

***TOWN COUNCIL***

***MEETING***

***PACKET***

**February 2, 2015**

*Agenda*  
Monday, February 2, 2015  
Town Hall, Council Chambers  
450 So. Parish Avenue  
7:00 PM



---

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

---

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

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

---

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

---

- 6) **CONSENT AGENDA**
    - A) Town Council Meeting –January 21, 2015
  - 7) **STAFF REPORTS**
  - 8) **OLD BUSINESS**
  - 9) **NEW BUSINESS**
    - A) Consider Retail Liquor Store License Renewal for Johnstown Liquor
    - B) Consider 2015 Three Mile Plan
    - C) Consider Larimer Humane Society Agreement
    - D) Consider Lease of Water Rights to T Farms, LLC
  - 10) **COUNCIL REPORTS AND COMMENTS**
  - 11) **MAYOR'S COMMENTS**
  - 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 – January 21, 2015**

**TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** February 2, 2015

**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-January 21, 2015

**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

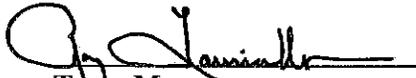
**RECOMMENDED ACTION:** Approve Consent Agenda

**SUGGESTED MOTION:**

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

**For Denial:**

**Reviewed:**

  
Town Manager

The Town Council of the Town of Johnstown met on Wednesday, January 21, 2015 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 Berg, James, Lebsack, Mellon, and Molinar Jr.

Those absent were: Councilmember Townsend

Also present: Avi Rocklin, Town Attorney, Roy Lauricello, Town Manager, John Franklin, Town Planner, Brian Phillips, Chief of Police, Tom Hellen, Public Works Director and Diana Seele, Town Clerk/Treasurer

Agenda Approval

Councilmember Mellon made a motion seconded by Councilmember Lebsack to approve the Agenda with the addition of Item 9 D. Executive Session for discussion of a personnel matter under Section 24-6-402(4)(f) C.R.S. Motion carried with a unanimous vote.

Consent Agenda

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

- January 5 15, 2015 Town Council meeting minutes
- Payment of Bills
- December Financial Statements
- Resolution No. 2015-02, Approving a Use by Special Review for Oil and Gas Exploration on Wind Farm PUD for Synergy Resources Corporation

Motion carried with a unanimous vote.

New Business

A. Public Hearing – Site Development Plan for Panilolo, LLC – The applicant Panilolo, LLC, represented by Mr. Brentley Prop, submitted a request for approval of a Site Development Plan for 2 lots located south of Marketplace Drive and east of I-25 in the Marketplace Subdivision/Johnsons corner area. The zoning for this property is PUD Planned Unit Development.

Mayor Romanowski opened the Public Hearing at 7:28 p.m. and having no public comments closed the hearing at 7:50 p.m.

Councilmember Mellon made a motion seconded by Councilmember James to approve the Site Development Plan for Panilolo, LLC subject to the Planning and Zoning Commission conditions: 1. Applicant shall work with Town to resolve all comments noted in the correspondence from John Franklin, dated November 26, 2014 prior to Town Council consideration; 2. Applicant shall comply with Johnstown Fire Protection District requirements; 3. Final landscape plans shall be approved by the Town prior to construction; 4. Applicant shall provide pro rata payment of public improvements costs to RV Boatel, LLC, in accordance with the Reimbursement Agreement; 5. No outside storage of materials is permitted until and unless enclosed by a screen fence approved by the Town; 6. Applicant shall execute a Water and Sewer Service Agreement, prepared by the Town Water Attorney to be considered by Town Council with the Final Site Development Plan. Motion carried with a unanimous vote.

B. Consider Professional Services Agreement with Gareth Curtis, Sculpture – Councilmember Lebsack made a motion seconded by Councilmember Berg to approve the professional services agreement with Gareth Curtis in an amount not to exceed \$40,000 plus reimbursement for travel expenses not to exceed \$1,000.00 and authorize the Mayor to sign the agreement. Motion carried with a unanimous vote.

C. Consider Professional Services Agreement with J-U-B Engineers, Inc. for Water System Master Plan Update – A total of 4 proposals was received from the advertisement in the newspaper. After review from staff the firm J-U-B Engineers, Inc. was selected. The project will consist of an update to the Town's current computer model of the water distribution system as well as an update of the Town's 2005 water master plan. Councilmember James made a motion seconded by Councilmember Lebsack to approve the Professional Services Agreement with J-U-B Engineers, Inc. for the Water Master Plan Update in a total amount not to exceed \$50,000. Motion carried with a unanimous vote.

D. Executive Session – Councilmember Mellon made a motion seconded by Councilmember Lebsack to recess into Executive Session at 8:10 p.m. for discussion of a personnel matter under Section 24-6-402(4)(f), C.R.S. (and not involving: (a) any specific employees who have requested discussion of the matter in open session ; (b) any member of the Town Board (or body); (c) the appointment of any person to fill an office of the Town Board (or body); or (d) personnel policies that do not require discussion of matters personal to particular employees.) Mayor Romanowski reopened the meeting at 8:40 and stated the only item discussed was what was stated in the earlier motion and no decisions were made.

There being no further business to come before Council the meeting adjourned at 8:54 p.m.

Mayor

Town Clerk/Treasurer



**AGENDA ITEM 9A**

**RETAIL  
LIQUOR STORE  
LICENSE RENEWAL  
(Johnstown Liquor)**

---

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** February 2, 2015

**ITEM NUMBER:** 9A

**SUBJECT:** Consider Retail Liquor Store License Renewal, Johnstown Liquor

**ACTION PROPOSED:** Approve Retail Liquor License Renewal

**PRESENTED BY:** Town Clerk, Police Chief

---

**AGENDA ITEM DESCRIPTION:** Benjamin O. Fisher, owner of Johnstown Liquor, has submitted a renewal application to the Town Clerk for a Retail Liquor Store License renewal, located at 21 S. Parish Avenue, Johnstown, CO. The required fees for the renewal application have been submitted to the Clerk's office. According to the Johnstown Police Department, the establishment has cooperated with law enforcement officials and there have been no violations of the liquor code during the last licensing period.

The Town Council acts as the Local Licensing Authority and is responsible for reviewing and issuing liquor licenses.

