

INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN,  
COLORADO AND THE CITY OF THORNTON, COLORADO

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), is made and entered into effective the \_\_\_\_ day of \_\_\_\_\_, 2024 by and between Town of Johnstown, a Colorado home rule municipality ("Johnstown"), and the City of Thornton, a Colorado home rule municipality ("Thornton"), collectively (the "Parties") concerning the Thornton Water Project.

WITNESSETH:

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, Thornton plans to install, construct, operate and maintain a water pipeline and appurtenances thereto, generally referred to as the Thornton Water Project ("the Pipeline"); and

WHEREAS, a portion of the Pipeline has been or will be installed, constructed, operated, and maintained in and through the corporate boundaries of Johnstown as well as in Johnstown's Growth Management Area, as generally depicted and shown on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, the Parties agree that it is beneficial to them to specify the rights and obligations of the Parties regarding the installation, construction, operation and maintenance of the Pipeline within Johnstown's current and future corporate limits; and

WHEREAS, it is the intent of the Parties that this Agreement contain all the rights and obligations of the Parties which shall be performed by the Parties with respect to installation, construction, operation and maintenance of the Pipeline within Johnstown's current and future corporate limits.

NOW, THEREFORE, in consideration of the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions to allow for the installation, construction, operation and maintenance of the Pipeline in Johnstown's current and future corporate limits. All conditions contained herein are in addition to applicable state statutes and Johnstown Ordinances, and are not intended to supersede such requirements, except as specifically provided in this

Agreement. All exhibits attached hereto are incorporated herein by this reference and are an integral part hereof.

2. Installation, construction, operation and maintenance of the Pipeline in Johnstown. Johnstown will permit Thornton to install, construct, operate and maintain the Pipeline in Johnstown's corporate limits, as they currently exist or as they may exist in the future, as generally shown on the map attached hereto as Exhibit A.

- a. Upon request by Thornton, Johnstown will timely process any necessary permits or other approvals for the installation, construction, operation and maintenance of the Pipeline through an administrative process and, assuming compliance with the provisions of this Agreement and with all of Johnstown's Ordinances, including but not limited to those for Excavations, Chapter 11, Article II, Sections 11-21 through 11-26, will grant such permits or other approvals. Thornton will pay Johnstown's typical fees and, if applicable, costs for the required permits or approvals.
  - i. Johnstown hereby grants and conveys to Thornton the easements for installation, construction, access, operation and maintenance of the Pipeline across the Johnstown-owned property (Weld County Parcel No. 105929400001) as described in attached Exhibit B.
- b. Additional terms for Thornton's use of Johnstown-owned property or right-of-way for the Pipeline are as follows:
  - i. Thornton will be responsible for road and pavement repairs and/or replacements necessitated by said Pipeline installation, construction, operation and maintenance ("Disturbances"), and will repair and/or replace such road and pavement to a condition substantially the same or better than the condition existing before Thornton's Disturbances as reasonably determined by Johnstown. Thornton shall further ensure that the grade (meaning the slope) of the roads is the same as the grade of the roads existing before Thornton's Disturbances, as reasonably determined by Johnstown.
  - ii. If construction of the Pipeline requires that Thornton relocate others' (including but not limited to service providers and Johnstown's) infrastructure existing as of the date of this Agreement, Thornton shall be responsible for such relocation costs. Except as provided in Subsection 2.c., if infrastructure that conflicts with construction of the Pipeline is installed after the date of this Agreement, the owner of such infrastructure will be responsible for costs for removal or relocation of such infrastructure.
  - iii. Thornton shall coordinate with Johnstown when work or maintenance is expected to be performed on the Pipeline in or on Johnstown-owned property or right-of-way. Johnstown shall endeavor to notify Thornton when

work or maintenance is expected to be performed in or on Johnstown-owned property or right-of-way that may impact the Pipeline.

