

***TOWN COUNCIL***

***MEETING***

***PACKET***

**May 20, 2019**



## Town Council

**Agenda**  
**Monday, May 20, 2019**  
**Town Hall, Council Chambers**  
**450 So. Parish Avenue**  
**7:00 PM**



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

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

- 1) **CALL TO ORDER**
  - A) Pledge of Allegiance
- 2) **ROLL CALL**
- 3) **AGENDA APPROVAL**
- 4) **RECOGNITIONS AND PROCLAMATIONS –**
- 5) **PUBLIC COMMENT (three-minute limit per speaker)**

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

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- 6) **CONSENT AGENDA**
    - A) Town Council Meeting Minutes – May 6, 2019
    - B) Payment of Bills
    - C) April Financial Statements
    - D) Intergovernmental Agreement for Contribution to Roadway Improvements
  - 7) **TOWN MANAGER REPORT**
  - 8) **TOWN ATTORNEY REPORT**
  - 9) **OLD BUSINESS**
  - 10) **NEW BUSINESS**
    - A) Consider Award of Contract to Loveland Barricade for the 2019 Pavement Marking Project
    - B) Consider Award of Contract to A-1 Chip Seal for the 2019 Slurry Seal Project
    - C) **Public Hearing First Reading** - Ordinance Number 2019-160, An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication Facilities
    - D) Consider Second Amendment to Iron Horse Agreement
    - E) Request for Municipal Code Change – Discussion Item Only
  - 11) **EXECUTIVE SESSION**
  - 12) **COUNCIL REPORTS AND COMMENTS**
  - 13) **MAYOR'S COMMENTS**
  - 14) **ADJOURN**
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**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 6A-D**

### **CONSENT**

### **AGENDA**

- **Council Minutes – May 6, 2019**
  - **Payment of Bills**
  - **April Financial Statements**
- **Intergovernmental Agreement for Contribution to Roadway Improvements**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** May 20, 2019

**ITEM NUMBER:** 6A-D

**SUBJECT:** Consent Agenda

**ACTION PROPOSED:** Approve Consent Agenda

**PRESENTED BY:** Town Clerk

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**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 – May 6, 2019
- B) Payment of Bills
- C) April Financial Statements
- D) \*Intergovernmental Agreement for Contribution to Roadway Improvements

\* The enclosed IGA is a necessary component of the WCR 50/LCR 14 application to DOLA for the Energy Impact Grant. The IGA outlines the financial contributions of the project committed by Larimer County assuming a successful grant application. Larimer County is contributing up to \$200,000 which would be reimbursed to the Town over a 3 year period based on and subject to the grant approval and project construction. After completion of the roadway project, the Town will annex this entire section of improved road and maintain it in perpetuity. Having this partnership with Larimer County is appreciated and valued for both the community and region's benefit. As a side note, we expect to have the Weld County IGA presented soon.

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**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.

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**FINANCIAL ADVICE:** N/A

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**RECOMMENDED ACTION:** Approve Consent Agenda

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**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, May 6, 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 Berg, Lemasters, Mellon, Young and Tallent  
Councilmember Molinar Jr. arrived at 7:15p.m.

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

#### Agenda Approval

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

#### Public Comment

Sarah Rice, Executive Director of Bright Futures gave an update on the Bright Futures Program.

Mark Miller, Fire Chief Loveland Rural Fire Authority spoke on the proposed Intergovernmental Agreement between the Front Range Fire Rescue Fire Protection District and the Town of Johnstown. Loveland Rural Fire Authority will work with Front Range Fire Protection District to improve delivery of fire services to the residents of Johnstown.

Sheila Woodson, from the organization Sower of Seeds invited Council and the audience to assist in providing fresh produce to the communities of Milliken and Johnstown. Sower of Seeds is a volunteer program of residents in the community who grow produce on their front porch and donate it to the local food banks.

#### Consent Agenda

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

- April 15, 2019 Council Meeting Minutes
- Intergovernmental Agreement Between the Front Range Fire Rescue Fire Protection District and the Town of Johnstown Regarding Fire Services
- Resolution Number 2019-16, 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

Motion carried with a unanimous vote.

New Business

A) Temporary Use of Adjacent Sidewalk, Parish Avenue and Parish Avenue Common Area (Town Property) Veteran Brothers Brewing Company – This is a request for a temporary modification of the liquor licensed premises to include use of the adjacent sidewalk, Parish Avenue and the Parish Avenue common area (Town Property) on May 26, 2019. Veteran Brothers Brewing Company can only use the Town Property for a total of 3 hours on May 26, 2019; alcohol cannot be consumed on Parish Avenue, the outside area wherein liquor will be served and/or consumed be fenced or otherwise enclosed; and Veteran Brothers maintain proper insurance. Councilmember Berg made a motion seconded by Councilmember Mellon to approve Veteran Brothers Brewing Company permit application for temporary modification of the liquor license premises to include use of the adjacent sidewalk, Parish Avenue and the Parish Avenue common area on May 26, 2019 subject to the following conditions: Veteran Brothers execute an agreement prepared by the Town Attorney; the use of the public property be limited to three hours; alcohol not be consumed on Parish Avenue; the outside area wherein liquor will be served and or consumed be fenced or otherwise enclosed; and Veteran Brothers maintain the proper insurance. Motion carried with a unanimous vote.

There being no further business to come before Council the meeting adjourned at 7:58 p.m.

Mayor

Town Clerk

# **Payment of Bills**

Town of Johnstown  
List of Bills - April 8, 2019 to May 12, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
4990 Ronald Reagan LLC	Police Substation lease	PD	1,519.75
A & E Tire Inc	Auto supplies	ALL	2,125.69
Ace Hardware	Supplies	PW	2,238.16
Ace of Blades	Professional services	PW	805.00
Adamson Police Products	Uniforms	PD	784.76
Advanced Roofing Technologies	Senior center repairs	ADM	317.00
AJ'S Backflow Testing LLC	Testing	PW	825.00
All Copy Products	Printer service	ALL	2,159.15
Alternative Elevations LLC	Annual elevator inspection	ADM	350.00
Anchor Auto Glass	Windshield replacement	PD	1,012.20
Angel Armor	Police supplies	PD	1,725.00
AP Mountain States, LLC	Johnstown Rec Center	ADM	2,412,359.42
Arapahoe Rental	Supplies	PW	97.85
Arrowhead Forensics	Evidence supplies	PD	73.18
Avalis Wayfinding Solutions	Supplies	ADM	59.25
Blackburn, Jacob	Training	PD	305.00
Blue Star Recyclers	Spring Clean-Up	PW	3,588.05
Brandon Copeland	Professional services	ADM	565.68
Carrot-Top Industries	Flags	PW	585.23
Caselle, Inc	Support & Court module	ADM	12,235.00
CDR Propane Services, LLC	Propane	PW	806.00
Central Weld County Water District	Water	PW	949.00
CenturyLink	Telephone	ADM	673.42
CH Diagnostic & Consulting	Water testing	PW	840.00
Chema Tox Laboratory Inc	Blood alcohol test	PD	375.00
Churchich Recreation LLC	Park supplies	PW	327.00
Cintas	Cleaning supplies	ALL	1,331.22
Cirsa	Insurance	ALL	50,558.41
City of Greeley	Water	PW	252.00
Colorado Analytical Labs	Lab testing	PW	960.00
Colorado Department of Revenue	Court	ADM	15.00
Colorado Department of Transportation	North I-25 Project	ADM	704,648.96
Colorado Dept of Agriculture	Supplies	PD	44.00
Concrete Mobile Mix, LLC	Repair	PW	927.50
Consolidated Home Supply Ditch & Reservoir C	MPR reimbursement	PW	10,484.81
Core & Main	Repair	PW	379.47
Coren Printing, Inc	Office supplies	ADM	462.00
Dana Kepner Co.	Supplies	PW	310.50
DBC Irrigation Supply	Supplies	PW	520.27
Defensive Edge Training & Consulting	Training	PD	450.00
Dent Vision	Vehicle repair	PD	14,061.94
DES Pipeline Maintenance, LLC	Professional service	PW	675.00
Dickerson, Brad	Uniform allowance	PD	450.00
Division of Oil & Public Safety	Annual registration / elevator	ADM	30.00
DPC Industries Inc	Chemicals	PW	16,994.49
Ergomed	Professional service	ADM	555.00

Town of Johnstown  
List of Bills - April 8, 2019 to May 12, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
Faris Machinery Co.	Service	PW	5,585.80
Felsburg Holt & Ullevig	Engineering services	ADM	9,593.60
Ferguson Waterworks	Supplies	PW	542.49
First Class Security Systems	Fire system maintenance	ADM	336.55
First National Bank	Admin supplies & custodial serv.	ADM	5,009.94
Front Range Raynor	Repair	PW	450.00
Frontier Fertilizer & Chemical	Weed control	PW	215.00
Galloway & Company, Inc.	Professional services	ADM	460.00
Galls LLC - DBA Neves Uniforms	Uniforms	PD	898.02
Gamez, Shirley Newsom	Monthly mileage	ADM	65.00
Glenn A. Jones Library	Monthly support	ADM	39,375.00
Grainger, Inc.	Supplies	PW	772.79
Greeley Lock and Key	Supplies	PD	44.85
Greeley Police Department	Guard terminal fee	PD	3,000.00
Greystone Technology Group	Computer support	ALL	2,800.00
Ground Engineering Consultants	Johnstown Rec Center	ADM	24,899.50
H & E Equipment Services, Inc.	Service	PW	961.14
H.E.S. Elevator Service	Elevator inspection	ADM	360.00
Hach Company	Chemicals	PW	898.51
Hays Market	Supplies	ALL	498.99
Helton & Williamsen, P.C.	Engineering services	ADM	12,884.57
Home Depot/GECF, The	Supplies	PW	725.93
Honstein Facility Service	Service	ADM	894.00
IMEG Corp	Engineering services	ADM	70,190.25
Inertia Automation Inc	Repairs	PW	3,474.15
Insight North America, LLC	Investment services	ADM	2,752.98
International Assoc. of Plumbing	Training	PW	100.00
J&S Contractors Supply Co.	Street signs	PW	7,080.62
John Deere Financial	Repair parts	PW	483.48
Johnstown BBQ Day Committee	BBQ Days	ADM	10,000.00
Johnstown Breeze	Publication costs	ADM	1,996.80
Johnstown-Milliken	Chamber partnership	ADM	3,000.00
JTF LLLP	Tax shareback	ADM	24,824.31
Kinsco, LLC	Uniforms	PD	662.34
Lance Graphics	Office supplies	ADM	880.00
Larimer County Sales Tax Administrator	Larimer County use taxes	ADM	29,002.92
Larimer Humane Society	Professional services	PD	150.00
Law Office of Avi Rocklin LLC	Legal services	ADM	31,219.50
Lazar, Michael	Municipal Court	ADM	1,312.50
Little Thompson Water District	Water	PW	9,226.24
Lowe's	Supplies	PW	415.74
Mares Auto Inc.	Vehicle repair	PD	428.00
Mariposa	Plant maintenance	ADM	170.00
Mary Ann Stroub	Building permit refund	ADM	50.00
Milliken Johnstown Electric	Repair	PW	289.48
Mountain States Pipe & Supply	Supplies	PW	15,927.35

Town of Johnstown  
List of Bills - April 8, 2019 to May 12, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
Nalco Company LLC	Chemicals	PW	5,281.68
Napa Auto Parts, Inc	Supplies	ALL	1,177.62
National Tactical Officers Assoc.	Training	PD	183.00
Newco Inc	Supplies	PW	299.58
Newman	Street signs	PW	286.91
NOCO Drug Testing LLC	Drug testing	PD	165.00
NOCO Engineering Company	Engineering services	PW	12,151.74
Office Depot	Office supplies	ALL	682.09
Office Scapes	Office supplies	ADM	764.00
Perkins+Will, Inc.	Johnstown Rec Center	ADM	36,712.00
Pinnacol Assurance	Worker's compensation	ADM	16,877.49
Pitney Bowes Global	Postage meter	ADM	98.55
Pocket Press, Inc	Supplies	PD	197.78
PoliceOne.com	Taser training	PD	495.00
Poudre Valley REA	Utilities	ALL	10,325.10
ProCode Inc.	Building inspection services	INSP	21,000.00
Quill	Office supplies	PD	242.79
Reif & Hunsaker PC	Legal services	ADM	1,592.50
RG and Associates, LLC	Planning services	ADM	14,368.75
Rhinehart Oil Co., Inc.	Fuel	ALL	9,200.73
Rock Soft Chenille & Embroider	Uniforms	PW	750.03
Rodriguez, Jose	Deposit refund	ADM	155.00
Royal-T	Professional service	PW	1,018.00
Security Central, Inc	Wastewater Security Service	PW	213.00
Simplastics	Supplies	PD	316.81
Southwest Direct, Inc.	Utility bill printing	ADM	3,411.93
SupplyWorks	Office/Cleaning supplies	ALL	1,542.68
Symbol Arts	Supplies	PD	642.75
TDS	Internet	All	949.36
Tender Care Holdings, LLC	Refund project deposit	ADM	8,089.76
The Gateway at 2534	Refund sewer overcharges	ADM	8,332.50
The Hardware Shop Inc	Safety inspection - lift	PW	360.00
Town of Johnstown	Petty cash	ADM	258.50
Traffic Signal Controls Inc	Supplies	PW	254.24
Trugreen Chemlawn	Lawn service	PW	1,050.00
UC Health	Felony blood draw	PD	589.48
UE Compression	Repairs	PW	3,157.30
United Power	Utilities	PW	749.10
Upstate Colorado Economic Dev	Membership investment	ADM	6,000.00
USA Bluebook	Supplies	PW	609.65
Utility Notification Center	Locates	PW	1,610.28
Various Construction Companies	Hydrant meter deposit refunds	PW	5,689.87
Various Residents	Community Center dep. refunds	ADM	1,400.00
Various Residents	Utility & deposit refunds	ADM	1,529.44
Vector Disease Control	Mosquito spraying	PW	6,445.00
Veris Environmental, LLC	Professional service	PW	1,357.39

Town of Johnstown  
List of Bills - April 8, 2019 to May 12, 2019

<u>Vendor</u>	<u>Description</u>	<u>Dept.</u>	<u>Amount</u>
Verizon Wireless	Cell phones	ALL	4,535.97
Waste Management	Trash service	PW	116,071.86
Weld County Clerk & Recorder	Recording fees	ADM	61.00
Weld County Dept of Public Health	Water/Wastewater testing	PW	2,404.50
Weld County Detention Center	Jail services	PD	54.93
Windstream	Phone services	ALL	1,859.45
Winters, Hellerich & Hughes	Prosecuting Attorney services	ADM	2,295.00
Workwell Occupational Medicine	Employment drug screen	ADM	78.50
WR Investment, LLC	Infrastructure cost reimb.	ADM	32,200.00
Xcel Energy	Utilities	ALL	85,831.55
Xylem Water Solutions USA	Saturator & supplies	PW	56,570.78
Yost Cleaning	Cleaning service	ALL	4,438.00
			<hr/> 4,071,705.62

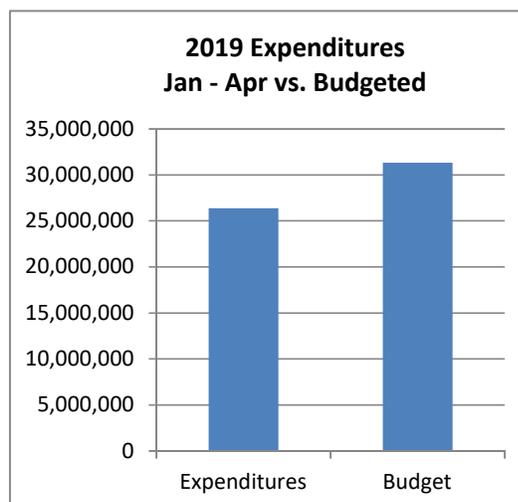
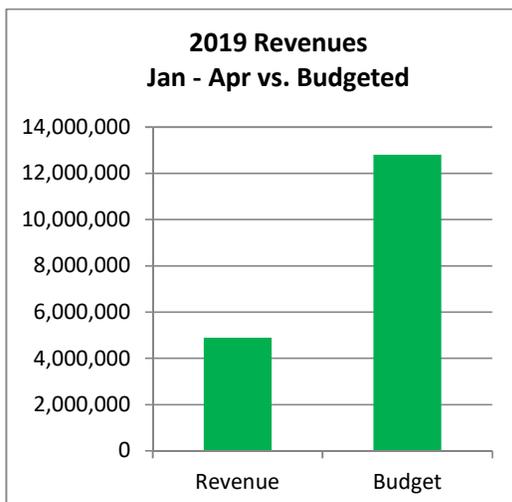
# **April Financial Statements**

Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - General Fund  
Period Ending April 30, 2019  
Unaudited

<b>General Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	46,372,234	46,372,234	
<b>Revenues:</b>			
Taxes & Fees	4,062,240	10,722,500	37.9%
Licenses & Permits	191,218	499,500	38.3%
Fines & Forfeitures	60,071	143,600	41.8%
Earnings on Investment	149,803	75,000	199.7%
Miscellaneous Revenue	(86,624)	53,000	-163.4%
<b>Total Operating Revenues</b>	<b>4,906,250</b>	<b>12,806,000</b>	<b>38.3%</b>
<b>Expenditures:</b>			
Legislative	8,776	78,900	11.1%
Judicial	12,358	51,100	24.2%
Elections	15	19,300	0.1%
Administration	182,179	493,300	36.9%
Planning & Zoning	85,400	242,900	35.2%
Police	822,587	2,662,900	30.9%
Inspections	55,989	189,000	29.6%
Streets	444,266	1,549,900	28.7%
Cemetery	3,181	42,900	7.4%
Animal Control	4,880	93,400	5.2%
Senior Coordinator	26,849	76,400	35.1%
Parks	7,283	64,400	11.3%
Library	196,875	472,500	41.7%
Contingent	54,609	468,700	11.7%
Transfers Out	24,485,976	24,846,000	98.6%
<b>Total Expenditures</b>	<b>26,391,223</b>	<b>31,351,600</b>	<b>84.2%</b>
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>(21,484,972)</b>	<b>(18,545,600)</b>	
<b>Ending Fund Balance*</b>	<b>24,887,262</b>	<b>27,826,634</b>	

\* - Unaudited

33% of the fiscal year has elapsed

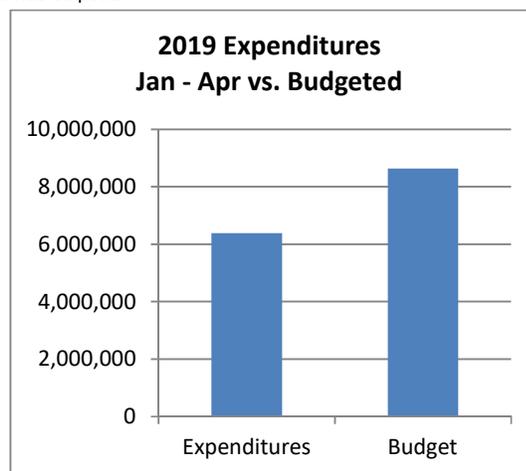
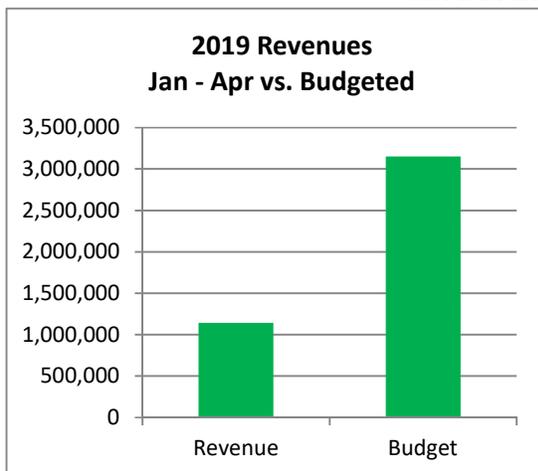


