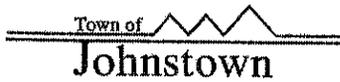


TOWN COUNCIL

MEETING

PACKET

March 3, 2014



Town Council

Agenda

Monday March 3, 2014
Town Hall, Council Chambers
450 So. Parish Avenue
7:00 PM



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

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

1) CALL TO ORDER

A) Pledge of Allegiance

2) ROLL CALL

3) AGENDA APPROVAL

4) RECOGNITIONS AND PROCLAMATIONS

5) PUBLIC COMMENT (three-minute limit per speaker)

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

6) CONSENT AGENDA

A) Town Council Meeting Minutes – February 19, 2014

7) STAFF REPORTS

8) OLD BUSINESS

9) NEW BUSINESS

- A) *Public Hearing – Appeal of Johnstown Review Committee (JRC) Decision – Liberty Arms Final PUD Development Plan
- B) Consider Intergovernmental Agreement with Weld County for Payment of Bonus Amounts for Certain Reported Oil and Gas Employees
- C) Consider Agreement with State of Colorado for an Energy Impact Assistance Grant for Downtown Streetscape Phases 3 and 4 and Municipal Parking Lot Improvements

10) COUNCIL REPORTS AND COMMENTS

11) MAYOR'S COMMENT

12) ADJOURN

NOTICE OF ACCOMODATION

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

AGENDA ITEM 6A

CONSENT

AGENDA

- **Council Minutes – February 19, 2014**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 3, 2014

ITEM NUMBER: 6A

SUBJECT: Consent Agenda

ACTION PROPOSED: Approve Consent Agenda

PRESENTED BY: Town Clerk

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

A) Town Council Minutes – February 19, 2014

LEGAL ADVICE: The entire Consent Agenda may be approved by a motion of the Town Council approving the Consent Agenda, which automatically approves each and every item listed on the Consent Agenda. If a Council member wishes to have a specific discussion on an individual item included with the Consent Agenda, they may move to remove the item from the Consent Agenda for discussion.

FINANCIAL ADVICE: N/A

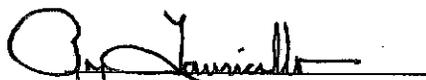
RECOMMENDED ACTION: Approve Consent Agenda

SUGGESTED MOTION:

For Approval: I move to approve the Consent Agenda.

For Denial:

Reviewed:


Town Manager

**COUNCIL
MINUTES**

The Town Council of the Town of Johnstown met on Wednesday, February 19, 2014 at 7:00 p.m. in the Council Chambers at 450 S. Parish Avenue, Johnstown.

Mayor Romanowski led the Pledge of Allegiance.

Roll Call:

Those present were: Councilmembers James, Lebsack and Townsend

Those absent were: Councilmembers Berg, Mellon and Molinar Jr.

Also present: Russ Anson, Town Attorney, Roy Lauricello, Town Manager. John Franklin, Town Planner and Diana Seele, Town Clerk

Agenda Approval

Councilmember James made a motion seconded by Councilmember Townsend to approve the Agenda. Motion carried with a unanimous vote.

Consent Agenda

Councilmember Lebsack made a motion seconded by Councilmember James to approve the Consent Agenda:

- February 3, 2014 - Town Council Meeting Minutes
- Payment of Bills
- January Financial Statements
- 2nd Reading – Ordinance No. 2014-130, Annexing Certain Unincorporated Lands in a Portion of the Northeast ¼ of Section 22, and a Portion of Southwest ¼ of Section 23, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado Known as the Daily and Robbins Annexation, and Containing Approximately 54.8+ Acres
- 2nd Reading – Ordinance No. 2014-131, Approval of Planned Unit Development Zoning of the Property Known as the Daily and Robbins Annexation Located in a Portion of the Northeast ¼ of Section 22 and a Portion of the Southwest ¼ of Section 23, Township 5 North, Range 68 West of the 6th Principal Meridian, County of Larimer, State of Colorado, and Containing Approximately 54.8+ Acres
- 2nd Reading – Ordinance No. 2014-132, An Ordinance to Allow a Deferral of Development Fees for Development Projects That Will Serve a Beneficial Public Purpose to the Town of Johnstown

Motion carried with a unanimous vote.

New Business

A. Consider Retail Liquor Store License Renewal – Johnstown Liquor – Councilmember Lebsack made a motion seconded by Councilmember Townsend to approve the Retail Liquor Store License renewal for Johnstown Liquor. Motion carried with a unanimous vote.

B. Consider Resolution No. 2014-02, Approving 2534 Hotel Development Fee Deferral Agreement for Four Stripe Investment Partners, LLC – The Agreement with Four Stripe follows the requirements of the Town Municipal Code, Section 4-83, adopted by Ordinance No. 2014-132, which allows Council to approve, by Resolution, an Agreement to defer development fees for a project that provides to the public significant social, economic, or cultural benefits, thereby serving a public purpose. Councilmember James made a motion seconded by Councilmember Townsend to approve Resolution No. 2014-02 which in turn, approves the 2534 Development Fee Deferral Agreement. Motion carried with a unanimous vote.

C. Consider Amended Public Improvements Development Agreements for Corbett Glen Filing Nos. 3 and 4 – The owner, Twin Silos, LLC has worked with the Town to arrive at a means for public and private development improvements to be completed and/or repaired in both filings, and to allow residential construction to proceed. The proposed agreements each include a revised phasing plan, whereby repairs and improvements must be completed so that building permits in that phase may be submitted. The agreements also allow the developer to collect a fee on lots in each filing to pay a proportionate cost of the repairs and new improvements. The fees would be assessed at the time a building permit is issued. Councilmember Townsend made a motion seconded by Councilmember Lebsack to approve the Amended Public Improvements Development Agreements for Corbett Glen Filing Nos. 3 and 4. Motion carried with a unanimous vote.

D. Consider Approval of Service and License Agreement for Website Update-Civic Plus – Councilmember Lebsack made a motion seconded by Councilmember Townsend to approve the service and license agreement with CivicPlus in an amount not to exceed \$8,253 for the design update and \$2,152.50 for the annual maintenance, support and hosting fee, and authorize the Mayor to sign the agreement. Motion carried with a unanimous vote.

There being no further business to come before the Council the meeting adjourned at 8:45 p.m.

Mayor

Town Clerk/Treasurer

AGENDA ITEM 9A

**APPEAL
OF
JOHNSTOWN REVIEW COMMITTEE
DECISION**

(Liberty Arms Institute)

(*Public Hearing)

*** PUBLIC HEARING PROCEDURE – Appeal of Johnstown Review Committee (JRC) Decision Regarding Liberty Firearms Final PUD Development Plan**

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

(SUGGESTED MOTIONS):

For Approval:

I move to approve the appeal of the JRC findings regarding the roof design.

For Denial:

I move to deny the appeal.

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 3, 2014

ITEM NUMBER: 9A

SUBJECT: *Public Hearing-Appeal of Johnstown Review Committee Decision - Liberty Arms Final PUD Development Plan

ACTION PROPOSED: Consider Appeal

PRESENTED BY: Mr. John Franklin, Town Planner

AGENDA ITEM DESCRIPTION: The applicant, TB Group representing Liberty Arms Institute has submitted an appeal of the Johnstown Review Committee (JRC) findings (copy attached). The 2534 Design Guidelines provide for an appeal of JRC findings to Town Council.

The JRC did not approve the proposed architectural design, finding that the absence of the "flying" roof line feature above the entry and the west side (drawing attached) is a major variance from the concept (drawing attached) presented to Town Council with the requested amendment to the Design Guidelines to allow the gun range.

LEGAL ADVICE: N/A

FINANCIAL ADVICE: N/A

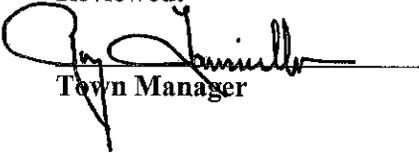
RECOMMENDED ACTION: The Town Council should consider the appeal.

SUGGESTED MOTIONS:

For Approval: I move to approve the appeal of the JRC findings regarding the roof design.

For Denial: I move to deny the appeal.

Reviewed:


Town Manager

**LIBERTY
ARMS
INSTITUTE
APPEAL LETTER**

February 13, 2014

John Franklin - Town Planner
Town of Johnstown

via email: jfranklin@townofjohnstown.com

Re: Liberty Arms Institute

Dear John,

We have reviewed the JRC comments for the Liberty Arms Institute received, January 28, 2014. Architecture comment 1A denies our submittal due specifically to differences related to the 'flying roof' features found on the original concept designs. Liberty Arms Institute would formally like to appeal this decision to Town Council at your earliest convenience.

Sincerely,



Mike Walker, RLA
The Birdsall Group

Cc: M. Rankin
T. Williams
T. Ryk



**JOHNSTOWN
REVIEW
COMMITTEE
DECISION LETTER**

January 28, 2014

TB Group – Mike Walker – RLA
444 Mountain Avenue
Berthoud, CO 80513

RE: Final Development Plan – Liberty Arms Institute

Mr. Walker:

In accordance with the 2534 Design Guidelines, the Johnstown Review Committee (JRC) has considered the Liberty Arms Institute application, received by the Town on December 20, 2013. The JRC received a Notice of Action date December 12, 2013 (conditional approval) from the 2534 Design Review Committee (DRC). The JRC solicited technical review comments from Town advisors, the fire district and utility companies.

Based upon the above, the JRC offers the following comments:

1) Architecture:

- 
- a) In considering the Amendment to the 2534 Design Guidelines to add the gun range as an allowable use on the property, the Planning and Zoning Commission and the Town Council reviewed a detailed, conceptual site plan and building design for the project. The appearance of the proposed building differs from that concept, in regards to the 'flying roof' feature employed at the entry and the west side. The JRC does not approve the proposed architectural design, finding that the absence of the roof line feature is a major variance from the concept as reviewed by Town Council. The Design Guidelines do provide that this finding can be appealed to Town Council.
 - b) The amount of architectural metal on the north elevation walls (excluding rooftop screen) appears to exceed the 30% maximum allowed in the Design Guidelines.
 - c) The white color delivery door seems out of place amidst greys and greens.

