

**AGREEMENT FOR ENGINEERING SERVICES
BETWEEN TOWN OF JOHNSTOWN AND IMEG
CORPORATION
CONCERNING WASTEWATER COLLECTION PLANNING
AND DESIGN**

THIS AGREEMENT FOR ENGINEERING SERVICES CONCERNING WASTEWATER COLLECTION PLANNING AND DESIGN (the “Agreement”) is made and entered into this _____ day of _____ 2020 (“Effective Date”) by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”) and IMEG Corporation, a Delaware corporation (“IMEG”) (collectively, the “Parties”).

WHEREAS, the Town requires professional consulting services in connection with sanitary sewer collection system master planning and specific engineering design services related thereto; and

WHEREAS, IMEG has held itself out to the Town as having the requisite expertise and experience to provide such professional consulting services; and

WHEREAS, the Town desires to engage the services of IMEG and IMEG wishes to provide the services more fully described on Exhibit A, attached hereto, and incorporated herein by reference (“Services”), for the Town; and

WHEREAS, the Parties wish to memorialize their contractual relationship.

NOW, **THEREFORE**, incorporating the foregoing Recitals herein, which are hereby acknowledged as being true and correct, and in consideration of the mutual promises, agreements, undertakings and covenants, as set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby mutually agree as follows:

SECTION 1: OBLIGATIONS, CONFIDENTIALITY AND WORK PRODUCT

1.01 Town Obligations; Confidentiality. The Town shall provide IMEG with information, reports and such other data as may be available to Town and reasonably required by IMEG to perform hereunder. No information identified or provided by the Town shall be disclosed by IMEG to third parties without the prior consent of the Town or pursuant to a lawful court order directing such disclosure. All original documents provided by Town to IMEG shall be returned to Town. IMEG is authorized by Town to retain copies of such data and materials for use by IMEG for Town related engineering services.

1.02 IMEG. IMEG has the background, expertise and education to provide the Services and warrants that it is qualified to assume the responsibilities and render the Services and has all requisite corporate authority and professional licenses in good standing, as required

by law. IMEG shall be responsible for the proper performance of this Agreement in accordance with the terms hereof and any and all applicable federal, state, and municipal laws, regulations and orders and in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community.

1.03 Ownership of Work Product. Upon payment to IMEG pursuant to this Agreement, all work, data, drawings, designs, plans, reports, computer programs (nonproprietary), computer input and output, analyses, tests, maps, surveys and any other materials developed for the Town are and shall be the property of the Town, and shall be provided by IMEG to the Town in due course during the term of this Agreement or as requested by the Town, and, in any event, prior to termination of the Agreement. However, any reuse of the documents by the Town without prior written authorization by IMEG other than for the specific intended purpose of this Agreement will be at the Town's sole risk.

SECTION 2: SERVICES, TERM AND COMPENSATION

2.01 Services. IMEG agrees to perform the Services for the Town. If additional services are desired, the Parties shall enter into a written amendment to this Agreement.

2.02 Term. This term of this Agreement shall continue until terminated by written notice from either party to the other in accordance with Section 5.

2.03 Compensation. In consideration of the completion of the services specified herein by IMEG, the Town shall pay IMEG on an hourly time and materials basis with a not-to-exceed amount as set forth on Exhibit B, attached hereto and incorporated herein by reference. If additional services are authorized as set forth herein, unless otherwise agreed, the Town shall pay IMEG in accordance with the schedule of rates and charges set out on Exhibit B. Detailed monthly invoices shall be rendered by IMEG and shall be due and payable thirty (30) days after date of receipt. Invoices shall be itemized and include hourly breakdowns for all personnel and other charges. The fee identified on Exhibit B for a specific requested service shall include all fees and expenses incurred by IMEG in performing all services hereunder.

2.04 Expenses: IMEG shall not incur any expense or debt over and above those identified in this Agreement on behalf of the Town without the Town's prior written authorization.