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Water Fund  
Period Ending April 30, 2019  
Unaudited

<b>Water Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Cash Balance*	23,276,463	23,276,463	
<b>Revenues:</b>			
Charges for Services	<u>519,344</u>	<u>2,745,000</u>	18.9%
Total Operating Revenues	<u>519,344</u>	<u>2,745,000</u>	18.9%
<b>Expenses:</b>			
Administration	103,363	441,100	23.4%
Operations	429,360	2,343,800	18.3%
Capital Outlay	5,854,826	5,854,826	
Depreciation	-	-	
Transfers Out	-	-	
Total Operating Expenses	<u>6,387,549</u>	<u>8,639,726</u>	73.9%
Operating Income (Loss)	<u>(5,868,205)</u>	<u>(5,894,726)</u>	
<b>Non-Operating Revenues (Expenses)</b>			
Tap Fees	116,052	-	
Capital Investment Fees	184,200	-	
Misc. Revenues	182,074	305,000	59.7%
Interest Expense	<u>140,805</u>	<u>100,000</u>	140.8%
Total Non-Operating Revenues (Expenses)	<u>623,131</u>	<u>405,000</u>	153.9%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenses</b>	<u><b>(5,245,074)</b></u>	<u><b>(5,489,726)</b></u>	
<b>Ending Cash Balance*</b>	<u><b>18,031,389</b></u>	<u><b>17,786,737</b></u>	

\* - Unaudited

33% of the fiscal year has elapsed

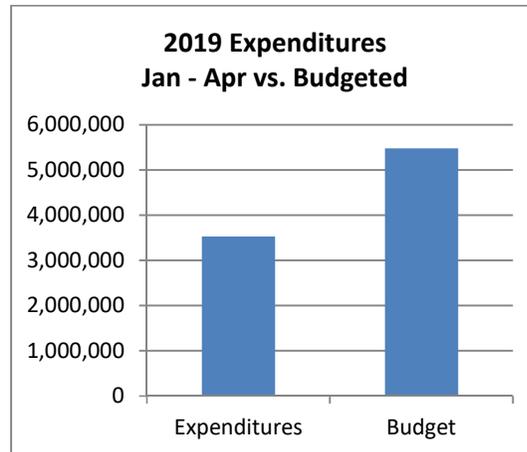
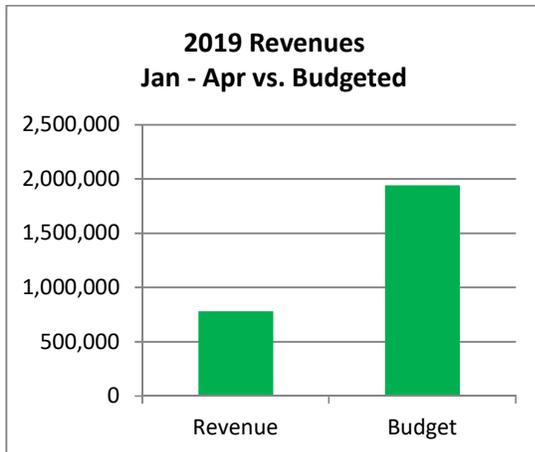


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Sewer Fund  
Period Ending April 30, 2019  
Unaudited

<b>Sewer Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Cash Balance*	10,901,997	10,901,997	
<b>Revenues:</b>			
Charges for Services	659,184	1,880,000	35.1%
Miscellaneous Revenue	-	-	
	<hr/>	<hr/>	
Total Operating Revenues	659,184	1,880,000	35.1%
<b>Expenses:</b>			
Administration	87,319	291,000	30.0%
Operations	298,168	2,043,000	14.6%
Capital Outlay	3,145,174	3,145,174	
Depreciation	-	-	
	<hr/>	<hr/>	
Total Operating Expenses	3,530,661	5,479,174	64.4%
Operating Income (Loss)	<hr/> <u>(2,871,477)</u>	<hr/> <u>(3,599,174)</u>	
<b>Non-Operating Revenues (Expenses)</b>			
Capital Improvement Fees	87,950	-	
Misc. Revenues	7,716	12,500	61.7%
Interest Expense	27,183	50,000	54.4%
	<hr/>	<hr/>	
Total Non-Operating Revenues (Expenses)	122,849	62,500	196.6%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenses</b>	<hr/> <u><b>(2,748,628)</b></u>	<hr/> <u><b>(3,536,674)</b></u>	
<b>Ending Cash Balance*</b>	<hr/> <u><b>8,153,369</b></u>	<hr/> <u><b>7,365,323</b></u>	

\* - Unaudited

33% of the fiscal year has elapsed

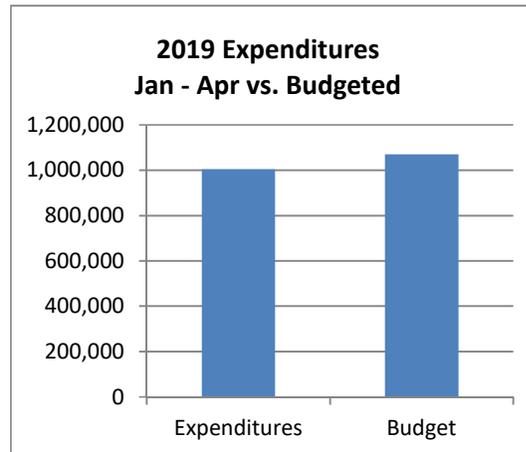
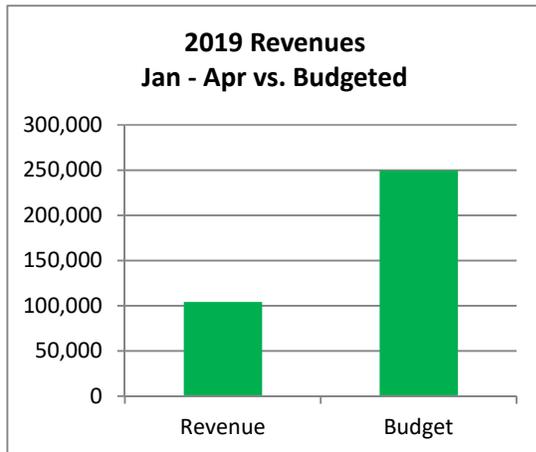


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Conservation Trust Fund  
Period Ending April 30, 2019  
Unaudited

<b>Conservation Trust Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	2,651,796	2,651,796	
<b>Revenues:</b>			
Taxes & Fees	68,705	157,500	43.6%
Intergovernmental	29,519	72,000	41.0%
Earnings on Investment	5,606	15,000	37.4%
Miscellaneous	198	5,000	4.0%
Total Operating Revenues	<u>104,028</u>	<u>249,500</u>	41.7%
<b>Expenditures:</b>			
Operations	3,783	70,000	5.4%
Capital Outlay	<u>1,000,000</u>	<u>1,000,000</u>	100.0%
Total Expenditures	<u>1,003,783</u>	<u>1,070,000</u>	93.8%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u>(899,755)</u>	<u>(820,500)</u>	
<b>Ending Fund Balance*</b>	<u><u>1,752,041</u></u>	<u><u>1,831,296</u></u>	

\* - Unaudited

33% of the fiscal year has elapsed

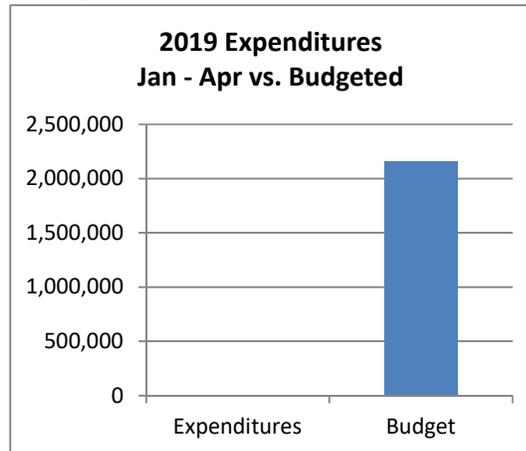
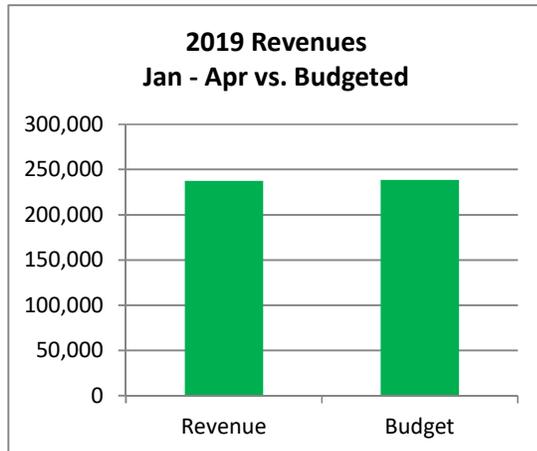


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Contingent Fund  
Period Ending April 30, 2019  
Unaudited

Contingent Fund	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	1,964,383	1,964,383	
<b>Revenues:</b>			
Earnings on Investment	12,369	13,500	91.6%
Transfers In	225,000	225,000	
Total Operating Revenues	<u>237,369</u>	<u>238,500</u>	99.5%
<b>Expenditures:</b>			
Transfers Out	-	2,161,900	0.0%
Total Expenditures	<u>-</u>	<u>2,161,900</u>	0.0%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b><u>237,369</u></b>	<b><u>(1,923,400)</u></b>	
<b>Ending Fund Balance*</b>	<b><u><u>2,201,752</u></u></b>	<b><u><u>40,983</u></u></b>	

\* - Unaudited

33% of the fiscal year has elapsed

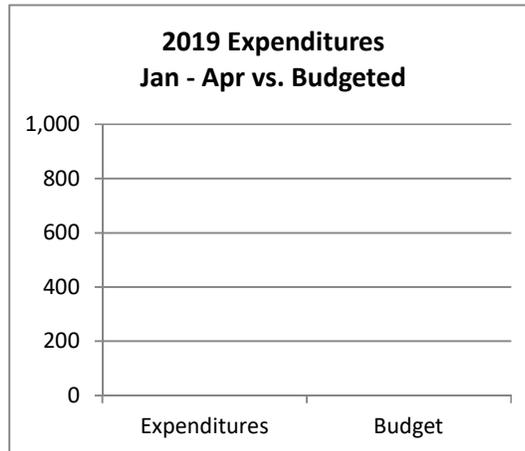
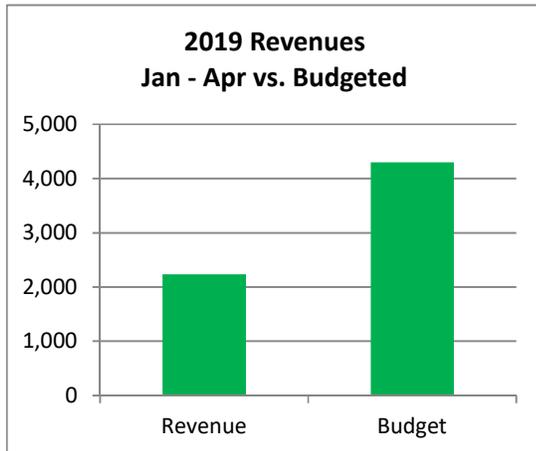


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Cemetery Fund  
Period Ending April 30, 2019  
Unaudited

<b>Cemetery Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	120,895	120,895	
<b>Revenues:</b>			
Miscellaneous Revenue	1,287	3,000	42.9%
Earnings on Investment	947	1,300	72.9%
Total Operating Revenues	<u>2,234</u>	<u>4,300</u>	52.0%
<b>Expenditures:</b>			
Operations & Maintenance	-	-	
Capital Outlay	-	-	
Transfers Out	-	-	
Total Expenditures	<u>-</u>	<u>-</u>	
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b><u>2,234</u></b>	<b><u>4,300</u></b>	
<b>Ending Fund Balance*</b>	<b><u>123,129</u></b>	<b><u>125,195</u></b>	

\* - Unaudited

33% of the fiscal year has elapsed

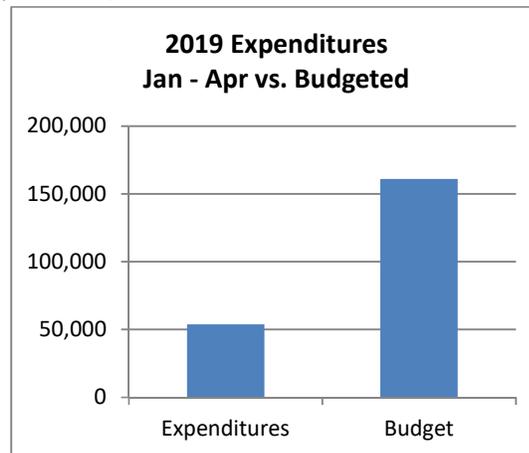
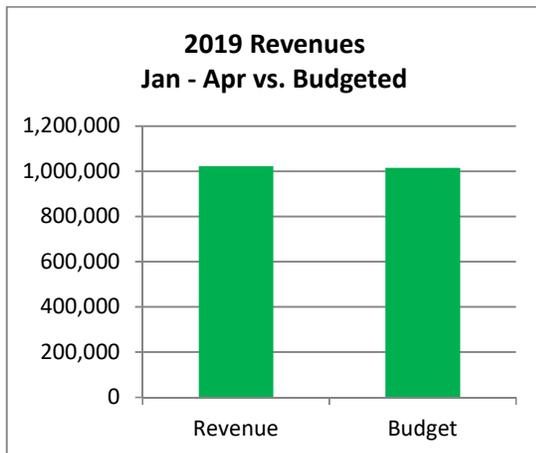


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Equipment Replacement Fund  
Period Ending April 30, 2019  
Unaudited

Equipment Replacement Fund	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	3,770,626	3,770,626	
<b>Revenues:</b>			
Earnings on Investment	22,899	15,000	152.7%
Transfers In	1,000,000	1,000,000	
Total Operating Revenues	<u>1,022,899</u>	<u>1,015,000</u>	100.8%
<b>Expenditures:</b>			
Capital	<u>53,832</u>	<u>161,000</u>	33.4%
Total Expenditures	<u>53,832</u>	<u>161,000</u>	33.4%
<b>Excess (Deficiency) of Revenues Over Expenditures</b>	<b><u>969,067</u></b>	<b><u>854,000</u></b>	
<b>Ending Fund Balance*</b>	<b><u><u>4,739,693</u></u></b>	<b><u><u>4,624,626</u></u></b>	

\* - Unaudited

33% of the fiscal year has elapsed

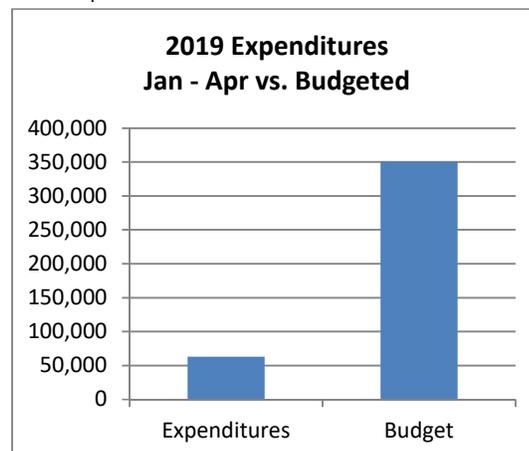
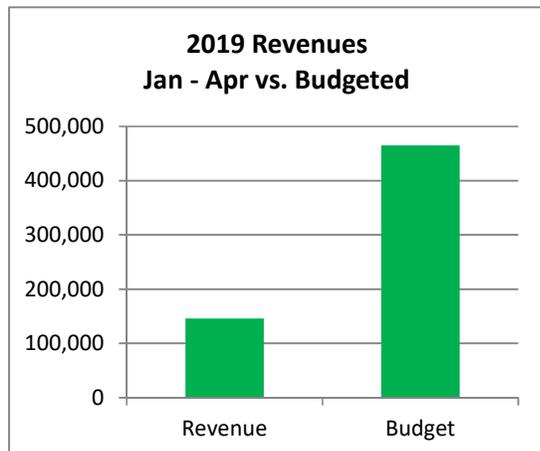


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Drainage Fund  
Period Ending April 30, 2019  
Unaudited

<b>Drainage Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Cash Balance*	2,975,713	2,975,713	
<b>Revenues:</b>			
Charges for Services	<u>145,934</u>	<u>430,000</u>	33.9%
Total Operating Revenues	<u>145,934</u>	<u>430,000</u>	33.9%
<b>Expenses:</b>			
Administration	28,754	100,600	28.6%
Operations	34,273	249,900	13.7%
Capital Improvements	-	-	
Transfer Out	<u>-</u>	<u>-</u>	
Total Operating Expenses	<u>63,027</u>	<u>350,500</u>	18.0%
Operating Income (Loss)	<u>82,907</u>	<u>79,500</u>	
<b>Non-Operating Revenues (Expenses)</b>			
Capital Revenues	-	-	
Misc. Revenues	-	-	
Interest Expense	<u>19,246</u>	<u>35,000</u>	55.0%
Total Non-Operating Revenues (Expenses)	<u>19,246</u>	<u>35,000</u>	55.0%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenses</b>	<u><b>102,153</b></u>	<u><b>114,500</b></u>	
<b>Ending Cash Balance*</b>	<u><b>3,077,866</b></u>	<u><b>3,090,213</b></u>	

\* - Unaudited

33% of the fiscal year has elapsed

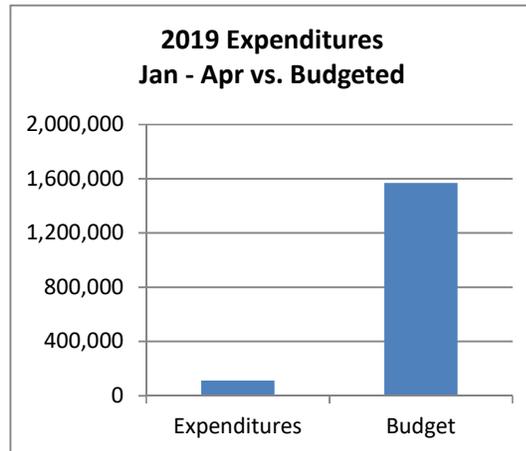
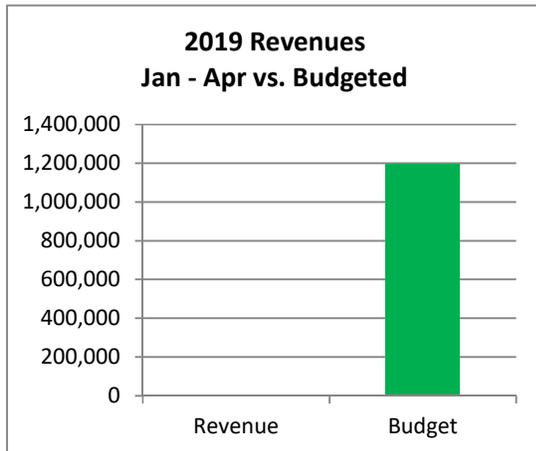


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Library Fund  
Period Ending April 30, 2019  
Unaudited

Library Fund	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	1,872,089	1,872,089	
<b>Revenues:</b>			
Earnings on Investment	-	1,184,900	0.0%
Miscellaneous Revenue	-	9,000	0.0%
Transfers In	-	3,000	0.0%
Total Operating Revenues	<u>-</u>	<u>1,196,900</u>	0.0%
<b>Expenditures:</b>			
Operations	112,387	720,000	15.6%
Capital Outlay	-	850,000	0.0%
Total Expenditures	<u>112,387</u>	<u>1,570,000</u>	7.2%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u><b>(112,387)</b></u>	<u><b>(373,100)</b></u>	
<b>Ending Fund Balance*</b>	<u><b>1,759,702</b></u>	<u><b>1,498,989</b></u>	