2) Access:

- a) The Town Council adopted Resolution 2013-11 (copy attached) which approved the amendment to the 2534 Design Guidelines regarding gun store-related uses, included a requirement that the main access to the facility be only Ronald Reagan Blvd. The proposed plan shows, through driveway width and landscaping that the main access is on Thompson Parkway.
- b) The Resolution also called for signage on Thompson Parkway towards the south near the entry to Thompson Crossing which indicates that Thompson Parkway is not a through street. Please confirm the plans for such signage.
- c) Town Traffic Engineer comments are attached. Please note the reference to the auxiliary right turn lane on Ronald Reagan Blvd.

- d) It is not clear how the double striping will be changed in Ronald Reagan to accommodate the left turn into the site.
- 3) Site Engineering: Please refer to Town Engineer comments which are attached.
- 4) Landscaping:
 - a) The proposed landscaped berm/buffer should extend further west towards Thompson Parkway. Will this landscaping be the owner's or district responsibility?
 - b) Who will install and maintain the curbside landscaping along Ronald Reagan?
 - c) Who will install the decorative street light(s) along Ronald Reagan?
 - d) What is color (should match the building or site lighting color) and finish of the flagpoles?
- 5) Water and Sewer Service Agreement: An agreement is required, along with evidence of adequate water rights to meet anticipated demands of the development. We will forward an agreement prepared by the Town Water Attorney to the owner for signatures and then will submit the signed agreement to Town Council for consideration. A water bank acknowledgement from the Thompson Ranch Metro District will need to be attached to the agreement.

Sincerely,
Johnstown Review Committee

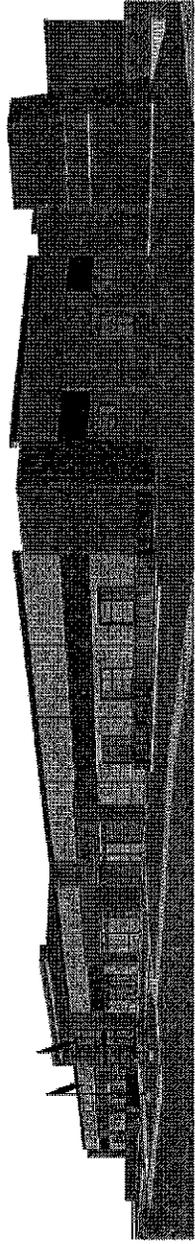
By:
John Franklin, Town Planner

Attachments

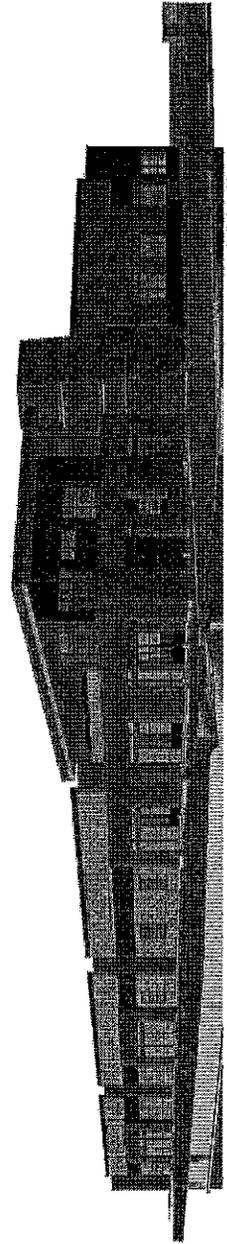
Copies to:
Todd Williams, Thompson Ranch Development Company
Matt Rankin
2534 Design Review Committee
Town Advisors
Building Department
File