---

**LEGAL ADVICE:** N/A

---

**FINANCIAL ADVICE:** N/A

---

**RECOMMENDED ACTION:** Consider Approval of Retail Liquor Store License Renewal.

---

**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Retail Liquor Store License renewal for Johnstown Liquor.

**For Denial:** I move to deny approval of the Retail Liquor Store License renewal for Johnstown Liquor.

---

**Reviewed:**

  
Town Manager

**RENEWAL  
APPLICATION**

**LIQUOR OR 3.2 BEER LICENSE  
 RENEWAL APPLICATION**

SUBMIT TO LOCAL LICENSING AUTHORITY

JOHNSTOWN LIQUOR  
 PO BOX 632  
 JOHNSTOWN CO 80534

Fees Due	
Renewal Fee	\$227.50
Storage Permit \$100 x _____	_____
Optional Premise \$100 x _____	_____
Related Resort \$75 x _____	_____
<b>Amount Due/Paid</b>	

Make check payable to: Colorado Department of Revenue. The State may convert your check to a one-time electronic banking transaction. Your bank account may be debited as early as the same day received by the State. If converted, your check will not be returned. If your check is rejected due to insufficient or uncollected funds, the Department may collect the payment amount directly from your banking account electronically.

PLEASE VERIFY & UPDATE ALL INFORMATION BELOW

RETURN TO CITY OR COUNTY LICENSING AUTHORITY BY DUE DATE

Licensee Name JOHNSTOWN LIQUOR INC		DBA JOHNSTOWN LIQUOR		
Liquor License # 14727390000	License Type Liquor Store (city)	Sales Tax License # 14727390000	Expiration Date 2/20/2015	Due Date 1/6/2015
Street Address 21 S PARISH AVE JOHNSTOWN CO 80534-9099				Phone Number (970) 587 2929
Mailing Address PO BOX 632 JOHNSTOWN CO 80534				
Operating Manager Ben Fisher	Date of Birth 8-2-1985	Home Address 562 12th Street, Johnst Co 80623		Phone Number 1-303-477-1396

- Do you have legal possession of the premises at the street address above?  YES  NO  
 Is the premises owned or rented?  Owned  Rented\* \*If rented, expiration date of lease FEB 1ST 2016
- Since the date of filing of the last annual application, has there been any change in financial interest (new notes, loans, owners, etc.) or organizational structure (addition or deletion of officers, directors, managing members or general partners)? If yes, explain in detail and attach a listing of all liquor businesses in which these new lenders, owners (other than licensed financial institutions), officers, directors, managing members, or general partners are materially interested.  YES  NO  
**NOTE TO CORPORATION, LIMITED LIABILITY COMPANY AND PARTNERSHIP APPLICANTS:** If you have added or deleted any officers, directors, managing members, general partners or persons with 10% or more interest in your business, you must complete and return immediately to your Local Licensing Authority, Form DR 8177: Corporation, Limited Liability Company or Partnership Report of Changes, along with all supporting documentation and fees.
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been convicted of a crime? If yes, attach a detailed explanation.  YES  NO
- Since the date of filing of the last annual application, has the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) been denied an alcohol beverage license, had an alcohol beverage license suspended or revoked, or had interest in any entity that had an alcohol beverage license denied, suspended or revoked? If yes, attach a detailed explanation.  YES  NO
- Does the applicant or any of its agents, owners, managers, partners or lenders (other than licensed financial institutions) have a direct or indirect interest in any other Colorado liquor license, including loans to or from any licensee or interest in a loan to any licensee? If yes, attach a detailed explanation.  YES  NO
- SOLE PROPRIETORSHIPS, HUSBAND-WIFE PARTNERSHIPS AND PARTNERS IN GENERAL PARTNERSHIPS:** Each person must complete and sign the DR 4679: Affidavit – Restriction on Public Benefits (available online or by calling 303-205-2300) and attach a copy of their driver's license, state-issued ID or valid passport.

**AFFIRMATION & CONSENT**

I declare under penalty of perjury in the second degree that this application and all attachments are true, correct and complete to the best of my knowledge.

Type or Print Name of Applicant/Authorized Agent of Business BEN FISHER	Title owner
Signature Ben Fisher	Date 1/13/15

**REPORT & APPROVAL OF CITY OR COUNTY LICENSING AUTHORITY**

The foregoing application has been examined and the premises, business conducted and character of the applicant are satisfactory, and we do hereby report that such license, if granted, will comply with the provisions of Title 12, Articles 46 and 47, C.R.S. **THEREFORE THIS APPLICATION IS APPROVED.**

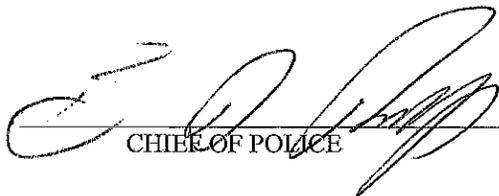
Local Licensing Authority For	Date
Signature	Title
	Attest

**POLICE  
REPORTS**

**TOWN OF JOHNSTOWN POLICE DEPARTMENT**

**Information 3.2% Beer or Liquor Application**

- Name and address of Applicant} Benjamin Fisher  
512 12<sup>th</sup> Street  
Gilcrest, CO 80623
1. Trade Name and Address} Johnstown Liquor  
21 S. Parish  
Johnstown, CO 80534
2. Date of Application: 01/14/2015
3. Type of Application: Retail Liquor Store License
4. Documents Accompanying Application  
A. Local and State License Fees} Submitted with application  
B. Evidence of Correct Zoning} CBD  
C. Building Plans and or Sketch of Interior} N/A  
D. Distance from School as per State} N/A  
E. Deed or Lease or Assignment of Lease or Ownership} Leased
5. Evidence of Public Notice  
A. Posting of Premises} N/A  
B. Legal Publication } N/A
6. Investigation: Police Department Case#}  
A. Applicant has made application for renewal of their Retail Liquor Store License  
B. Johnstown Liquor has operated legally during its last license period.  
C. Cooperation with law enforcement has been good.
8. Findings of fact:  
A. Johnstown Liquor presently holds license 147239-0000 that expires February 20, 2015  
B. The required fees were submitted.  
C. It is my recommendation that the renewal be approved.

  
\_\_\_\_\_  
CHIEF OF POLICE

  
\_\_\_\_\_  
DATE

**JOHNSTOWN POLICE DEPT.  
LIQUOR LICENSE RENEWAL INFORMATION SHEET**

APPLICANT: **Johnstown Liquor**

ADDRESS: **21 S. Parish Avenue**

TYPE LICENSE: **Liquor Store**

POLICE CALLS FOR SERVICE AT THIS LOCATION:

LIQUOR VIOLATIONS AT THIS LOCATION:

ARRESTS DUE TO ALCOHOL AT THIS LOCATION:

JPD RECOMMENDATION FOR RENEWAL: YES XXX NO \_\_\_\_\_

REPORTING OFFICER: 

DATE: 1/14/15

ADDITIONAL INFORMATION:

Johnstown liquor was served with notice of the Standards for Sellers and Servers of Alcohol Beverages for both the August 12 and August 27, 2014 classes. Our records indicate that they did not have a representative attend either class.



