) the major repair and replacement of the HVAC system, plumbing system, boiler, air handler, chiller, pipes, fire alarm panel or electrical panel; (2) foundation, walls and structural repairs; (3) roof repairs and replacement; and (4) capital expenditures and improvements necessary to safely maintain the Facility. Notwithstanding the foregoing, the YMCA shall be responsible for the routine maintenance of the Facility even if the cost of the maintenance of any particular item exceeds Two Thousand Five Hundred Dollars (\$2,500.00).

## **ARTICLE 6**

### **FINANCIAL CONSIDERATIONS**

6.1 Fiscally Sound Operation. The YMCA shall use commercially reasonable best efforts to operate the Facility in a fiscally sound manner to achieve break-even or surplus status during each year of the Term. All of the YMCA's obligations under this Agreement are intended to be paid for by the Operating Funds. The Parties anticipate and agree that the YMCA shall endeavor to operate the Facility with funds derived solely from the Facility Revenues and, if such revenues are not sufficient, then from the Operating Subsidy. The YMCA shall not be obligated to fund the Facility Expenses with YMCA revenue that is separate and distinct from the Facility Revenues. The YMCA shall maintain and account for Facility Revenues and Expenses within the YMCA's accounting system. Facility Revenues shall not be used to pay for any YMCA expenses except for the Facility Expenses.

6.2 Operating Subsidy. The Town recognizes and agrees that, if the Facility Revenues are not sufficient to cover the operations of the Facility, the YMCA shall not be responsible for any shortfall and the Town will be required to subsidize Facility operations through the Operating Subsidy. The Town agrees that, subject to budgeting and appropriations, it shall fund the Operating Subsidy on annual basis. The YMCA agrees that it will prudently and in a commercially reasonable manner operate the Facility to ensure the Facility Revenues and the Operating Subsidy are sufficient to cover the operations of the Facility.

The Parties agree that the Operating Subsidy shall not exceed \$500,000.00 in any given year. Upon receipt of a monthly invoice from the YMCA delivered prior to the first day of a given month, payment of the Operating Subsidy shall be made by the Town to the YMCA in the amount of \$41,666 per month on or about the first day of each calendar month and shall be deemed late if not paid by the tenth day of a given month.

Notwithstanding the foregoing, the monthly payment of \$41,666 shall not be due and payable until the Facility opens to the public. From the Effective Date until the date that the Facility opens to the public, the Town shall pay the YMCA the amounts set forth on the Effective Date Amendment.

If, at any time during a Facility Fiscal Year, the YMCA becomes aware that Facility Expenses may exceed the Operating Funds, or, stated differently, that an operational loss may exceed \$500,000, the Parties shall forthwith meet and confer and endeavor to plan a reduction of expenses to meet the anticipated deficit, while maintaining YMCA programming, safety and quality standards. If the Parties are not able to reach agreement and the YMCA seeks additional funds to operate the Facility, the matter shall forthwith be presented to the Town Council for a determination about how to proceed and/or whether to budget and appropriate additional funds for that Facility Fiscal Year.

If, at the end of a Facility Fiscal Year, the Operating Subsidy is less than \$500,000, creating an operating surplus, the Parties shall reconcile the difference during January of the following calendar year. The YMCA shall be entitled to retain an amount equal to 21.3% of the difference between \$500,000 and the actual Operating Subsidy amount as an incentive bonus administrative fee. For any remaining funds resulting from the operating surplus, the Town may direct that: (1) the YMCA return the additional funds; (2) the YMCA keep the additional funds and use such funds to offset the monthly payment of the Operating Subsidy for the then-current calendar year; or (3) the additional funds be used by the YMCA to improve the Facility in a manner agreed upon by the Town.

After three (3) operational Facility Fiscal Years, the Parties shall meet to discuss the Operating Subsidy and whether it should be adjusted based on actual Facility Revenues and Facility Expenses. If Town Council is not agreeable to an adjustment reasonably satisfactory to the YMCA, the YMCA may terminate this Agreement as set forth in Section 8.3. If the Parties agree upon an adjustment to the Operating Subsidy, such agreement shall be set forth as a written amendment to this Agreement. Otherwise, the original amounts of the Operating Subsidy will remain as is.