PROPOSED PUD FINAL

DEVELOPMENT PLAN



View From Southeast



View From Northwest

Liberty Firearms Institute

Project Number: 2013-26



CONCEPTUAL SITE PLAN

AND

ARCHITECTURAL DESIGN

PROPOSED PHASE 1 SITE PLAN

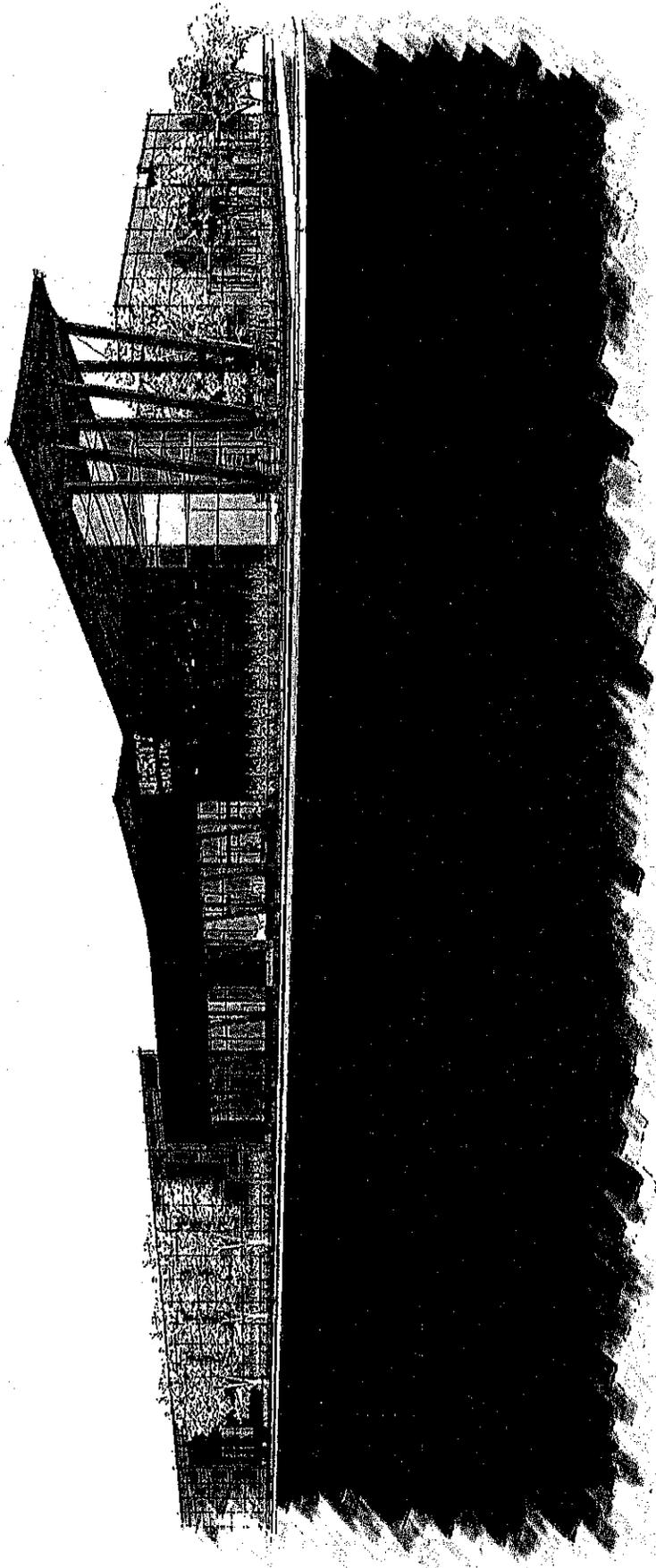


LIBERTY GUN CLUB

THOMPSON PARKWAY & RONALD REAGAN BOULEVARD



OVERALL VIEW OF PROPOSED BUILDING FROM NORTHWEST

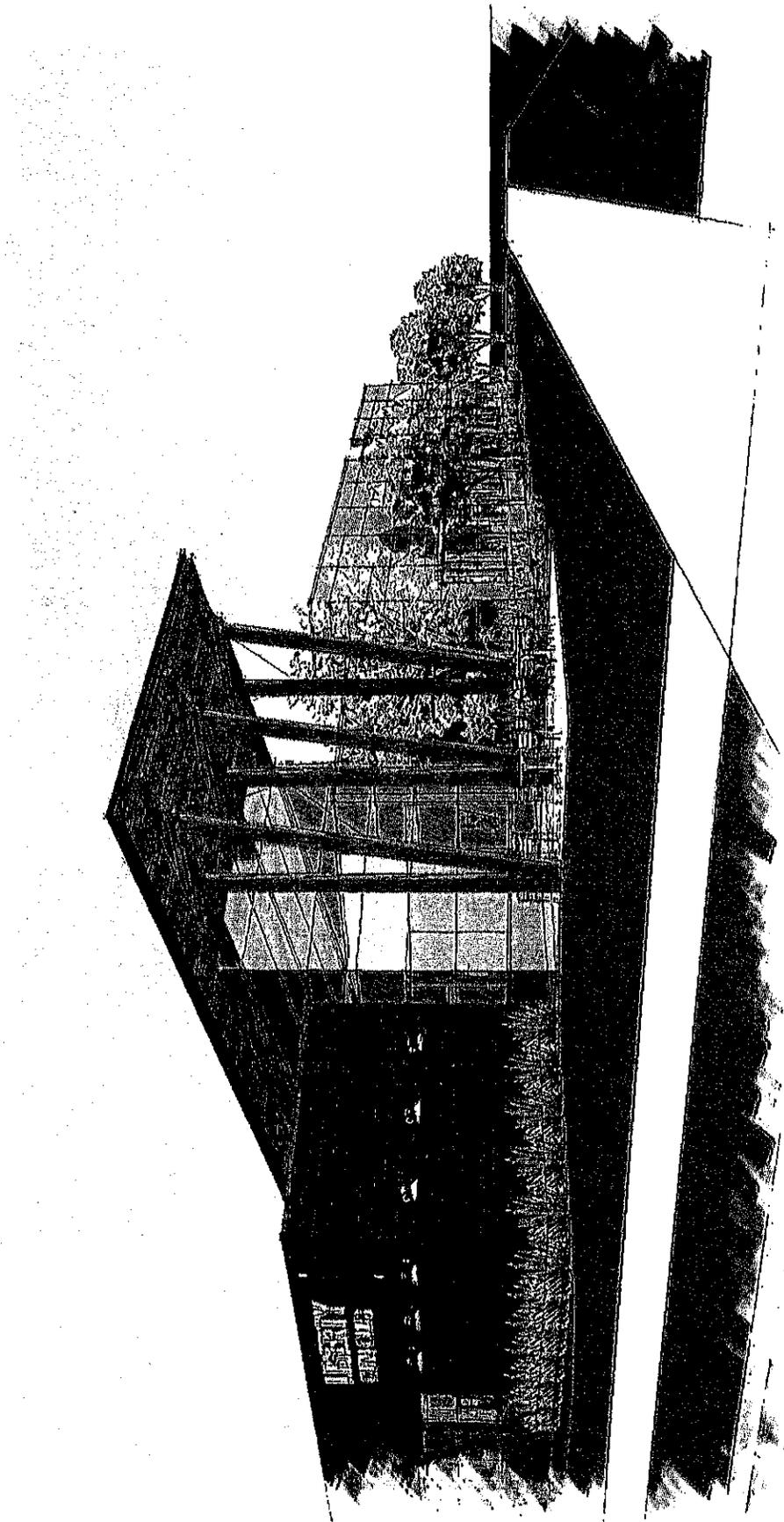


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LIBERTY GUN CLUB
THOMPSON PARKWAY & RONALD REAGAN BOULEVARD



VIEW OF PROPOSED PATIO FROM INTERSECTION

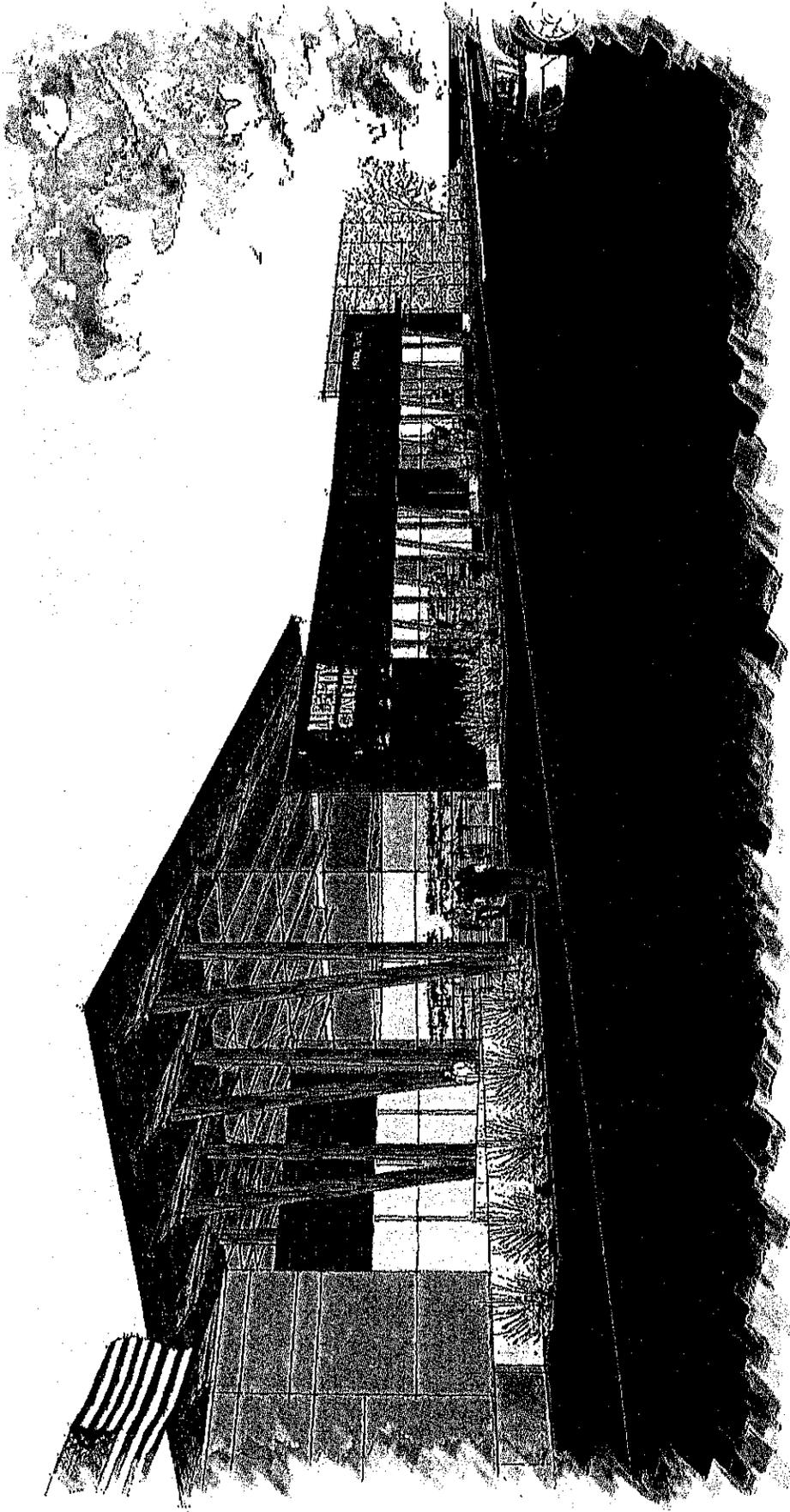


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LIBERTY GUN CLUB
THOMPSON PARKWAY & RONALD REAGAN BOULEVARD



VIEW OF PROPOSED BUILDING ENTRANCE



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LIBERTY GUN CLUB
THOMPSON PARKWAY & RONALD REAGAN BOULEVARD

AGENDA ITEM 9B

IGA

(Weld County)

**(Payment of Bonus Amounts for Reported
Oil and Gas Employees)**

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 3, 2014

ITEM NUMBER: 9B

SUBJECT: Consider Intergovernmental Agreement (IGA) with Weld County for Payment of Bonus Amounts for Certain Reported Oil and Gas Employees

ACTION PROPOSED: Approve Intergovernmental Agreement

PRESENTED BY: Town Manager and Attorney

AGENDA ITEM DESCRIPTION: Weld County has contracted with Mr. Bill Jerke (refer to attached professional services agreement) to assist in ensuring that the maximum number of oil and gas employees residing within unincorporated Weld County and the various municipalities within Weld County are reported to the State of Colorado for 2014. The County has agreed to pay Mr. Jerke a base amount of \$20,000, which is the same amount that was paid in 2013, plus a bonus amount of 5% of the State of Colorado Severance Tax Direct Distribution payment per employee (maximum \$50), and 5% of the Federal Mineral Lease Distribution per employee (maximum \$50) for all employees residing within unincorporated Weld County over 4,353.

The attached IGA provides that the Town of Johnstown will pay Weld County a pro rata share (\$365.27) of the additional \$10,000 base amount (the increase of the base from \$10,000 to \$20,000) plus a bonus amount (maximum \$50 payment per employee for State of Colorado Severance Tax Direct Distribution and Federal Mineral Lease Distribution) for all reported oil and gas employees residing within the Town boundaries over the number of oil and gas employees reported for Johnstown for 2013, which totaled one-hundred fifty nine (159). The term of the IGA is from January 1, 2014 to December 31, 2014. Payment will need to be made by the Town to the County at the end of the quarter when the distributions are received.

As you may recall, the Town previously contracted with Mr. Jerke in 2009, 2011, 2012 and 2013.

*Mr. Jerke will be in attendance should Council have questions.

LEGAL ADVICE: The Town Attorney previously reviewed the past agreements. This agreement is similar to those.

FINANCIAL ADVICE: The agreement provides that the Town will pay Weld County a base amount of \$365.27, plus a five percent (5%) bonus-maximum \$50 per employee, for both the State of Colorado Severance Tax Direct Distribution and the Federal Mineral Lease Distribution for all employees residing within the Town boundaries over one-hundred fifty nine (159), which was the number of oil/gas employees reported residing in Johnstown in 2013.

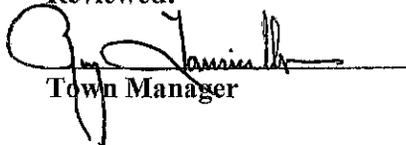
RECOMMENDED ACTION: Approve IGA

SUGGESTED MOTION:

For Approval: I move to approve the Intergovernmental Agreement, and authorize the Mayor to sign it.

For Denial: I move to deny approval of the Intergovernmental Agreement.

Reviewed:


Town Manager

**INTERGOVERNMENTAL
AGREEMENT**

**INTERGOVERNMENTAL AGREEMENT FOR PAYMENT OF BONUS AMOUNTS
FOR CERTAIN REPORTED OIL AND GAS EMPLOYEES RESIDING
WITHIN MUNICIPAL BOUNDARIES**

THIS INTERGOVERNMENTAL AGREEMENT is made and entered into effective as of the date set forth below, between the COUNTY OF WELD, a political subdivision of the State of Colorado, whose address is P. O. Box 758, 1150 O Street, Greeley, CO 80632, hereinafter referred to as "Weld County," and the TOWN OF JOHNSTOWN, a municipal corporation of the State of Colorado, with address of 450 S. Parish, P.O. Box 609, Johnstown, CO 80534, hereinafter referred to as "Municipality."

WITNESSETH:

WHEREAS, the Colorado Department of Local Affairs ("DOLA") distributes revenue derived from energy and mineral extraction statewide, with revenues coming from State Severance Tax receipts and Federal Mineral Lease non-bonus payments, and

WHEREAS, on December 18, 2013, the Board of County Commissioners entered into an agreement with William Jerke to assist in ensuring that the maximum number of oil and gas employees residing within unincorporated Weld County and the various municipalities within Weld County are reported to the State of Colorado, and

WHEREAS, generally, the terms of the agreement with Mr. Jerke call for the payment of a base amount of \$20,000 plus for all reported oil and gas employees residing within Weld County over 4,353 (residing in unincorporated Weld County), a bonus amount of 5% of the State of Colorado Severance Tax Direct Distribution payment per employee (maximum \$50), and 5% of the Federal Mineral Lease Distribution per employee (maximum \$50), paid to Mr. Jerke upon the receipt of said State and Federal sums by the County (said distributions being collectively referred to herein as "Distributions"), and

WHEREAS, Municipality recognizes that it will benefit financially from the payment of the \$20,000 by County, because the work performed by Mr. Jerke will most likely result in increased Distributions to it by DOLA, and

WHEREAS, Municipality offers, through this IGA, to share in the cost of the agreement with Mr. Jerke by paying a prorate share of the additional base of \$10,000 (the increase of the base from \$10,000 to \$20,000) dependent upon the municipalities percentage of the 4,353 employees counted in 2013 (as shown on the attached Exhibit "A"), plus the bonus amount for all reported oil and gas employees residing within their municipality in 2014 over the number of employees reported for their municipality for 2013, and

WHEREAS, in accordance with Section 29-1-203, C.R.S., political subdivisions may cooperate or contract with one another to provide any function, service or facility lawfully authorized to each of the corporations or contracting entities.