**AGENDA ITEM 9B**

**2015  
THREE MILE  
PLAN**

## TOWN COUNCIL AGENDA COMMUNICATION

---

**AGENDA DATE:** February 2, 2015

**ITEM NUMBER:** 9B

**SUBJECT:** Consider 2015 Three Mile Plan

**ACTION PROPOSED:** Approve 2015 Three Mile Plan

**PRESENTED BY:** Town Planner John Franklin

---

**AGENDA ITEM DESCRIPTION:** Section 31-12-105(1)(e) of the Colorado Revised Statutes limits annexations by municipalities by stating that no annexation may take place, which would have the effect of extending a municipal boundary more than three miles in any direction from any point of such municipal boundary in any one year. This section of the statutes also requires that, prior to the completion of any annexation within this three-mile range, the municipality shall have in place a plan for that three-mile wide area, which generally describes such elements as streets, waterways, utilities, parks, land uses, etc. for the area. This "Three Mile Plan" must be updated at least once each year.

Other than meeting the annexation requirement, the Three-Mile Plan has no unique value to the Town, because of the various master plans the Town has adopted and maintained for land use and infrastructure in the Johnstown Planning Area.

On January 28, 2015 the Planning and Zoning Commission voted unanimously to recommend approval of the 2015 Three Mile Plan.

---

**LEGAL ADVICE:** N/A

---

**FINANCIAL ADVICE:** N/A

---

**RECOMMENDED ACTION:** The Planning and Zoning Commission recommends approval of the 2015 Three Mile Plan.

---

**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the 2015 Three Mile Plan.

**For Denial:** I move to deny approval of the 2015 Three Mile Plan.

---

**Reviewed:**

  
Town Manager



**AGENDA ITEM 9C**

**2015  
LARIMER  
HUMANE SOCIETY  
AGREEMENT**

**TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** February 2, 2015

**ITEM NUMBER:** 9C

**SUBJECT:** Consider Agreement between the Town of Johnstown and the Larimer Humane Society

**ACTION PROPOSED:** Approve Agreement

**PRESENTED BY:** Chief of Police and Town Attorney

---

**AGENDA ITEM DESCRIPTION:** The Town of Johnstown currently contracts its animal control sheltering and enforcement with the Larimer Humane Society. The services provided to the Town include maintaining and operating physical plant facilities for the sheltering of animals, veterinary services and medical supplies for injured animals, and the transport and impound of animals, as needed.

There are a few minor increases to the fee schedule over the 2014 agreement. Under Section 10 "Fee Schedule," subsections (b) and (d), new verbiage has been added designating that for extra-large animals, the Town will be charged an extra \$20.00 per day to board the animal. Also under section 10, subsection (e), Larimer Humane Society increased calls for assistance from \$25.00 per call to \$55.00 per call during business hours, and increased the rate for calls for assistance from \$50.00 per call to \$65.00 per call for after-hours assistance.

---

**LEGAL ADVICE:** The agreement was reviewed by the Town Attorney.

---

**FINANCIAL ADVICE:** According to the Town Treasurer, funds have been budgeted for the services.

---

**RECOMMENDED ACTION:** Approve agreement with the Larimer Humane Society

---

**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the agreement with the Larimer Humane Society and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the agreement.

---

**Reviewed:**

  
Town Manager

# AGREEMENT

## AGREEMENT

Section 1. This agreement, dated for reference purposes only this \_\_\_\_ day of \_\_\_\_\_ 2015, is made by and between the Town of JOHNSTOWN, JOHNSTOWN, Colorado, hereinafter referred to as "the Town" and the Larimer Humane Society, hereinafter referred to as "the Society";

WITNESSETH:

WHEREAS, the Town of JOHNSTOWN has adopted, by ordinance, a policy aimed at providing economical, safe, and humane animal sheltering and humane law enforcement services for residents of the Town and funds have been provided therefore; and

WHEREAS, the Society, a nonprofit corporation, is dedicated to safe and humane treatment of animals and desires to furnish said services;

WHEREAS, the Society operates a State-licensed animal shelter at 6317 Kyle Avenue, Fort Collins, Colorado, and employs trained and qualified persons to transport, shelter and handle animals within its custody; mailing address is 5137 S College Ave, Fort Collins, 80525.

NOW, THEREFORE, the Town of JOHNSTOWN and the Larimer Humane Society agree to the following:

1. Duration of the Agreement. This agreement shall have initial term of one year, January 1, 2015 through December 31, 2015, and shall automatically renew successive 12 month terms, unless terminated by either party 90 days prior to end of term or unless sooner terminated as provided herein. Notice of termination shall be written notice to the other party stating such termination.
2. Scope of Services. The Humane Society shall perform the following duties pursuant to this agreement:
  - a. Maintain and operate all physical plant facilities and equipment necessary for the efficient, effective operation of an animal shelter in compliance with state laws and ordinances and resolutions of the Town.
  - b. Provide for, or be responsible for, the professional services of a doctor of veterinary medicine licensed to so practice in the state of Colorado and available for 24 hour emergency services;
  - c. Maintain and provide all medical supplies, professional instruments, and equipment necessary for the efficient, effective operation of said animal shelter
  - d. Provide humane and appropriate vehicles equipped with equipment necessary for transport of animals impounded by the town to the animal shelter or designated veterinary clinic.

3. Operation and Management of Shelter. The Society shall:
- a. Conduct the operations of the animal shelter within and upon the above described property;
  - b. Comply with the applicable laws of the State of Colorado, ordinances of the Town, the existing administrative directives of the Town, and such future administrative directives of the Town as may from time to time be agreed to by the Society and the Town Council of the said Town, relative to operating and managing the Animal Shelter and vehicles used for transport;
  - c. Maintain the shelter in a clean, sanitary condition as required by the Pet Animal Care and Facilities Act;
  - d. Accept from the Town for impoundment in the animal shelter, dogs, cats, and other companion animals similar in size to dogs, under the same terms and conditions as herein provided for the impoundment of dogs;
  - e. Do each and every other professional act deemed necessary or appropriate to the end that the animal shelter shall be operated in an efficient, effective, and economical manner;
  - f. Not release or otherwise dispose of any dog or other animal placed by the Town with the Society under the terms of this agreement unless and until all impoundment periods prescribed by the Town and the State of Colorado Pet Animal Care Facilities Act have been satisfied or unless euthanasia prior to that time is deemed necessary or appropriate by the veterinarian or designated shelter personnel advising the Society.
  - g. Keep and maintain all animals covered by this agreement impounded to it by the Town under the provisions of this agreement for at least the time required by the State of Colorado Pet Animal Care Facilities Act. In the event any animal is held for the purpose of observation for the presence of rabies, the animal shall be held for such times as directed by the Town Chief of Police or Health Department, or other designated individual which time shall not be less than ten (10) days or such greater times as may be provided in the governing Town regulation or ordinance during which times, the daily board fee will be collected from the owner of the animal, or in the case of an unowned animal, will be paid by the Town.
  - h. Not release an animal to its owner unless all requirements of the Town's regulation or ordinances, including payment of impoundment fees have been complied with unless the Society, in its sole discretion, waives said fees. The Society will report any fees waived and will not charge the Town for the impoundment/board of these animals.
  - i. Submit a report on a quarterly basis with annual summary to the Town listing the