\* - Unaudited

33% of the fiscal year has elapsed

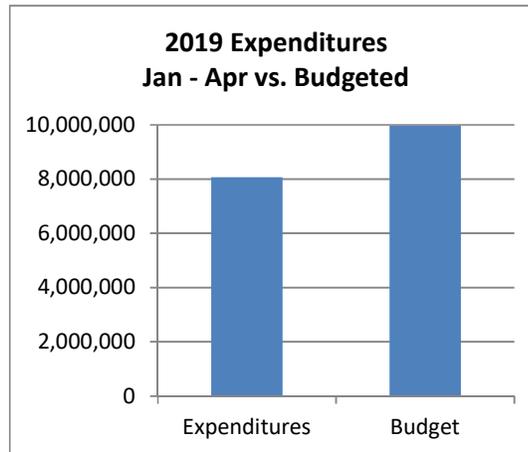
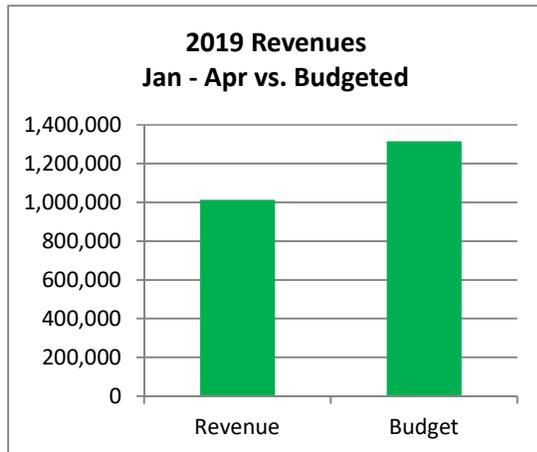


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Capital Projects Fund  
Period Ending April 30, 2019  
Unaudited

<b>Capital Projects Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	19,867,294	19,867,294	
<b>Revenues:</b>			
Taxes and Fees	910,155	1,200,000	75.8%
Miscellaneous Revenue	-	15,000	0.0%
Interest	102,715	100,000	102.7%
<i>Transfers In</i>	-	-	
Total Operating Revenues	<u>1,012,871</u>	<u>1,315,000</u>	77.0%
<b>Expenditures:</b>			
Capital Outlay	71,083	1,973,500	0.0%
<i>Transfers Out</i>	<u>8,000,000</u>	<u>8,000,000</u>	0.0%
Total Expenditures	<u>8,071,083</u>	<u>9,973,500</u>	80.9%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u><b>(7,058,212)</b></u>	<u><b>(8,658,500)</b></u>	
<b>Ending Fund Balance*</b>	<u><b>12,809,082</b></u>	<u><b>11,208,794</b></u>	

\* - Unaudited

33% of the fiscal year has elapsed

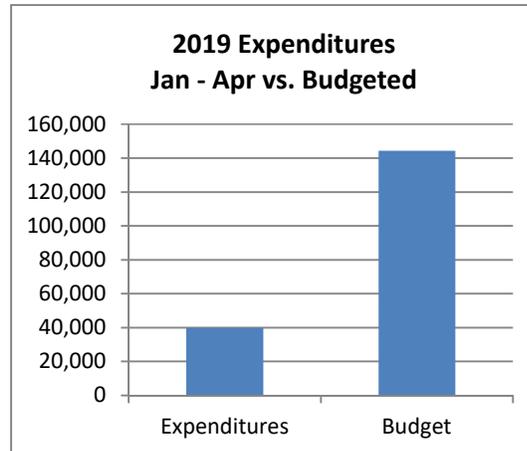
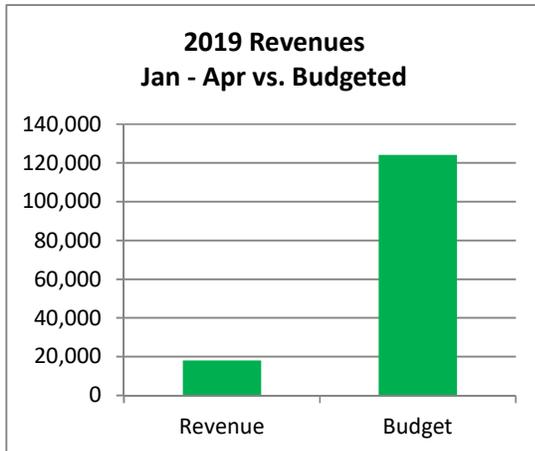


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Johnson's Corner Improvement Fund  
Period Ending April 30, 2019  
Unaudited

<b>Johnson's Corner Improvement Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	19,275	19,275	
<b>Revenues:</b>			
Taxes & Fees	18,028	124,000	14.5%
Earnings on Investment	8	100	8.0%
Total Operating Revenues	<u>18,036</u>	<u>124,100</u>	14.5%
<b>Expenditures:</b>			
Capital Outlay	<u>39,824</u>	<u>144,300</u>	27.6%
Total Expenditures	<u>39,824</u>	<u>144,300</u>	27.6%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u>(21,788)</u>	<u>(20,200)</u>	
<b>Ending Fund Balance*</b>	<u>(2,513)</u>	<u>(925)</u>	

\* - Unaudited

33% of the fiscal year has elapsed

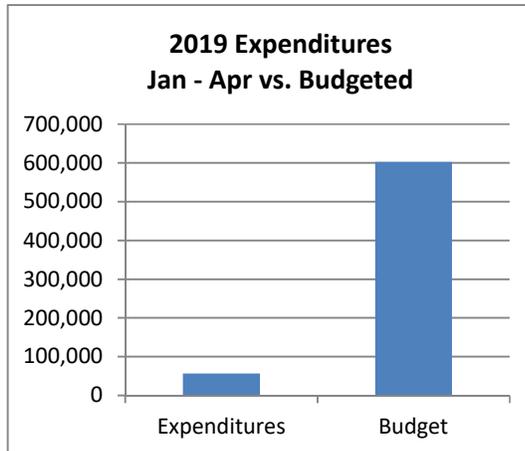
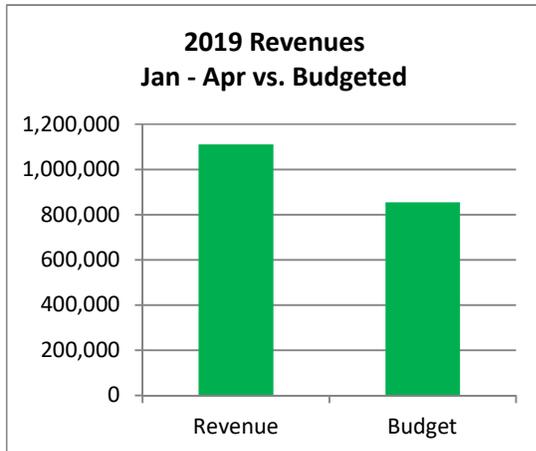


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Impact Fund  
Period Ending April 30, 2019  
Unaudited

<b>Impact Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	18,435,604	18,435,604	
<b>Revenues:</b>			
Taxes & Fees	1,009,603	855,000	118.1%
Earnings on Investment	101,609	100,000	101.6%
Total Operating Revenues	<u>1,111,212</u>	<u>955,000</u>	116.4%
<b>Expenditures:</b>			
Capital Outlay	<u>56,253</u>	<u>602,839</u>	9.3%
Total Expenditures	<u>56,253</u>	<u>602,839</u>	9.3%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b><u>1,054,959</u></b>	<b><u>352,161</u></b>	
<b>Ending Fund Balance*</b>	<b><u>19,490,563</u></b>	<b><u>18,787,765</u></b>	

\* - Unaudited

33% of the fiscal year has elapsed

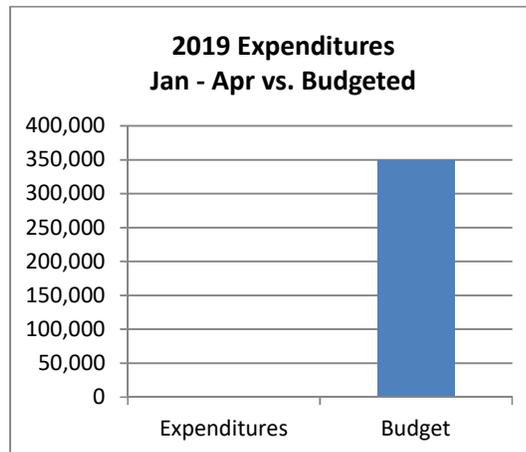
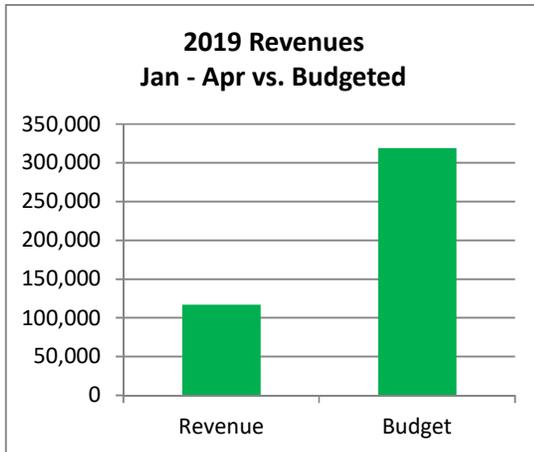


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Street Maintenance Fund  
Period Ending April 30, 2019  
Unaudited

	2019 Actuals Jan - Apr	2019 Adopted Budget	%
<b>Street Maintenance Fund</b>			Complete
Beginning Fund Balance*	300,231	300,231	
<b>Revenues:</b>			
Taxes & Fees	116,518	319,000	36.5%
Earnings on Investment	581	100	580.5%
Total Operating Revenues	<u>117,099</u>	<u>319,100</u>	36.7%
<b>Expenditures:</b>			
Operations & Maintenance	<u>-</u>	<u>350,000</u>	0.0%
Total Expenditures	<u>-</u>	<u>350,000</u>	0.0%
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<u><b>117,099</b></u>	<u><b>(30,900)</b></u>	
<b>Ending Fund Balance*</b>	<u><b>417,330</b></u>	<u><b>269,331</b></u>	

\* - Unaudited

33% of the fiscal year has elapsed

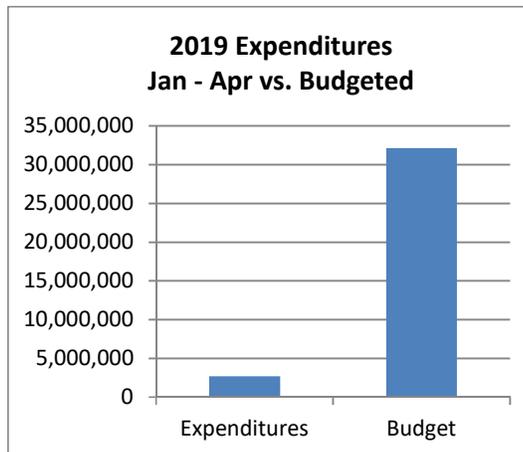
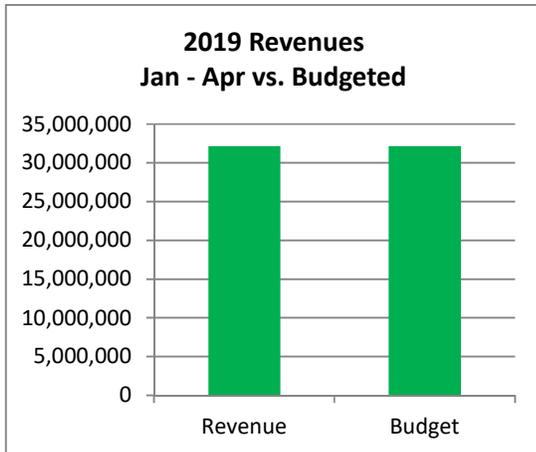


Town of Johnstown, Colorado  
Statement of Revenues, Expenditures, and Changes in  
Fund Balances - Recreation Center Fund  
Period Ending April 30, 2019  
Unaudited

<b>Recreation Center Fund</b>	2019 Actuals Jan - Apr	2019 Adopted Budget	%
			Complete
Beginning Fund Balance*	0	0	
<b>Revenues:</b>			
Transfers In	32,150,000	32,150,000	100.0%
Earnings on Investment	-	-	
<b>Total Operating Revenues</b>	<b>32,150,000</b>	<b>32,150,000</b>	<b>100.0%</b>
<b>Expenditures:</b>			
Operations & Maintenance	2,673,486	32,000,000	8.4%
<b>Total Expenditures</b>	<b>2,673,486</b>	<b>32,000,000</b>	<b>8.4%</b>
<b>Excess (Deficiency) of Revenues and Other Sources over Expenditures</b>	<b>29,476,514</b>	<b>150,000</b>	
<b>Ending Fund Balance*</b>	<b>29,476,514</b>	<b>150,000</b>	

\* - Unaudited

33% of the fiscal year has elapsed



# **Intergovernmental Agreement**

**INTERGOVERNMENTAL AGREEMENT**  
**FOR CONTRIBUTION TO ROADWAY IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2019, by and between the Town of Johnstown, Colorado, a municipal corporation of the State of Colorado, whose address is 450 S. Parish Avenue, Johnstown, Colorado 80534, hereinafter referred to as “JOHNSTOWN” and the County of Larimer, State of Colorado, by and through the Board of County Commissioners of the County of Larimer, Colorado whose address is 200 W. Oak Street Fort Collins, CO 80521, hereinafter referred to as “LARIMER COUNTY.”

RECITALS

WHEREAS, LARIMER COUNTY and JOHNSTOWN, as well as Weld County, share operational maintenance and jurisdiction of portions of Weld County Road 50 (“WCR 50”) from Weld County Road 13 (South County Line Road) to the I-25 Frontage Road, also known, in part, as East Larimer County Road 14 (the “ROADWAY”), and

WHEREAS, JOHNSTOWN desires to pave the ROADWAY (the “PROJECT”), and

WHEREAS, JOHNSTOWN is seeking a Department of Local Affairs Energy and Mineral Impacts Assistance Fund Grant (“GRANT”) to assist in the payment of the cost of the PROJECT, and

WHEREAS, JOHNSTOWN’S desire to undertake the PROJECT is contingent on the award of the GRANT, and

WHEREAS, LARIMER COUNTY desires to contribute to the cost of the PROJECT in the amount of \$200,000.00 on the condition that, upon completion, JOHNSTOWN annex the ROADWAY, and

WHEREAS, LARIMER COUNTY agrees to said payment because of the benefit of the PROJECT to transportation in the area, and

WHEREAS, JOHNSTOWN desires to accept LARIMER COUNTY’S financial contribution and agrees, upon completion of the PROJECT, to annex the ROADWAY, and

WHEREAS, both parties to this Agreement are authorized to enter into said Agreement by C.R.S. Sec. 29-1-203 and the Colorado Constitution Article XIV, Sec. 18(2), for the purpose of achieving greater efficiencies for the provision of services to the public.

AGREEMENT

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties hereto agree as follows:

1. RECITALS: The Recitals are incorporated into the Agreement as if fully set forth herein.
2. PROJECT: Subject to the terms contained in this Agreement, JOHNSTOWN agrees to undertake and complete the PROJECT.
3. TERM: The term of this Agreement shall be from the date first written above to and until such time as LARIMER COUNTY makes the final payment described in Paragraph 4 below and JOHNSTOWN annexes the ROADWAY.
4. CONTRIBUTION BY LARIMER COUNTY: LARIMER COUNTY agrees to pay to JOHNSTOWN the sum of \$200,000.00 as a contribution to the PROJECT. On or before March 1 of each of the next three calendar years, commencing in 2020, and upon receipt of an invoice from JOHNSTOWN, LARIMER COUNTY agrees to pay \$66,667.00 to JOHNSTOWN. To effectuate the foregoing, subject to any constitutional or legal restraints, LARIMER COUNTY agrees to budget and appropriate such amount for the calendar years 2020, 2021 and 2022.
5. ANNEXATION OF ROADWAY BY JOHNSTOWN: Upon completion of the PROJECT, JOHNSTOWN agrees to annex the ROADWAY.
6. ENTIRE AGREEMENT: This writing, together with the exhibits attached hereto, constitutes the entire agreement between the parties hereto with respect to the subject matter herein, and shall be binding upon said parties, their officers, employees, agents and assigns and shall inure to the benefit of the respective survivors, heirs, personal representatives, successors and assigns of said parties.
7. NO THIRD-PARTY BENEFICIARY ENFORCEMENT: It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in the Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be incidental beneficiary only.
8. SEVERABILITY: If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable, this Agreement shall be construed and enforced without such provision to the extent that this Agreement is then capable of execution within the original intent of the parties hereto.
9. MODIFICATION AND BREACH: No modification, amendment, notation, renewal, or other alteration of or to this Agreement shall be deemed valid or of any force or effect whatsoever, unless mutually agreed upon in writing by the undersigned parties. No breach of any term, provision, or clause of this Agreement shall be deemed waived or excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party hereto, or waiver of, a breach by any other party, whether express or implied, shall not constitute a consent to, waiver of, or excuse for any

other different or subsequent breach.

10. NOTICES: All notices required herein shall be mailed via First Class Mail to the parties' representatives at the addresses set forth below:

JOHNSTOWN:  
Matt LeCerf, Town Manager  
450 S. Parish Avenue  
Johnstown, CO 80650

LARIMER COUNTY:  
Linda Hoffman, County Manager  
202 W. Oak Street  
Fort Collins, CO 80521

11. NO WAIVER OF GOVERNMENTAL IMMUNITY: No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

12. CONDITION PRECEDENT: Notwithstanding the foregoing, this Agreement is contingent upon JOHNSTOWN being awarded the GRANT. If the GRANT is not awarded in the 2019 calendar year, JOHNSTOWN shall be entitled, in its discretion, to re-apply for the GRANT during the 2020 calendar year. If the GRANT is awarded in 2020, LARIMER COUNTY agrees that this Agreement shall remain valid and operative and the timeline for payment, budgeting and appropriating set forth in Paragraph 4 shall move forward by one calendar year, with payments thus due during the 2021, 2022 and 2023 calendar years.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate of the day and year first hereinabove written.

**ATTEST:**

**TOWN OF JOHNSTOWN, COLORADO**

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

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

**ATTEST:**  
**LARIMER COUNTY Clerk to the Board**

**BOARD OF COUNTY COMMISSIONERS**  
**LARIMER COUNTY, COLORADO**

By: \_\_\_\_\_  
Clerk to the Board

By: \_\_\_\_\_  
Tom Donnelly, Chairman

**AGENDA ITEM 7**

**TOWN MANAGER**

**REPORT**



# TOWN OF JOHNSTOWN

## MEMORANDUM

---

TO: Honorable Mayor and Town Council Members

FROM: Matt LeCerf, Town Manager

DATE: May 20, 2019

CC: Town Staff  
Local Media

SUBJECT: Departmental Report

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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):

- 05/20/2019 – Regular Town Council Meeting
  - 05/28/2019 – Town Work Session – Retreat
  - 06/03/2019 – Regular Town Council Meeting
  - 06/10/2019 – Work Session (none planned)
- 

### **Police Department**

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

- *Weapon Certification* – Officer Blackburn completed both his rifle armorer certification and shotgun instructor training.
- *Other Training* – Department wide training on victim rights and recertification on taser.  
Victim Rights
  - Officers learned about the victim’s rights process
  - Which laws apply to the victim’s rights process
  - How officer can better utilize victims’ advocatesRed Side completed training on Oleoresin Capsicum (OC (Mace)) and Baton.
- *TIPS Training* – Johnstown PD hosted a Standards for Sellers and Servers of Alcohol Beverages class for our businesses that hold liquor licenses. Colorado Department of Liquor and Tobacco taught the class. Johnstown has twenty-one liquor license establishments. Representatives from six establishments attended the training. Thanks to Hays Market, Johnstown Liquor, Candlelight Dinner Playhouse, Veteran Brothers Brewing, Little House Chinese, and JM Post for sending representatives.

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

**The Community That Cares**

- *Drug Takeback Program* – Sergeant Dickerson and Officer Otero took part in the National Prescription Drug Takeback program. They took in 127.4 pounds of prescription drugs.
- *Mobile Terminal Data Technology* - Officer Perry and Lieutenant Oglesby met with Panasonic to evaluate our MTD's and products that are available.
- *Sex Offender Checks* – JPD completed sex offender address verification checks on 23 registered sex offenders. One offender was found to not be in compliance and a warrant was issued for his arrest.
- *Community Basketball Game* – Lieutenant Oglesby, Officer Kehr, Detective Slocum, and Officer Cygan played in the unified basketball game with special needs students at RHS, marking the end of Kindness Week at RHS. Officer Blackburn and Officer Zoss filled in as coaches.