### 6.3 Reports to Town.

a. Monthly Reports. In concurrence with the YMCA's monthly finance committee meetings, the YMCA shall provide a monthly report to the Town, which shall contain financial information related to the Facility and be in same format as the reports generated for the YMCA's other branches. If the Town desires a different format, the Town agrees to pay the YMCA for the additional costs associated with the additional work. The Town may

request, and the YMCA shall thereafter provide, reports related to membership information, program participation and similar miscellaneous items at the Facility.

b. YMCA Annual Audits; Operating Statements. The YMCA shall provide the Town with an annual audit for the Facility when it is approved by the YMCA's finance committee for the prior Facility Fiscal Year. The audit shall be performed in accordance with generally acceptable accounting procedures by the YMCA's regular outside certified public accounting firm. The YMCA shall provide the Town with unaudited operating statements within sixty (60) days after the end of each calendar quarter.

6.4 Maintenance of Accounting Records; Town Audits. On an ongoing basis, the YMCA shall prepare and maintain accurate records of Facility Revenues and Facility Expenses. Such records shall specifically include, but not be limited to, and copies of bank statements, deposit slips and such documentation of Facility receipts as is customary at other YMCA branches. The YMCA agrees to keep these records for a period of seven (7) years after the conclusion of any Facility Fiscal Year and further agrees that such financial records shall be open and available to the Town Manager, the Town Finance Director and other persons authorized by them for examination upon reasonable notice during business hours. In the Town's discretion, the YMCA shall make all documentation available for examination at either the Facility, the Town or the Town's auditor's offices.

At any time within three (3) years after the conclusion of a Facility Fiscal Year, the Town may, at its sole expense, audit or have audited the YMCA's operations during such Facility Fiscal Year and the YMCA shall cooperate with any such audit by promptly making its financial records available to the auditor upon reasonable notice and during normal business hours. If the Town's audit indicates that the YMCA's records deviate in a significant manner from the Monthly Reports and audit reports provided by the YMCA to the Town, the YMCA shall pay the cost of the Town's audit.

6.5 Annual Budgets. Prior to adoption of the budget by the YMCA's Board of Directors, the YMCA shall prepare an annual budget for the Facility ("Facility Budget"). During development of the Facility Budget, the YMCA shall meet and confer with the Town. At least thirty (30) days prior to final adoption of the Facility Budget, and no later than October 1 of any given year, the YMCA shall provide a copy to the Town for review and comment. Consistent with general accounting practices, the Facility Budget shall set out the estimated revenues and expenditures for the following Facility Fiscal Year.

6.6 Tax Revenue. If, at any time, the Town obtains new tax revenue earmarked to pay for or offset the costs and expenses related to the management and operation of the Facility, the Parties shall promptly meet and, if appropriate, amend this Agreement to reflect a new financial structure that may include elimination, or a reduction, of the Operating Subsidy.

## **ARTICLE 7**

### **INSURANCE/INDEMNITY**

7.1 Property. The Town, at its sole cost and expense, shall obtain and maintain, throughout the Term, a policy or policies of insurance to keep the Facility, its improvements and equipment insured against loss or damage by fire, lightning and all other insurable risks, in an amount equal to the replacement cost thereof as determined by the Town and its insurer. The insurance under this Section shall name the Town as sole loss payee and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town and the YMCA. The insurance required pursuant to this Section may be maintained by the Town through a public entity self-insurance pool or a generally recognized responsible insurance company or companies authorized to do business in the State of Colorado, as may be selected by the Town. In the event of a loss or damage under this Section, the

Town will be responsible for any claim not fully covered by insurance due to any applicable deductible, policy limits or exclusions.

7.2 Liability. The YMCA shall obtain and maintain throughout the term of this Agreement commercial general liability insurance protecting the Town and the YMCA against claims of personal injury, death and property damage. Such commercial general liability insurance shall provide minimum protection of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the aggregate with an umbrella policy of Five Million Dollars (\$5,000,000), which insurance coverage may be provided by primary and umbrella policies, and by policies with multiple locations. Any required deductible or co-insurance amount shall be paid by the YMCA. The insurance under this Section shall name the Town as an additionally insured party and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. The Town has and shall maintain general liability insurance coverage in the amount of three hundred fifty thousand dollars (\$350,000.00) for injury to one person, or nine hundred, ninety thousand dollars (\$990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* ("CGIA"), as may be amended from time to time.

7.3 Auto Liability. The YMCA shall obtain and maintain throughout the term of this Agreement comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than Five Hundred Thousand Dollars (\$500,000) per person in any one occurrence and One Million Dollars (\$1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least Fifty Thousand Dollars (\$50,000) per occurrence, with respect to each of the YMCA's owned, hired or non-owned vehicles assigned to or used in performance of services under this Agreement. Any required deductible or co-insurance amount shall be paid by the YMCA. The insurance under this Section shall name the Town as an additionally insured party and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town.