WITNESSETH:

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

1. PAYMENT BY MUNICIPALITY OF BONUS AMOUNTS FOR CERTAIN REPORTED OIL AND GAS EMPLOYEES RESIDING WITHIN MUNICIPALITY'S BOUNDARIES: Municipality agrees to pay to County a prorate share of the additional base of \$10,000 (the increase of the base from \$10,000 to \$20,000) dependent upon the municipalities percentage of the 4,353 employees counted in 2013 (as shown on the attached Exhibit "A"), plus the bonus amount for all reported oil and gas employees residing within their municipality in 2014 over the number of employees reported for their municipality for 2013. The term "bonus amount" shall be the amount of 5% of the State of Colorado severance tax direct distribution payment per employee (maximum \$50), and 5% of the federal mineral lease distribution per employee (maximum \$50). Payment shall be made by Municipality to County at the end of the quarter when the Distributions are received.
2. TERM: The term of this IGA shall be from January 1, 2014, to and until December 31, 2014.
3. ENTIRE AGREEMENT: This writing constitutes the entire IGA 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.
4. NO WAIVER OF IMMUNITY: No portion of this IGA shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess, nor shall any portion of this IGA be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this IGA.
5. NO THIRD PARTY BENEFICIARY ENFORCEMENT: It is expressly understood and agreed that the enforcement of the terms and conditions of this IGA, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this IGA shall give or allow any claim or right of action whatsoever by any other person not included in this IGA. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this IGA shall be an incidental beneficiary only.

Signed by the parties this ____ day of _____, 2014.

ATTEST:
Weld County Clerk to the Board

COUNTY OF WELD, a political
subdivision of the
State of Colorado

By: _____
Deputy Clerk to the Board

By: _____
Douglas Rademacher, Chairman
Board of County Commissioners of the
County of Weld

ATTEST:

TOWN OF JOHNSTOWN, a municipal
corporation of the State of Colorado

By: _____
Diana Seele, Town Clerk

By: _____
Mark Romanowski, Mayor

EXHIBIT "A"**JERKE 2014 CONTRACT BASE ALLOCATION TO MUNICIPALITIES****COLORADO EMPLOYEE RESIDENCY REPORT- NUMBER OF EMPLOYEES**

<u>MUNICIPALITY</u>	<u>2013</u>	<u>Percent</u>	<u>Base</u> <u>10,000</u>	<u>Prorata Share of</u> <u>10,000</u>	<u>Total Share of</u> <u>\$20,000 Base</u>
AULT	26	0.005973	\$ -	\$ 59.73	\$ 59.73
DACONO	42	0.009649	\$ -	\$ 96.49	\$ 96.49
EATON	87	0.019986	\$ -	\$ 199.86	\$ 199.86
ERIE	17	0.003905	\$ -	\$ 39.05	\$ 39.05
EVANS	577	0.132552	\$ -	\$ 1,325.52	\$ 1,325.52
FIRESTONE	57	0.013094	\$ -	\$ 130.94	\$ 130.94
FORT LUPTON	261	0.059959	\$ -	\$ 599.59	\$ 599.59
FREDERICK	63	0.014473	\$ -	\$ 144.73	\$ 144.73
GARDEN CITY	4	0.000919	\$ -	\$ 9.19	\$ 9.19
GILCREST	46	0.010567	\$ -	\$ 105.67	\$ 105.67
GREELEY	1569	0.360441	\$ -	\$ 3,604.41	\$ 3,604.41
GROVER	13	0.002986	\$ -	\$ 29.86	\$ 29.86
HUDSON	29	0.006662	\$ -	\$ 66.62	\$ 66.62
JOHNSTOWN	159	0.036527	\$ -	\$ 365.27	\$ 365.27
KEENSEBURG	23	0.005284	\$ -	\$ 52.84	\$ 52.84
KERSEY	65	0.014932	\$ -	\$ 149.32	\$ 149.32
LA SALLE	92	0.021135	\$ -	\$ 211.35	\$ 211.35
LOCHBUIE	75	0.017229	\$ -	\$ 172.29	\$ 172.29
MEAD	27	0.006203	\$ -	\$ 62.03	\$ 62.03
MILLIKEN	101	0.023202	\$ -	\$ 232.02	\$ 232.02
NUNN	6	0.001378	\$ -	\$ 13.78	\$ 13.78
PIERCE	17	0.003905	\$ -	\$ 39.05	\$ 39.05
PLATTEVILLE	89	0.020446	\$ -	\$ 204.46	\$ 204.46
RAYMER	0	0	\$ -	\$ -	\$ -
SEVERANCE	36	0.00827	\$ -	\$ 82.70	\$ 82.70
WINDSOR	131	0.030094	\$ -	\$ 300.94	\$ 300.94
BRIGHTON	0	0	\$ -	\$ -	\$ -
NORTHGLEN	0	0	\$ -	\$ -	\$ -
LONGMONT	0	0	\$ -	\$ -	\$ -
BERTHOUD	0	0	\$ -	\$ -	\$ -
UNINCORPORATED WELD COUNTY	<u>741</u>	<u>0.170227</u>	<u>\$ 10,000.00</u>	<u>\$ 1,702.27</u>	<u>\$ 11,702.27</u>
TOTAL	4353	1	\$ 10,000.00	\$ 10,000.00	\$ 20,000.00

AGREEMENT
(Professional Services)

AGREEMENT FOR PROFESSIONAL SERVICES

THIS AGREEMENT is made by and between the County of Weld, State of Colorado, whose address is 915 10th Street, Greeley, Colorado, 80631 ("**County**"), and William H. Jerke, whose address is 22911 WCR 39, LaSalle, Colorado 80645, ("**Contractor**").

WHEREAS, County desires to retain Contractor as an independent contractor to perform services as more particularly set forth below; and

WHEREAS, Contractor has the time available to timely perform the services, and is willing to perform the services according to the terms of this Agreement.

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

1. **Engagement of Contractor.** County hereby retains Contractor, and Contractor hereby accepts engagement by County upon the terms and conditions set forth in this Agreement.
2. **Term.** The term of this Agreement shall be from January 1, 2014, through and until September 1, 2014.
3. **Services to be Performed.** Contractor agrees to perform the following Services:
 - a. Contractor shall solicit and encourage oil and gas service companies performing services for oil and gas operators working within Weld County during 2013 to report their employees' home addresses to those operators. The operators will then be encouraged by the Contractor to report such information, along with information regarding their own employees' home addresses, to the Colorado Department of Revenue, for 2014 reporting purposes. The number reported for 2013 was 4,353. Contractor shall have access to Weld County GIS and the Weld County Clerk to the Board records to accomplish his work in providing the Services contemplated herein.
4. **Compensation.**
 - a. Contractor shall be paid the sum of \$20,000 for the base number of 4,353 oil and gas employees residing within Weld County, paid monthly on the 15th day of the month, for five months (\$4,000/month), starting in January, 2014.
 - b. For all reported oil and gas employees' home addresses located within Weld County as recognized by the Colorado Department of Local Affairs over 4,353, a bonus amount of 5% of the State of Colorado Severance Tax Direct Distribution payment per employee (maximum \$50), and 5% of the Federal

Mineral Lease Distribution per employee (maximum \$50), paid to Contractor upon the receipt of said State and Federal sums by County. If, for any reason, the State does not pay the anticipated Severance Tax Direct Distribution, County will not be obligated to pay the State bonus to Contractor.

- c. County anticipates entering into intergovernmental agreements with municipalities located within Weld County to then receive a portion of the State and Federal distributions referred to in subsection b., above. Any amounts so received by County shall be retained by County and no amount from the receipt of such distributions shall be due and owing to Contractor.
 - d. Contractor shall receive no compensation from County other than what is stated herein.
5. **Additional Work.** In the event the County shall require changes in the scope, character, or complexity of the work to be performed, and said changes cause an increase or decrease in the time required or the costs to the Contractor for performance, an equitable adjustment in fees and completion time shall be negotiated between the parties and this Agreement shall be modified accordingly by a supplemental Agreement. Any claims by the Contractor for adjustment hereunder must be made in writing prior to performance of any work covered in the anticipated supplemental Agreement. Any change in work made without such prior supplemental Agreement shall be deemed covered in the compensation and time provisions of this Agreement.
6. **Independent Contractor.** Contractor agrees that Contractor is an independent contractor and that neither Contractor nor Contractor's agents or employees are, or shall be deemed to be, agents or employees of the County for any purpose. Contractor shall have no authorization, express or implied, to bind the County to any agreement, liability, or understanding. The parties agree that Contractor will not become an employee of County, nor is Contractor entitled to any employee benefits from County as a result of the execution of this Agreement.
7. **Warranty.** Contractor warrants that the Services performed under this Agreement will be performed in a manner consistent with the professional standards governing such Services and the provisions of this Agreement.
8. **Reports County Property.** All reports and other tangible materials produced in connection with the performance of this Agreement, whether or not such materials are in completed form, shall at all times be considered the property of the County. Contractor shall not make use of such material for purposes other than in connection with this Agreement without prior written approval of County.

9. **Insurance and Indemnification.** Contractor shall defend and indemnify County, its officers and agents, from and against loss or liability arising from Contractor's acts, errors or omissions in seeking to perform its obligations under this Agreement. Contractor shall provide necessary workers' compensation insurance at Contractor's own cost and expense.
10. **Termination.** Either party may terminate this Agreement at any time without notice upon a material breach of the terms of this Agreement; however, in the event of early termination, Contractor shall be paid any amounts then due and owing as identified in Paragraph 4, above.
11. **Non-Assignment.** Contractor may not assign or transfer this Agreement, any interest therein or claim thereunder, without the prior written approval of County.
12. **Time of Essence.** Time is of the essence in each and all of the provisions of this Agreement.
13. **Interruptions.** Neither party to this Agreement shall be liable to the other for delays in delivery or failure to deliver or otherwise to perform any obligation under this Agreement, where such failure is due to any cause beyond its reasonable control, including but not limited to Acts of God, fires, strikes, war, flood, earthquakes or Governmental actions.
14. **Notices.** Any notice required to be given under this Agreement shall be in writing and shall be mailed or delivered to the other party at that party's address as stated above.
15. **Compliance.** This Agreement and the provision of services hereunder shall be subject to the laws of Colorado and be in accordance with the policies, procedures, and practices of County.
16. **Non-Exclusive Agreement.** This Agreement is nonexclusive and County may engage or use other contractors or persons to perform services of the same or similar nature.
17. **Certification.** Contractor certifies that Contractor is not an illegal immigrant, and further, Contractor represents, warrants, and agrees that it has verified that Contractor does not employ any illegal aliens. If it is discovered that Contractor is an illegal immigrant, employs illegal aliens or subcontracts with illegal aliens, County can terminate this Agreement and Contractor may be held liable for damages.
18. **Entire Agreement/Modifications.** This Agreement contains the entire agreement between the parties with respect to the subject matter contained in this Agreement. This instrument supersedes all prior negotiation, representation, and understanding or

agreements with respect to the subject matter contained in this Agreement. This Agreement may be changed or supplemented only by a written instrument signed by both parties.