SECTION 3: SCHEDULE

3.01 Schedule. Unless otherwise agreed, IMEG shall provide the Services in accordance with the timeline set forth on Exhibit C, attached hereto and incorporated herein by reference.

SECTION 4: INSURANCE AND INDEMNITY PROVISIONS

4.01 Insurance.

- A. IMEG shall maintain and keep in force during the term of this Agreement one or more policies of liability insurance written by one or more responsible insurance carrier(s) authorized to do business in the State of Colorado, which will include protecting and indemnifying the Town in the following amounts:
1. Workers' Compensation insurance as required by law;
 2. Commercial General or Business Liability Insurance with minimum combined single limits of TWO MILLION DOLLARS (\$2,000,000.00) each occurrence and FOUR MILLION DOLLARS (\$4,000,000.00) general aggregate;
 3. Automobile Liability Insurance with minimum combined single limits for bodily injury and property damage of not less than ONE MILLION DOLLARS (\$1,000,000) for any one occurrence, with respect to each of the IMEG's owned, hired or non-owned vehicles assigned to or used in performance of the services. In the event that the IMEG's insurance does not cover non-owned automobiles, the requirements of this paragraph shall be met by each employee of IMEG who utilizes an automobile in providing services to Town under this Agreement; and
 4. Professional Liability Insurance with minimum limits of ONE MILLION dollars (\$1,000,000.00) each claim and TWO MILLION dollars (\$2,000,000.00) general aggregate.
- B. IMEG shall procure and maintain and shall cause any subcontractor of IMEG to procure and maintain, the minimum insurance coverages listed herein. Such coverages shall be procured and maintained with forms and insurers acceptable to Town. All coverages shall be continuously maintained to cover all liability, claims, demands, and other obligations assumed by the IMEG pursuant to this Agreement. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. The Town shall have the right to request and receive a certified copy of any policy and any endorsement thereto.
- C. A certificate of insurance shall be completed by IMEG's insurance agent(s) as evidence that policies providing the required coverages, conditions, and minimum limits are in full force and effect, and shall be subject to review and approval by Town prior to commencement of any of the services under this Agreement. The certificate shall identify this Agreement and shall provide that the coverages afforded under the policies shall not be canceled, terminated, or materially changed until at least 30 days prior written notice has been given to Town. If the words "endeavor to" appear in the portion of the certificate addressing cancellation, those words shall be

stricken from the certificate by the agent(s) completing the certificate. The completed certificate of insurance shall be sent to:

Town of Johnstown
P.O. Box 609
Johnstown, CO 80534
Attention: Town Manager

4.02 Damage and Indemnity. IMEG assumes full responsibility for any and all damages caused by IMEG's willful or negligent exercise of its activities under by this Agreement. IMEG agrees that it will at all times indemnify and hold harmless the Town, its officers, agents, employees, tenants and their successors and assigns from and against all liabilities, losses, claims, demands, actions and court costs (including reasonable attorneys' fees), arising from or related to loss or damage to property or injury to or death to any persons to the extent such injury, loss, or damage is caused by the willful or negligent act of IMEG, or any subcontractor of IMEG pursuant to this Agreement.

SECTION 5: TERMINATION

5.01 Termination. Either party may terminate this Agreement, with or without cause, by providing thirty (30) days prior written notice to the other. Notwithstanding the foregoing, if the Town terminates this Agreement for cause and determines that a notice period is not in the best interests of the Town, the Town may terminate this Agreement by providing written notice to IMEG effective immediately. In the event the Agreement is terminated by Town's issuance of said written notice of termination, Town shall pay IMEG for all work previously authorized and performed prior to the date of termination. Notwithstanding the foregoing, if IMEG has not provided all the documents to the Town described in Section 1.03, the Town may, in its discretion, withhold final payment until the documents are provided.

SECTION 6: INDEPENDENT CONTRACTOR

6.01 Independent Contractor. IMEG understands and agrees that IMEG is an independent contractor and not an employee of the Town. The Town shall not provide benefits of any kind to IMEG. The Town shall not be responsible for withholding any portion of IMEG's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. IMEG IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE TOWN. IMEG IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAX ON MONEYS PAID PURSUANT TO THIS AGREEMENT. As long as there is not a conflict of interest with the Town, IMEG may engage in any other lawful business activities during the term of this Agreement.