7.4 Workers' Compensation. The YMCA shall obtain and maintain throughout the term of this Agreement workers' compensation insurance, including employer's liability (at the minimum limits required by the state of Colorado) for all YMCA personnel employed by or at the instance of the YMCA, including waiver of subrogation by the insurance carrier with respect to the Town. Such insurance shall be in accordance with the requirements of the most current and applicable State workers' compensation insurance laws in effect from time to time.

7.5 Certificates; other Terms. Each Party shall provide the other with certificates of coverage evidencing the coverages and payment of the premium(s) for said coverage. The Certificates or other forms evidencing such insurance shall be provided on or before the beginning of the occupancy of the Facility by the YMCA, and at the time each date the insurance is renewed or the insurance company or self-insurance pool is changed. Each Party shall notify the other immediately in writing if any of the insurance policies required hereunder are canceled or become ineffective, or if a notice of cancellation or ineffectiveness is received by the Party, unless that Party has arranged for equivalent coverage to commence on or before the date of cancellation or ineffectiveness. Every policy required of the YMCA above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provided by the YMCA. Failure on the part of the YMCA to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may terminate this Agreement, or at its discretion may procure or renew any such policy and may pay any premiums in connection therewith, and all monies so paid by the Town shall be repaid by the YMCA to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to the YMCA from the Town.

7.6 Cooperation. The Town and the YMCA shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or insurance pool covering the events described in this Article. In no event will the YMCA voluntarily settle, or consent to the settlement of any claim of or against the Town without the written consent of the Town.

7.7 Indemnity. The YMCA shall indemnify, defend and hold harmless the Town against and from all liability for claims, damages, costs, losses and expenses resulting from, arising out of, or in any way connected with negligent or intentional acts or omissions of the YMCA, its employees, agents or invitees on or about the Facility.

7.8 Town Liability. The Town shall be responsible for liability from actions in tort in the manner and to the extent provided by the CGIA. The Town and the YMCA understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the CGIA, as from time to time amended, or otherwise available to the Town, its officers, or its employees or authorized volunteers.

## **ARTICLE 8** **TERMINATION**

This Agreement shall be subject to the following termination provisions. In the event of any termination or expiration of this Agreement, neither Party shall be relieved from any financial obligations each may owe to the other as a result of liabilities incurred during the course of this Agreement.

8.1 No Termination Until After One Full Fiscal Year. Absent extraordinary circumstances and a material breach of the Agreement, neither Party may provide notice of termination of this Agreement until after December 31, 2021.

Notwithstanding the foregoing, if the Town fails to pay the Operating Subsidy as provided herein, the YMCA may provide sixty (60) days written notice to terminate. If the Operating Subsidy is thereafter paid, the YMCA shall withdraw the notice of termination. If the Operating Subsidy is not paid in full, the YMCA may, in its discretion, terminate this Agreement without participating in mediation, and such termination due to the Town's failure to pay shall be subject to the terms of Section 8.5 below.

8.2 Early Termination by Mutual Agreement. By mutual agreement, the YMCA and the Town may terminate this Agreement for any or no reason in an agreed-upon time period.

8.3 Termination by Either Party for Cause. With the exception of a default related to the Town's failure to pay the Operating Subsidy, if either Party substantially fails to honor its contractual commitments, the non-defaulting Party may provide written notice of intended termination to the other Party. Such notice shall specify the manner in which the defaulting Party has failed to perform its contractual undertakings. The defaulting Party shall have sixty (60) days after receipt of said notice in which to cure all defaults giving rise to the notice of intended termination, provided that the defaulting Party shall have an additional period to cure any default upon written notice to the non-defaulting Party to the extent such Party cannot reasonably cure such default within the sixty (60) day period, as long as such Party commences reasonable curative actions within such sixty (60) days and diligently prosecutes such actions to completion. If the non-defaulting Party reasonably determines that the defaulting Party has satisfactorily implemented corrective action, the notice of intended termination shall be withdrawn.

If, at the conclusion of the cure period, the default is not remedied to the satisfaction of the non-defaulting Party, the non-defaulting Party may commence mediation as set forth below in Section 9.2. If

mediation is not successful within sixty (60) days, unless the Parties mutually agree to an extension, the non-defaulting party may terminate this Agreement upon written notice without prejudice to any other rights and remedies.