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

- *Northern Colorado Children's Museum* – The Town Manager participated in a discussion with representatives evaluating the need for a Children's Museum located in Northern Colorado. This would provide a great cultural amenity to the region should their overall findings provide viability in the project and campaign financing become a reality.
- *Little Thompson River Trail Grant* – Staff met with the Jake Schuch, CDOT Project Manager regarding a grant the Town has received through NFRMPO. The grant is in the amount of \$250,000 and requires a minimum of a 20% match. The application submitted is to construct an approximate 5,000 linear foot trail parallel to the Little Thompson near the recreation center. Staff plans to begin the initial paperwork this year and begin design and construction next year. The funds are federal dollars and require significant paperwork and compliance compared to other grants.
- *Community Tour* – We will continue our community facility tours on June 7<sup>th</sup>. The visit this time will be at the Water Treatment Plant to learn about how we receive and treat our potable water for the community. This is a great opportunity to understand how this critical resource gets to our faucet!
- *Sewer Collection Evaluation* – Staff continues to evaluate the sewer collection infrastructure in our system. We anticipate having preliminary findings presented to the Council in June, in what will more than likely be at a scheduled work session. A firm date has yet to be determined.
- *Financial Dashboard* – Staff is in the process of investigating the installation of an online dashboard that would allow Department Heads more timely and detailed information regarding their accounts and their financial activities.
- *2018 Audit* – Staff received the financial records from the Library and is in the process of reviewing those records and getting them input into our system before the second phase of the audit begins on May 28<sup>th</sup>.
- *Utility Account Audit* – Staff is in the process of arranging for an internal utility account audit to ensure that accounts and services are thoroughly reviewed on a regular basis.

**AGENDA ITEM 10A**

**AWARD CONTRACT TO  
LOVELAND BARRICADE  
(2019 Pavement Marking Project)**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** May 20, 2019

**ITEM NUMBER:** 10A

**SUBJECT:** Town of Johnstown 2019 Pavement Marking Bid Award

**ACTION PROPOSED:** Approve the Bid Award to Loveland Barricade

**ATTACHMENTS:** 1. Bid from Loveland Barricade

**PRESENTED BY:** Marco Carani, Director of Public Works

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### **AGENDA ITEM DESCRIPTION:**

Enclosed for your review and consideration is a Bid award request for the 2019 Pavement Marking Project between the Town of Johnstown and Loveland Barricade.

On April 23, 2019 we contacted the City of Loveland to be able to piggy-back a price for Pavement Marking as we have done in the past. We are following Section 11 of the Town of Johnstown purchasing policy (Exemptions from Public bidding) which states the following:

*The Town requires staff to solicit bids for any purchase of goods over \$50,000, per engagement or annually. This requirement may be waived by the Town Manager for ongoing service contracts where the past experience related directly to the Town is a compelling reason to continue a service contract from year to year. Selection of vendors, contractors or consultants may be based on past experience with the Town, knowledge of the Town and region, philosophy of the nature of the job, availability of time, quality of product, quality of service and material, maintenance, warranties, price and other such criteria as deemed appropriate for a particular public project. The Town recognizes the following exemptions to the bid guidelines set forth herein:*

*c. Use of State Bids or Existing Contracts. This Policy shall not apply if the purchasing department is able to piggy-back on a State Bid Award, GSA bid award, or other bid award by a local government entity where a public bid process has taken place on the conditions that appropriate verification of the bid is provided, the cost does not exceed \$100,000, and funds are available in the budget.*

The 2019 Pavement Marking Program is proposed to include the following sections of Town owned roadway:

### Pavement Marking Installation

- Ronald Reagan Blvd. from Frontage Road to LCR3
- Telep Ave. from 1<sup>st</sup> St. and WCR50
- Thompson Pkwy. from Hwy. 34 to south of Railroad tracks

- Charlotte from Angove to Columbine
- LCR 16 (Freedom Pkwy) from East Frontage Road to WCR 13
- WCR42 from WCR17 west to Railroad tracks
- CR48 west of I-25 Town limits to Town Limits
- Larimer Pkwy. from Hwy. 34 to Ronald Reagan
- Market Place Dr. from Frontage Road to the gravel road east of Dinner Theatre
- Brian Blvd. from Frontage Road east to Arrow Wood Lane
- WCR 13 from North County Boundary to CR46
- WCR 13 from Hwy. 34 north ¼ mile by bridge

For FY 2019, \$350,000 was budgeted in the Street Maintenance Fund. On April 15, \$40,000 was moved by approval of Town Council for additional street overlay work, leaving a fund balance of \$310,000 for additional maintenance type road work. The bid price for this project is \$90,450, leaving a balance of \$219,550 in the Street Maintenance Fund.

**LEGAL ADVICE:**

The agreement was reviewed by the Town Attorney

**FINANCIAL ADVICE:**

\$350,000 was budgeted for 2019, for the street maintenance project and funds are available to spend \$90,450 for the 2019 Pavement Marking Project

**RECOMMENDED ACTION:**

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to award the bid between the Town of Johnstown and Loveland Barricade for the 2019 Town of Johnstown Pavement Marking Project in the amount not to exceed \$90,450.

**For Denial:**

I move that we deny the bid between the Town of Johnstown and Loveland Barricade for the 2019 Town of Johnstown Pavement Marking Project in the amount of \$90,450.

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**Reviewed and Approved for Presentation:**

\_\_\_\_\_  
Town Manager

# **Contract**

**TOWN OF JOHNSTOWN, COLORADO**

**2019 PAVEMENT MARKING REPLACEMENT PROJECT**

THIS CONTRACT entered into at Johnstown, Colorado, this \_\_\_ day of \_\_\_, 2019 by and between the TOWN OF JOHNSTOWN, COLORADO, a Colorado Home Rule Municipal Corporation with address for notice at 450 S. Parish Ave. /P.O. Box 609, Johnstown, Colorado 80534 hereinafter called and referred to as the Town, and Loveland Barricade Company (Limited Liability Company) with address for notice at 2456 E 9<sup>th</sup> St, Loveland CO 80537. Herein after called and referred to as Contractor.

**WITNESSETH:**

THAT FOR AND in consideration of the premises, the payments hereinafter provided for, and the mutual covenants, promises, doings, and things hereinafter set forth, the parties hereto do now agree as follows:

1. That Town does engage the services of Contractor, and Contractor does hereby bind himself unto Town, to perform the following project to Town, to wit:

**2019 PAVEMENT MARKING REPLACEMENT PROJECT**

for a total price not to exceed Ninety Thousand Four Hundred Fifty Dollars and no/100 (\$90,450.00), which shall be paid in the following manner:

The total price shall be payable by Town unto Contractor upon Town's accounts payable cycle following approval by Town of detail invoices from Contractor. Final payment shall be paid upon final completion of the work, and acceptance by the Town, and receipt of all lien waivers, and end of period for Notice of Final Payment as published by Town Clerk.

2. That all of Contractor's performance hereunder shall be in a workmanlike manner, and shall be in conformity with the attached specifications for said project, and in accordance with time restrictions and limitations set forth:

The term "Contract documents" means and includes the following:

- (a) Contract and Attachments
- (b) Specifications
- (c) Pavement marking quote
- (d) Insurance Certificates and Insurance Requirements
- (e) Notice to Proceed
- (f) Change Order
- (g) Notice of Contractor's Settlement
- (h) Final Receipt and Guarantee

The contractor shall furnish all materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.

3. That within three (3) days of the execution of the contract, the Contractor shall have furnished the Town all of the items required of the Contractor in the Contract Documents. Upon receiving the required documents, the Town shall issue a Notice to Proceed. Contractor shall then have thirty (30) calendar days to complete the project. Failure to complete the project by the specified time shall cause Contractor to be liable to the Town for **\$200.00** each day beyond such time period to reimburse Town for its damages for

such delay, such amount being difficult to ascertain in advance, and therefore, the Parties agree to the per day damages as liquidated damages and not as a penalty.

Further, this Contract shall be construed and interpreted according to the laws of the State of Colorado and any action to interpret, construe, or enforce the same shall be maintained in the appropriate court in Weld County, Colorado.

The Contractor agrees to comply with the terms of Attachment A. which is attached hereto and incorporated herein by reference.

Executed as of the date and year as above written.

**TOWN OF JOHNSTOWN, COLORADO**

By \_\_\_\_\_  
Mayor

**ATTEST:**

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

**CONTRACTOR**  
**Loveland Barricade LLC**

By \_\_\_\_\_  
(Title)

## Attachment A

### REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS

Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this public contract for services; or
2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the Department of Labor and Employment program.

Contractor is prohibited from using either the e-verify program or the Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph 1 of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to the authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes.

**IF CONTRACTOR VIOLATES ANY OF THE AFOREMENTIONED REQUIREMENTS, THE TOWN MAY TERMINATE THE CONTRACT FOR BREACH OF CONTRACT. IF THIS CONTRACT IS SO TERMINATED, CONTRACTOR SHALL BE LIABLE FOR ACTUAL AND CONSEQUENTIAL DAMAGES TO THE TOWN OF JOHNSTOWN.**

**AGENDA ITEM 10B**

**AWARD CONTRACT TO**

**A-1 CHIP SEAL**

**(2019 Slurry Seal Project)**

## **TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** May 20, 2019

**ITEM NUMBER:** 10B

**SUBJECT:** Town of Johnstown 2019 Slurry Seal Bid Award

**ACTION PROPOSED:** Approve the Bid Award to A-1 Chip Seal

**ATTACHMENTS:**

1. Estimate
2. Contract
3. Certificate of good standing

**PRESENTED BY:** Marco Carani, Director of Public Works

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### **AGENDA ITEM DESCRIPTION:**

Enclosed for your review and consideration is a Bid award request for the 2019 Slurry Seal Project between the Town of Johnstown and A-1 Chip Seal

On April 23, 2019 we contacted the City of Loveland to be able to piggy back on their bid prices for Chip seal/Slurry seal. In years past, the Town of Johnstown has received a bid through the City of Loveland for a proposal for bids. We are following section 11 of the Town of Johnstown purchasing policy which addresses the permissive use of this method as listed below:

*The Town requires staff to solicit bids for any purchase of goods over \$50,000, per engagement or annually. This requirement may be waived by the Town Manager for ongoing service contracts where the past experience related directly to the Town is a compelling reason to continue a service contract from year to year. Selection of vendors, contractors or consultants may be based on past experience with the Town, knowledge of the Town and region, philosophy of the nature of the job, availability of time, quality of product, quality of service and material, maintenance, warranties, price and other such criteria as deemed appropriate for a particular public project. The Town recognizes the following exemptions to the bid guidelines set forth herein:*

*c. Use of State Bids or Existing Contracts. This Policy shall not apply if the purchasing department is able to piggy-back on a State Bid Award, GSA bid award, or other bid award by a local government entity where a public bid process has taken place on the conditions that appropriate verification of the bid is provided, the cost does not exceed \$100,000, and funds are available in the budget.*

While it is over the \$100,000 limit for this project, we have historically piggy backed with the City of Loveland to save on administrative costs. A-1 chip seal has been the contractor for the Town of Johnstown for many years providing quality work in our community. In the past the Town has done chip seal surfaces. This year we will be applying a slurry seal. Slurry seal has more of a liquid base compared to chip seal which has more rock. The Slurry seal application will seal the fine line cracks better than chip seal and allow for a smoother surface.

By sealing the fine cracks more effectively, we hope this prevents or minimizes the freeze-thaw cycle underneath the road surface that causes potholes. With respect to a cost comparison between the two applications, the slurry seal application will allow the Town to do more roadways.

The project is done in two phases. The first phase is applying crack seal material to fill in cracks measuring 1/4" or bigger and then an application of slurry.

For the 2019 Chip seal/Slurry seal projects \$350,000 was budgeted in the Street Maintenance Fund. \$40,000 was moved to the 2019 Street Overlay project with Town Council approval back on April 15, 2019. \$310,000 remains in the fund and assuming approval of the Pavement Marking Program for 2019, the remaining fund for 2019 is \$219,550. Based on the bid received, \$155,588 will be allocated to:

- Rolling Hills Pkwy
- Centennial Drive
- Castle Pines
- N 3<sup>rd</sup> St.

Staff would like to use the remaining \$63,962 to do the streets listed below as the balance of funds permits:

- White Wing Road from Saxony Road to Muscovey Lane,
- Muscovey Lane, White Wing Road to White Wing Road
- Bittren Drive, White Wing Road to White Wing Road.

**LEGAL ADVICE:**

The agreement was reviewed by the Town Attorney

**FINANCIAL ADVICE:**

Funds are available to spend \$219,550.00 for the 2019 Slurry Seal project

**RECOMMENDED ACTION:**

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**SUGGESTED MOTIONS:**

**For Approval:** I move to award the bid between the Town of Johnstown and A-1 Chipseal Company for the 2019 Town of Johnstown Slurry Seal Project in the amount not to exceed \$219,550.

**For Denial:** I move that we deny the bid between the Town of Johnstown and A-1 Chipseal for the 2019 Town of Johnstown Slurry Seal Project in the amount of \$155,588

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**Reviewed and Approved for Presentation:**

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Town Manager

# **Contract**

**TOWN OF JOHNSTOWN, COLORADO**

**2019 SLURRY SEAL PROJECT**

THIS CONTRACT entered into at Johnstown, Colorado, this \_\_\_ day of \_\_\_, 2019 by and between the TOWN OF JOHNSTOWN, COLORADO, a Colorado Home Rule Municipal Corporation with address for notice at 450 S. Parish Ave. /P.O. Box 609, Johnstown, Colorado 80534 hereinafter called and referred to as the Town, and A-1 Chipseal, Company (Corporation) with address for notice at 2505 E. 74<sup>th</sup> Ave., Denver, CO 80229 hereinafter called and referred to as Contractor.

**WITNESSETH:**

THAT FOR AND in consideration of the premises, the payments hereinafter provided for, and the mutual covenants, promises, doings, and things hereinafter set forth, the parties hereto do now agree as follows:

1. That Town does engage the services of Contractor, and Contractor does hereby bind himself unto Town, to perform the following project to Town, to wit:

**2019 SLURRY SEAL PROJECT**

for a total price not to exceed \_\_\_\_\_ (\_\_\_\_\_), which shall be paid in the following manner:

The total price shall be payable by Town unto Contractor upon Town's accounts payable cycle following approval by Town of detail invoices from Contractor. Final payment shall be paid upon final completion of the work, and acceptance by the Town, and receipt of all lien waivers, and end of period for Notice of Final Payment as published by Town Clerk.

2. That all of Contractor's performance hereunder shall be in a workmanlike manner, and shall be in conformity with the attached specifications for said project, and in accordance with time restrictions and limitations set forth:

The term "Contract documents" means and includes the following:

- (a) Contract and Attachments
- (b) Specifications
- (c) Chip Seal quote
- (d) Insurance Certificates and Insurance Requirements
- (e) Notice to Proceed
- (f) Change Order
- (g) Notice of Contractor's Settlement
- (h) Final Receipt and Guarantee

The contractor shall furnish all materials, supplies, tools, equipment, labor and other services necessary for the construction and completion of the project described herein.

3. That within three (3) days of the execution of the contract, the Contractor shall have furnished the Town all of the items required of the Contractor in the Contract Documents. Upon receiving the required documents, the Town shall issue a Notice to Proceed. Contractor shall then have thirty (30) calendar days to complete the project. Failure to complete the project by the specified time shall cause Contractor to be liable to the Town for **\$200.00** each day beyond such time period to reimburse Town for its damages for

such delay, such amount being difficult to ascertain in advance, and therefore, the Parties agree to the per day damages as liquidated damages and not as a penalty.

Further, this Contract shall be construed and interpreted according to the laws of the State of Colorado and any action to interpret, construe, or enforce the same shall be maintained in the appropriate court in Weld County, Colorado.

The Contractor agrees to comply with the terms of Attachment A. which is attached hereto and incorporated herein by reference.

Executed as of the date and year as above written.

**TOWN OF JOHNSTOWN, COLORADO**

By \_\_\_\_\_  
Mayor

**ATTEST:**

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

**CONTRACTOR**  
**A-1 Chip Seal Company**

By \_\_\_\_\_  
(Title)

## Attachment A

### REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS

Contractor shall not:

1. Knowingly employ or contract with an illegal alien to perform work under this public contract for services; or
2. Enter into a contract with a subcontractor that fails to certify to the Contractor that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

Contractor has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the public contract for services through participation in either the e-verify program or the Department of Labor and Employment program.

Contractor is prohibited from using either the e-verify program or the Department of Labor and Employment program procedures to undertake pre-employment screening of job applicants while the public contract for services is being performed.

If Contractor obtains actual knowledge that a subcontractor performing work under the public contract for services knowingly employs or contracts with an illegal alien, the Contractor shall be required to:

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Contractor has actual knowledge that the subcontractor is employing or contracting with an illegal alien; and
2. Terminate the subcontract with the subcontractor if within three days of receiving the notice required pursuant to subparagraph 1 of this subparagraph the subcontractor does not stop employing or contracting with the illegal alien; except that the Contractor shall not terminate the contract with the subcontractor if during such three days that subcontractor provides information to establish that the subcontractor has not knowingly employed or contracted with an illegal alien.

Contractor shall comply with any reasonable request by the Department made in the course of an investigation that the Department of Labor and Employment is undertaking pursuant to the authority established in subsection (5) of Section 8-17.5-102 of the Colorado Revised Statutes.

**IF CONTRACTOR VIOLATES ANY OF THE AFOREMENTIONED REQUIREMENTS, THE TOWN MAY TERMINATE THE CONTRACT FOR BREACH OF CONTRACT. IF THIS CONTRACT IS SO TERMINATED, CONTRACTOR SHALL BE LIABLE FOR ACTUAL AND CONSEQUENTIAL DAMAGES TO THE TOWN OF JOHNSTOWN.**

**AGENDA ITEM 10C**

**PUBLIC HEARING**

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

**Ordinance Number 2019-160**

**PUBLIC HEARING PROCEDURE** – Ordinance No. 2019-160, An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication facilities.

- 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. 2019-160, An Ordinance An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication facilities.**

**For Denial:**

**I move to deny approval of Ordinance No. 2019-160.**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** May 20, 2019

**ITEM NUMBER:** 10C

**SUBJECT:** **1<sup>st</sup> Reading:** Repeal and Replace Chapter 16 Article XIX  
Telecommunications towers and antennas, with Chapter 16 Article  
XIX Wireless Communication Facilities (WCFs)

**ACTION PROPOSED:** Approve the Ordinance on first reading.

**ATTACHMENTS:** Copy of Ordinance 2019-160

**PRESENTED BY:** Kim Meyer, Planning & Development Director

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### **AGENDA ITEM DESCRIPTION:**

Enclosed for your review and consideration is amended municipal code language relating to all wireless communications facilities (WCFs) that are proposed/developed in the Town. The state and federal laws and rules regarding and regulating WCFs have changed dramatically over the past several years, which has prompted municipalities to review and amend ordinances to accommodate new definitions, new review procedures, and other modifications to prior rules.

Most notable is the move at the federal level (i.e., the FCC) to remove local and state restrictions on WCFs in both the levels of review and permitting, as well as their ability to now utilize public rights-of-way, comparable to other utilities. Additionally, federal rules now regulate the amounts of time – the “shot clocks” – that a municipality may take to render a decision, depending on the type of WCF proposed. This greatly restricts the Town’s ability to review and negotiate appropriate design and siting. It is anticipated that implementation by the applicant of the siting and design standards contained in this proposed code will greatly assist Staff in reviewing and revising new WCF land use applications, giving us the opportunity to start that review in the best place possible.