SECTION 7: NOTICE

7.01 Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered or mailed postage prepaid, certified mail, return receipt requested as follows:

TO THE TOWN:
Town of Johnstown
Attn: Town Manager
P.O. Box 609
Johnstown, CO 80534

TO IMEG:
IMEG Corporation
Attn: Taylor C. Goertz, PE
7600 E. Orchard Road, Suite 250-S
Greenwood Village, CO 80111

The addresses for notices may be changed by written notice given to the other party in the manner provided above. Notice may also be sent via electronic mail (“e-mail”) delivery and shall be effective upon confirmation of receipt of the e-mail.

SECTION 8: MISCELLANEOUS

8.01 Time. Time is of the essence of this Agreement and of each covenant hereof.

8.02 Non-Appropriation of Funds. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

8.03 Illegal Aliens. IMEG shall comply with the statutory provisions prohibiting employment of illegal aliens, as set forth on Exhibit D, attached hereto and incorporated herein by such reference.

8.04 Assignment; Third Party Rights. IMEG may not assign, delegate or subcontract any part of its rights, duties or obligations under this Agreement, other than subcontract services as identified in this Agreement, without prior Town written approval. The Parties do not intend to confer any benefit hereunder on any person or entity other than the Parties hereto.

8.05 Amendment. This Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

8.06 Severability. If any part, term or provision of this Agreement is declared unlawful or unenforceable, the remainder of this Agreement shall remain in full force and effect.

8.07 Waiver. No consent or waiver, express or implied, by a party to or of any breach or default by the other party in the performance by the other party of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the non-defaulting party. Failure on the part of any party to complain of any act or failure to act or to declare any other party in default, irrespective of how long such failure

continues, shall not constitute a waiver by such party of its rights hereunder.

8.08 Governmental Immunity. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., 10C.R.S., as from time to time amended, or otherwise available to the Town, its officers, or its employees.

8.09 Applicable Law and Venue. This Agreement shall be construed according to the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, State of Colorado.

8.10 Mediation. In the event of any dispute arising under this Agreement, except in the case of injunctive relief as set forth in Paragraph 8.11, the Parties shall submit the matter to mediation prior to commencing legal action in a location that does not exceed sixty (60) miles from the Town and shall equally share the cost of the mediation.

8.11 Right to Injunction. The Parties hereto acknowledge that the services to be rendered by IMEG under this Agreement and the rights and privileges granted to the Town under the Agreement are of a special, unique, unusual and extraordinary character which gives them a peculiar value, the loss of which may not be reasonably or adequately compensated by damages in any action at law, and the breach by IMEG of any of the provisions of this Agreement may cause the Town irreparable injury and damage. IMEG agrees that the Town, in addition to other relief at law, shall be entitled to injunctive and other equitable relief in the event of, or to prevent, a breach of any provision of this Agreement by IMEG.

8.12 Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this Agreement, the prevailing party, to the extent permitted by law, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

8.13 Entire Agreement. The provisions of this Agreement represent the entire and integrated agreement between the Town and IMEG and supersede all prior negotiations, representations and agreements, whether written or oral.

8.14 Public Official Personal Liability. Nothing herein shall be construed as creating any personal liability on the part of any elected official, officer, employee or agent of the Town.

8.15 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.

EXHIBIT A SERVICES

IMEG shall provide the following services:

IMEG shall provide final design and engineering services for the Central Phase 2 Sewer Interceptor as defined in Exhibit 'E', Wastewater System Proposed Interceptor Alignments — Priorities. This alignment is further defined as beginning at the proposed Johnstown Farms Lift Station and ending at the existing Clearview Lift Station. It is recognized and agreed upon by the Town and the IMEG that the proposed alignment may change due to certain physical or political barriers beyond either Party's control. Both the Town and the IMEG shall review any such changes and determine if an Amendment to this Contract may be required.