8.4 Termination due to Casualty Loss. If the Facility is damaged by fire or other casualty and such damage prevents the Facility from being operated in substantially the same manner as it was operated prior to such casualty or damage, and such damage is not repaired by the Town within sixty (60) days after the date of such fire or casualty (or, in the case of a repair reasonably requiring more than sixty (60) days, if Town has not commenced such repair) or if such damage cannot reasonably be repaired or restored in full within one hundred eighty (180) days after the date of such fire or casualty, the Town or the YMCA shall have the right to terminate this Agreement by written notice to the other delivered not more than ninety (90) days following the occurrence of the damage. If the Facility is damaged by fire or other casualty and neither the Town nor the YMCA elects to terminate this Agreement, the Town shall promptly repair or reconstruct the damage to the Facility.

If the Facility is wholly inoperative due to fire or other casualty and the Town intends to repair the damage, the Town shall only be required to pay the reasonable portion of the Operating Subsidy necessary to meet ongoing and recurring expenses during the period of the repair. If the Facility is partially damaged by fire or other casualty and the Facility is reasonably capable of remaining open to the public, the Town shall continue to pay the Operating Subsidy to the YMCA unless an equitable adjustment is deemed to be appropriate.

In any event, if the Facility is damaged by fire or other casualty, the Parties shall promptly meet to discuss the status of the Facility, including, but not limited to, the efforts to repair the damage, the ability to use the Facility and whether an equitable adjustment to the Operating Subsidy is appropriate.

8.5 Termination Without Notice or Failure to Appropriate. If the Town were to otherwise terminate this Agreement prior to or at the end of a Term without providing eighteen (18) months' notice, or by a failure to appropriate, then the Town would be required to compensate the YMCA for the YMCA's costs related to the termination in the amount of \$150,000.

## **ARTICLE 9** **DISPUTE RESOLUTION; REMEDIES**

9.1 Conferral. The Town and the YMCA desire to attempt to reach an amicable resolution of any disputes and controversies that may arise between them under this Agreement as quickly as is reasonably practicable and in a mutually beneficial manner. To foster a positive working relationship, the Parties shall endeavor, prior to providing a written notice of intended termination as set forth in Section 8.3 above, to arrange a meeting between the senior staff of the Town and the YMCA to attempt to resolve the dispute. Such meeting shall be held within fifteen (15) days of a request, unless otherwise provided in this Agreement.

9.2 Mediation. If a dispute arises under this Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the Parties shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in the subject matter of the dispute. If the Parties are unable to agree upon a mediator, the Parties shall apply to the Judicial Arbiter Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties.

9.3 Rights and Remedies at Law and Equity; Injunctive Relief. Unless the Parties otherwise agree, if the mediation is not completed within sixty (60) days, then either Party may pursue the rights and

remedies it may have at law and equity. Notwithstanding the foregoing, a Party shall not be required to mediate with respect to an action of the type for which a Party is entitled at law or in equity to immediate judicial injunctive relief or judicial specific performance arising out of the activity to be enjoined or caused to be performed to prevent irreparable harm or injury.

9.4 Remedies Cumulative; Legal Expenses. The various rights and remedies of the Parties under this Agreement or allowed by law shall be cumulative. In the event either [or both] Party(ies) hereto shall be obligated to secure legal counsel to enforce (or defend against) any alleged default under this Agreement, then the prevailing Party, to the extent permitted by law, shall be entitled to recover against the other Party reasonable attorneys' fees, and all costs and fees so incurred through all appellate proceedings as may be required.

## **ARTICLE 10** **FORCE MAJEURE**

If either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power or other utilities, terrorist acts, riots, insurrection, war, fire, floods or other acts of God, providing such cause is not due to the willful act or neglect of the Party delayed in performing the work or doing the acts required under the terms of this Agreement (collectively, "Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

The provisions of this Article shall not be applicable to delays resulting from the inability of a Party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

## **ARTICLE 11** **NOTICES**

Any notice required or permitted to be given pursuant to this Agreement shall be effective and valid if in writing, and delivered personally by reputable express courier or delivery service, or sent by verifiable facsimile machine (with a copy by first class mail postage prepaid) or by certified or registered U.S. Mail postage prepaid, return receipt requested, as follows:

If to the Town:

TOWN OF JOHNSTOWN  
Attn: Town Manager  
450 S. Parish Avenue  
Johnstown, CO 80534  
Phone: (970) 587-4664  
Facsimile: (970) 587-0141

If to the YMCA:

YMCA of NORTHERN COLORADO  
Attn: Chief Executive Officer  
2800 Dagny Way  
Lafayette, CO 80026  
Phone: (303) 664-5455  
Facsimile: (303) 664-5456

With a copy to:

Law Office of Avi S. Rocklin, LLC  
Attn: Avi S. Rocklin, Esq.  
1437 N. Denver Avenue, #330  
Loveland, CO 80538  
Phone: (970) 419-4226  
Facsimile: (970) 797-1806

With a copy to:

Inside/Out Advisors, LLC  
Attn: Holden J. Bank, Esq.  
1384 North Park Drive  
Lafayette, CO 80026  
Phone: (303) 241-4248

Unless otherwise specified, notice shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after the same is deposited with the United States Postal Service. Notices given by counsel to either Party shall be deemed given by such Party. Any person or entity may by written notice to the others change the address for such person or entity's receipt of notices.

