

**WATER AND SEWER SERVICE AGREEMENT
(ROOSEVELT HIGH SCHOOL)**

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this ___ day of _____ 2023, by and between the **WELD COUNTY SCHOOL DISTRICT RE-5J**, a political subdivision of the State of Colorado (“School District”), and **THE TOWN OF JOHNSTOWN**, a Colorado home-rule municipality (“Town”), collectively sometimes referred to as the “Parties” and singularly as “Party.”

WITNESSETH:

WHEREAS, the School District owns an interest in land located in in the E1/2 of SW1/4 and SE1/4, Section 12, Township 4 North, Range 68 West, 6th PM., Weld County, Colorado, described more particularly on Exhibit A, attached hereto and incorporated herein by reference (“Subject Property”); and

WHEREAS, the Subject Property has been annexed to the Town; and

WHEREAS, the Subject Property is being developed by the School District as Roosevelt High School, which will have approximately 1500 students, 22.55 acres of permanently irrigated landscape, 17.28 acres of temporary irrigated landscape, and 0.5-acre irrigated right-of-way (“Project”); and

WHEREAS, the School District and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Project.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance (“Ordinance”), the School District has submitted to the Town a preliminary water and sewer demand analysis for the Project. Said analysis was received by the Town, is on file with the Town and, as modified by the Town’s Water Engineer by memorandum dated December 7, 2021, is hereby accepted by the Town. The analysis sets forth the projected water and sewer demands for the Project as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
In-Building	9.53	0.48
Permanent Landscape Irrigation	51.43	43.72
Temporary Landscape Irrigation	17.28	14.69
Total	78.24	58.89

2. Water Dedication and Water Purchase.

- a. Dedication.** Within 10 days after the mutual execution of the Agreement, the School District will dedicate five (5) shares of stock in the Consolidated Home Supply Ditch & Reservoir Company, currently Certificate #5032, to the Town, which shares have not been changed to include municipal use and total 32 acre-feet of usable water per year (“Water Stock”). If the water dedication is not made within the required time period, this Agreement will be voided without further action from either of the Parties.
- b. Purchase.** To facilitate development of the Project, the Town agrees to allow the School District to pay cash-in-lieu of the required water dedication for the remaining 46.24 acre-feet of raw water required to satisfy the water needs of the Project. The School District agrees to pay the fair market value for the water in the amount of Sixty-Eight Thousand Seven Hundred Fifty Dollars (\$68,750) per acre-foot, for a total purchase price of Three Million One Hundred Seventy-Nine Thousand Dollars (\$3,179,000). The School District agrees to pay such amount in two equal installments of One Million Five Hundred Eighty- Nine Thousand Five Hundred Dollars (\$1,589,500). The first installment shall be due and payable to the Town on or before July 30, 2023, and the second installment shall be due and payable to the Town on or before April 30, 2024. If the payments are not made as contemplated herein, interest at the statutory rate shall be due and owing on the unpaid balance.
- c. Depiction.** A depiction of the foregoing is set forth below:

Credit from dedication of Water Stock:	32.00 acre-feet
Credit from cash-in-lieu payment:	<u>46.24 acre-feet</u>
Total estimated demand:	78.24 acre-feet

3. Temporary Use. Of the 78.24 acre-feet of raw water demand projected for the Project, 17.28 acre-feet is anticipated to be used temporarily to establish native grasses on 17.28 acres. When the native grasses are established, the School District may permanently remove the irrigation system(s) used to establish the native grasses and provide written documentation to the Town of such removal. When the Town provides written notice to the School District that it has accepted that the temporary irrigation has permanently ceased, the Town agrees to create a water bank on the School District’s behalf containing 17.28 acre-feet of raw water credit and the School District may thereafter, with the Town’s written consent, which consent will not be unreasonably withheld, delayed or conditioned, assign the 17.28 acre-feet to another project, school or use within the Town’s boundaries.

4. Commitment to serve. Subject to the School District’s performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 9.53 acre-feet per year of water supply for in-building use together with the corresponding sewer service, 51.43 acre-feet for permanent irrigation, and 17.28 acre-feet for temporary irrigation, as described above, for the Project.

5. Future review of water usage and dedication requirements. In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Project at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the School District, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

6. Payment of Water Court Transfer fees. Upon execution of this Agreement, the School District shall pay to the Town the sum of Thirty Three Thousand Seventy Two DOLLARS (\$33,072) as payment of the Water Court Transfer Fees required by the Ordinance. This payment is for the required dedication of 78.24 acre-feet per year of estimated potable water demand and estimated consumptive use of 58.89 acre-feet per year (117.8 SFE) for the Project. If the actual water demand for the Project increases, additional fees will be required.

7. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO SCHOOL DISTRICT:

Weld RE5-J School District
110 South Centennial Dr., Ste. A
Milliken, CO 80543
Email: _____

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
Email: hhill@johnstownco.gov

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538
Email: avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
3401 Quebec St., Suite 3400
Denver, CO 80207
Email: peterampe@hillandrobbs.com

The addresses for notices may be changed by written notice given to the other Party in the manner provided above.

8. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent thereof. If such default is not cured within thirty (30) days and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after ninety (90) days, either Party may then commence an action in a court of competent jurisdiction and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

9. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This Agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

10. Amendment or modification. No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

11. Attorney's fees and costs. If judicial action is commenced to enforce or defend this Agreement and the Town is the prevailing party, the School District, to the extent permitted by law, shall pay the Town's reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Agreement.

12. Waiver. The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

13. Headings for convenience only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

14. Non severability. Each paragraph of this Agreement is intertwined with the others and is not severable unless by mutual consent of the Parties hereto.

15. Choice of laws and venue. This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any legal action shall be in the County of Weld, State of Colorado.

16. Entire agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

17. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. Each Party acknowledges that it 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 Agreement and with

respect to all matters set forth herein. The Parties agree that this Agreement 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.

18. Recordation. This Agreement will be recorded by the Town at the School District's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject Property, and will be binding upon the Parties hereto and the permitted successors and assigns of the School District. Recordation will constitute notice of this Agreement to all persons or entities not parties hereto.

19. Incorporation of § 22-1-135, C.R.S. To the extent § 22-1-135, C.R.S., applies to this Agreement, if at all, the terms shall be incorporated herein.

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

Signatures follow.

TOWN OF JOHNSTOWN, COLORADO


ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

WELD COUNTY SCHOOL DISTRICT RE-5J

ATTEST:

By:  _____
Amanda Proctor, Secretary

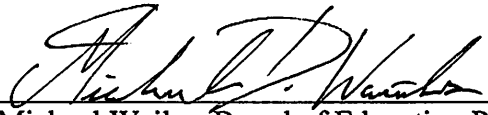
By:  _____
Michael Wailes, Board of Education President

EXHIBIT A

LEGAL DESCRIPTION

Lot 1 of the Whitehall Subdivision Filing No 1, situate in the East half of the Southwest Quarter and Southeast Quarter of Section 12, Township 4 North, Range 68 West, Town of Johnstown, County of Weld, State of Colorado.