There are several types of WCFs that local control may exert some influence on, in terms of siting, design and massing, and take into consideration the context of the neighborhood, but the FCC has rendered many as permitted uses / uses-by-right in all zoning districts and Staff believes that the Town’s best defense will be working closely with operators/applicants to apply these standards and processes to create the best situation possible. Large towers, or WCFs that do not meet the proposed design standards, would be considered Uses by Special Review and therefore subject to hearings, a longer shot clock, and higher levels of scrutiny.

More specifically, the ordinance includes:

1. New definitions and processes, crafted from FCC language, for each “type” of WCF to ensure compatibility and compliance.
2. Design standards that address the specific concerns posed by each type of WCF – requiring camouflage and concealment, and collocation, wherever possible.

3. Review processes that mirror existing Town processes wherever possible, meet the timing imposed by the FCC, and provide the best opportunity possible for staff to review and respond to new applications.

As this fast-paced technology and industry continue to evolve, Staff anticipates future modifications to state and federal rules and regulations, which may necessitate future “housekeeping” updates of this code to maintain compliance. No specific changes are known or anticipated at present.

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

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**FINANCIAL ADVICE:** No significant impact to Town finances is anticipated.

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**RECOMMENDED ACTION:** Approve Ordinance No. 2019-160 on first reading.

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to approve Ordinance 2019-160, An Ordinance Repealing and Replacing Article XIX of Chapter 16 of the Johnstown Municipal Code Concerning Wireless Communication Facilities

**For Denial:**

I move that we deny Ordinance 2019-160.

**For Remittance:**

I move to remit Ordinance 2019-160 back to Staff for further revisions, to include/consider...

**Reviewed and Approved for Presentation:**

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Town Manager

# **Ordinance No. 2019-160**

**TOWN OF JOHNSTOWN, COLORADO**

**ORDINANCE NO. 2019 - 160**

**AN ORDINANCE REPEALING AND REPLACING  
ARTICLE XIX OF CHAPTER 16 OF THE JOHNSTOWN  
MUNICIPAL CODE CONCERNING WIRELESS  
COMMUNICATION FACILITIES.**

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

**WHEREAS**, Article XIX of Chapter 16 of the Johnstown Municipal Code regulates telecommunications towers and antennas in the Town; and

**WHEREAS**, Town Council desires to amend Article XIX of Chapter 16 of the Johnstown Municipal Code to conform to existing state and federal laws and regulations regarding wireless communication facilities; and

**WHEREAS**, Town Council finds that this Ordinance is in the best interests of the Town of Johnstown.

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

**Section 1.** Article XIX of Chapter 16 of the Johnstown Municipal Code shall be repealed and replaced in full to read as follows:

**ARTICLE XIX – Wireless Communication Facilities.**

**Sec. 16-341 Purpose and intent.**

In order to accommodate the communication need of residents and businesses while protecting the public, health, safety and general welfare of the community, the Town Council finds that these regulations are necessary to:

- (a) Provide for the managed development and installation, maintenance modification and removal of wireless communications infrastructure in the Town with the fewest number of wireless communications facilities (WCFs) to complete a network without unreasonably discriminating against wireless communications providers of functionally equivalent services, including all of those who install, maintain, operate and remove wireless communication facilities;
- (b) Minimize adverse visual effects of WCFs through thoughtful design and siting, including, but not limited to, camouflage design techniques, appropriate and effective screening and undergrounding whenever possible;

- (c) Encourage the location of towers in areas that minimize the total number of towers needed throughout the Town;
- (d) Require the co-siting of WCFs on new and existing sites wherever possible;
- (e) Encourage the location of WCFs in areas where the impact to the Town and its residents is minimized;
- (f) Enhance the ability of wireless communications service providers to provide wireless services to the community quickly, effectively and efficiently; and
- (g) Effectively manage WCFs located in the public right-of-way.

**Sec. 16-342 Definitions.**

*Agreement* shall mean an executed agreement, and any exhibits, supplements or amendments thereto, between the owner or operator of WCFs and the Town to utilize the public right-of-way or public property to install WCFs and associated equipment.

*Alternative tower structure* shall mean man-made trees, clock towers, bell steeples, light poles, buildings and similar alternative design mounting structures that are compatible with the natural setting and surrounding structures and camouflage or conceal the presence of the antennas or towers in a manner designed to make them architecturally compatible with the surrounding area. This term also includes any antenna or antenna array attached to an alternative tower structure. A stand-alone pole in the right-of-way, streetlight or traffic signal that accommodates small cell facilities is considered an alternative tower structure to the extent it meets the camouflage and concealment standards of this Article.

*Antenna* shall mean any device used to transmit or receive radio or electromagnetic waves such as, but not limited to, panel antennas, reflecting discs, microwave dishes, whip antennas, directional and non-directional antennas consisting of one or more elements, multiple antenna configurations or other similar devices and configurations as well as exterior apparatus designed for telephone, radio or television communications through the sending or receiving of wireless communications signals.

*Base station* shall mean a structure or equipment at a fixed location that enables Federal Communications Commission (“FCC”) licensed or authorized wireless communications between user equipment and a communications network. The definition of base station does not include or encompass a tower as defined herein or any equipment associated with a tower. Base station includes, without limitation:

- (a) Equipment associated with wireless communications services such as private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul that, at the time the relevant application is filed with the Town under this Article, has been reviewed and approved under the applicable zoning or siting process or under another state or local regulatory review process, even

if the structure was not built for the sole or primary purpose of providing such support; and

- (b) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems and small-cell networks) that, at the time the relevant application is filed with the Town under this Article, has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

The definition of base station does not include any structure that, at the time the relevant application is filed with the Town, does not support or house equipment described in paragraphs (a) and (b) above.

*Camouflage, concealment or camouflage design techniques* shall mean measures used in designing a WCF to alter or mask its appearance in such a manner as to substantially integrate it into surrounding building designs or natural settings to minimize the visual impacts of the facility on the surrounding uses and ensure the facility is compatible with the environment in which it is located. A WCF site utilizes camouflage design techniques when it:

- (a) is integrated as an architectural feature of an existing structure such as a cupola, spire, chimney, cornice or similar item;
- (b) is integrated in an outdoor fixture such as a utility tower; or
- (c) uses a design which mimics and is consistent with nearby natural features, architectural features (such as a clock tower), or is incorporated into (including without limitation, being attached to the exterior of such facilities and painted to match it) or replaces existing permitted facilities (including without limitation, stop signs or other traffic signs or freestanding light standards),

such that the presence of the WCF is not readily apparent.

*Cell on wheels* shall mean a mobile cell site that consists of an antenna tower and electronic radio transceiver equipment on a truck or trailer designed to boost reception as part of a larger cellular network and is temporary in nature.

*Collocation* shall mean:

- (a) the mounting or installation of transmission equipment on a pre-existing structure (i.e., tower, building, utility pole, street light pole); or
- (b) the modification of a structure for the purpose of mounting or installing an antenna facility on the structure to transmit or receive radio frequency signals for communications purposes, whether or not there is an existing antenna on the structure.

*Co-siting* shall mean the sharing of a single structure, tower, designated area of land or other facility by more than one antennae or other WCF equipment.

*Director* shall mean the Town's director of the Planning and Development Department. Director may also include, in the Town Manager's discretion, the Town Manager.

*Eligible facilities request* shall mean any request for modification of an existing tower or base station that is not a substantial change.

*Eligible support structure* shall mean any tower or base station as defined in this Article, provided that it is existing at the time the relevant application is filed with the Town under this Article.

*Existing tower or base station* shall mean a constructed tower or base station that was reviewed, approved and lawfully constructed in accordance with all requirements of applicable law as of the time it was built; for example, a tower that exists as a legal, non-conforming use and was lawfully constructed is existing for purposes of this definition.

*Micro cell facility* shall mean a small wireless facility that is no larger than twenty-four (24) inches in length, fifteen (15) inches in width, twelve (12) inches in height, and that has an exterior antenna, if any, that is no more than eleven (11) inches in length.

*Monopole* shall mean a single, freestanding pole-type structure supporting one or more antennas.

*Over the air receiving device* shall mean an antenna used to receive video programming from direct broadcast satellites, broadband radio services and television broadcast stations, but shall not include antennas used for AM/FM radio, amateur ("ham") radio, CB radio, digital audio radio services or antennas used as part of a hub to relay signals among multiple locations.

*Pole-mounted small cell facility* shall mean a small cell facility with an antenna that is mounted and supported on an alternative tower structure, which structure may be a replacement pole.

*Public property* shall mean real property owned or controlled by the Town, excluding the public right-of-way.

*Public right-of-way (ROW)* shall mean any public street, way, alley, sidewalk, median, parkway or boulevard that is dedicated to public use.

*Radio frequency emissions letter* shall mean a letter from the applicant certifying that all WCFs that are the subject of the application shall comply with federal standards for radio frequency emissions.

*Replacement pole* shall mean an alternative tower structure that is a newly constructed and permitted traffic signal, utility pole, street light, flagpole, electric distribution or other similar structure of proportions and of equal height or such other height that would not constitute a substantial change to a pre-existing pole or structure in order to support a WCF or small cell facility or micro cell facility or to accommodate collocation, and replaces a pre-existing pole or structure.

*Shot Clock* means the provisions of the Declaratory Ruling and Third Report and Order issued by the FCC on September 28, 2018, related to the timeframe for review and tolling, as may be amended by the FCC from time to time.

*Signal non-interference letter* shall mean a letter from the applicant certifying that the WCFs that are the subject of the application will be designed, sited and operated in accordance with applicable federal regulations addressing radio frequency interference.

*Site for towers* (other than towers in the right-of-way and eligible support structures) shall mean the current boundaries of the leased or owned property surrounding the tower or eligible support structure and any access or utility easements currently related to the site. A site for other alternative tower structures, base stations, micro cell facilities and small cell facilities in the right-of-way is further restricted to that area comprising the base of the structure and other existing or proposed related accessory equipment deployed on the ground.

*Small cell facility* or *small wireless facility* shall mean a WCF where each antenna is located inside an enclosure of no more than three (3) cubic feet in volume or, in the case of an antenna that has exposed elements, the antenna and all of its exposed elements could fit within an imaginary enclosure of no more than three (3) cubic feet; and primary equipment enclosures are not larger than twenty-eight (28) cubic feet in volume; and all other wireless equipment associated with the structure, including the wireless equipment associated with the propose antenna and any pre-existing associated equipment on the structure, is not more than twenty-eight (28) cubic feet in volume, cumulatively.

Small cell facilities are mounted to structures fifty (50) feet or less in height, including their antennas, or are mounted on structures no more than ten percent (10%) taller than other adjacent structures, or do not extend existing structures on which they are located to a height of more than fifty (50) feet or by more than ten percent (10%), whichever is greater.

Small cell facility shall also include a micro cell or micro cell facility.

*Substantial change* shall mean a modification that substantially changes the physical dimensions of an eligible support structure if, after the modification, the structure meets any of the following criteria:

- (a) For towers, other than alternative tower structures or towers in the right-of-way, it increases the height of the tower by more than ten percent (10%) or by the height of one (1) additional antenna array, with separation from the nearest existing antenna not to exceed twenty (20) feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than ten percent (10%) or more than ten (10) feet, whichever is greater;
- (b) For towers, other than towers in the right-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the tower more than twenty (20) feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the side of the structure by more than six (6) feet;
- (c) For any eligible support structure, it involves installation of more than the standard

number of new equipment cabinets for the technology involved, but not to exceed four (4) cabinets;

- (d) For towers in the right-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no pre-existing ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than ten percent (10%) larger in height or overall volume than any other existing, individual ground cabinet associated with the structure;
- (e) For any eligible support structure, it entails any excavation or deployment outside the current site;
- (f) For any eligible support structure, it would defeat the concealment elements of the eligible support structure; for the purposes of this definition, a change that would undermine the concealment elements of this structure will be considered to defeat the concealment elements of the structure; or
- (g) For any eligible support structure, it does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure equipment, unless the non-compliance is due to an increase in height, increase in width, addition of cabinets or new excavation that would not exceed the thresholds identified in subsections (a), (b), (c) or (d) of this definition. For purposes of determining whether a substantial change exists, changes in height are measured from the original support structure in cases where deployments are or will be separated horizontally, such as on building rooftops; in other circumstances, changes in height are measured from the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to February 22, 2012.

*Telecommunications Act* means the Federal Telecommunications Act of 1996, 47 U.S.C. §§ 151-614 (1994 & Supp. 1998), as amended.

*Toll* and *tolling* shall mean to delay, suspend or hold off on the imposition of a deadline, statute of limitations or time limit.

*Tower* shall mean any structure that is designed and constructed primarily built for the sole or primary purpose of supporting one or more FCC-licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. The term includes self-supporting lattice towers, guyed towers, monopole towers, radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures and the like.

*Transmission equipment* shall mean equipment that facilitates transmission for any FCC licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable and regular and backup power supply. The term includes equipment associated with wireless communications services including, but not limited to, private, broadcast and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*Unreasonable interference* shall mean any use of the right-of-way that disrupts or interferes with the use by the Town, the general public or other person authorized to use or be present upon the right-of-way, when there exists an alternative that would result in less disruption or interference. Unreasonable interference includes any use of the right-of-way that disrupts vehicular or pedestrian traffic, any interference with public utilities and any other activity that will present a hazard to public health, safety or welfare.

*Wireless communications facility* or *WCF* shall mean a facility used to provide personal wireless services as defined at 47 U.S.C. § 332 (c)(7)(C), as amended; or wireless information services provided to the public or to such classes of users as to be effectively available directly to the public via licensed or unlicensed frequencies; or wireless utility monitoring and control services. A WCF does not include a facility entirely enclosed within a permitted building where the installation does not require a modification of the exterior of the building; nor does it include a device attached to a building, used for serving that building only and that is otherwise permitted under other provisions of the Code. A WCF includes an antenna or antennas, including without limitation, directional, omni-directional and parabolic antennas, base stations, support equipment, alternative tower structures and towers. The term does not include mobile transmitting devices used by wireless service subscribers, such as vehicle or hand held radios/telephones and their associated transmitting antennas, nor does it include other facilities specifically excluded from the coverage of this Title.

#### **Sec. 16-343 Applicability.**

- (a) The requirements set forth in this Article shall apply to all eligible facilities requests and WCF applications for base stations, alternative tower structures, towers, micro cells, small cells and all other wireless facilities, unless exempt under Subsection (b).
- (b) The requirements set forth in this Article shall not apply to:
  - (1) Amateur radio antennas. Amateur radio antennas that are owned and operated by a federally licensed amateur radio station operator or are exclusively receive-only antennas, provided that the height is less than or equal to the distance from the base of the antenna to the property line and meets other applicable provisions of the Code are met.
  - (2) Pre-existing WCFs. Any WCF for which a permit has been properly issued prior to June 3, 2019, shall not be required to meet the requirements of this Article. Notwithstanding the foregoing, any modifications qualifying as an eligible facility request shall be evaluated under this Article.
  - (3) Miscellaneous receiving antennas. Antennas used for reception of television, multi-channel video programming and radio such as over-the-air receiving device (OTARD) antennas, television broadcast antennas, satellite antennas and broadcast radio antennas, provided such antennas are less than one (1) meter in diameter, mounted on the ground with a total height less than five (5) feet or attached to an existing building. The Director has the authority to approve modifications to the size

and height restriction of OTARD antennas and OTARD antenna structures, if, in the reasonable discretion of the Director, modifications are necessary to comply with federal law.

- (4) Emergency. A WCF installed upon the declaration of a state of emergency by the federal or state government or by the Town pursuant to written determination, provided prior to the WCF installation or within seventy-two hours (72) thereafter, that such action is necessary to protect the health, safety and welfare of the public.
- (5) Temporary WCF. A cell on wheels, or similar temporary WCF, installed for the purpose of providing sufficient coverage for a special event for no more than fifteen (15) days, subject to administrative approval by the Town.

**Sec. 16-344 Operational standards.**

- (a) Federal Requirements. WCFs shall meet the standards and regulations of the Federal Aviation Administration, the FCC and any other federal government agency with the authority to regulate WCFs, as amended from time to time. If such standards and regulations are revised, then the owners of the WCF shall bring such facility into compliance with such revised standards and regulations within the time period mandated by the controlling federal agency. Unless preempted by federal law, failure to meet such revised standards and regulations within thirty (30) days of the Town's determination of such failure shall constitute grounds for the removal of the WCF by the Town or by the owner of the WCF at the owner's expense.
- (b) Permission to use public right-of-way or public property.
  - (1) Public right-of-way. Prior to, or concurrently with, the filing of an application seeking land use approval for the siting of WCF in the ROW, the applicant shall have an executed agreement with the Town, granting the applicant a non-exclusive license to use the ROW. WCFs attached to an existing pole or replacement pole or on a new traffic signal, street light pole or similar structure shall require written evidence of a license, or other legal right or approval, to use such structure by its owner. The applicant shall remain the owner of, and solely responsible for, any WCF installed in the ROW.
  - (2) Public property. Prior to, or concurrently with, the filing of an application seeking land use approval for a WCF on public property, the applicant shall execute a lease agreement with the Town.
- (c) Operation and maintenance. To ensure the structural integrity of WCFs, the owner and operator of a WCF shall ensure that it is maintained in compliance with the standards contained in applicable local building and safety codes. If, upon inspection, the Town concludes that a WCF fails to comply with such codes and/or constitutes a danger to persons or property, then, upon written notice being provided to the owner of the WCF, the owner shall have thirty (30) days from the date of notice to bring the WCF into

compliance. Upon good cause shown by the owner and meeting reasonable safety considerations, the Director may extend such compliance period, not to exceed 90 days from the date of said notice. If the owner fails to bring the WCF into compliance within said time period, the Town may remove the WCF at the owner's expense.

- (d) Abandonment and removal. After the WCF is constructed, if a WCF has not been in use for a period of three (3) months, the owner of the WCF shall notify the Town of the non-use and shall indicate whether re-use is expected within the ensuing three months. Any WCF that is constructed and is not operated for a continuous period of six (6) months shall be considered abandoned. The Town, in its sole discretion, may require an abandoned WCF to be removed. The owner of such WCF, or the property owner who signed a removal affidavit, shall remove the same within thirty (30) days of receipt of written notice from the Town. If such WCF is not removed within said thirty (30) days, the Town may remove it at the owner or the property owner's expense and any approved permits for the WCF shall be deemed to have expired. The Town may also, in its sole discretion, decline to approve any new WCF application until the applicant who is also the owner of any abandoned WCF has removed such WCF or provided payment for such removal to the Town.
- (e) Hazardous materials. No hazardous materials shall be permitted in association with WCFs, except those necessary for the operation of the WCF and only in accordance with all applicable laws governing such materials.
- (f) Collocation and co-siting. No WCF owner or operator shall unreasonably exclude a telecommunications competitor from using the same WCF facility or site. When an owner or operator seeks to exclude a telecommunications competitor, upon request from the Director, the owner or operator shall provide written evidence explaining why collocation or co-siting is not possible at the particular facility or site.

#### **Sec. 16-345 Review procedures and requirements.**

- (a) Review procedures; applications; timeframe for review. New WCFs shall be constructed, collocated or co-sited after a written request from an applicant is reviewed and approved by the Town, in accordance with this Article. The Town shall provide an application for WCF submittals, which shall require the provision of information necessary and adequate for the Town to appropriately make a determination with respect to the WCF development request. An application for a WCF that does not comply with the provisions and design standards of this Article may seek use by special review approval pursuant to the procedure set forth in the Code.
  - (1) Review procedures for certain WCFs, including base stations, alternative tower structures, small cell facilities and alternative tower structures within public rights-of-way.

Applications for base stations, alternative tower structures, small cell facilities and alternative tower structures within public rights-of-way shall be reviewed by the

Director for conformance with this Article, using the design standards set forth in Section 16-346 and those otherwise found in the Code. If the Director determines that WCFs in the rights-of-way are found to have a significant visual impact, are not compatible with the structure or surrounding area or do not meet the intent of this Article, the Director may refer such applications to the Planning and Zoning Commission for a use by special review determination.