following information in regard to the previous quarter:

1. Total number of stray animals admitted from the Town. If the animal is brought to the Society by a citizen, the Society will make best efforts to confirm that the animal was found at an address in the Town.
  2. Total amount due based on fees described in Section 10 of this Agreement.
  3. Total number of impounded animals returned to their owners.
  4. Total number of impounded animals not reclaimed by their owners.
  5. Total fees due by the Town for animals not reclaimed by their owners based on fees described in Section 6 of this agreement.
  6. Total fees due by the Town for unowned stray animals held under rabies quarantine based on fees described in Section 10 of this agreement.
4. Transport of Animals. With regard to assisting the Town and transporting animals pursuant to this agreement, the Society shall:
- a. Respond to calls which originate from the Town, between the hours of 8:00 a.m. and 8:00 p.m. Monday through Sunday, and on an emergency basis as needed.
  - b. The Society shall only respond to requests for field service from the Town's Police, Larimer County Sherriff dispatch or the Town Hall. Society will instruct Town citizen's requesting service to contact one of entities.
  - c. That transportation of the animals must take place within a reasonable time from the time the animal is taken into custody by the Town
  - d. Ensure that injured or ill stray animals receive veterinary care in accordance with the State of Colorado Pet Animal Care Facilities Act.
  - e. To immediately notify the Humane Society or to immediately transport an animal to a licensed veterinarian for treatment if the animal is suffering or requires
  - f. immediate veterinary care. Maintain records of all calls responded to, and shall, at the end of each quarter, submit the following information:
    1. Case number of each call responded to.
    2. Total number of calls during normal hours of coverage.
    3. Total number of calls on an emergency basis.
    4. Total amount due based on fees described in Section 10 of this Agreement.
5. Transport of Animals. With regard to assisting the Society and transporting animals pursuant to this agreement, the Town shall:
- a. Provide humane treatment, adequate food, access to water and sanitary conditions for animals picked up by the Town until they can be transported to the shelter.
  - b. That transportation of the animals must take place within a reasonable time from the time the animal is taken into custody by the Town.
  - c. To immediately notify the Humane Society or to immediately transport an animal to a licensed veterinarian for treatment if the animal is suffering or requires immediate veterinary care.

6. Enforcement. The Society shall not provide enforcement of animal regulations to the Town.
7. Enforcement. With regard to assisting the town with enforcement of animal regulations pursuant to this agreement, the Town shall:
  - a. Provide Society with yearly training of Town animal ordinances and swear-in society officers.
  - b. Provide Society with appropriate paperwork to enforce Town animal ordinances.
8. Indemnity. Notwithstanding anything else herein, the Society shall protect, defend, indemnify, and hold harmless the Town, the departments and agencies thereof, its officers, elected and appointed, and its employees, servants, and agents from any and every action, cause of action, claim or demand of any person, natural or corporate who is not a subscribing party to this Agreement resulting from or arising out of any negligent act or omission of the Society, its officers, employees or agents, relating to the performance of any of the obligations of the Society under this Agreement. The Society shall not however, be liable for the acts, claims, or demands which may arise from the negligent acts of the Town, its officers, elected or appointed, and the departments thereof, nor for acts, claims or demands based upon the operation of the animal shelter by the Society or the transport of animals to the Shelter in compliance with instructions or orders given to the Society by authorized agents or elected or appointed officers of the Town, and the Town shall indemnify and hold the Society harmless therefrom to the fullest extent permitted by law.
9. Insurance. The Society shall carry liability insurance sufficient to insure against acts of omission of the Society, its employees and agents, with the minimum coverage as follows:

Bodily Injury	\$150,000.00/\$4,000,000.00
Property Damage	\$50,000.00

The Town shall be an "Additional Insured" on any policy obtained by the Society pertaining to its duties under this Agreement with respect to operations performed by or on behalf of the Society and falling within the scope of the agreement between the Town and the Society.

10. Fee Schedule. The Town agrees:
  - a. To pay the Society \$25.00 shelter fee for each animal impounded from the Town.
  - b. To pay the Society \$10.00 per day boarding fee for each animal not reclaimed by its owner, not to exceed \$50.00 (\$10.00 X 5 day stray period). There will be a charge of \$20/day for Extra-large dogs and long term impounds requiring 2 runs. (As defined by PACFA)
  - c. To pay the Society \$65.00 for each stray animal not reclaimed by its owner.
  - d. To pay the Society \$25.00 impound plus 10-days board @ \$10.00 per day for

unowned stray animals held under rabies quarantine, not to exceed \$125.00. There will be a charge of \$20/day for Extra-large dogs and long term impounds requiring 2 runs.

- e. To pay the Society \$55.00 per call for officer assistance between the hours of 8:00 a.m. - 8:00 p.m.; and pay the Society \$65.00 per call for after-hours officer assistance.
- f. That the Society may retain, as additional compensation, all impound fees collected by the Society from individuals whom animals are released which have been impounded by the Town.

11. Independent Contractor Status. The Parties agree that:

- a. The Society is and shall at all times remain an independent contractor with the Town.
- b. The Society has under this Agreement only the right to receive compensation from the Town for the services performed hereunder;
- c. As to its dealings with third parties, the Parties shall have no power to bind the other by contract or any other manner, nor shall either have any power or authority to act for or on behalf of the other.
- d. The Society shall not assign any of the rights acquired by or delegate the duties imposed upon it under the provisions of the agreement without having first obtained the written permission of the Town to do so.
- e. This Agreement may not be enlarged, modified, or altered except in writing, signed by the parties as an amendment thereto;
- f. No waiver of rights created by any breach of this contract shall be construed to be a waiver of rights created by any subsequent breach thereof;
- g. The only expenditures to be made by the Town under any by virtue of this Agreement shall be the charges and fees specifically provided.
- h. Society has complied with all federal, state and local laws requiring business permits, certificates and licenses required to carry out the services to be performed under this Agreement.