Notwithstanding the foregoing, either Party may give notice by E-mail delivery on the condition that the other Party acknowledges receipt of the E-mail and agrees in a responsive E-mail communication to accept notice in such manner.

## **ARTICLE 12** **GENERAL PROVISIONS**

12.1 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action shall be in Weld County, State of Colorado.

12.2 Modification of Agreement. The terms, covenants and conditions of this Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

12.3 No Waiver by Prior Actions. The failure of either Party to insist upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by the other Party shall not constitute a waiver or relinquishment of the subsequent right to require strict performance of any such term, covenant or condition.

12.4 Severability. If any portion(s) of this Agreement shall, for any reason, be held invalid or unenforceable, such portion(s) shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portion(s) shall nevertheless be valid, enforceable and of full force and effect; provided, however, that if the invalid provision is material to the overall purpose and operation of this Agreement, then this Agreement shall terminate upon the severance of such provision.

12.5 Entire Agreement. This Agreement, the exhibits attached hereto, and all amendments constitute the entire understanding and agreement of the Parties and supersede any prior written or oral agreement pertaining to the subject matter hereof.

12.6 Authorized Representatives. Until a Party provides written notice of an alternative representative or representatives, the following named persons shall be deemed an authorized representative for each Party with respect to this Agreement and the other Party shall be entitled to rely on the actions and communications of said person(s) to be those of such Party so long as the same are within the scope of this Agreement:

Town: The Town Manager shall be designated as the Town's authorized representative.

YMCA: The Chief Executive Officer or Chief Volunteer Officer, or any person subsequently designated in writing by the Chief Executive Officer, shall be designated as the YMCA's authorized representative.

12.7 Further Actions; Reasonableness and Cooperation; Time for Consent. Each Party agrees to take such further actions and to execute such additional documents or instruments as may be reasonably requested by the other Party to carry out the purpose and intent of this Agreement. Except where expressly stated to be in a Party's sole discretion, or where it is stated that a Party has the ability to act in its sole judgment or for its own uses or purposes, wherever it is provided or contemplated in this Agreement that a Party must give its consent or approval to actions or inactions by the other Party or a third person in connection with the transactions contemplated hereby, such consent or approval will not be unreasonably withheld or delayed, nor will any other determinations that must be made by a Party in the course of performing and administering this Agreement be unreasonably made. The Town and the YMCA each also agree to cooperate with and reasonably assist each other in good faith in carrying out the purpose and intent of this Agreement and the overall goals and purposes for the Facility. If no deadline is set herein for a Party to approve or consent to an action or inaction by the other Party or a third person, such approval or consent shall be given or affirmatively withheld in writing within twenty (20) days after it is requested in writing, or it shall be deemed given.

12.8 Relationship of the Parties; No Third-Party Beneficiaries. This Agreement shall not create a partnership or joint venture between the Parties and is limited to the specific purposes set out herein. Neither Party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other Party. The Parties do not intend to confer any benefit hereunder on any other person or entity other than the Parties hereto. The YMCA understands and agrees that it is an independent contractor and the Town shall not provide benefits of any kind to the YMCA, its officers, employees or agents.

12.9 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.

12.10 Return of Records. Upon termination of this Agreement, the YMCA shall return to Town all records, notes, documents and other items that were provided by the Town to the YMCA or otherwise created by the Town for the YMCA to use during the term of this Agreement for the operation of the Facility. In addition, the YMCA shall provide all membership information to the Town and a listing of all Facility program participants for the last three (3) years.

12.11 Captions; Recitals and Exhibits; Agreement Preparation. Captions used throughout this Agreement are for convenience and reference only and the words contained herein shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. The Recitals found at the beginning of this Agreement and Exhibits A and B and any properly adopted amendments, supplements or replacements thereto are incorporated herein by reference and are important and material parts of this Agreement. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any Party hereto.