(2) Review procedures for certain WCFs, including towers.

- a. Applications for towers, other than those defined or excepted in (1) above, must utilize the use by special review procedure (conditional use approval) set forth in the Code including Chapter 16, Article VII, and meet the applicable submittal requirements contained in Section 16-145(f)(1), as amended, unless otherwise directed by the Director.
- b. Applications for towers shall demonstrate that other alternative design options, such as using base stations or alternative tower structures, are not viable options.
- c. Subject to the tolling provisions contained in Subsection (c), the Town shall render a decision within one-hundred (150) days of the date on which an applicant submits a complete use by special review application.

(3) Review procedures for eligible facilities requests.

- a. Permitted use; application; decision. Eligible facilities requests shall be considered a permitted use in all zoning districts and shall be subject to administrative review. The Town shall prepare an application form requiring submittal of the information necessary for the Town to consider whether a project constitutes an eligible facilities request, including, but not limited to, sufficient information to allow the Town to determine whether the request does not constitute a substantial change and whether it complies with applicable law. The application shall not require the applicant to demonstrate a need or business case for the request.
- b. Timeframe for review of an eligible facilities request. Subject to the tolling provisions contained in Subsection (c), the Director shall render a decision within sixty (60) days of the date on which an applicant submits a complete application.
- c. Not an eligible facilities request. If the Director determines that the applicant's request is not an eligible facilities, the presumptively reasonable timeframe set forth in Section 332(c)(7) of the Telecommunication Act, as prescribed by the Shot Clock, shall begin to run from the issuance of the Town's decision that the application is not a covered request, assuming that the application is deemed to be complete at that time. The Town may request additional information from the applicant to evaluate whether the application is complete, during which time the timeframe for review of the application shall be tolled.

(4) Review procedures for small cell facilities.

- a. Application. The Town shall prepare an application form requiring submittal of the information necessary for the Town to consider whether a project constitutes a small cell facility.
- b. Timeframe for review of small cell facilities.
  1. Collocation on existing structure. Subject to the tolling provisions contained in Subsection (c), the Town shall render a decision within sixty (60) days of the date on which an applicant submits a complete application.
  2. New structure. Subject to the tolling provisions of contained in Subsection (c), the Town shall render a decision within ninety (90) days of the date on which an applicant submits a complete application.
- c. Batched applications for small cell facilities. If a single application seeks authorization for multiple deployments, all of which may be categorized as either small cell facilities using an existing structure or small cell facilities using a new structure, then the timeframe for review shall be equal to that for a single deployment within that category. If a single application seeks authorization for multiple deployments, the components of which may be a mix of these aforementioned categories (small cell facilities using an existing structure or small cell facilities using a new structure), then the timeframe for review shall be equal to that with the longer review timeframe permitted for all components of that application.

(b) Additional submittal requirements.

- (1) In addition to the requirements contained in the Town-approved applications, the following supplemental items are required for all WCF applications:
  - a. Applicable submittal requirements contained in Section 16-145(f)(1), as amended, unless otherwise waived by the Director;
  - b. Signal non-interference letter;
  - c. Radio frequency emissions letter;
  - d. Photo simulations showing before and after conditions;
  - e. Inventory of sites. Each applicant shall provide a narrative description and a map of the applicant's existing and currently proposed WCFs within the Town and those within one half-mile of the Town's boundaries. The applicant shall inform the Town generally of the areas in which it believes WCFs may need to be located

within the next three (3) years. The inventory list shall identify the site name, address or location and a general description of the facility (i.e., rooftop antennas and ground-mounted equipment). This provision is not intended to be a requirement that the applicant submit its business plan, proprietary information or make commitments regarding locations of WCFs within the Town. This information will be used to assist in the Town's comprehensive planning and promote co-siting by identifying areas in which WCFs might be appropriately constructed for multiple users. The Town may share such information with other applicants seeking to locate WCFs within the Town, provided, however, that the Town shall not, by sharing such information, be making a representation that such sites are available or suitable. The inventory of sites shall be updated upon the submission of a new application filed more than six (6) months subsequent to the prior application; and

- f. Abandonment and removal affidavit. Affidavits shall be required from the owner of the property and from the applicant acknowledging that each is responsible for the removal of a WCF that is abandoned or is unused for a period of six (6) months.
- (2) Applications must include all necessary information, materials, a business license and completed permit applications for the permits that are required for the construction and installation of the proposed WCF, including, but not limited to, building, electrical or right-of-way permits.
- (c) Tolling and reset of the timeframe for review. The review periods commence to run when a complete application is filed with the Town, and may be tolled by mutual agreement of the Town and the applicant. When the Town determines that an application is incomplete, the timeframe for review will be reset once a complete application is received in the manner set forth herein.
- (1) Tolling for small cell facility applications. If an application is incomplete, the Town shall provide written notice to the applicant within ten (10) days of receipt of the application. The Town's timeframe for review shall be reset upon the Town's receipt of a complete amended application from the applicant. If the Town subsequently determines that the amended application is not complete, the Town shall provide a subsequent written notice to the applicant within ten (10) days of receipt of the amended application. The Town's timeframe for review shall toll until the applicant resubmits a subsequent amended application, and shall commence to run again on the business day following the day on which the applicant submits such subsequent amended application.
  - (2) Tolling for all other WCF applications. If an application is incomplete, the Town shall provide written notice to the applicant within thirty (30) days of receipt of the application. The Town's timeframe for review shall toll until the applicant submits an amended application, and shall commence to run again on the business day following the day on which the applicant submits such amended application. If the

Town subsequently determines that the amended application is not complete, the Town shall provide a subsequent written notice to the applicant within ten (10) days of receipt of the amended application. The Town's timeframe for review shall toll until the applicant resubmits a subsequent amended application, and shall commence to run again on the business day following the day on which the applicant submits such subsequent amended application.

- (3) Failure to act. If an applicant fails to respond and resubmit the information requested by the Town within fourteen (14) days of the Town's written notice, the Town may make a determination of denial without prejudice. The applicant may thereafter submit a new application.
- (d) Decision. Any decision to approve, approve with conditions or deny an application shall be in writing and supported by evidence and shall be provided to the applicant. An applicant may appeal an administrative decision in accordance with the Code and may appeal a decision rendered by Town Council in accordance with state and federal law and regulations.
- (e) Compliance with applicable law. Notwithstanding the approval of a WCF application or eligible facilities request, all work must be completed in compliance with applicable building, structural, electrical and safety requirements as set forth in the Code and all other applicable laws and regulations. All applicants shall:
  - (1) Comply with permits and licenses issued by a governmental authority with jurisdiction;
  - (2) Comply with easements, covenants, conditions and restrictions on or applicable to the underlying real property;
  - (3) Maintain the WCF in good working condition and to the standards established at the time of application approval; and
  - (4) Ensure the WCF and the site is free from trash, debris, litter, graffiti and other forms of vandalism. Any damage shall be repaired as soon as practicable, and, in no instance, more than ten (10) days from the time of notification by the Town or after discovery by the owner or operator of the site. Notwithstanding the foregoing, any graffiti on WCFs located in the public rights-of-way or on public property may be removed by the Town, in its discretion, and the owner or operator of the WCF shall pay all costs of such removal within thirty (30) days after receipt of an invoice from the Town.
- (f) Fee. The applicant shall pay a fee with the submission of the application. The fee shall be the maximum amount allowed by the FCC, if at all, or an amount set by Town Council by resolution. The fee shall constitute a reasonable approximation of the Town's costs and shall be imposed on a non-discriminatory basis. The Town may, in its discretion, retain professional consultants to review and assist in the processing of applications. If a

professional consultant is retained by the Town, the applicant shall be required to pay the Town's actual costs for the consultant.

**Sec. 16-346 Design standards.**

(a) Applicability. WCFs shall be designed and located to minimize the impact on the surrounding neighborhood and to maintain the character and appearance of the Town. The design standards set forth herein shall apply to the location and design of all WCFs governed by this Article, unless otherwise exempted by the Town. While the Town anticipates and expects compliance with all the design standards set forth herein, the Town's primary objectives are to ensure that WCFs use camouflage and concealment design techniques to reduce visibility and be co-sited or collocated to minimize the number of facilities.

(b) General design standards for WCFs.

(1) Camouflage and concealment. All WCFs and any transmission equipment shall, to the maximum extent possible, use camouflage and concealment design techniques including, but not limited to, the use of materials, colors, textures, screening, undergrounding, landscaping or other design options that blend the WCF into the surrounding natural setting and built environment.

- a. Camouflage design may be of heightened importance where findings of particular sensitivity are made (e.g. proximity to historic, natural or aesthetically significant structures or areas, views or to community features or facilities). In instances where WCFs are located in areas of high visibility, they shall be designed (e.g., placed underground, depressed or located behind earth berms) to minimize their profile.
- b. Camouflage design may include the use of alternative tower structures should the Director determine that such design meets the intent of this Article and the community is better served thereby.
- c. WCFs shall be constructed out of non-reflective materials (visible exterior surfaces only).

(2) Co-siting and collocation.

- a. Co-siting. WCFs shall be designed and constructed to permit the facility to accommodate WCFs from at least two (2) wireless service providers on the same WCF, to the extent reasonably feasible based upon construction, engineering and design standards, except where such collocation would materially compromise the design intent of the WCF, particularly visually.
- b. Collocation. If existing eligible facilities are not available in the area to be served, WCFs shall be designed to utilize pre-existing structures, poles and buildings wherever possible.

- (3) Accessibility. WCFs and associated equipment shall be designed and sited to comply with the Americans with Disabilities Act and all other local, state and federal laws and regulations. WCFs may not be located or maintained in a manner that causes unreasonable interference.
- (4) Height. The maximum height of a WCF shall be thirty-six inches (36') unless otherwise approved through a use by special review procedure or the applicant provides compelling evidence that a majority of similar, nearby structures are taller and that a taller height is thus compatible. The Director shall determine whether a taller height is acceptable.
- (5) Setbacks. The following minimum setback requirements shall apply to all WCFs, except for alternative tower structures and small cell facilities in the right-of-way, and shall be the greater of the following:
  - a. When attached to a structure, the setback for a principal building within the applicable zoning district;
  - b. Twenty-five percent (25%) of the facility height, including WCFs and related accessory equipment;
  - c. For sites within 100 feet of residential uses, facilities over thirty (30) feet from ground elevation measured within five (5) feet of the base, a setback from all adjacent residential property lines of one (1) foot for every foot in height; or
  - d. Twenty (20) feet.
- (6) Lighting. WCFs shall not be artificially lighted, unless required by the FAA or other applicable governmental authority or the WCF is mounted on a light pole or other similar structure primarily used for lighting purposes. All exterior lighting within equipment yards shall be mounted on poles or on a building wall below the height of the screen wall or fence.
- (7) Noise. Noise generated on a site must not be emitted at levels prohibited in the Code or otherwise prohibited by the Director, except that a WCF owner or operator shall be permitted to exceed such noise standards for a reasonable period of time during repairs, not to exceed two (2) hours without the prior written authorization of the Director.
- (8) Landscaping.
  - a. All landscaping and screening shall adhere to the Town of Johnstown Landscape Standards and Specifications, as amended;
  - b. WCFs shall be sited in a manner that ensures continued compliance with required landscaping and open areas for the principal uses on the parcel;
  - c. WCFs, including small cell facilities, unless excepted by the Director for safety

considerations, shall provide screening from rights-of-way and adjacent properties, which may, in the Director's discretion, include berms and plant materials; and

d. Where landscaping is required, appropriate irrigation must be installed.

(9) Screening.

- a. All structures and improvements associated with a WCF shall incorporate adequate safety equipment and aesthetic treatments to be visually compatible with uses in the surrounding area;
- b. All equipment not located within the right-of-way and not otherwise addressed herein shall be fully screened within a walled yard or placed in an enclosed building except in cases where the Director determines that a better design alternative exists. The yard shall be enclosed by a solid fence or wall of sufficient height to screen all miscellaneous equipment from view from the right-of-way or adjacent properties and to provide security; and
- c. Cables, wires, boxes, transformers and other accessory equipment must be designed to be located internally or otherwise highly-integrated into any structure to the degree feasible to minimize visual clutter and screen.

(c) Additional design standards for WCFs on structures, including buildings, towers, poles.

- (1) Building roof-mounted WCFs and equipment shall be set back from the edges of flat roofs, screened, painted, enclosed or otherwise effectively camouflaged and concealed to minimize the visual impact on surrounding properties and rights-of-way. No roof-mounting may occur on gabled or similar roofing structures that provide significant visibility from nearby rights-of-way and properties.
- (2) Antennas may only be mounted to the side of a building if camouflage and concealment techniques are utilized to ensure maximum integration and minimal interference with the architectural features of that building. The equipment shall be mounted in a configuration as flush to the wall as technically possible, with a maximum protrusion of six (6) feet, and shall not project above the wall on which it is mounted.
- (3) Equipment shall, to the maximum extent feasible, feature the smallest and most discreet components that the technology will allow so as to have the least possible impact on the architectural character and overall aesthetics of the building or structure.
- (4) Roof-mounted WCF equipment shall be screened by parapet or screen walls in a manner compatible with the building's design, colors and materials.
- (5) If a replacement pole is being considered, the new pole must match, to the extent feasible, other street light and traffic poles within five hundred and twenty-eight (528) feet of the site with regard to design, height, width and utility. A replacement pole accommodating

internal wiring and cable may be up to twenty-four inches (24") in diameter at the base.

(d) Design standards in relation to residential uses.

- (1) WCFs shall be sited and designed in a manner that is considerate of the proximity of the facility relative to residential structures, neighborhoods and planned residential areas in order to minimize the visual impacts of WCFs on existing and planned residential areas.
- (2) When placed on or adjacent to residential properties, a WCF shall be placed in close proximity to a common property line between adjoining residential properties, such that the WCF minimizes visual impacts equitably among adjacent and nearby properties.
- (3) For a corner lot, the WCF shall be placed adjacent to a common property line between adjoining residential properties or on the corner formed by two intersecting streets.

(e) Design requirements specific to various types of WCFs.

(1) Alternative tower structures not in the public right-of-way shall:

- a. Be designed and constructed to look like a building, facility, structure or other commonplace item typically found in the area;
- b. Be camouflaged or concealed consistent with other existing natural or manmade features in or near the proposed location;
- c. Be compatible with the surrounding area, including design considerations such as the context, scale, massing, height, articulation, topography and the landscaped environment;
- d. Be the minimum size needed to obtain coverage objectives. Height or size of the proposed alternative tower structure should be minimized as much as possible;
- e. Be sited in a manner that is sensitive to the proximity of the facility to structures, neighborhoods, special districts, natural areas and residential uses and zoning district boundaries; and
- f. Take into consideration the uses on adjacent and nearby properties and the compatibility of the facility to these uses.

(2) Alternative tower structures and small cell facilities in the public right-of-way. Such WCFs are subject to the alternative tower structures design standards set forth in this Section and to the following additional design criteria:

- a. Alternative tower structures and associated small cell facilities or micro cell facilities may be deployed in the public right-of-way through the utilization of a street light pole, distribution lines, utility poles, traffic signal or similar structure;
- b. To the extent that an alternative tower structure is a vertical structure located in the public right-of-way, its pole-mounted components shall be located on or within an existing utility or street light pole serving another purpose whenever technically feasible;
- c. If the applicant provides evidence that an existing structure is not available in the area where additional coverage is needed, a new pole or structure may be considered;
- d. With respect to pole components, such components shall be located on or within a new utility pole where other utility distribution lines are aerial and there are no reasonable alternatives, if the applicant is authorized to construct the new utility poles;
- e. Alternative tower structures shall be consistent with the size and shape of similar pole-mounted equipment installed by communications companies on utility poles in the right-of-way within reasonable proximity the proposed alternative tower structure;
- f. Alternative tower structures shall be designed such that antenna installations on traffic signal standards are placed in a manner so that the size and appearance of the structure will not be considerably altered and the function of the signal will not be impacted;
- g. Alternative tower structures shall be sized to minimize the negative aesthetic impacts to the right-of-way and adjacent properties;
- h. Alternative tower structures shall not alter vehicular circulation or parking within the right-of-way or impede vehicular, bicycle or pedestrian access or visibility along the right-of-way;
- i. Alternative tower structures may not be more than five (5) feet taller (as measured from the ground to the top of the pole) than any existing utility or traffic signal pole within a radius of five hundred and twenty-eight (528) feet of the pole or structure. A new or freestanding alternative tower structure may not be higher than thirty six (36) feet; and
- j. Alternative tower structures in the right-of-way shall not exceed twenty four (24) inches in diameter.

(3) Towers that are not alternative tower structures or small cell facilities.

- a. No new towers, excepting small cell facilities in the right-of-way, shall be permitted unless the applicant demonstrates to the reasonable satisfaction of the Director that existing WCFs are not able to accommodate the needs that the applicant proposes to address with its tower application and sufficient separation of towers is achieved. Evidence may consist of the following:
  1. No existing WCFs with a suitable height are located within the geographic area required to meet the applicant's engineering requirements;
  2. Existing WCFs do not have sufficient structural strength to support applicant's proposed WCF;
  3. The applicant's proposed WCF would cause electromagnetic interference with the existing WCFs or the existing WCFs would cause interference with the applicant's proposed WCF; or
  4. The applicant demonstrates that there are other limiting factors that render existing WCFs unsuitable for collocation;
- b. Towers shall either maintain a galvanized steel finish, or, subject to any applicable FAA standards and Town design approval processes, be painted a neutral color so as to reduce visual obtrusiveness;
- c. Wherever possible, towers shall be located to utilize existing landforms, vegetation and structures to aid in screening the facility from view or to otherwise blend in with the surrounding built and natural environment;
- d. Monopole support structures shall taper from the base to the tip;
- e. All towers shall be enclosed by security fencing or wall and shall also be equipped with an appropriate anti-climbing device;
- f. Where the proposed height exceeds that of the zoning district, towers over ninety (90) feet in height shall not be located within one-quarter mile from any existing tower that is over ninety (90) feet in height, unless the applicant has shown to the satisfaction of the Director that there are no reasonably suitable alternative sites in the required geographic area that meet the applicant's needs; and
- g. Tower-related accessory equipment shall meet the following standards:
  1. All buildings, shelter, cabinets and other accessory components shall be grouped as closely together as technically possible;
  2. The total footprint coverage area of the WCF's accessory equipment shall not exceed three hundred fifty (350) square feet;

3. No related accessory equipment or accessory structure shall exceed twelve (12) feet in height; and
  4. Related accessory equipment, including, but not limited to, remote radio units, shall be fully screened whenever feasible by being located behind parapet walls or within equipment enclosures.
- (f) Design standards for ground mounted equipment. Ground-mounted equipment shall be located in a manner necessary to address both public safety and aesthetic concerns. Wherever feasible, ground-mounted equipment that is otherwise visible from the right-of-way or adjacent properties shall be undergrounded to minimize the visual impact to the area and minimize impacts related to physical access on the site. Where appropriate and to the extent it is reasonably feasible based upon construction, engineering and design standards, the Director may require a flush-to-grade underground equipment vault.
- (g) Deviation; interpretation of standards and guidelines.
- (1) Deviation. The Town anticipates and expects compliance with all the design standards set forth in this Section. If an applicant does not utilize the design standards, the applicant shall, in its application, identify the standards that are not utilized and the reason for the deviation.
  - (2) Interpretation. Where interpretation of the design standards is necessitated by the circumstances, the Director shall make such determination. The applicant may appeal the Director's determination to the Board of Adjustment.

**Secs. 16-347 - 16-360. Reserved.**

**Section 2. Severability.** If any part or provision of this Ordinance, or its application to any person or circumstance, is adjudged to be invalid or unenforceable, the invalidity or unenforceability of such part, provision, or application shall not affect any of the remaining parts, provisions or applications of this Ordinance that can be given effect without the invalid provision, part or application, and to this end the provisions and parts of this Ordinance are declared to be severable.