19. **Funding Contingency.** No portion of this Agreement shall be deemed to create an obligation on the part of County to expend funds not otherwise appropriated or budgeted for.
20. **No Conflict.** No employee of Contractor nor any member of Contractor's family shall serve on a County Board, committee or hold any such position which either by rule, practice or action nominates, recommends, supervises Contractor's operations, or authorizes funding to Contractor.
21. **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.
22. **Governmental Immunity.** No portion of this Agreement shall be deemed to constitute a waiver of any immunities the parties or their officers or employees may possess.
23. **No Third Party Beneficiary.** 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 this 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 an incidental beneficiary only.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year written below.

CONTRACTOR:

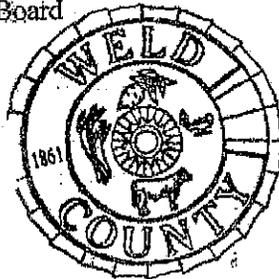
William H. Jerke
William H. Jerke

ATTEST: *Monica Daniel-Nika*
CLERK TO THE BOARD

BOARD OF COUNTY
COMMISSIONERS OF WELD COUNTY

By: *Donna J. Sechler*
Deputy Clerk to the Board

By: *William F. Garcia*
William F. Garcia, Chairman



DEC 18 2013

LETTER
(Weld County Attorney)



WELD COUNTY ATTORNEY'S OFFICE
1150 O STREET
P.O. BOX 758
GREELEY, COLORADO 80632
PHONE: 970-336-7235
FAX: 970-352-0242

December 18, 2013

Mayor Mark Romanowski
Town of Johnstown
450 S. Parish
P.O. Box 609
Johnstown, CO 80534

Re: 2014 IGA for Payment of Bonus Amounts
for Certain Reported Oil And Gas
Employees

Dear Mayor Romanowski,

On December 18, 2013, the Board of County Commissioners of Weld County entered into an agreement with William H. Jerke for the year 2014 to assist in ensuring that the maximum number of oil and gas employees residing within unincorporated Weld County and the various municipalities within Weld County are reported to the State of Colorado. The agreement is similar to the one for 2013. A copy of the 2014 agreement with Mr. Jerke is enclosed.

The Board is again asking all municipalities in Weld County to participate in paying a portion of the costs associated with the County's agreement with Mr. Jerke. Such participation will be by intergovernmental agreement ("IGA"), similar to the one for 2013.

Two originals of the IGA are enclosed. If you are agreeable to participating as described, I ask that you sign the enclosed originals and send them to me at the following address: Bruce T. Barker, Weld County Attorney, P.O. Box 758, 1150 O Street, Greeley, CO 80632. I will then see that the originals are signed by the Board Chairman, and one original will be returned to you.

Please feel free to call me at (970) 356-4000, ext. 4390, if you have any questions.

Sincerely,



Bruce T. Barker
Weld County Attorney

Enc.

AGENDA ITEM 9C

ENERGY

IMPACT

GRANT

AGREEMENT

(State of Colorado)

(Downtown Streetscape Project)

TOWN COUNCIL AGENDA COMMUNICATION

AGENDA DATE: March 3, 2014

ITEM NUMBER: 9C

SUBJECT: Consider Agreement with the State of Colorado for an Energy Impact Assistance Grant for Downtown Streetscape Phases 3 and 4 and Municipal Parking Lot Improvements

ACTION PROPOSED: Approve Agreement

PRESENTED BY: Town Attorney and Town Manager

AGENDA ITEM DESCRIPTION: On July 15, 2013 the Town of Johnstown submitted an Energy and Mineral Impact Assistance Grant application to the State of Colorado. The grant request was for funding in the amount of \$936,400 to assist in the cost of construction of the downtown streetscape and municipal parking lot improvements. A \$600,000 Energy Impact Assistance Grant was awarded to the Town for the project.

The attached proposed agreement with the State of Colorado is a standard agreement entered into between the State of Colorado and various entities receiving impact assistance funds. The scope of services provides in part for the following:

- The Project is the construction and installation of streetscape improvements in downtown Johnstown.
- The Town of Johnstown will construct and install improvements to the streetscape along approximately three (3) blocks of Charlotte Street, in the downtown area. The streetscape improvements include street and utility reconstruction, installation of pedestrian crosswalks utilizing pavers, landscaping, street furniture, lighting and signage. The Town will own the improvements and, a contractor will be hired to complete the work.
- The Town will be responsible for completion of the work and will be required to provide required documentation to the Department of Local Affairs (DOLA) as specified in the contract.
- The Town shall notify DOLA at least thirty (30) days in advance of Project completion.
- The State shall evaluate the Town's expenditure of the grant funds for timeliness and compliance with the terms of the Grant. DOLA reserves the right to recapture advanced Grant Funds when Town has not or is not complying with the terms of the Grant.
- Eligible expenses shall include the construction and or/installation of street and utility reconstruction, crosswalks with pavers, landscaping, street furniture, lighting and signage.
- Construction of the project to be completed by February 28, 2015.

LEGAL ADVICE: The Town Attorney has reviewed the agreement.

FINANCIAL ADVICE: According to the Town Treasurer, funds have been budgeted and are available for the project.

RECOMMENDED ACTION: Approve agreement with the State of Colorado

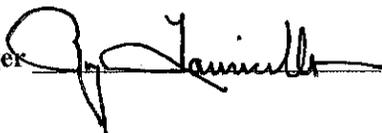
SUGGESTED MOTIONS:

For Approval: I move to approve the agreement with the State of Colorado and authorize the Mayor to sign it.

For Denial: I move to deny approval of the agreement with the State of Colorado.

Reviewed:

Town Manager



AGREEMENT

GRANT AGREEMENT

Between

**STATE OF COLORADO
DEPARTMENT OF LOCAL AFFAIRS**

And

TOWN OF JOHNSTOWN

Summary

Award Amount: \$600,000.00

Identification #s:

Encumbrance #: F14MLG7307 (*DOLA's primary identification #*)
Contract Management System #: 64820 (*State of Colorado's tracking #*)

Project Information:

Project/Award Number: EIAF 7307
Project Name: Johnstown Downtown Streetscape & Municipal Parking Lot Imp.
Performance Period: Start Date: _____ End Date: 02/28/15
Brief Description of Project / Assistance: The Project is the construction and installation of streetscape improvements in downtown Johnstown, Colorado.

Program & Funding Information:

Program Name: Energy & Mineral Impact Assistance Fund
Funding source: Federal Funds
Catalog of Federal Domestic Assistance (CFDA) Number (if federal funds): 15.227
Funding Account Codes: 153 FAA0 128 5110

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 FORM 1 – RESERVED.

1. PARTIES

This Agreement (hereinafter called “Grant”) is entered into by and between the **TOWN OF JOHNSTOWN** (hereinafter called “Grantee”), and the STATE OF COLORADO acting by and through the Department of Local Affairs for the benefit of the Division of Local Government (hereinafter called the “State” or “DOLA”).

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY.

This Grant shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or designee (hereinafter called the “Effective Date”). The State shall not be liable to pay or reimburse Grantee for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to (see checked option(s) below):

- A. The Effective Date.
- B. The Effective Date; provided, however, that all Project costs, if specifically authorized by the federal funding authority, incurred on or after March 1, 20XX, may be submitted for reimbursement as if incurred after the Effective Date.
- C. insert date for authorized Pre-agreement Costs (as such term is defined in §4) , if specifically authorized by the funding authority . Such costs may be submitted for reimbursement as if incurred after the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority to enter into this Grant exists in C.R.S. 24-32-106 and 29-3.5-101 and funds have been budgeted, appropriated and otherwise made available pursuant to C.R.S. 34-63-101 (Federal Mineral Leasing Fund) and a sufficient unencumbered balance thereof remains available for payment. Required approvals, clearance and coordination have been accomplished from and with appropriate agencies.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Grant.

C. Purpose

The purpose of this Grant is described in **Exhibit B**.

D. References

All references in this Grant to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Budget

"Budget" means the budget for the Project and/or Work described in **Exhibit B**.

B. Closeout Certification

"Closeout Certification" means the Grantee's certification of completion of Work submitted on a form provided by the State.

C. Evaluation

"Evaluation" means the process of examining Grantee's Work and rating it based on criteria established in **§6** and **Exhibit B**.

D. Exhibits and other Attachments

The following are attached hereto and incorporated by reference herein:

- i. Exhibit A (Applicable Laws)
- ii. Exhibit B (Scope of Project)
- iii. Exhibit E (Project Performance Plan)
- iv. Exhibit G (Form of Option Letter)

E. Goods

"Goods" means tangible material acquired, produced, or delivered by Grantee either separately or in conjunction with the Services Grantee renders hereunder.

F. Grant

"Grant" means this agreement, its terms and conditions, attached exhibits, documents incorporated by reference pursuant to the terms of this Grant, and any future modifying agreements, exhibits, attachments or references incorporated herein pursuant to Colorado State law, Fiscal Rules, and State Controller Policies.

G. Grant Funds

"Grant Funds" means available funds payable by the State to Grantee pursuant to this Grant.

H. Party or Parties

"Party" means the State or Grantee and "Parties" means both the State and Grantee.

I. Pay Request(s)

"Pay Request(s)" means the Grantee's reimbursement request(s) submitted on form(s) provided by the State.

