

WATER AND SEWER SERVICE AGREEMENT (ELWELL ELEMENTARY)

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this _____ day of _____ 2023, by and between **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 the NE1/4, 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 Elwell Elementary School, a 77,000 square foot elementary school with a total irrigated landscape of 3.07 acres, of which 0.93 acres will be spray-irrigated and 2.14 acres will be xeric-irrigated with native seed (“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 June 1, 2022, 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	1.548	0.077
Landscape Irrigation	4.480	3.810
Total	6.030	3.880

2. Water Rights Dedication. Based on the previous dedication of raw water for Letford Elementary School, the School District has a surplus raw water credit with the Town in the amount of 6.03 acre-feet. Such credit shall be used to satisfy the raw water demands associated with the Project.

3. Commitment to serve. Subject to the School District's performance of all the covenants contained herein the Town commits to provide to the Project up to 1.548 acre-feet per year of water supply for in-building use together with the corresponding sewer service and 4.48 acre-feet for irrigation as described above.

4. 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.

5. Payment of Water Court Transfer fees. *Intentionally omitted.*

6. 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: bhill@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.
1160 Lincoln St., Suite 2720

Denver, CO 80264
Email:peterampe@hillandrobbins.com

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

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

WELD COUNTY SCHOOL DISTRICT RE-5J

ATTEST:

By: 
Amanda Proctor, Secretary

By: 
Michael Wailes, Board of Education President

TOWN OF JOHNSTOWN, COLORADO

ATTEST:

By: _____
Hannah Hill, Town Clerk

By: _____
Troy D. Mellon, Mayor

EXHIBIT A

LEGAL DESCRIPTION

Tract C, Clearview PUD Second Filing, located in Norther east quarter of Section 12, Township 4 North, Range 68 West of the 6th P.M., Town of Johnstown, County of Weld, State of Colorado