**Section 3. Code revisions.** Minor changes such as the format and other related changes to unify the revised Code may be necessary. The Town Clerk is hereby authorized to make such changes, provided that neither the intent nor substantive content of this Ordinance be altered by such changes.

**Section 4. Effective Date and Publication.** 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 10D**

**CONSIDER SECOND AMENDMENT**

**IRON HORSE AGREEMENT**

## TOWN COUNCIL AGENDA COMMUNICATION

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**AGENDA DATE:** May 20, 2019

**ITEM NUMBER:** 10D

**SUBJECT:** Second Amendment to Iron Horse Agreement

**ACTION PROPOSED:** Deny the Second Agreement to Iron Horse as Presented

**ATTACHMENTS:**

1. Second Amendment to Iron Horse Agreement
2. IMEG Cost Estimate for LCR 3 Improvements
3. Final Plat Iron Horse Filing 1
4. LCR3-Highway 34 PEL Study Design Alternative
5. LCR3-Highway 34 Concept

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

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### **AGENDA ITEM DESCRIPTION:**

Enclosed for your review and consideration is the Second Amendment to the Iron Horse Agreement. The Iron Horse property was annexed in 2006, and is also known as the Spreng Annexation. As part of this annexation and the subsequent Development Agreements entered into with the Town, the Developer (Iron Horse, LLC) is required to pay for the proportionate share of roadway, traffic signal, and intersection improvements along County Road 3 and to Highway 34. Proportionate as represented in the agreement would mean 25% of the cost based on ownership adjacent to the intersection. To date this infrastructure improvement has not occurred, and at some point, the Town began restricting building permits on the Iron Horse Development.

Since this restriction, one exception has been provided on May 11, 2012. In this instance the Town provided one building permit for the Carrier Lot, but the agreement also reinforced the provision that:

*“the Developer, however, shall not be entitled to receive any additional building permits in either Filing One or Filing Two beyond the one permit issued for the Carrier Lot until either the Intersection Improvements and the CR3 improvements have been paid for and/or constructed in accordance with the Iron Horse Agreements and Town requirements, or the Town and the Developer execute a written amendment(s) to the Iron Horse Agreements regarding the Intersection Improvements and the CR3 Improvements.”*

Iron Horse, LLC and the Town have been working on an agreement that would provide the ability of the Developer to move forward with development of the property, which is in the best interest of Iron Horse and the Town. The provisions of the agreement includes “Reserved Lots” specifically identified and prohibited from development for up to 5 years to consider reorientation of CR3 (overview of this below). It additionally includes an estimated costs for required improvements to be completed by Iron Horse. As part of the estimated costs, for each

lot sold, the Developer shall provide a predetermined amount that shall be deposited with the Town as Escrow Payment for the improvements. The agreement as presented also has a provision in it located in several sections stating the language below:

*“The payment by the Developer of the escrow payments required by this Second Amendment Agreement shall relieve the Developer of any further obligation for the CR3 Interim Improvements and the Intersection Improvements, except as otherwise expressly set forth herein or as otherwise agreed in writing between the Town and the Developer.”*

This statement in essence limits the obligation of the Developer to contribute their proportionate share as called out in all previous agreements. While the agreement acknowledges the proportionate share is 25%, if the cost for these improvements are underestimated and exceed the estimated costs, the Developer would be exempt from meeting the proportionate share and contribute other monies for the project obligations. One would assume then, that the gap that may exist, becomes the responsibility of the Town if the improvements are to move forward.

While the Town was amenable to this agreement in principle, we requested changes desiring a guarantee for the proportionate share of the improvements at CR3 and Highway 34. The Town also requested a change to the language in the agreement related to the *“escrow payment subject to an annual adjustment, commencing on the anniversary date of this Second Amendment Agreement in calendar year 2021, based on the Engineering News Record Construction Cost Index for the Denver Metropolitan area.”* In this provision, we requested adjustments begin in 2020. In both of these requests, the Developer respectfully denied the request to make changes and asked that the Council make the decision on this item. The combination of these two items are the primary reasons why Staff is recommending denial of this agreement. These changes are fundamental to the original annexation and development agreements. Reducing the Developer’s obligation to the original agreement is financially irresponsible on the part of the Town.

It is also important to note that in February 2019, the Colorado Department of Transportation completed the Planning and Environmental Linkage (PEL) Study for Highway 34. As part of this study, the initial recommendation for the intersection of CR 3 and Highway 34 is to reorient the roadway and construct an overpass type bridge at this intersection over Highway 34. A concept of this option from the PEL Study is included (labeled Johnstown-Greeley Recommended Alternative). While there are no cost estimates from this concept, Staff does not believe the spirit of the agreements between the Developer and Town imagined this design to be proportionately shared. Under this condition, CDOT, the Town and other public funding and partnerships would need to be created to move this concept to construction.

Regardless of the above concept, another alternative has been discussed for some time. This concept, (labeled “Information Only”), reorients the roadway and would incorporate a full movement intersection at CR3 and Highway 34. This option is more financially feasible and plausible as a long-term alternative.

It is the opinion of Staff that asking for the Developer to stay true to the commitment of the original agreements is in the best interest of the Town and the Developer. Staff wants to see development continue and building permits issued for this property, but also under an agreement

that respect the existing agreements rather than dismissing those commitments. As an alternative, the Town could continue to issue permits on a case by case basis similar to the agreement for the Carrier Lot which preserves the proportionate share obligation of the Developer.

**LEGAL ADVICE:**

The agreement was reviewed and drafted with Developer's legal counsel by the Town Attorney.

**FINANCIAL ADVICE:**

The financial impact from this agreement has yet to be verified until the project is designed and bid, but could obligate the Town financially.

**RECOMMENDED ACTION:** Staff recommends denial of the agreement as presented based on the reasons described in this agenda item.

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**SUGGESTED MOTIONS:**

**For Approval:**

I move to approve the Second Amendment to Iron Horse Agreement between the Town of Johnstown and Iron Horse, LLC.

**For Denial:**

I move that we deny the Second Amendment to Iron Horse Agreement between the Town of Johnstown and Iron Horse, LLC.

**Reviewed and Approved for Presentation:**

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Town Manager

# **Second Amendment Agreement**

**SECOND AMENDMENT TO  
IRON HORSE AGREEMENTS**

**THIS SECOND AMENDMENT TO IRON HORSE AGREEMENTS** (the “**Second Amendment Agreement**”) is made and entered into between the **TOWN OF JOHNSTOWN, COLORADO**, a municipal corporation (hereinafter referred to as the “**Town**”) and **IRON HORSE, LLC**, a Colorado limited liability company (hereinafter referred to as “**Iron Horse**”) this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

**WITNESSETH:**

**WHEREAS**, on November 3, 2006, the Town and Iron Horse entered into the “**Annexation Agreement – Spreng Annexation**” (the “**Annexation Agreement**”) in connection with the annexation of approximately 173.90 acres of property known as the “**Spreng Annexation**”; and

**WHEREAS**, the Annexation Agreement contains, among other requirements, certain requirements for payment by Iron Horse or a successor or assign of Iron Horse (the “**Developer**”), of a proportionate share of a traffic signal and intersection improvements at Larimer County Road 3 and State Highway 34 as more particularly described in Paragraph B.2 of this Second Amendment Agreement (the “**Intersection Improvements**”); and

**WHEREAS**, on October 31, 2006, the Town and Iron Horse entered into the “**Public Improvements Development Agreement (Non-Residential) for Town of Johnstown (Iron Horse)**” (the “**Filing One Agreement**”) in connection with the development of an approximately 33.321-acre portion of the Spreng Annexation known as Iron Horse Filing One (“**Filing One**”) which agreement requires, among other requirements, the construction, by the Developer, of the Intersection Improvements and make certain improvements to Larimer County Road 3 (“**CR3**”) from Ronald Reagan Boulevard to State Highway 34 as more particularly described in Paragraph B.1 of this Second Amendment Agreement (the “**CR3 Interim Improvements**”); and

**WHEREAS**, on May 11, 2012, the Town and Iron Horse entered into the “**Public Improvements Development Agreement (Non-Residential) for Town of Johnstown (Iron Horse, Filing No. 2)**” (the “**Filing Two Agreement**”) in connection with the development of an approximately 45.648-acre portion of the Spreng Annexation known as Iron Horse Filing Two (“**Filing Two**”), which agreement requires, among other requirements, the construction, by the Developer, of the Intersection Improvements and the CR3 Interim Improvements as described therein; and

**WHEREAS**, approximately 96.474 acres of the Spreng Annexation is not included in either Filing One or Filing Two (the “**Unplatted Property**”); and

**WHEREAS**, Iron Horse intends to subdivide the Unplatted Property into lots or sell the Unplatted Property to one or more third parties for subdivision into lots (the “**Future Lots**”) for the development of industrial uses or any other permitted uses in accordance with the Iron Horse Design Guidelines approved by the Town; and

**WHEREAS**, the estimated net acreage of the Future Lots is 81.55 acres; and

**WHEREAS**, the Annexation Agreement, Filing One Agreement and Filing Two Agreement are referred to collectively herein as the “**Iron Horse Agreements**,” and

**WHEREAS**, on May 7, 2018, the Town and Iron Horse entered into an Amendment to the Iron Horse Agreements (the “**First Amendment Agreement**”) which provided, subject to certain conditions, for the issuance of a building permit for the development of one lot in either Filing One or Filing Two (the “**Carrier Lot**”) without triggering Developer’s requirement to pay for or construct the Intersection Improvements or the CR3 Interim Improvements as set forth in the Iron Horse Agreements; and

**WHEREAS**, the Town has issued a building permit for Lot 7, Block 1, Filing One pursuant to the First Amendment Agreement; and

**WHEREAS**, the Colorado Department of Transportation (“**CDOT**”) is presently conducting the “US Highway 34 Planning and Environmental Linkage” study (the “**PEL Study**”) which is exploring the feasibility of alternative access for CR3 and which is expected to be completed in 20\_\_; and

**WHEREAS**, Iron Horse is actively marketing the Unplatted Property, and three undeveloped lots in Filing One and Filing Two, which three (3) lots are legally described as follows:

- Lot 1, Block 2, Filing One,
- Lot 1, Filing Two
- and
- Lot 2, Filing Two,

and are referred to together herein as the “**Undeveloped Lots**”; and

**WHEREAS**, the net acreage of the Undeveloped Lots is 18.3 acres; and

**WHEREAS**, the Town is supportive of Iron Horse’s efforts to bring significant new businesses to the Town; and

**WHEREAS**, the parties hereto desire to amend the Iron Horse Agreements to provide for the issuance of building permits for the development of the Future Lots and the Undeveloped Lots upon the payment of each such lot’s proportionate share of the costs of the Intersection Improvements and the CR3 Interim Improvements based on the net acreage of the lot, without triggering the Developer’s requirement to construct the Intersection Improvements or the CR3 Interim Improvements as set forth in the Iron Horse Agreements; and

WHEREAS, in exchange for the issuance of building permits for the development of the Future Lots and the Undeveloped Lots in accordance with the terms and conditions of this Second Amendment Agreement, Iron Horse agrees to certain restrictions on Lots 1 through 6, Block One, Filing One (the “**Reserved Lots**”) as more particularly described in Paragraph F of this Second Amendment Agreement; and

WHEREAS, the Future Lots, the Undeveloped Lots and the Reserved Lots are depicted conceptually on the plan attached hereto as **Exhibit A** (the “**Concept Plan**”).

**NOW, THEREFORE**, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Iron Horse agree to amend the Iron Horse Agreements as follows:

- A. The Recitals are incorporated into this Second Amendment Agreement as if fully set forth herein.
- B. For purposes of determining the escrow amount set forth in Paragraph C:
  - 1. The “CR3 Interim Improvements” include two lanes (24 feet) of pavement along CR3 from Ronald Reagan Boulevard to U.S. Highway 34 constructed to an interim arterial standard, including improvements to the Union Pacific Railroad crossing and 6 inch curb and gutter, constructed and installed in accordance with Town regulations, the cost of which is estimated to be Seven Hundred Eight Thousand Nine Hundred Ninety-three Dollars (\$708,993) (the “**CR3 Interim Improvement Cost**”); and
  - 2. The “Intersection Improvements” include twenty-five percent (25%) of the Town’s estimated cost of installing a traffic signal at CR3 and U.S. Highway

34, such percentage estimated to be One Hundred Thirty-two Thousand Two Hundred Thirty-four Dollars (\$132,234) (the “**Developer Intersection Improvement Cost**”).

3. The total net acreage of the Future Lots and Undeveloped Lots is 99.85 acres.

C. Notwithstanding the requirements of the Iron Horse Agreements for Developer’s payment for or construction of the Intersection Improvements or the CR3 Interim Improvements in connection with the issuance of building permits within the Spreng Annexation, Iron Horse Filing One or Iron Horse Filing Two, the Town agrees that the Developer of a Future Lot or an Undeveloped Lot shall be entitled to receive building permits from the Town after the date of this Second Agreement Amendment for a primary building in each of the Future Lots and each of the Undeveloped Lots upon the occurrence of both of the following events for each such lot:

1. The Developer shall have deposited into escrow with the Town a proportionate share of the CR3 Interim Improvement Cost and the Developer Intersection Improvement Cost in an amount equal to Eight Thousand Four Hundred Twenty-four Dollars and Ninety-one Cents (\$8,424.91) per net acre of the Future Lot or Undeveloped Lot for which the building permit is sought (the “**Escrow Payment**”). The amount of the Escrow Payment is subject to an annual adjustment, commencing on the anniversary date of this Second Amendment Agreement in calendar year 2021, based on the Engineering News Record Construction Cost Index for the Denver Metropolitan area.

2. The Developer shall meet all Town requirements for issuance of the building permit, including, but not limited to, payment of the requisite fees and payment of the Escrow Payment, but shall not be required to make any other payment or perform any construction related to the CR3 Interim Improvements or the Intersection Improvements except as expressly set forth herein or as otherwise agreed in writing between the Town and the Developer.

D. The funds escrowed with the Town pursuant to Paragraph C.1 above shall be used by the Town only for the design, construction and installation of the Intersection Improvements and/or the CR3 Interim Improvements, or any portions thereof, and the Town shall use the escrowed funds for such improvements as soon as the Town, in its reasonable discretion, deems feasible, based on the timing of escrow payments made pursuant to this Second Amendment Agreement and other sources of revenue available to the Town for these purposes. The payment by the Developer of the escrow payments required by this Second Amendment Agreement shall relieve the Developer of any further obligation for the CR3 Interim Improvements and the Intersection Improvements,

except as otherwise expressly set forth herein or as otherwise agreed in writing between the Town and the Developer.

E. For the purpose of this Second Amended Agreement, a building permit for a primary building shall not include any permit for a secondary, ancillary or accessory building including, without limitation, any permit for a tenant improvement, renovation or expansion of an existing structure, nor shall any such permits for secondary, ancillary or accessory buildings trigger obligations for the Intersection Improvements or the CR3 Interim Improvements, on the condition that the Escrow Payment or the Adjusted Escrow Payment, as defined in Paragraph F.4 below, was made prior to the issuance of the building permit for the primary building.

F. Iron Horse shall not market, lease or sell the Reserved Lots, nor shall Iron Horse be entitled to receive building permits for such lots until the Town Council of the Town makes a determination regarding the CR3 access pursuant to the completed PEL Study.

1. In the event the Town Council decides to maintain the current alignment of the CR3 access, the Reserved Lots shall thereupon be released from the restrictions of this Paragraph F and the Developer shall be entitled to receive building permits upon meeting applicable Town requirements therefor and upon the payment of the Adjusted Escrow Payment, as defined in Paragraph F.4 below.
2. In the event that the Town Council decides on an alternate alignment of the CR3 access (“**Alternate Alignment**”), the Reserved Lots shall thereupon be released from the restrictions of this Paragraph F and the Developer shall be entitled to receive building permits upon meeting applicable Town requirements therefor and upon the payment of the Adjusted Escrow Payment, as defined in Paragraph F.4 below. However, the Developer and the Town agree to work in good faith on any needed agreement to address issues raised by the Alternate Alignment (e.g. designing to avoid impact to Iron Horse lots affected by the Alternate Alignment or any required right-of-way dedication or improvements to CR3 to address Town requirements for safe access). The Developer will not be required to make additional improvements to CR3 for purposes of achieving the Alternate Alignment, except as may be necessary to meet Town requirements for safe access to and from the lots abutting CR3. The Developer may install water, sewer and stormwater lines in the right-of-way of the Alternate Alignment, subject to Town approval.
3. In the event that the Town Council determination regarding the CR3 access is not made within five (5) years of execution of this Second Amendment

Agreement, then the Developer shall be entitled to receive building permits for the Reserved Lots upon meeting applicable Town requirements therefor and upon the payment of the Adjusted Escrow Payment, as defined in Paragraph F.4 below.

4. Upon the release of each the Reserved Lots from the restriction of this Paragraph F, the per acre Escrow Payment set forth in Paragraph C. above, as adjusted based on the Engineering News Record Construction Cost Index for the Denver Metropolitan area, shall be recalculated as follows:
  - a. The total of the CR3 Interim Improvement Cost and the Developer Intersection Improvement Cost, as adjusted based on the Engineering News Record Construction Cost Index for the Denver Metropolitan area, shall be reduced by the total amount of the Escrow Payments that have already been made (the “**Remaining Costs**”);
  - b. The total net acreage of the Future Lots and the Undeveloped Lots (99.85 acres) shall be adjusted to reflect the inclusion of the net acreage of the Reserved Lots (9.75 acres) and the exclusion of the net acreage of any Future Lots and/or Undeveloped Lots for which building permits have already been issued and Escrow Payments have already been made (the “**Adjusted Net Acreage**”).
  - c. The Remaining Costs shall be divided by the Adjusted Net Acreage, with the result being the adjusted per-acre escrow payment (the “**Adjusted Escrow Payment**”).
  - d. The “**Escrow Payment Adjustment Formula**” described above and “**Examples of Application**” of such formula are set forth on **Exhibit B-1** and **Exhibit B-2**, respectively, attached hereto and incorporated herein by reference.

G. For each building permit sought for a Reserved Lot, or for a Future Lot or an Undeveloped Lot after calculation of the Adjusted Escrow Payment pursuant to Paragraph F.4 above, the Developer thereof shall be required to deposit into escrow with the Town an amount equal to the Adjusted Escrow Payment for each net acre of such lot, and shall further be required to meet all applicable Town requirements for issuance of the building permit therefor.

H. With the exception of Paragraph I below, neither the issuance of the building permit for, nor the development of, the Future Lots, the Undeveloped Lots or the Reserved Lots shall require compliance by the Developer with the provisions of the Iron Horse Agreements for the Intersection Improvements or the CR3 Interim Improvements.

I. Notwithstanding the provisions of this Second Amendment Agreement allowing the issuance of a building permits for the Future Lots, the Undeveloped Lots and the Reserved Lots without requiring the design, construction or installation of the Intersection Improvements or the CR3 Interim Improvements as set forth in the Iron Horse Agreements, the Developer shall nevertheless be required to construct curb, gutter, sidewalk and tree lawn landscaping improvements, in accordance with applicable Town requirements, along the CR3 frontage of Lot 1, Block 2, Filing One and any of the Future Lots or the Reserved Lots that abut CR3, as a requirement of the development of all such lots. The frontage improvements specified herein shall be completed prior to the issuance of a certificate of occupancy for Lot 1, Block 2, Filing One and for any of the Future Lots or Reserved Lots that abut CR3.