12. Taxes, Benefits and Workers' Compensation. With regard to taxes, benefits and workers' compensation:

- a. Town will not:
  - 1. withhold FICA (Social Security and Medicare taxes) from Society's payment or make FICA payments on Society's behalf,
  - 2. withhold state or federal income tax from Society's payments.
  - 3. Society shall pay all taxes incurred while performing services under this Agreement including all applicable income taxes and, if Society is not a corporation, self-employment (Social Security) taxes. Upon demand, Society shall provide Town with proof that such payments have been made.

SOCIETY IS NOT ENTITLED TO WORKERS  
COMPENSATION BENEFITS AND SOCIETY IS OBLIGATED

TO PAY FEDERAL AND STATE INCOME TAXES ON ANY  
MONIES EARNED PURSUANT TO THIS AGREEMENT.

4. Society understands that Society is not eligible to participate in any employee pension, health, vacation pay, sick pay or other fringe benefit plan of Town.
  5. Town shall make no state or federal unemployment compensation payments on behalf of Society. Society will not be entitled to these benefits in connection with work performed under this Agreement.
13. Miscellaneous. The parties agree that strict and timely compliance with the pertinent laws of the State of Colorado, ordinances of the Town, and administrative directives of the Town, the future administrative directives of the Town, and administrative directive of the Town, as may be agreed to by the Society and the Town Council of the said Town relative to the animal shelter and transporting services, and the provisions of this agreement, all as they relate to the operation of the animal shelter, shall be the essence hereof; and, that the failure of either of the parties to so conform shall be sufficient case of the other to terminate this agreement upon written notice to the defaulting party.

This Agreement will be governed by the laws of the State of Colorado.

14. Exclusive Agreement. The Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the parties hereto.

This is the entire Agreement between Society and Town.

IN WITNESS WHEREOF, the parties hereto have personally subscribed and ensealed these presents or have caused the same to be done by the duly authorized and commissioned officers thereof on the day and year above written.

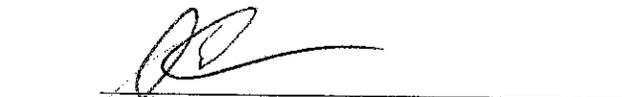
ATTEST:

TOWN OF JOHNSTOWN:

ATTEST:

LARIMER HUMANE SOCIETY

  
\_\_\_\_\_  
Bill Penick  
DIRECTOR OF ANIMAL CONTROL

  
\_\_\_\_\_  
Steve A. Carlson  
Executive Director



**AGENDA ITEM 9D**

**LEASE  
OF  
WATER RIGHTS  
(T Farms, LLC)**

**TOWN COUNCIL AGENDA COMMUNICATION**

---

**AGENDA DATE:** February 2, 2015

**ITEM NUMBER:** 9D

**SUBJECT:** Consider Lease of Water Rights to T Farms, LLC

**ACTION PROPOSED:** Approve Lease of Water Rights

**PRESENTED BY:** Town Attorney

---

**AGENDA ITEM DESCRIPTION:** In December of 2014, T Farms, LLC (managed by McWhinney Real Estate Services, Inc.) purchased a parcel of property known as Trindle Farms on the west side of Interstate 25. T Farms also bought ten shares of The Consolidated Home Supply Ditch and Reservoir Company, water historically used to irrigate 90 acres of the property ("Water Rights"). T Farms then sold the Water Rights to the Thompson Ranch Development Company. As part of the consideration of the sale, T Farms executed a dry-up covenant, a copy of which is attached.

On January 12, 2015, the Thompson Ranch Development Company assigned the Water Rights to the Town. At some future point, the Town will commence a water court action to change the Water Rights from irrigation to municipal use. Until that time, T Farms desires to lease the Water Rights to continue irrigating the Property.

The proposed Lease of Water Rights is for a four-term, which automatically renews for one-year terms until terminated by either party. The Town may nevertheless terminate the lease prior to the expiration of the term if required to do so by the contemplated water court action. T Farms agrees to pay all assessments and obligations due to The Consolidated Home Supply Ditch and Reservoir Company during the term of the lease.

Among other reasons, the lease is beneficial in that the water will continue to be used in a manner consistent with its historic consumptive use until the use of the water is changed.

---

**LEGAL ADVICE:** N/A

---

**FINANCIAL ADVICE:** N/A

---

**RECOMMENDED ACTION:** Approve the Lease of Water Rights.

---

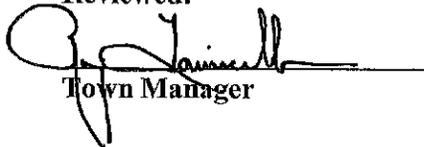
**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Lease of Water Rights to T Farms, LLC, and authorize the Mayor to sign it.

**For Denial:** I move to deny approval of the Lease of Water Rights to T Farms, LLC.

---

**Reviewed:**

  
Town Manager

**LEASE**

## LEASE OF WATER RIGHTS

THIS LEASE AGREEMENT is entered into this 2<sup>nd</sup> day of day of February, 2015, by and between the Town of Johnstown, Colorado, a municipal corporation, hereinafter "Landlord," and T Farms, LLC, a Colorado limited liability company, hereinafter "Tenant." Landlord and Tenant may collectively be referred to as the "Parties" or individually as a "Party."

### RECITALS

WHEREAS, Landlord is the owner of ten shares of capital stock of The Consolidated Home Supply Ditch and Reservoir Company, represented by Stock Certificate Number 6775, a copy of which is attached hereto and incorporated herein by reference as Exhibit A ("Water Rights");

WHEREAS, Tenant is the owner of property described on Exhibit B, which is attached hereto and incorporated herein by this reference (the "Property"), a portion of which has historically been irrigated with the Water Rights;

WHEREAS, Tenant desires to lease the Water Rights to irrigate the Property consistent with the historical use; and

WHEREAS, Landlord desires to the lease the Water Rights to the Tenant.