J. Pre-agreement costs

"Pre-agreement costs," when applicable, means the costs incurred on or after the date as specified in **§2** above, and prior to the Effective Date of this Grant. Such costs shall have been detailed in Grantee's grant application and specifically authorized by the State and incorporated herein pursuant to **Exhibit B**.

K. Project

“Project” means the overall project described in **Exhibit B**, which includes the Work.

L. Project Closeout

“Project Closeout” means the submission by the Grantee to the State of an actual final Pay Request, a final Status Report and a Closeout Certification.

M. Program

“Program” means the grant program specified on the first page of this Grant that provides the funding for this Grant.

N. Review

“Review” means examining Grantee’s Work to ensure that it is adequate, accurate, correct and in accordance with the criteria established in **§6** and **Exhibit B**.

O. Services

“Services” means the required services to be performed by Grantee pursuant to this Grant.

P. Status Report(s)

“Status Report(s)” means the Grantee’s status report(s) on the Work/Project submitted on form(s) provided by the State.

Q. Subcontractor

“Subcontractor” means third-parties, if any, engaged by Grantee to carry out specific vendor related services.

R. Subgrantee

“Subgrantee” means third-parties, if any, engaged by Grantee to aid in performance of its obligations. Subgrantee is bound by the same overall programmatic and grant requirements as Grantee.

S. Subject Property

“Subject Property” means the real property, if any, for which Grant Funds are used to acquire, construct, or rehabilitate.

T. Substantial Progress in the Work

“Substantial Progress in the Work” means Grantee meets all deliverables and performance measures within the time frames specified in **Exhibit E**.

U. Work

“Work” means the tasks and activities Grantee is required to perform to fulfill its obligations under this Grant and **Exhibit B**, including the performance of the Services and delivery of the Goods.

V. Work Product

“Work Product” means the tangible or intangible results of Grantee’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM

A. Initial Term-Work Commencement

Unless otherwise permitted in **§2** above, the Parties’ respective performances under this Grant shall commence on the Effective Date. This Grant shall terminate on **February 28, 2015** unless sooner terminated or further extended as specified elsewhere herein.

B. Two Month Extension

The State, at its sole discretion upon written notice to Grantee as provided in **§16**, may unilaterally extend the term of this Grant for a period not to exceed two months if the Parties are negotiating a replacement Grant (and not merely seeking a term extension) at or near the end of any initial term or any extension thereof. The provisions of this Grant in effect when such notice is given, including, but not limited to prices, rates, and delivery requirements, shall remain in effect during the two month extension. The two-month extension shall immediately terminate when and if a replacement Grant is approved and signed by the Colorado State Controller.

6. STATEMENT OF WORK

A. Completion

Grantee shall complete the Work and its other obligations as described herein and in **Exhibit B**. Except as specified in §2 above, the State shall not be liable to compensate Grantee for any Work performed prior to the Effective Date or after the termination of this Grant.

B. Goods and Services

Grantee shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Grant Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed by Grantee or Subgrantees shall be considered Grantee's or Subgrantees' employee(s) for all purposes hereunder and shall not be employees of the State for any purpose as a result of this Grant.

7. PAYMENTS TO GRANTEE

The State shall, in accordance with the provisions of this §7, pay Grantee in the following amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable under this Grant to Grantee by the State is **\$600,000.00 (SIX HUNDRED THOUSAND and XX/100 DOLLARS)**, as determined by the State from available funds. Grantee agrees to provide any additional funds required for the successful completion of the Work. Payments to Grantee are limited to the unpaid obligated balance of the Grant as set forth in **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Grant or in **Exhibit B** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Grant or such Exhibit. Grantee shall initiate any payment requests by submitting invoices to the State in the form and manner set forth and approved by the State.

ii. Interest

The State shall not pay interest on Grantee invoices. The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by Grantee previously accepted by the State.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making fiscal commitments beyond the term of the State's current fiscal year. Therefore, Grantee's compensation is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions, set forth below. If federal funds are used with this Grant in whole or in part, the State's performance hereunder is contingent upon the continuing availability of such funds. Payments pursuant to this Grant shall be made only from available funds encumbered for this Grant and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not fully appropriated, or otherwise become unavailable for this Grant, the State may immediately terminate this Grant in whole or in part to the extent of funding reduction without further liability in accordance with the provisions herein.

iv. Erroneous Payments

At the State's sole discretion, payments made to Grantee in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by Grantee, may be recovered from Grantee by deduction from subsequent payments under this Grant or other grants or agreements between the State and Grantee or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any person or entity other than the State.

C. Use of Funds

Grant Funds shall be used only for eligible costs identified herein and/or in **Exhibit B**.

i. Budget Line Item Adjustments.

Modifications to uses of such Grant Funds shall be made in accordance with §4.4 of Exhibit B. For line item adjustments over 10% but less than 24.99% (a "Minor Line Item Adjustment") which are approved, the State shall provide written notice to Grantee in a form substantially equivalent to Exhibit G (each an "Option Letter"). If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

ii. Overall Budget Adjustments.

Modifications to the overall Budget shall be made in accordance with §4.5 of Exhibit B. For overall Budget adjustments less than 24.99% (a "Minor Budget Adjustment") which are approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

iii. Setting Final Initial Budget.

All requests by the Grantee to align the initial overall Budget with current market conditions shall be made in accordance with §4.5.1.1 of Exhibit B. If such True-up Budget Proposal (as such term is defined in §4.5.1.1 of Exhibit B) is approved, the State shall provide written notice to Grantee in an Option Letter. If exercised, the provisions of the Option Letter shall become part of and be incorporated into this Grant.

D. Matching/Leveraged Funds

Grantee shall provide matching and/or leveraged funds in accordance with Exhibit B.

8. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §8 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §19, if applicable.

A. Performance, Progress, Personnel, and Funds

State shall submit a report to the Grantee upon expiration or sooner termination of this Grant, containing an Evaluation and Review of Grantee's performance and the final status of Grantee's obligations hereunder. In addition, Grantee shall comply with all reporting requirements, if any, set forth in Exhibit B.

B. Litigation Reporting

Within 10 days after being served with any pleading in a legal action filed with a court or administrative agency, related to this Grant or which may affect Grantee's ability to perform its obligations hereunder, Grantee shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State's principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of DOLA.

C. Performance Outside the State of Colorado and/or the United States

[Not applicable if Grant Funds include any federal funds] Following the Effective Date, Grantee shall provide written notice to the State, in accordance with §16 (Notices and Representatives), within 20 days of the earlier to occur of Grantee's decision to perform, or its execution of an agreement with a Subgrantee to perform, Services outside the State of Colorado and/or the United States. Such notice shall specify the type of Services to be performed outside the State of Colorado and/or the United States and the reason why it is necessary or advantageous to perform such Services at such location or locations. All notices received by the State pursuant to this §8.C shall be posted on the Colorado Department of Personnel & Administration's website. Knowing failure by Grantee to provide notice to the State under this §8.C shall constitute a material breach of this Grant.

D. Noncompliance

Grantee's failure to provide reports and notify the State in a timely manner in accordance with this §8 may result in the delay of payment of funds and/or termination as provided under this Grant.

E. Subgrants/Subcontracts

Copies of any and all subgrants and subcontracts entered into by Grantee to perform its obligations hereunder shall be submitted to the State or its principal representative upon request by the State. Any and all subgrants and subcontracts entered into by Grantee related to its performance hereunder shall comply with all applicable federal and state laws and shall provide that such subgrants be governed by the laws of the State of Colorado.

9. GRANTEE RECORDS

Grantee shall make, keep, maintain and allow inspection and monitoring of the following records:

A. Maintenance

Grantee shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Grantee shall maintain such records (the "Record Retention Period") until the last to occur of the following:

- (i) a period of five years after the date this Grant is completed or terminated, or final payment is made hereunder, whichever is later, or
- (ii) for such further period as may be necessary to resolve any pending matters, or
- (iii) if an audit is occurring, or Grantee has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved.

B. Inspection

Grantee shall permit the State, the federal government (if Grant Funds include federal funds) and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe Grantee's records related to this Grant during the Record Retention Period for a period of five years following termination of this Grant or final payment hereunder, whichever is later, to assure compliance with the terms hereof or to evaluate Grantee's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Grant, including any extension. If the Work fails to conform to the requirements of this Grant, the State may require Grantee promptly to bring the Work into conformity with Grant requirements, at Grantee's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require Grantee to take necessary action to ensure that future performance conforms to Grant requirements and exercise the remedies available under this Grant, at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

Grantee shall permit the State, the federal government (if Grant Funds include federal funds), and other governmental agencies having jurisdiction, in their sole discretion, to monitor all activities conducted by Grantee pursuant to the terms of this Grant using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All monitoring controlled by the State shall be performed in a manner that shall not unduly interfere with Grantee's performance hereunder.

D. Final Audit Report

Grantee shall provide a copy of its audit report(s) to DOLA as specified in **Exhibit B**.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

Grantee shall comply with the provisions of this §10 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals.

A. Confidentiality

Grantee shall keep all State records and information confidential at all times and comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of Grantee shall be immediately forwarded to the State's principal representative.

B. Notification

Grantee shall notify its agent, employees, Subgrantees, and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by Grantee or its agents in any way, except as authorized by this Grant or approved in writing by the State. Grantee shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by Grantee or its agents, except as permitted in this Grant or approved in writing by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by Grantee for any reason may be cause for legal action by third parties against Grantee, the State or their respective agents. Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to this §10.

11. CONFLICTS OF INTEREST

Grantee shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of Grantee's obligations hereunder. Grantee acknowledges that with respect to this Grant, even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations to the State hereunder. If a conflict or appearance exists, or if Grantee is uncertain whether a conflict or the appearance of a conflict of interest exists, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Grant.

12. REPRESENTATIONS AND WARRANTIES

Grantee makes the following specific representations and warranties, each of which was relied on by the State in entering into this Grant.

A. Standard and Manner of Performance

Grantee shall perform its obligations hereunder in accordance with the highest standards of care, skill and diligence in the industry, trades or profession and in the sequence and manner set forth in this Grant.

B. Legal Authority – Grantee and Grantee's Signatory

Grantee warrants that it possesses the legal authority to enter into this Grant and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Grant, or any part thereof, and to bind Grantee to its terms. If requested by the State, Grantee shall provide the State with proof of Grantee's authority to enter into this Grant within 15 days of receiving such request.