12.12 Assignment/Delegation. Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, in its sole discretion. In such case, the assignee shall execute into a written agreement, agreeing to be bound by the terms of this Agreement.

12.13 Publicity. The YMCA shall, to the extent reasonably practicable, confer and coordinate public announcements and other publicity concerning the Facility with the Town.

12.14 Execution; Counterparts. Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so and, upon request by the other Party, proof of such authority in customary form will be furnished to the other Party. This Agreement may be executed at different times and in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on the Parties hereto, notwithstanding that both Parties may not have executed the same counterpart.

12.15 Survival. All provisions of this Agreement, which by their terms provide for or contemplate obligations or duties of a Party which are to extend beyond the expiration or termination of this Agreement (and the corresponding rights of the other Party to enforce or receive the benefit of such obligations or duties), shall survive such expiration or termination.

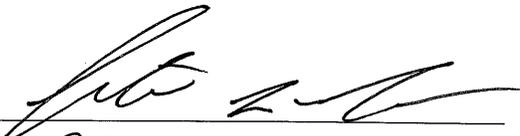
12.16 Sale of Facility. In the event that the Town decides to sell the Facility to a non-governmental entity or the Town receives a bona fide offer to purchase the Facility from a non-governmental entity, the Town shall provide written notice to the YMCA and provide the YMCA with a right of first refusal to purchase the Facility. If the YMCA desires to purchase the Facility, the YMCA shall have thirty (30) days from receipt of the notice to enter into a purchase and sale agreement with the Town for the purchase of the Facility upon mutually-agreeable terms. If the Parties are not able to agree upon terms, the Town may sell, or offer to sell, the Facility to a third party. If the Town were to sell the Facility to a third party, this Agreement would terminate upon the consummation of the sale.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN

YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF BOULDER VALLEY  
d/b/a YMCA of Northern Colorado

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

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

Name: Gary Lebsack

Name: Chris Colner

Title: Mayor

Title: CEO

Date: \_\_\_\_\_

Date: 3/14/19

Attest:

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

**EXHIBIT A**

**EFFECTIVE DATE AMENDMENT  
TO THE FACILITY MANAGEMENT AGREEMENT  
BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND  
YOUNG MEN’S CHRISTIAN ASSOCIATION OF BOULDER VALLEY  
D/B/A YMCA OF NORTHERN COLORADO**

This EFFECTIVE DATE AMENDMENT, dated as of \_\_\_\_\_, 2019, is made by and between the TOWN OF JOHNSTOWN, COLORADO, a Colorado home rule municipal corporation of the State of Colorado (the “Town”), and the YOUNG MEN’S CHRISTIAN ASSOCIATION OF BOULDER VALLEY, d/b/a YMCA of Northern Colorado, a Colorado non-profit corporation (the “YMCA”), through its Board of Directors.

WHEREAS, the Town of Johnstown and the Young Men’s Christian Association of Boulder Valley d/b/a YMCA of Northern Colorado executed a Facility Management Agreement on March \_\_\_\_, 2019 (“Agreement”); and

WHEREAS, the terms used herein shall have the meaning(s) set forth in the Agreement; and

WHEREAS, pursuant to Section 3.1 of the Agreement, the Parties agreed to execute an Effective Date Amendment approximately six (6) months prior to the opening of the Facility to the public; and

WHEREAS, pursuant to Section 6.2 of the Agreement, the Parties agreed to set forth the funds that would be due and owing from the Town to the YMCA during the interim period between the Effective Date of the Agreement and the date that the Facility opens to the public; and

WHEREAS, the Parties hereby desire to memorialize their intent with respect to the foregoing.

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date. The Effective Date of the Agreement shall be \_\_\_\_\_, 2019.

2. Operating Subsidy from the Effective Date to the Date the Facility Opens to the Public. Until the Facility opens to the public, the Town shall pay the YMCA the following amounts:

Month

Amount

[To Be Inserted]

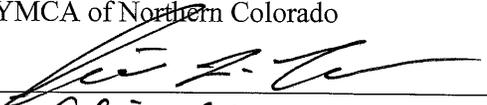
[To Be Inserted]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN

YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF BOULDER VALLEY  
d/b/a YMCA of Northern Colorado

By: \_\_\_\_\_  
Name:  
Title: Town Manager

By:   
Name: Chris Cohen  
Title: CEO

Attest:

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

**EXHIBIT B**

LEASED WELLNESS EQUIPMENT AMENDMENT  
TO THE FACILITY MANAGEMENT AGREEMENT  
BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND  
YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY  
D/B/A YMCA OF NORTHERN COLORADO

This LEASED WELLNESS EQUIPMENT AMENDMENT, dated as of \_\_\_\_\_, 2019, is made by and between the TOWN OF JOHNSTOWN, COLORADO, a Colorado home rule municipal corporation of the State of Colorado (the "Town"), and the YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY, d/b/a YMCA of Northern Colorado, a Colorado non-profit corporation (the "YMCA"), through its Board of Directors.