### AGREEMENT

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals: The Recitals are incorporated herein and made a part hereof.
2. Term of Lease: The initial term of this Lease shall be for a period of four years, commencing on February 2, 2015 and ending on February 1, 2019.
3. Automatic Renewal: At the expiration of the initial four-year term of this Lease, this Lease shall automatically renew for a period of one year and shall thereafter automatically renew for succeeding and consecutive one year periods until either the Landlord or the Tenant provides written notice to the other Party of the termination of the Lease on or before March 1 of the applicable calendar year.
4. Early Termination: Tenant understands and agrees that Landlord intends to commence a Water Court case to change the Water Rights from irrigation to municipal or other

beneficial use. Notwithstanding the foregoing provisions, if required by the Water Court case or necessary to comply with a Decree entered in such case, Landlord may terminate this Lease by providing thirty (30) days written notice to Tenant. Landlord shall endeavor, without committing, to provide any such notice on or before March 1 of any given calendar year.

5. Use of Water Rights: The Tenant shall, during the term of this Lease and any and all renewal terms, have all the use and benefit of the Water Rights. Upon termination of this Lease, Tenant shall cease using the Water Rights to irrigate the Property and shall otherwise cease all consumptive use of the water attributable to the Water Rights.

6. Rent: Tenant shall pay to the Landlord as rent for the use and benefit of the Water Rights the amount of \$1.00 per year during the initial term of the Lease and any and all renewal terms, unless such rental amount is modified by mutual written agreement of the parties.

7. Payment of Assessments and Obligations: During the term of this Lease and any and all renewal terms, Tenant shall be responsible for all assessments and obligations due and owing to The Consolidated Home Supply Ditch and Reservoir Company relating to the Water Rights. Landlord shall pay those sums on Tenant's behalf and, upon notice, Tenant shall promptly reimburse Landlord. Tenant shall not be entitled to delivery of water until the assessments and obligations are paid.

8. Amendments: Any and all amendments to this Lease shall be in writing and signed by both Parties.

9. Notice. Any notice required to be provided under this Lease shall be in writing and shall be deemed to have been duly given if personally delivered, sent by a nationally recognized overnight delivery service, or sent by certified mail, return receipt requested:

To Landlord: Town of Johnstown  
Attn: Roy Lauricello, Town Manager  
450 S. Parish Avenue  
Johnstown, CO 80534

With a copy: Law Office of Avi S. Rocklin, LLC  
Attn: Avi Rocklin, Town Attorney  
19 Old Town Square, Suite 238  
Fort Collins, CO 80524

To Tenant: T Farms, LLC  
Attn: Troy C. McWhinney  
c/o McWhinney Real Estate Services, Inc.  
2725 Rocky Mountain Avenue, Ste. 200  
Loveland, CO 80538

With a copy: Hasler, Fonfara and Goddard LLP  
Attn: Joseph H. Fonfara  
125 S. Howes, 6<sup>th</sup> Floor (Zip Code: 80521)  
P.O. Box 2267  
Fort Collins, CO 80522

10. Indemnification. Tenant agrees to indemnify, protect, defend and save harmless Landlord from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Landlord, relating to or arising from the use of the Water Rights in a manner inconsistent with the historic consumptive use, in a manner inconsistent with the Dry-Up Covenant executed by T Farms, LLC on January 22, 2015, or in an otherwise unlawful manner.

11. No Presumption. Landlord and Tenant acknowledge that each has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Lease and with respect to all matters set forth herein. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement and that the entry into and execution of this Lease is its own free and voluntary act and deed, without compulsion. Landlord and Tenant agree that this Lease reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

12. Costs and Attorney Fees. In the event legal action is required to enforce the provisions of this Lease, the court shall award to the prevailing party all reasonable costs and expenses, including attorney's fees.

13. Governing Law and Venue. The terms of this Agreement shall be governed by and construed in accordance with Colorado law. Venue for any claim, proceeding or action arising out of this Lease shall be in Larimer or Weld County, Colorado.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.

15. Assignment: If this Lease were assigned to a third party, the assigning Party shall provide written notice to the other party prior to such assignment.

16. Successors. This Lease shall be binding on and shall inure to the benefit of the Parties' heirs, successors or assigns.

17. Headings. The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

LANDLORD:

TOWN OF JOHNSTOWN, COLORADO

By: \_\_\_\_\_  
Mark Romanowski, Mayor

ATTEST:

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

TENANT:

T FARMS, LLC,  
a Colorado limited liability company

By: McWhinney Real Estate Services, Inc.,  
a Colorado corporation, Manager

By: Troy McWhinney  
Name: Troy McWhinney  
Title: Chief Investment Officer

**EXHIBIT A**

**Copy of Stock Certificate**

No 6775

Incorporated Under the  
Laws of the State of Colorado

- 10 -  
Shares

# The Consolidated Home Supply Ditch and Reservoir Co.



CAPITAL STOCK  
\$100,000

2,000 SHARES  
\$50 EACH

This is to Certify that

The Town of Johnstown

is the owner of Ten Shares of Capital Stock of  
The Consolidated Home Supply Ditch and Reservoir Company, full paid  
transferable only on the books of the Company, in person, or by attorney,  
on surrender of this certificate.

Witness the Seal of the Company and the Signatures of the President  
and Secretary at Loveland, Colorado, this 13th day of JANUARY

1920/5

*James A. Schmitt*  
President

*David A. Schmitt*  
Secretary

**EXHIBIT B**

**Legal Description of Property**

---

**Legal Description-Trindle Farms**

THE SE1/4 AND THE E1/2 OF THE NE1/4 OF THE SW1/4 OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF LARIMER, STATE OF COLORADO EXCEPT RIGHT OF WAY FOR COUNTY ROAD AS ESTABLISHED AND/OR USED, being more particularly described as follows;

A tract of land located in the South Half of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 30 as bearing North 00°21'18" West and with all bearings contained herein relative thereto:

Commencing at the Southeast Corner of said Section 30; thence along the South line of said Section 30, South 89°35'05" West, 25.00 feet to the POINT OF BEGINNING; thence continuing along said South line, South 89°35'05" West, 2620.17 feet to the South Quarter Corner of Section 30; thence along the West line of the Southeast Quarter of said Section 30, North 00°17'00" West, 1301.88 feet to the South one-sixteenth corner of Section 30; thence along the South line of the Northeast Quarter of the Southwest Quarter of said Section 30, South 89°52'54" West, 661.27 feet; thence, North 00°17'07" West, 1275.49 feet to a point on the apparent South right-of-way line of Larimer County Road 16E; thence along said right-of-way line for two (2) courses and distances: South 89°48'04" East, 661.34 feet; thence, South 89°48'57" East, 2617.06 feet to a point on the apparent West right-of-way line of Larimer County Road 11; thence, along said right-of-way line South 00°21'18" East, 2546.32 feet to the Point of Beginning, contains 173.228 acres, more or less.