C. Licenses, Permits, Etc.

Grantee represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. Grantee warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Grant, without reimbursement by the State or other adjustment in Grant Funds. Additionally, all employees and agents of Grantee performing Services under this Grant shall hold all required licenses or certifications, if any, to perform their responsibilities. Grantee, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for Grantee to properly perform the terms of this Grant shall be deemed to be a material breach by Grantee and constitute grounds for termination of this Grant.

13. INSURANCE

Grantee and its Subgrantees shall obtain and maintain insurance as specified in this section at all times during the term of this Grant: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to Grantee and the State.

A. Grantee

i. Public Entities

If Grantee is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. Grantee shall show proof of such insurance satisfactory to the State, if requested by the State. Grantee shall require each subgrant with Subgrantees that are public entities, providing Goods or Services hereunder, to include the insurance requirements necessary to meet Subgrantee's liabilities under the GIA.

ii. Non-Public Entities

If Grantee is not a "public entity" within the meaning of the GIA, Grantee shall obtain and maintain during the term of this Grant insurance coverage and policies meeting the same requirements set forth in §13(B) with respect to Subgrantees that are not "public entities".

B. Grantees, Subgrantees and Subcontractors

Grantee shall require each subgrant with Subgrantees and each contract with Subcontractors, other than those that are public entities, providing Goods or Services in connection with this Grant, to include insurance requirements substantially similar to the following:

i. Workers' Compensation

Workers' Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of Grantee, Subgrantee and Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Malpractice/Professional Liability Insurance

This section shall | shall not apply to this Grant.

Grantee, Subgrantees and Subcontractors shall maintain in full force and effect a Professional Liability Insurance Policy in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate, written on an occurrence form, that provides coverage for its work undertaken pursuant to this Grant. If a policy written on an occurrence form is not commercially available, the claims-made policy shall remain in effect for the duration of this Grant and for at least two years beyond the completion and acceptance of the work under this Grant, or, alternatively, a two year extended reporting period must be purchased. The Grantee, Subgrantee or Subcontractor shall be responsible for all claims, damages, losses or expenses, including attorney's fees, arising out of or resulting from such party's performance of professional services under this Grant, a subcontract or subgrant.

v. Umbrella Liability Insurance

For construction projects exceeding \$10,000,000, Grantee, Subgrantees and Subcontractors shall maintain umbrella/excess liability insurance on an occurrence basis in excess of the underlying insurance described in §13B(i)-(iv) above. Coverage shall follow the terms of the underlying insurance, included the additional insured and waiver of subrogation provisions. The amounts of insurance required in subsections above may be satisfied by the Grantee, Subgrantee and

Subcontractor purchasing coverage for the limits specified or by any combination of underlying and umbrella limits, so long as the total amount of insurance is not less than the limits specified in each section previously mentioned. The insurance shall have a minimum amount of \$5,000,000 per occurrence and \$5,000,000 in the aggregate.

vi. Property Insurance

This subsection shall apply if Grant Funds are provided for the acquisition, construction, or rehabilitation of real property.

Insurance on the buildings and other improvements now existing or hereafter erected on the premises and on the fixtures and personal property included in the Subject Property against loss by fire, other hazards covered by the so called "all risk" form of policy and such other perils as State shall from time to time require with respect to properties of the nature and in the geographical area of the Subject Property, and to be in an amount at least equal to the replacement cost value of the Subject Property. Grantor will at its sole cost and expense, from time to time and at any time, at the request of State provide State with evidence satisfactory to State of the replacement cost of the Subject Property.

vii. Flood Insurance

If the Subject Property or any part thereof is at any time located in a designated official flood hazard area, flood insurance insuring the buildings and improvements now existing or hereafter erected on the Subject Property and the personal property used in the operation thereof in an amount equal to the lesser of the amount required for property insurance identified in §vi above or the maximum limit of coverage made available with respect to such buildings and improvements and personal property under applicable federal laws and the regulations issued thereunder.

viii. Builder's Risk Insurance

The subsection shall apply if Grant Funds are provided for construction or rehabilitation of real property.

Grantee, Subgrantee and/or Subcontractor shall purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial construction/rehabilitation costs, plus value of subsequent modifications and cost of materials supplied or installed by others, comprising total value for the entire Project at the site on a replacement cost basis without optional deductibles. Such property insurance shall be maintained, unless otherwise agreed in writing by all persons and entities who are beneficiaries of such insurance, until final payment has been made or until no person or entity other than the property owner has an insurable interest in the property.

- a) The insurance shall include interests of the property owner, Grantee, Subgrantee, Subcontractors in the Project as named insureds.
- b) All associated deductibles shall be the responsibility of the Grantee, Subcontractor and Subgrantee. Such policy may have a deductible clause but not to exceed \$10,000.
- c) Property insurance shall be on an "all risk" or equivalent policy form and shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Grantee's, Subgrantee's and Subcontractor's services and expenses required as a result of such insured loss.
- d) Builders Risk coverage shall include partial use by Grantee and/or property owner.
- e) The amount of such insurance shall be increased to include the cost of any additional work to be done on the Project, or materials or equipment to be incorporated in the Project, under other independent contracts let or to be let. In such event, Subgrantee and Subcontractor shall be reimbursed for this cost as his or her share of the insurance in the same ratio as the ratio of the insurance represented by such independent contracts let or to be let to the total insurance carried.

ix. Pollution Liability Insurance

This subsection shall apply if Grant Funds are provided for the construction or rehabilitation of real property.

If Grantee and/or its Subgrantee or Subcontractor is providing directly or indirectly work with pollution/environmental hazards, they must provide or cause those conducting the work to provide Pollution Liability Insurance coverage. Pollution Liability policy must include contractual liability coverage. The policy limits shall be in the amount of \$1,000,000 with maximum deductible of \$25,000 to be paid by the Grantee's Subcontractor and/or Subgrantee.

C. Miscellaneous Insurance Provisions

Certificates of Insurance and/or insurance policies required under this Grant shall be subject to the following stipulations and additional requirements:

- i. Deductible.** Any and all deductibles or self-insured retentions contained in any Insurance policy shall be assumed by and at the sole risk of the Grantee, its Subgrantees or Subcontractors,
- ii. In Force.** If any of the said policies shall fail at any time to meet the requirements of the Grant as to form or substance, or if a company issuing any such policy shall be or at any time cease to be approved by the Division of Insurance of the State of Colorado, or be or cease to be in compliance with any stricter requirements of the Grant, the Grantee, its Subgrantee and its Subcontractor shall promptly obtain a new policy.
- iii. Insurer.** All requisite insurance shall be obtained from financially responsible insurance companies, authorized to do business in the State of Colorado and acceptable to Grantee,
- iv. Additional Insured**
Grantee and the State shall be named as additional insureds on the Commercial General Liability and Automobile Liability Insurance policies (leases and construction Grants require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).
- v. Primacy of Coverage**
Coverage required of Grantee, Subgrantees and Subcontractors shall be primary over any insurance or self-insurance program carried by Grantee or the State.
- vi. Cancellation**
The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Grantee and Grantee shall forward such notice to the State in accordance with §16 (Notices and Representatives) within seven days of Grantee's receipt of such notice.
- vii. Subrogation Waiver**
All insurance policies in any way related to this Grant and secured and maintained by Grantee or its Subgrantees and Subcontractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against Grantee or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

D. Certificates

Grantee, Subgrantee and Subcontractor shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Grant or of their respective subcontract or subgrant. No later than 15 days prior to the expiration date of any such coverage, Grantee, Subgrantee and Subcontractor shall deliver to the State or Grantee certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Grant, subgrant or subcontract, Grantee, Subgrantee and Subcontractor shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §13.

14. BREACH

A. Defined

In addition to any breaches specified in other sections of this Grant, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, constitutes a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Grantee, or the appointment of a receiver or similar officer for Grantee or any of

its property, which is not vacated or fully stayed within 20 days after the institution or occurrence thereof, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §16. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §15. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Grant in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

15. REMEDIES

If Grantee is in breach under any provision of this Grant or if the State terminates this Grant pursuant to §15(B), the State shall have the remedies listed in this §15 in addition to all other remedies set forth in other sections of this Grant following the notice and cure period set forth in §14(B), if applicable. The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If Grantee fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Grant and in a timely manner, the State may notify Grantee of such non-performance in accordance with the provisions herein. If Grantee thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Grant or such part of this Grant as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. Grantee shall continue performance of this Grant to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination. If, after termination by the State, it is determined that Grantee was not in breach or that Grantee's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Grant had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

B. Early Termination in the Public Interest

The State is entering into this Grant for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Grant ceases to further

the public policy of the State, the State, in its sole discretion, may terminate this Grant in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Grant by the State for cause or breach by Grantee, which shall be governed by §15(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify Grantee of such termination in accordance with §16. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Grant.

ii. Obligations and Rights

Upon receipt of a termination notice, Grantee shall be subject to and comply with the same obligations and rights set forth in §15(A)(i).

iii. Payments

If this Grant is terminated by the State pursuant to this §15(B), Grantee shall be paid an amount which bears the same ratio to the total reimbursement under this Grant as the Services satisfactorily performed bear to the total Services covered by this Grant, less payments previously made.

Additionally, if this Grant is less than 60% completed, the State may reimburse Grantee for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Grant) incurred by Grantee which are directly attributable to the uncompleted portion of Grantee's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Grantee hereunder.

C. Termination for No Substantial Progress in the Work

The State may elect to terminate this Grant upon receipt and review of any Quarterly Progress Report, submitted per the time periods defined in **Exhibit E** – Project Performance Plan, if such Quarterly Progress Report fails to evidence Substantial Progress in the Work as directed, defined and expected under **Exhibit B**. Further, the State may elect to terminate this Grant if the Grantee fails to complete Project Closeout within **three months** of completion of the Work. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder.

i. Obligations and Rights

To the extent specified in any termination notice, Grantee shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and subgrants/subcontracts with third parties. However, Grantee shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Grant's terms. At the sole discretion of the State, Grantee shall assign to the State all of Grantee's right, title, and interest under such terminated orders or subgrants/subcontracts. Upon termination, Grantee shall take timely, reasonable and necessary action to protect and preserve property in the possession of Grantee in which the State has an interest. All materials owned by the State in the possession of Grantee shall be immediately returned to the State.

ii. Payments

The State shall reimburse Grantee only for accepted performance up to the date of termination.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, Grantee also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Grant by Grantee and the State may withhold any payment to Grantee for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from Grantee is determined. The State may withhold any amount that may be due to Grantee as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services.