WHEREAS, the Town of Johnstown and the Young Men's Christian Association of Boulder Valley d/b/a YMCA of Northern Colorado executed a Facility Management Agreement on March \_\_\_\_, 2019 ("Agreement"); and

WHEREAS, the terms used herein shall have the meaning(s) set forth in the Agreement; and

WHEREAS, pursuant to Section 4.4 of the Agreement, the Parties agreed to execute an amendment to the Agreement setting forth the agreed-upon Leased Wellness Equipment; and

WHEREAS, the Parties hereby desire to memorialize their intent with respect to the foregoing.

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the YMCA shall lease the following equipment, which shall collectively be the Leased Wellness Equipment:

Equipment

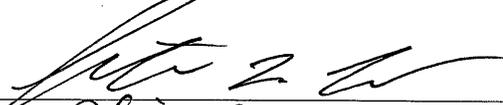
[To Be Inserted]

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN

YOUNG MEN'S CHRISTIAN ASSOCIATION  
OF BOULDER VALLEY  
d/b/a YMCA of Northern Colorado

By: \_\_\_\_\_  
Name:  
Title: Town Manager  
Attest:

By:   
Name: Chris Colner  
Title: CEO

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

**AGENDA ITEM 10C**

**RESOLUTION 2019-14**

**(Supporting the Application  
for an Energy Impact Grant)**

## **TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** April 1, 2019

**ITEM NUMBER:** 10C

**SUBJECT:** DOLA Energy Impact Grant Resolution of Support for Application

**ACTION PROPOSED:** Approve the Resolution of Support for the Grant Application to DOLA

**ATTACHMENTS:** 1. Resolution 2019-14

**PRESENTED BY:** Matt LeCerf, Interim Town Manager

---

### **AGENDA ITEM DESCRIPTION:**

The Department of Local Affairs (DOLA) has a grant program with funds provided through the state severance tax on energy and mineral production and from a portion of the state's share of royalties paid to the federal government for mining and drilling of minerals and mineral fuels on federally owned land. Applications are received 3 times annually for projects, the first being received on April 1 with an estimated \$20 million available for projects.

The Town in March 2017 completed engineering design of Weld County Road 50 (WCR 50) / Larimer County Road 14 (LCR 14). This area consists of about 9,700 linear feet of unpaved road section and is owned and maintained in various areas by Larimer County, Weld County, and Johnstown. Based on the unpaved section, maintenance of the total area is as follows: Larimer County about 9.95%, Weld County about 22.1%, and Johnstown 67.95%. To help see the WCR50/LCR14 project as a reality, the Town has submitted an application for the April 1 application cycle. The request will be based on updated cost estimates of \$2,046,166 and the application can be for up to \$1 million of the project total. Funds have been committed by the following County Agencies in the amounts listed below:

- Larimer County – Up to \$200,000 – Reimbursement to the Town requested from 2020-2022.
- Weld County - \$360,000
- Johnstown – Would cover the balance estimated at \$486,166 assuming the award of the full grant amount.

### **LEGAL ADVICE:**

The resolution was reviewed by the Town Attorney

### **FINANCIAL ADVICE:**

If successful in the application and based on timing of the grants authorization to proceed, funds may need to be appropriated from either the Capital Projects or Impact Fee Fund.

### **RECOMMENDED ACTION:**

---

**SUGGESTED MOTIONS:**

**For Approval:**

I move to approve Resolution 2019-14 as presented for the DOLA Energy Impact Grant Application Submittal.

**For Denial:**

I move that we deny Resolution 2019-14 as presented for the DOLA Energy Impact Grant Application Submittal.

**Reviewed and Approved for Presentation:**

---

Town Manager

# **RESOLUTION**

**No. 2019-14**

**TOWN OF JOHNSTOWN, COLORADO**

**RESOLUTION NO. 2019-14**

**A RESOLUTION OF THE TOWN OF JOHNSTOWN, COLORADO,  
SUPPORTING THE APPLICATION FOR AN ENERGY IMPACT GRANT FROM THE  
STATE OF COLORADO DEPARTMENT OF LOCAL AFFAIRS**

WHEREAS, the Town of Johnstown authorizes the application for the Energy Impact Grant; and

WHEREAS, the purpose of the grant is to improve Weld County Road 50 and Larimer County Road 14 by making critical improvements that benefit the community to pave the roadway from an unimproved condition; and

WHEREAS, this is a collaborative project between Larimer County, Weld County and the Town of Johnstown; and

WHEREAS, the total cost of the project is estimated to be \$2,046,166 and the grant request is for \$1,000,000 which is the maximum request permitted.