9/2/2014

**DRY-UP**  
**COVENANT**

## DRY-UP COVENANT

THIS DRY-UP COVENANT is made and given this 21<sup>st</sup> day of January, 2015, by T FARMS, LLC, a Colorado limited liability company ("Grantor").

### RECITALS

WHEREAS, Grantor owns a parcel of property consisting of approximately 173 acres, which is described on Exhibit A attached hereto and incorporated herein by this reference (the "Property"); and

WHEREAS, Grantor previously owned water rights historically used to irrigate approximately 90 acres of the Property, which included ten (10) shares of capital stock of The Consolidated Home Supply Ditch and Reservoir Company ("Water Rights"); and

WHEREAS, Grantor sold and assigned the Water Rights to Thompson Ranch Development Company, a Colorado corporation, and, as part of the consideration of the sale, agreed to execute this Dry-Up covenant; and

WHEREAS, on January 12<sup>th</sup>, 2015, Thompson Ranch Development Company assigned the Water Rights to the Town of Johnstown, Colorado, a municipal corporation ("Johnstown"); and

WHEREAS, the Water Rights are represented by Stock Certificate Number 6775, a copy of which is attached hereto and incorporated herein by reference as Exhibit B; and

WHEREAS, Johnstown intends to utilize the Water Rights for municipal water uses once it obtains a decree from the Water Court changing the Water Rights from irrigation to municipal, or other beneficial, use; and

WHEREAS, Grantor understands that, in order for the Water Court to permit the change of the Water Rights, the consumption of water on the Property must be permanently reduced in the same amount as is changed and transferred to other beneficial uses so as not to materially injure vested water rights or other appropriators; and

WHEREAS, Grantor executes this Dry-Up Covenant to ensure that the historic consumptive use on the Property attributable to the Water Rights ceases, except as otherwise provided herein.

### COVENANT

THEREFORE, in consideration of the willingness of the Thompson Ranch Development Company to have accepted the Water Rights, as well as other good and valuable consideration, the receipt of which is hereby acknowledged, Grantor covenants and agrees as follows:

1. The Recitals are incorporated herein and made a part hereof.

2. From and after the date hereof, Grantor, for itself and all subsequent owners, covenants and agrees to cease using the Water Rights to irrigate the Property and to otherwise cease all consumptive use of the water attributable to the Water Rights, except as otherwise permitted herein.

3. Grantor hereby grants to Johnstown, or to successors or assigns of the Water Rights ("Grantee"), a non-exclusive perpetual easement for the purpose of access to and over the Property as may be necessary to take actions to effectuate and enforce this Dry-Up Covenant, including but not limited to the conducting of any monitoring or testing activity that may be required by the State Engineer or by any court or tribunal of competent jurisdiction to enforce this Dry-Up Covenant or that may be a pre-condition for changing the Water Rights. The non-exclusive easement provided by Grantor to Grantee in this Section 3 shall be subject to the following conditions: (a) Grantee shall use its best efforts to minimize any interference with the use of the Property by the Property owner except as reasonably required to exercise the Grantee's rights hereunder; (b) Grantee shall at all times comply with all applicable laws and ordinances and shall hold the Property owner harmless from any and all liability and liens on account of Grantee's activities; (c) Grantee shall not engage in activities that cause any permanent harm or damage (other than permanent dry up caused by the cessation of irrigation by the Water Rights) to the Property or to the Property owner's easements or personal property except as reasonably required to exercise Grantee's rights hereunder; and (d) Grantee shall leave the Property and the Property owner's easements and personal property in the same condition as they were in prior to any activities of Grantee except as reasonably required to exercise Grantee's rights hereunder.

4. This Dry-Up Covenant shall entitle Johnstown to the first and prior right to claim credit for the dry-up or nonirrigation of the Property, and the purpose of this Dry-Up Covenant is to ensure that the amount of consumptive use attributable to the Water Rights is not impaired. Grantor agrees to provide Johnstown with all assistance Johnstown may reasonably require in regard to the anticipated change of the Water Rights, provided that Grantor shall not be required to incur out-of-pocket costs in connection therewith.

5. This Dry-Up Covenant shall not prohibit Grantor or Grantor's heirs, successors or assigns from irrigating the Property with water rights which may in the future be lawfully transferred to such land or with other water properly obtained and lawfully used to irrigate the Property. If the Property is not otherwise irrigated, Grantor, for itself and subsequent owners, agrees, at its sole expense, to take all steps necessary to accomplish revegetation and noxious weed management as may be required by § 37-92-305(4.5)(a), C.R.S., or otherwise required by law or court order.

6. Notwithstanding the foregoing provisions, Grantor or Grantor's heirs, successors or assigns may irrigate the Property with the Water Rights upon the execution of a Lease of Water Rights between Grantor and Johnstown, the form of which, without exhibits, is attached hereto and incorporated herein as Exhibit C, and may continue to irrigate the Property until the Lease of Water Rights expires or is otherwise terminated pursuant to the terms thereof.



---

**EXHIBIT A**

**Legal Description of Property**

---

**Legal Description-Trindle Farms**

THE SE1/4 AND THE E1/2 OF THE NE1/4 OF THE SW1/4 OF SECTION 30, TOWNSHIP 5 NORTH, RANGE 68 WEST OF THE 6<sup>TH</sup> P.M., COUNTY OF LARIMER, STATE OF COLORADO EXCEPT RIGHT OF WAY FOR COUNTY ROAD AS ESTABLISHED AND/OR USED, being more particularly described as follows;

A tract of land located in the South Half of Section 30, Township 5 North, Range 68 West of the 6th P.M., County of Larimer, State of Colorado, more particularly described as follows:

Considering the East line of the Southeast Quarter of said Section 30 as bearing North 00°21'18" West and with all bearings contained herein relative thereto:

Commencing at the Southeast Corner of said Section 30; thence along the South line of said Section 30, South 89°35'05" West, 25.00 feet to the POINT OF BEGINNING; thence continuing along said South line, South 89°35'05" West, 2620.17 feet to the South Quarter Corner of Section 30; thence along the West line of the Southeast Quarter of said Section 30, North 00°17'00" West, 1301.88 feet to the South one-sixteenth corner of Section 30; thence along the South line of the Northeast Quarter of the Southwest Quarter of said Section 30, South 89°52'54" West, 661.27 feet; thence, North 00°17'07" West, 1275.49 feet to a point on the apparent South right-of-way line of Larimer County Road 16E; thence along said right-of-way line for two (2) courses and distances: South 89°48'04" East, 661.34 feet; thence, South 89°48'57" East, 2617.06 feet to a point on the apparent West right-of-way line of Larimer County Road 11; thence, along said right-of-way line South 00°21'18" East, 2546.32 feet to the Point of Beginning, contains 173.228 acres, more or less.