J. Any notice required or desired to be given by a party hereto shall be in writing and may be personally delivered; sent by certified mail, return receipt requested; or sent by a nationally recognized receipted overnight delivery service, including the United States Postal Service, United Parcel Service or Federal Express for earliest delivery the next day. Any such notice shall be deemed to have been given and received as follows: when personally delivered to the party to whom it is addressed; when mailed, three delivery (3) days after deposit with the United States Postal Service, postage prepaid; and when by overnight delivery service, one (1) day after deposit in the custody of the delivery service. The addresses for the mailing or delivering of notices shall be as follows:

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

With copy to:               Law Office of Avi S. Rocklin, LLC  
                                      Attn: Avi Rocklin  
                                      1437 N. Denver Avenue, #330  
                                      Loveland, CO 80538

If to Iron Horse: Iron Horse, LLC  
c/o McWhinney Real Estate Services, Inc.  
Attn: VP of Community Development/GM of Centerra  
2725 Rocky Mountain Avenue, Suite 200  
Loveland, CO 80538

With copy to: McWhinney Real Estate Services, Inc.  
Attn: Senior VP and General Counsel  
1800 Wazee Street, Suite 200  
Denver, CO 80202

Notice of a change of address of a party shall be given in the same manner as all other notices as hereinabove provided.

K. This Second Amendment Agreement shall constitute a covenant running with the land, and shall inure to the benefit of, and be binding upon, the parties hereto and their successors and assigns, including, but not limited, to purchasers and developers of the Future Lots, the Undeveloped Lots and the Reserved Lots.

L. Except as amended herein, all terms and conditions of the Iron Horse Agreements and the First Amendment Agreement shall remain in full force and effect.

**IN WITNESS WHEREOF**, the parties have set their hands below.



**TOWN OF JOHNSTOWN, COLORADO,**  
A Municipal Corporation

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

ATTEST:

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

# Exhibit A - Concept Plan



## LAND USE KEY

- INDUSTRIAL
- OPEN SPACE

NET ACRES:

UNDEVELOPED LOTS - 18.3 ACRES  
FUTURE LOTS - 81.55 ACRES

TOTAL: 99.85 ACRES

- RESERVED LOTS
- UNDEVELOPED LOTS
- FUTURE LOTS



NOTE: THIS INFORMATION AND OR REVISIONS THEREON IS/ARE OFFERED BY OR BEHALF OF McWHINNEY AND DOES NOT CONSTITUTE A CONTRACT. THE INFORMATION SHOWN HEREIN IS SUBJECT TO CHANGE WITHOUT NOTICE.

**EXHIBIT B-1**

**Escrow Payment Adjustment Formula**

$$\begin{array}{r} \text{CR3 Interim Improvement Cost} \\ \text{plus } \underline{\hspace{2cm} \text{Developer Intersection Improvement Cost} \hspace{2cm}} \\ = \hspace{10cm} \text{Total Cost} \end{array}$$

$$\begin{array}{r} \text{less } \underline{\hspace{2cm} \text{Escrow Payments Paid} \hspace{2cm}} \\ = \hspace{10cm} \text{Remainder of Total Cost} \end{array}$$

**Divided by**

$$\begin{array}{r} \text{Acreage of Future Lots/Undeveloped Lots} \\ \text{plus } \underline{\hspace{2cm} \text{Acreage of Reserved Lots} \hspace{2cm}} \\ = \hspace{10cm} \text{Total Acreage} \end{array}$$

$$\begin{array}{r} \text{less } \underline{\hspace{2cm} \text{Acreage of developed Future Lots/Undeveloped Lots} \hspace{2cm}} \\ = \hspace{10cm} \text{Remaining Acreage} \end{array}$$

**Result: Adjusted Escrow Payment**

**EXHIBIT B-2**  
**(page 1)**

**Examples of Application of the  
Escrow Amount Adjustment Formula**

**Example #1:** Reserved Lots released for development prior to development of any of the Future Lots or Undeveloped Lots

	CR3 Interim Improvement Cost (\$708,993)
plus	Developer Intersection Improvement Cost (\$132,234)
=	Total Cost (\$841,227)
less	Original Escrow Payments Paid ( - 0 - )
=	Remainder of Total Cost (841,227)

**Divided by**

	Acreage of Future Lots/Undeveloped Lots (99.85)
plus	Acreage of Reserved Lots (9.75)
=	Total Acreage (109.6)
less	Acreage of developed Future Lots/Undeveloped Lots ( - 0 - )
=	Remaining Acreage (109.6)

**Result: Adjusted Escrow Payment = \$7,675.43 per acre**

**EXHIBIT B-2**  
**(page 2)**

**Examples of Application of the  
Escrow Amount Adjustment Formula**

**Example #2:** Reserved Lots released for development after development of 75 acres of the Future Lots and/or Undeveloped Lots and after payment of Original Escrow Payments for the 75 acres equal to \$631,868 (\$8,424,91 x 75)

	CR3 Interim Improvement Cost (\$708,993)
plus	Developer Intersection Improvement Cost (\$132,234)
=	<u>Total Cost (\$841,227)</u>

less	Original Escrow Payments Paid (\$631,868)
=	Remainder of Total Cost (\$209,359)

**Divided by**

	Acreage of Future Lots/Undeveloped Lots (99.85)
plus	Acreage of Reserved Lots (9.75)
=	<u>Total Acreage (109.6)</u>

less	Acreage of developed Future Lots/Undeveloped Lots (75 )
=	Remaining Acreage (34.6)

**Result: Adjusted Escrow Payment = \$6,050.84 per acre**

**IMEG Cost Estimate  
For LCR 3 Improvements**

**IMEG COST ESTIMATE COMPARISON TO DEVELOPMENT AGREEMENT CONDITIONS**  
12/21/2019

SCHEDULE 1- INTERIM IMPROVEMENTS, US 34 TO RR BOULEVARD**	IMEG COST OPINION	MRES POSITION	NOTES
Grading and Demo (inc Ponds)	\$ 119,833	\$ 119,833	
Sidewalks (10 foot wide, East Side)	\$ 58,500	\$ 58,500	Sidewalks may indeed be in the street standard, but would not be constructed with CR3 without adjacent development (if we were to build today)
Curb and Gutter	\$ 46,800	\$ 35,400	Still maintain that we should only construct east side curb, shoulder on west side to accommodate expansion and eliminate throwaway curb. East Side only should be in the estimate, along with Gravel Shoulder on west side
Paving	\$ 180,420	\$ 180,420	Roadbase was priced at \$35/CY in IMEG estimate. Contracted unit prices for 8" section should be ~\$10/CY
Construction Indirects (Survey, EC, Traffic Control, Mob)	\$ 57,500	\$ 56,532	Maintained Traffic control at \$25k + 8% of Hard Costs
<b>Construction Total:</b>	<b>\$ 463,053</b>	<b>\$ 450,685</b>	
<b>Soft Costs (14%- Engineering, CM, Materials Testing)</b>	<b>\$ 64,900</b>	<b>\$ 63,096</b>	
<b>Contingency (10%)</b>	<b>\$ 52,795</b>	<b>\$ 51,378</b>	
<b>Total</b>	<b>\$ 580,748</b>	<b>\$ 565,159</b>	

**Notes:**

\*Schedule 1 does not assume any improvements to the UPRR crossing or US 34. City assumption in figure 1 puts the interim improvements in the center of the 120' Roadway section, the street should be shifted east to the ultimate location (and avoid throwaway improvements), and curb could then be added to both sides, 10' Sidewalk on one (recommended in the "MRES Position" column)

SCHEDULE 4- INTERSECTION IMPROVEMENTS TO CR3, US 34	25% OF IMEG COST OPINION	MRES POSITION	NOTES
Traffic Signal	\$ 87,500	\$ 87,500	
Fiber Interconnect	\$ 6,250	\$ 6,250	
Construction Indirects (Survey, EC, Traffic Control, Mob)	\$ 11,688	\$ 11,688	
<b>Construction Total:</b>	<b>\$ 105,438</b>	<b>\$ 105,438</b>	
<b>Soft Costs (14%- Engineering, CM, Materials Testing)</b>	<b>\$ 14,775</b>	<b>\$ 14,775</b>	
<b>Contingency (10%)</b>	<b>\$ 12,021</b>	<b>\$ 12,021</b>	
<b>Total</b>	<b>\$ 132,234</b>	<b>\$ 132,234</b>	

SCHEDULE 5: UP CROSSING OF CR #3	IMEG COST OPINION	MRES POSITION (1/2 OF COSTS)	NOTES
Concrete Pads	\$ 76,800	\$ 38,400	1/2 Ultimate Crossing
RR Signal	\$ 100,000	\$ 50,000	1/2 Ultimate Crossing
Signal Interconnect	\$ 15,000	\$ 7,500	1/2 Ultimate Crossing
Construction Indirects (Survey, EC, Traffic Control, Mob)	\$ 37,600	\$ 18,800	1/2 Ultimate Crossing
<b>Construction Total:</b>	<b>\$ 229,400</b>	<b>\$ 114,700</b>	
<b>Soft Costs (14%- Engineering, CM, Materials Testing)</b>	<b>\$ 32,000</b>	<b>\$ 16,058</b>	
<b>Contingency (10%)</b>	<b>\$ 26,140</b>	<b>\$ 13,076</b>	
<b>Total</b>	<b>\$ 287,540</b>	<b>\$ 143,834</b>	

\*\*\* THE DEVELOPMENT AGREEMENTS REFERENCES THAT "INTERIM" IMPROVEMENTS MATCH THOSE REQUIRED BY THE UPRR. WORST CASE COSTS (ULTIMATE CROSSING COSTS) HAVE BEEN PRESENTED BY IMEG. IT IS POSSIBLE THAT THE UP MAY NOT REQUIRE ULTIMATE IMPROVEMENTS WITH THE INTERIM CONSTRUCTION. ADDITIONALLY, IMEG'S COSTS REPRESENT 4-LANE (FULL) WIDTH CROSSING COSTS. 1/2 OF THIS CROSSING SHOULD NOT BE CONSIDERED AS PART OF THE ESCROW.

COST TOTALS FOR INTERIM COSTS North of Ronald Reagan: (SCHEDULES 1, 4, 5)	IMEG COST OPINION/ TOWN POSITION	MRES POSITION	NOTES
Schedule 1	\$ 580,748	\$ 565,159	Variance: Removed Curb on West side, replaced with Shoulder
Schedule 4 (1/4 OF US 34/CR 3 INTERSECTION)	\$ 132,234	\$ 132,234	
Schedule 5	\$ 287,540	\$ 143,834	Variance: 1/2 OF ULTIMATE CROSSING COSTS
<b>SURETY PROPOSED:</b>	<b>\$ 1,000,522</b>	<b>\$ 841,227</b>	

**Variance: \$ 159,295**

**Final Plat**  
**Iron Horse Filing 1**







**LCR 3/Highway 34  
PEL Study Design Alternative**



# JOHNSTOWN - GREELEY RECOMMENDED ALTERNATIVE

6.1 MILES, CENTERRA PKWY/THOMPSON PKWY TO EAST OF US 257

## 6-lane Roadway Cross Section with Interchanges

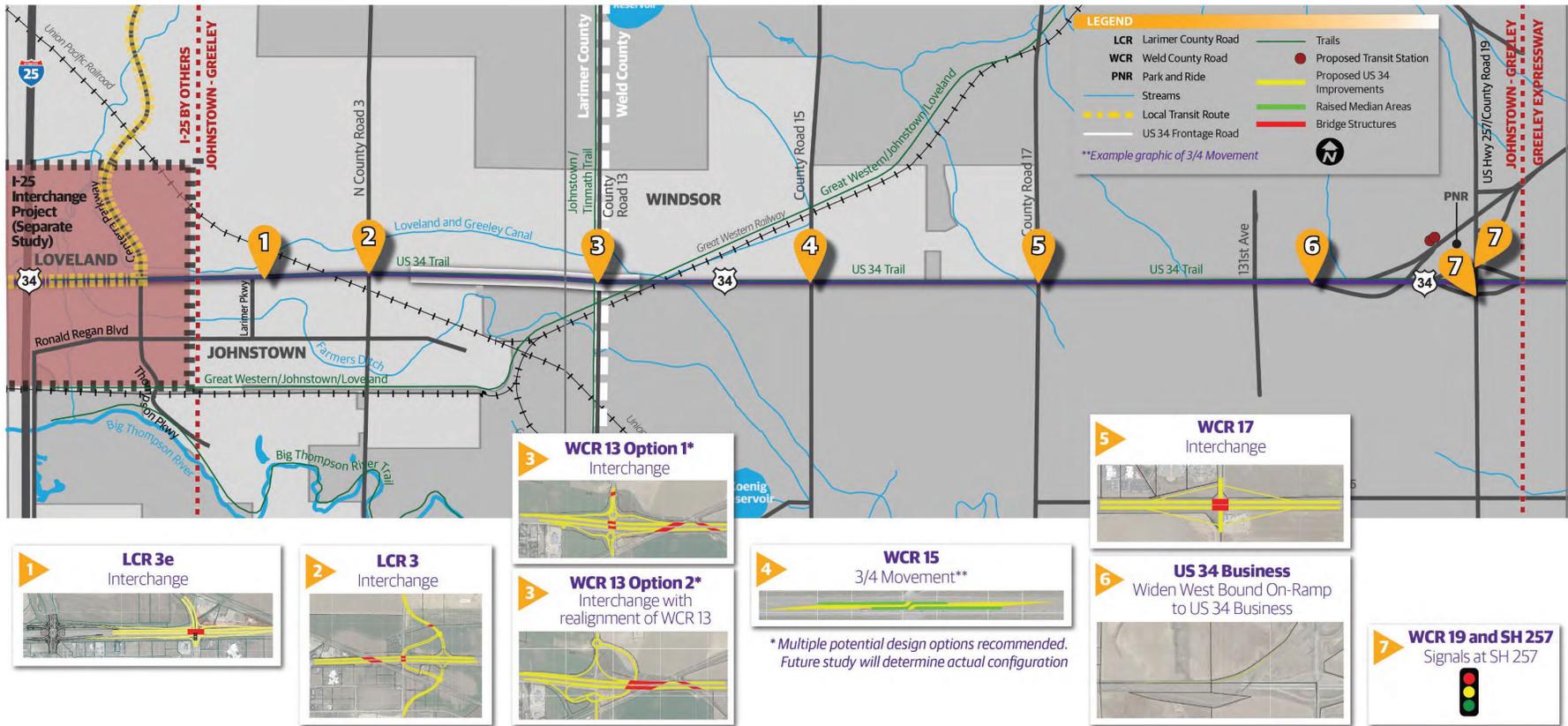
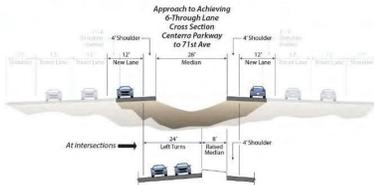


Figure 2-6. Recommended Alternative: Johnstown-Greeley Segment

# **LCR 3/Highway 34 Concept**



**AGENDA ITEM 10E**

**REQUEST FOR MUNICIPAL**

**CODE CHANGE**

**(Discussion Item Only)**

**TOWN COUNCIL AGENDA COMMUNICATION**

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**AGENDA DATE:** May 20, 2019  
**ITEM NUMBER:** 10E  
**SUBJECT:** Requested Town Code Change  
**ACTION PROPOSED:** **Discussion Item Only**  
**ATTACHMENTS:** Email received  
**PRESENTED BY:** Matt LeCerf, Town Manager

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**AGENDA ITEM DESCRIPTION:**

The Town received the enclosed email from Mr. Kane Young-Hiss requesting that the Town consider modifying its municipal codes related to the provisions for wild animals in the definition section. The actual language states the following:

**Sec. 7-121. Definitions.**

*27. Wild animal means any monkey (nonhuman primate), raccoon, skunk, poisonous snake or reptile, jaguar, cheetah, mountain lion, wildcat, panther, margay or any other species of cats other than ordinarily domesticated house cats, any bear, any nonpoisonous snake longer than six (6) feet, any crocodile or alligator longer than one (1) foot, any badger, prairie dog, beaver, muskrat or bat, or any wolf, coyote, fox or other species of canine other than ordinarily domesticated dogs.*

Mr. Young-Hiss' request specifically is the removal of the description of "*any nonpoisonous snakes longer than six (6) feet*". If the Council desires to make this change to the code, it would permit for the habitation of any nonpoisonous snake regardless of size. Mr. Hiss may be in attendance at the meeting to provide any information you may desire related to his expertise in the reptilian/snake field.

If it is the desire of the Council to make changes to this section of the municipal code, we believe the item can be modified within 90 days as we have no knowledge of the existence of snakes that do not currently comply with the municipal code in its current form.

**LEGAL ADVICE:**

Not applicable.

**FINANCIAL ADVICE:**

Not applicable.

**RECOMMENDED ACTION:** Staff has no objections to changes in the municipal code related to the length of snakes in the community. Staff is looking for general direction from the Council related to this request.

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**Reviewed and Approved for Presentation:**

\_\_\_\_\_  
Town Manager

**E-mail from  
Mr. Kane Young-Hiss**

## Matt LeCerf

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**To:** Diana Seele (dseele@townofjohnstown.com)  
**Subject:** FW: an appeal to repeal

Diana,

Can you insert this email into the next packet as a discussion item?

Thanks,

ML

Sent from my iPhone

Begin forwarded message:

**From:** "Coup D'etat Exotics" <[kaneyounghiss@gmail.com](mailto:kaneyounghiss@gmail.com)>  
**Date:** April 17, 2019 at 6:45:04 PM MDT  
**To:** [council@townofjohnstown.com](mailto:council@townofjohnstown.com)  
**Subject:** an appeal to repeal

Dear Johnstown City council and Mayor Lebsack,

Currently, the city of Johnstown, CO has restrictions on large snakes, a restriction I consider to be unjust. The restrictions fall under Chapter 7, Article VII of the Johnstown municipal code titled, "Health, Sanitation, and Animals: Animal Control". It prohibits, "Any wild or exotic animal, as defined in this article. (Ord. 99-603 §1)". The municipal code defines wild animal as, "Wild animal means any monkey (nonhuman primate), raccoon, skunk, poisonous snake or reptile, jaguar, cheetah, mountain lion, wildcat, panther, margay or any other species of cats other than ordinarily domesticated house cats, any bear, any nonpoisonous snake longer than six (6) feet, any crocodile or alligator longer than one (1) foot, any badger, prairie dog, beaver, muskrat or bat, or any wolf, coyote, fox or other species of canine other than ordinarily domesticated dogs."

My hope is to remove nonpoisonous snakes longer than 6 feet from the code's definition of wild animals. This would give citizens of Johnstown the legal ability to own and keep within city limits. It is my belief that these animals were unfairly banned due to an unfair stigma against them. These animals are not as aggressive or violent as some portray them. In the USA, data collected by the CDC estimated that there were approximately 4.5 million dog bites between 2003 and 2004. Roughly 750,000 of these victims received medical attention, about 350,000 were emergency room visits, and 40 led to death. Yet Johnstown has no laws restricting specifically dogs. Only laws that can apply to many such as the restrictions on "vicious animals" or "Nuisance Animals". So why do we ban snakes over 6' yet allow dogs as pets throughout the city? Because dogs have many redeeming qualities, and so do snakes. We cannot let a whole species be restricted because there may be a few aggressive animals or negligent owners. We cannot restrict something because we have an unfounded fear of them. Snakes are Beautiful, intelligent and fascinating creatures who have been demonized for centuries.

It is my goal to help remove this unfair view placed upon these amazing creatures, and make them legal to own in our great small town of Johnstown. Not only will this increase the freedoms and happiness of some of the citizens in Johnstown, but it could open the door to new small businesses in our town in the form of stores. While it may seem like an unpopular hobby, reptile enthusiasts make up a decent amount of People here in CO, as well as all over the US.

Recently here in Johnstown, on April 6, we had our 2019 Children's Festival. One of the exhibitors in attendance was Fort Collins Reptile & Amphibian Encounters. They brought with them a reticulated Python, one of the largest snakes on earth. Yet there were plenty of children who were able to pet and see this wonderful animal without worry. These snakes are not inherently aggressive, and if kids are able to see and handle them, why are the adult citizens of Johnstown not able to keep them? It is time we remove these wondrous creatures from the listed definition of "wild animals" in the Johnstown Municipal code, and allow our citizens to own these amazing animals. I've attached a photo taken at the 2019 Children's festival of children learning about, and petting the 14' Reticulated python named Juju to illustrate that these are not evil animals. I hope you will consider my request. Thank you.

-Kane Young-Hiss