NOW THEREFORE, BE IT RESOLVED by the Town Council of the Town of Johnstown, Colorado that:

Section 1. The Town Council hereby authorizes and supports the application for the Energy Impact Grant in the amount of \$1,000,000.

Section 2. Effective Date. This resolution shall become effective immediately upon adoption.

Section 3. Repealer. All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 4. Certification. The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSES, AND ADOPTED THIS 1<sup>ST</sup> DAY OF APRIL, 2019.

**TOWN OF JOHNSTOWN, COLORADO**

**ATTEST:**

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

By: \_\_\_\_\_  
Gary Lebsack, Mayor

**LETTERS OF SUPPORT**  
**(Larimer County)**  
**(Weld County)**

# LARIMER COUNTY | BOARD OF COUNTY COMMISSIONERS

P.O. Box 1190, Fort Collins, Colorado 80522-1190, 970.498.7010, Larimer.org

March 26, 2019

Division of Local Government  
1313 Sherman Street, Room 521  
Denver, CO 80203

RE: Energy Impact Grant to the Department of Local Affairs

Dear Committee Members:

The Larimer County Board of County Commissioners is excited to provide this letter of support for the Town of Johnstown's Energy Impact Grant Application to the Department of Local Affairs for the April 1 program cycle.

The application is for critical improvements to the Larimer County Road 14/Weld County Road 50 roadway which is currently an unimproved gravel section of approximately 9,700 linear feet. This road segment was at one time on Larimer County's 5-year Transportation Capital Improvement Plan, but because the roadway exists in multiple jurisdictions due to annexations by Johnstown, and the fact that the right of way is split down the centerline by the County Boundary separating Larimer and Weld Counties, coordination and execution of this project has been difficult.

The Town of Johnstown completed engineering design of this roadway in March 2017. The award the DOLA Energy Impact Grant will finally enable Larimer County, Weld County, and Town of Johnstown to bring this project to fruition through collaboration and financial cooperation.

While Larimer County does not have funds budgeted currently for this project, Johnstown has agreed to enter into an IGA that would permit Larimer County to pay back our pro rata share over a 3-year period to Johnstown currently estimated at \$100,000 assuming a successful grant application. Furthermore, as part of this project, Johnstown has committed to taking ownership of the entire road section upon completion of this project.

This roadway serves as a truck route and has seen two fatalities since 2015. In the interest of safety, support for collaborative projects among local governments, and for the benefit of the region, we ask for your favorable consideration of this meaningful application for grant funds.

Regards,



Tom Donnelly, Chair  
Larimer County Board of County Commissioners





OFFICE OF BOARD OF COMMISSIONERS  
PHONE: 970-336-7204  
FAX: 970-336-7233  
1150 O STREET  
P.O. BOX 758  
GREELEY, COLORADO 80632

March 26, 2019

Mayor Gary Lebsack  
Town of Johnstown  
450 S. Parish Avenue  
Johnstown, CO 80534

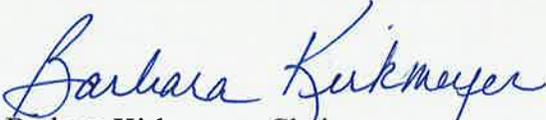
Dear Mayor Lebsack,

This is a letter of support for the Town of Johnstown's Tier II Energy Impact Assistance Grant application to the Department of Local Affairs for the reconstruction of Weld County Road (WCR) 50 from WCR 13 west to the I-25 Frontage Road. The Board of Weld County Commissioners unanimously agreed to contribute \$360,000 towards the local match of this grant. In return, Johnstown agrees to enter into an Intergovernmental Agreement (IGA) in order to annex the remaining WCR 50 segments currently co-mingled with Johnstown's jurisdiction.

The Board of Weld County Commissioners supports this grant application and project because we believe CR 50 is an important oil and gas arterial corridor, which transitions into a state highway.

Sincerely,

BOARD OF COUNTY COMMISSIONERS

  
Barbara Kirkmeyer, Chair

C: Don Warden  
Matt LeCerf, Town Manager  
Elizabeth Relford, Public Works