9/2/2014

---

**EXHIBIT B**

Copy of Stock Certificate

---

No 6775

Incorporated Under the  
Laws of the State of Colorado

- 10 -  
Shares

# The Consolidated Home Supply Ditch and Reservoir Co.

CAPITAL STOCK  
\$100,000

2,000 SHARES  
\$50 EACH



This is in Certify that The Town of Johnston

is the owner of Ten Shares of Capital Stock of  
**The Consolidated Home Supply Ditch and Reservoir Company**, full paid  
transferable only on the books of the Company, in person, or by attorney,  
on surrender of this certificate.

Witness the Seal of the Company and the Signatures of the President  
and Secretary at Loveland, Colorado, this 13<sup>TH</sup> day of JANUARY  
1920/5

*James J. Lee*  
President

*DeWitt A. Schmitz*  
Secretary

---

EXHIBIT C

Form of Lease of Water Rights

---

## LEASE OF WATER RIGHTS

THIS LEASE AGREEMENT is entered into this 2<sup>nd</sup> day of February, 2015, by and between the Town of Johnstown, Colorado, a municipal corporation, hereinafter "Landlord," and T Farms, LLC, a Colorado limited liability company, hereinafter "Tenant." Landlord and Tenant may collectively be referred to as the "Parties" or individually as a "Party."

### RECITALS

WHEREAS, Landlord is the owner of ten shares of capital stock of The Consolidated Home Supply Ditch and Reservoir Company, represented by Stock Certificate Number 6775, a copy of which is attached hereto and incorporated herein by reference as Exhibit A ("Water Rights");

WHEREAS, Tenant is the owner of property described on Exhibit B, which is attached hereto and incorporated herein by this reference (the "Property"), a portion of which has historically been irrigated with the Water Rights;

WHEREAS, Tenant desires to lease the Water Rights to irrigate the Property consistent with the historical use; and

WHEREAS, Landlord desires to lease the Water Rights to the Tenant.

### AGREEMENT

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals: The Recitals are incorporated herein and made a part hereof.
2. Term of Lease: The initial term of this Lease shall be for a period of four years, commencing on February 2, 2015 and ending on February 1, 2019.
3. Automatic Renewal: At the expiration of the initial four-year term of this Lease, this Lease shall automatically renew for a period of one year and shall thereafter automatically renew for succeeding and consecutive one year periods until either the Landlord or the Tenant provides written notice to the other Party of the termination of the Lease on or before March 1 of the applicable calendar year.
4. Early Termination: Tenant understands and agrees that Landlord intends to commence a Water Court case to change the Water Rights from irrigation to municipal or other

beneficial use. Notwithstanding the foregoing provisions, if required by the Water Court case or necessary to comply with a Decree entered in such case, Landlord may terminate this Lease by providing thirty (30) days written notice to Tenant. Landlord shall endeavor, without committing, to provide any such notice on or before March 1 of any given calendar year.

5. Use of Water Rights: The Tenant shall, during the term of this Lease and any and all renewal terms, have all the use and benefit of the Water Rights. Upon termination of this Lease, Tenant shall cease using the Water Rights to irrigate the Property and shall otherwise cease all consumptive use of the water attributable to the Water Rights.

6. Rent: Tenant shall pay to the Landlord as rent for the use and benefit of the Water Rights the amount of \$1.00 per year during the initial term of the Lease and any and all renewal terms, unless such rental amount is modified by mutual written agreement of the parties.

7. Payment of Assessments and Obligations: During the term of this Lease and any and all renewal terms, Tenant shall be responsible for all assessments and obligations due and owing to The Consolidated Home Supply Ditch and Reservoir Company relating to the Water Rights. Landlord shall pay those sums on Tenant's behalf and, upon notice, Tenant shall promptly reimburse Landlord. Tenant shall not be entitled to delivery of water until the assessments and obligations are paid.

8. Amendments: Any and all amendments to this Lease shall be in writing and signed by both Parties.

9. Notice. Any notice required to be provided under this Lease shall be in writing and shall be deemed to have been duly given if personally delivered, sent by a nationally recognized overnight delivery service, or sent by certified mail, return receipt requested:

To Landlord: Town of Johnstown  
Attn: Roy Lauricello, Town Manager  
450 S. Parish Avenue  
Johnstown, CO 80534

With a copy: Law Office of Avi S. Rocklin, LLC  
Attn: Avi Rocklin, Town Attorney  
19 Old Town Square, Suite 238  
Fort Collins, CO 80524

To Tenant: T Farms, LLC  
Attn: Troy C. McWhinney  
c/o McWhinney Real Estate Services, Inc.  
2725 Rocky Mountain Avenue, Ste. 200  
Loveland, CO 80538

With a copy: Hasler, Fonfara and Goddard LLP.  
Attn: Joseph H. Fonfara  
125 S. Howes, 6<sup>th</sup> Floor (Zip Code: 80521)  
P.O. Box 2267  
Fort Collins, CO 80522

10. Indemnification. Tenant agrees to indemnify, protect, defend and save harmless Landlord from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against Landlord, relating to or arising from the use of the Water Rights in a manner inconsistent with the historic consumptive use, in a manner inconsistent with the Dry-Up Covenant executed by T Farms, LLC on January \_\_, 2015, or in an otherwise unlawful manner.

11. No Presumption. Landlord and Tenant acknowledge that each has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Lease and with respect to all matters set forth herein. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement and that the entry into and execution of this Lease is its own free and voluntary act and deed, without compulsion. Landlord and Tenant agree that this Lease reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

12. Costs and Attorney Fees. In the event legal action is required to enforce the provisions of this Lease, the court shall award to the prevailing party all reasonable costs and expenses, including attorney's fees.

13. Governing Law and Venue. The terms of this Agreement shall be governed by and construed in accordance with Colorado law. Venue for any claim, proceeding or action arising out of this Lease shall be in Larimer or Weld County, Colorado.

14. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings.

15. Assignment: If this Lease were assigned to a third party, the assigning Party shall provide written notice to the other party prior to such assignment.

16. Successors. This Lease shall be binding on and shall inure to the benefit of the Parties' heirs, successors or assigns.

17. Headings. The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

LANDLORD:

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

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

By: \_\_\_\_\_  
Mark Romanowski, Mayor

TENANT:

T FARMS, LLC,  
a Colorado limited liability company

By: McWhinney Real Estate Services, Inc.,  
a Colorado corporation, Manager

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