D. Remedies Not Involving Termination

The State, at its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend Grantee's performance with respect to all or any portion of this Grant pending necessary corrective action as specified by the State without entitling Grantee to an adjustment in price/cost or performance schedule. Grantee shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by Grantee after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to Grantee until corrections in Grantee's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed, that due to Grantee's actions or inactions, cannot be performed or, if performed, would be of no value to the State; provided, that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of Grantee's employees, agents, or Subgrantees whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Grant is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If Grantee infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Grant, Grantee shall, at the State's option (a) obtain for the State or Grantee the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

16. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Chantal Unfug, Division Director
Division of Local Government
Colorado Department of Local Affairs
1313 Sherman Street, Room 521
Denver, Colorado 80203
Email: chantal.unfug@state.co.us

B. Grantee:

Mark Romanowski, Mayor
Town of Johnstown
450 S. Parish Avenue
Johnstown, Colorado 80534
Email: mromanowski1@msn.com

17. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

This section shall | shall not apply to this Grant.

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or Work Product of any type, including drafts, prepared by Grantee in the performance of its obligations under this Grant shall be the exclusive property of the State and, all Work Product shall be delivered

to the State by Grantee upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. Grantee shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of Grantee's obligations hereunder without the prior written consent of the State.

18. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the GIA. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees is controlled and limited by the provisions of the GIA and the risk management statutes, CRS §24-30-1501, et seq., as amended.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Grantee under this Grant is greater than \$100,000 either on the Effective Date or at anytime thereafter, this §19 applies.

Grantee agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state Grants and inclusion of Grant performance information in a statewide Contract Management System.

Grantee's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Grant, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of Grantee's performance shall be part of the normal Grant administration process and Grantee's performance will be systematically recorded in the statewide Contract Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of Grantee's obligations under this Grant shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of Grantee's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Grant term. Grantee shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that Grantee demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by the Department of Local Affairs, and showing of good cause, may debar Grantee and prohibit Grantee from receiving future grants and bidding on future contracts. Grantee may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of Grantee, by the Executive Director, upon a showing of good cause.

20. RESTRICTION ON PUBLIC BENEFITS

This section shall | shall not apply to this Grant.

Grantee must confirm that any individual natural person is lawfully present in the United States pursuant to CRS §24-76.5-101 et seq. when such individual applies for public benefits provided under this Grant by requiring the applicant to:

- A. Produce an identification document in accordance with §2.1.1 through §2.1.3 of Colorado Department of Revenue's Rule #1 CCR 201-17, Rule for Evidence of Lawful Presence, as amended.
- B. Execute an affidavit herein attached as **Form 1**, Residency Declaration, stating
 - i. That he or she is a United States citizen or legal permanent resident; or
 - ii. That he or she is otherwise lawfully present in the United States pursuant to federal law.

[The following applies if Grant is funded with federal funds].

Notwithstanding the foregoing, to the extent that there is any conflict with the provisions above or those set forth in the Residency Declaration attached hereto as **Form 1** and any provision of federal law, the provisions of federal law shall prevail.

21. GENERAL PROVISIONS

A. Assignment and Subgrants

Grantee's rights and obligations hereunder are personal and may not be transferred, assigned or subgranted without the prior, written consent of the State. Any attempt at assignment, transfer, or subgranting without such consent shall be void. All assignments, subgrants, or subcontracts approved by Grantee or the State are subject to all of the provisions hereof. Grantee shall be solely responsible for all aspects of subgranting and subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §21(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Grant are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Grant may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Grant represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein.

F. Indemnification-General

Grantee shall, to the extent permitted by law, indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by Grantee, or its employees, agents, Subgrantees, or assignees pursuant to the terms of this Grant; however, the provisions hereof shall not be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions, of the GIA, or the Federal Tort Claims Act, 28 U.S.C. 2671 et seq., as applicable, as now or hereafter amended.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Grant shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. List of Selected Applicable Laws

At all times during the performance of this Grant, Grantee shall comply with all applicable Federal and State laws and their implementing regulations, currently in existence and as hereafter amended, including without limitation those set forth on **Exhibit A**, Applicable Laws. Grantee also shall require compliance with such laws and regulations by subgrantees under subgrants permitted by this Grant.

I. Use Covenants

This section shall | shall not apply to this Grant:

For Subject Property that is owned by Grantee upon execution of this Grant, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after execution of this Grant. For Subject Property acquired by Grantee using Grant Funds, Grantee shall record a Use Covenant substantially equivalent to **Exhibit F** with the county in which the property resides as soon as reasonably practicable after acquisition of such property.

J. Modification

i. By the Parties

Except as specifically provided in this Grant, modifications of this Grant shall not be effective unless agreed to in writing by the Parties in an amendment hereto, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATION OF CONTRACTS -

TOOLS AND FORMS. Changes to the Grant shall be authorized to be approved by the following State or DOLA parties:

- a) Approval by Division Director
The Division Director of DOLA or his delegee shall have authority to approve changes to the Responsible Administrator and Key Personnel specified in §5 of **Exhibit B** and the Principal Representative in §16.
- b) Approval by DOLA Controller
The DOLA Controller shall have authority to approve all changes to the Grant which are not reserved to the Division Director above.

ii. By Operation of Law

This Grant is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Grant on the effective date of such change, as if fully set forth herein.

K. Order of Precedence

The provisions of this Grant shall govern the relationship of the Parties. In the event of conflicts or inconsistencies between this Grant and its exhibits and attachments including, but not limited to, those provided by Grantee, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Exhibit A (Applicable Laws)
- ii. Colorado Special Provisions
- iii. The provisions of the main body of this Grant (excluding the cover page)
- iv. Any executed Option Letters
- v. Exhibit B (Scope of Project)
- vi. Exhibit E (Project Performance Plan)
- vii. The cover page of this Grant

L. Severability

Provided this Grant can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

M. Survival of Certain Grant Terms

Notwithstanding anything herein to the contrary, provisions of this Grant requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if Grantee fails to perform or comply as required.

N. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. Grantee shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing Grantee for them.

O. Third Party Beneficiaries

Enforcement of this Grant and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

P. Waiver

Waiver of any breach of a term, provision, or requirement of this Grant, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

EIAF 7307 - Johnstown Downtown Streetscape & Municipal Parking Lot Imp.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Grant and the performance measures and standards under CRS §24-103.5-101, if any, are subject to public release through the Colorado Open Records Act, CRS §24-72-101, et seq.

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22. COLORADO SPECIAL PROVISIONS

A. The Special Provisions apply to all Grants except where noted in *italics*.

i. **CONTROLLER'S APPROVAL. CRS §24-30-202 (1).**

This Grant shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

ii. **FUND AVAILABILITY. CRS §24-30-202(5.5).**

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

iii. **GOVERNMENTAL IMMUNITY.**

No term or condition of this Grant 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, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

iv. **INDEPENDENT CONTRACTOR**

Grantee shall perform its duties hereunder as an independent Grantee and not as an employee. Neither Grantee nor any agent or employee of Grantee shall be deemed to be an agent or employee of the State. Grantee and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Grantee or any of its agents or employees. Unemployment insurance benefits shall be available to Grantee and its employees and agents only if such coverage is made available by Grantee or a third party. Grantee shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Grant. Grantee shall not have authorization, express or implied, to bind the State to any Grant, liability or understanding, except as expressly set forth herein. Grantee shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

v. **COMPLIANCE WITH LAW.**

Grantee shall strictly comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

vi. **CHOICE OF LAW.**

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this grant. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Grant, to the extent capable of execution.

vii. **BINDING ARBITRATION PROHIBITED.**

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Grant or incorporated herein by reference shall be null and void.

viii. **SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.**

State or other public funds payable under this Grant shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Grantee hereby certifies and warrants that, during the term of this Grant and any extensions, Grantee has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Grantee is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Grant, including, without

limitation, immediate termination of this Grant and any remedy consistent with federal copyright laws or applicable licensing restrictions.

ix. **EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Grant. Grantee has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Grantee's services and Grantee shall not employ any person having such known interests.

x. **VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.**

[*Not applicable to intergovernmental agreements*] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

xi. **PUBLIC GRANTS FOR SERVICES. CRS §8-17.5-101.**

[*Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services*] Grantee certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Grant and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Grant, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c), Grantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant or enter into a grant with a Subgrantee that fails to certify to Grantee that the Subgrantee shall not knowingly employ or contract with an illegal alien to perform work under this Grant. Grantee (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Grant is being performed, (b) shall notify the Subgrantee and the granting State agency within three days if Grantee has actual knowledge that a Subgrantee is employing or contracting with an illegal alien for work under this Grant, (c) shall terminate the Subgrant if a Subgrantee does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If Grantee participates in the State program, Grantee shall deliver to the granting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Grantee has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If Grantee fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the granting State agency, institution of higher education or political subdivision may terminate this Grant for breach and, if so terminated, Grantee shall be liable for damages.

xii. **PUBLIC GRANTS WITH NATURAL PERSONS. CRS §24-76.5-101.**

Grantee, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the Effective Date of this Grant.

(Special Provisions - effective 1/1/09)

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS GRANT

*** Persons signing for Grantee hereby swear and affirm that they are authorized to act on Grantee's behalf and acknowledge that the State is relying on their representations to that effect.**

<p style="text-align: center;">GRANTEE <u>INSERT-Legal Name of Grantee</u></p> <p>By: _____ Name of Authorized Individual (print)</p> <p>Title: _____ Official Title of Authorized Individual</p> <p>_____ *Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR DEPARTMENT OF LOCAL AFFAIRS</p> <p>By: _____ Reeves Brown, Executive Director</p> <p>Date: _____</p> <hr/> <p style="text-align: center;">PRE-APPROVED FORM CONTRACT REVIEWER</p> <p>By: _____ Bret Hillberry, State Grants Program Manager</p> <p>Date: _____</p>
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ALL GRANTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State grants. This Grant is not valid until signed and dated below by the State Controller or delegate. Grantee is not authorized to begin performance until such time. If Grantee begins performing prior thereto, the State of Colorado is not obligated to pay Grantee for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA

By: _____
Barbara M. Casey, CPA, Controller Delegate

Date: _____