Final Design and Engineering Services for this phase shall include the following assessment(s) and evaluation(s):

- A. Easements/Right-of-Way - IMEG shall coordinate directly and with Town and other Town contracted consultants to further determine feasible property to construct and operate sanitary sewer interceptor improvements. Processes included within this assessment may include: 1) Initial contact and discussion with land owners who may be impacted by the proposed sanitary sewer interceptor improvements; 2) Title search , by a Title Insurance Company, for each parcel impacted by the proposed alignments (it is estimated there are up to 25 parcels along this alignment for which obtaining Title information binders and performing associated research will be required); 3) Determination of locations of land encumbrances that may preclude a proposed alignment within each subject parcel; 4) Preparation of temporary construction easement legal descriptions and exhibits by a Professional Land Surveyor to be utilized for construction easement agreements between the Town and impacted land owners; and, 5) Preparation of permanent utility easement legal descriptions and exhibits by a Professional Land Surveyor to be utilized for permanent easement agreements between the Town and impacted land owners.
- B. Environmental Assessment - IMEG shall provide a final assessment of the proposed alignment with regards to environmental services including a Phase I Environmental Site Assessment (Phase I ESA), natural resource assessment, wetland delineation, habitat assessment, and cultural resource inventory. These environmental services will provide the Town with data to assist in determination of final proposed alignment of the interceptor in addition to determining if there are any environmental concerns that may impact construction scheduling and/or construction costs.
- C. Subsurface Utility Engineering (SUE) - IMEG shall provide Level A/B SUE services to determine locations of existing utilities within the proposed alignment. By Colorado State Law, IMEG is required to provide these

services as part of this Contract upon completion of final design of improvements.

- D. Geotechnical Engineering - IMEG shall provide soil borings at critical design points along the proposed alignment at depths varying between 20 to 30 feet below the ground surface to evaluate subsurface geological conditions and to obtain samples for laboratory testing. The laboratory testing will be completed to evaluate relevant engineering characteristics, such as, but not limited to, in-place moisture and density, particle size analysis, Atterberg limit, strength, water-soluble sulfates, and soil corrosivity. This evaluation will assist IMEG in determining feasibility and requirements for installation of the sanitary sewer interceptor at the proposed alignment or if a more suitable alignment should be reviewed.

This information will be utilized in conjunction with our previously completed initial geotechnical study completed in 2020. Any soil borings completed in this scope will be as a result of a change in the proposed alignment and/or in location(s) in which it is determined that there is insufficient geotechnical data available.

- E. Field Surveying - IMEG shall provide land surveying services in coordination with final design of this alignment including existing conditions at minimum 100-foot intervals for the length of the proposed alignment.
- F. State and Local Permitting - IMEG will prepare a capacity analysis of the proposed interceptor to determine an appropriate size for the proposed interceptor for this alignment. However, it is anticipated the required interceptor size will not require a CDPHE Permit, and as such, budget is NOT included herein for IMEG to prepare a State of Colorado required Site Application for the proposed alignment. Should a CDPHE Permit become necessary, additional budget may need to be negotiated at that time.
- G. Final design - IMEG will prepare construction plans and project specifications for the final design of the proposed Central Interceptor — Second Priority alignment, which is estimated at 7,200 +/- lineal feet in length. The construction plans will consist of a cover sheet, applicable construction notes, an overall alignment plan, plan and profile of the sanitary sewer alignment (horizontal/vertical), construction details, temporary erosion control considerations, demolition/decommissioning of the existing Clearview Lift Station, and estimated plan quantities. In conjunction with the construction plans, IMEG will prepare project specifications specifically outlining required materials, workmanship, and processes for constructing the proposed sanitary sewer interceptor. The project specifications will be integrated into a Project Manual that will contain the Town contract documents including agreement and conditions. It is assumed that the Engineering Joint Contract Documents Committee (EJCDC) format will be utilized for the Contract and

Specifications that comprise the Project Manual.

- H. CMAr Assistance - IMEG will assist the Town and the Town's selected CMAr Contractor during pre-construction services to evaluate construction and design alternatives. Weekly CMAr team meetings will be held in which IMEG will prepare meeting agendas and meeting minutes. IMEG estimates these weekly meetings to be held for twenty (20) weeks during the design phase.

EXHIBIT B
Schedule of Fees
November 2020

The estimated schedule of fees, on time and material basis in an amount not to exceed without additional Town authorization is as follows (consistent with the Scope of Work described in Exhibit A):

Final Design Phase (Central - Priority 2)

A.	Easements/ROW *	\$25,000
B.	Environmental Assessment *	\$10,000
C.	Subsurface Utility Engineering *	\$42,000
D.	Geotechnical Engineering *	\$15,000
E.	Field Surveying *	\$15,000
F.	State Permitting	\$25,000
G.	Final Design	\$79,000
H.	CMAA Assistance	\$ 40,000
I.	Project Expenses (Allowance)	\$ 1,000
Total - Central Phase 2 (Not to Exceed)		\$252,000

* Includes sub-consultant fees

Typical current staff rates for the Town are presented below for consideration. IMEG will hold the rates for a two-year period. If the Agreement continues beyond two years, IMEG may update the rates.

Staff	Title	IMEG Current Hourly Rates
Gregory A. Weeks, P.E.	Project Manager	\$150
Taylor C. Goertz, P.E.	Project Executive	\$190
Glendon W. Berrett, P.E.	Project Executive	\$190
Rick A. Rome, P.E.	Senior Engineer	\$150
Greg D. Jeppesen, P.E.	Senior Engineer	\$150
Ryan K. Vevang, P.E.	Project Engineer	\$130
Shelley E. Cobau	Senior Civil Technician	\$120
Michael C. Cregger, P.L.S.	Senior Land Surveyor	\$140
Paige R. Coufal	Project Engineer	\$100
Zach W. Pauser	Project Designer	\$100
Julie Campos	Administrative Assistant	\$65
Survey Crew (PWSI)	Subconsultant	\$160
Other Staff General Rates		
Project Engineer		\$90-\$110
Senior Engineer		\$110-\$150
CAD/GIS Technician		\$85-\$125
Professional Land Surveyor		\$130-\$150
Inspection Staff		\$85-\$130
Administrative Staff		\$60-\$90

- Automobile travel will be charged at current Federal Government rate.
- Outside Consultants and/or independent laboratory tests which IMEG administers will be charged at cost plus 10%
- Other expenses charged at cost plus 10%.

EXHIBIT C
Timeline

Unless otherwise agreed in writing, the following timeline and major milestones for the proposed Scope of Work defined in Exhibit A shall apply:

Design Schedule

Milestone	Start Date	Duration (Weeks)	Completion Date
Notice to Proceed	1/1/2021	0	1/1/2021
Field Surveying*, **	1/3/2021	2*	1/17/2021*
Environmental Assessment	1/3/2021	4	1/31/2021
Preliminary Design	2/1/2021	4	2/28/2021
Easement/ROW Determination	3/1/2021	2	3/15/2021
Subsurface Utility Engineering**	3/15/2021	4	4/15/2021
Geotechnical Engineering**	3/15/2021	4	4/15/2021
Final Design	4/15/2021	4	5/15/2021
CMAA Pricing/Evaluation	5/15/2021	8	7/15/2021
Begin Construction***	7/15/2021	10	9/30/2021

* Subject to weather impacts/snow cover.

** Authorization to enter properties must be secured before field investigation can be completed.

*** For informational purposes only (not a part of this Agreement).

EXHIBIT D
REQUIRED PROVISIONS FOR CONTRACT FOR SERVICES
PROHIBITING EMPLOYMENT OF ILLEGAL ALIENS

IMEG shall not:

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

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

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

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

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

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

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

EXHIBIT E LIMITS OF CENTRAL PHASE 2