- iv. Thornton shall bear all costs associated with the installation, construction, operation and maintenance of the Pipeline.
  - v. Thornton shall be responsible for responding to all 811 calls for locating the Pipeline.
  - vi. Johnstown will allow Thornton to access the easements granted in Section 2.a.i. above via Johnstown's access road to Johnstown's water tank located on the Johnstown-owned parcel currently identified as Weld County Parcel No. 105929400001 while the Temporary Access and Construction Easement attached as Exhibit B ("TCE") is activated pursuant to paragraph 2 of said TCE. Consequently, when the TCE is terminated, so will Thornton's right to use the access road unless Johnstown permits access on a case-by-case basis. Thornton shall restore or repair to its original condition, and in a manner that is satisfactory to Johnstown, and damages caused by Thornton's use of Johnstown's access road. Johnstown and Thornton shall coordinate to allow both parties to access the gates to the property through interlocking locks or other means. Thornton will provide at least 24 hours advance notice to Johnstown prior to accessing the easements via Johnstown's access road, except in case of emergency which threatens life, safety or property. Johnstown makes no warranty that Johnstown will continue to own or control said access road.
- c. If Johnstown's use of its rights of way reasonably requires the Pipeline to be moved for installation of stormwater or sanitary sewer lines or construction of roadway or intersection improvements, and no other reasonable alternative exists that does not require relocation of the Pipeline, Johnstown shall provide written notice to Thornton and Thornton shall, at its own cost and expense, move the Pipeline to a location deemed acceptable by Johnstown and Thornton. The Parties shall work together in good faith in the event relocation is necessary so that any adjustments made to the Pipeline will be as minimal as possible. Johnstown will use best efforts to plan around the Pipeline to avoid its relocation. In the event of relocation, Johnstown shall provide access to the relocated Pipeline if possible.
  - d. As long as such improvements do not interfere with Thornton's maintenance of, or access to, the Pipeline, Johnstown shall be entitled to install public improvements in the rights of way where the Pipeline is located and shall be entitled to cross the Pipeline subject to separation requirements identified in Paragraph 4.i., and landscaping standards identified in Exhibit C.

3. Location of the Pipeline within Johnstown's Growth Management Area. Thornton has identified the alignment for the Pipeline through Johnstown and Johnstown's Growth Management Area, and has acquired the easements necessary for

installation, construction, operation and maintenance of the Pipeline. Thornton will provide the then-current Plan and Profile drawings for the Pipeline within Johnstown and the Johnstown Growth Management Area within 60 days of execution of this Agreement, and will provide as-built drawings for the Pipeline within 60 days of such drawings being available.

4. Uses of Johnstown-owned property or right of way in the vicinity of the Pipeline after initial installation of the Pipeline. Johnstown will endeavor to regulate other uses of or changes to Johnstown-owned property or right-of-way so that such uses or changes will not unreasonably interfere with Thornton's use, operation or maintenance of the Pipeline. Thornton recognizes that third parties, including franchises, may have a pre-existing right to use Johnstown-owned property or right-of-way and that Johnstown has no direct oversight related to such third party or franchise operations, maintenance and capital planning. As permitted by law, Thornton's Pipeline shall be subject to such pre-existing rights. Except as stated herein, Thornton shall not be entitled to prohibit the use of the Johnstown-owned property or right-of-way by other utility operators. Such utility owner's rights will be subject to the terms of Thornton's Pipeline easements where Thornton's pipeline easement rights supersede or pre-date the rights of such utility operators' rights. Johnstown specifically acknowledges that areas not yet annexed or owned by Johnstown as of the date of Thornton's Pipeline easements are subject to such Pipeline easements and the rights and limitations defined therein, and will continue to be subject to such existing Pipeline easements if Johnstown acquires property or annexes rights of way that coincide with the Pipeline easements. After initial installation of the Pipeline, Johnstown and Thornton shall seek the cooperation of third parties and franchisees in use of the right-of-way to accommodate and protect the Pipeline. In addition, with respect to Johnstown-owned property or right-of-way:

- i. Johnstown will endeavor to require a minimum of a ten (10) foot horizontal separation from the centerline of the Pipeline to any other utility proposed to be installed within the Pipeline easement and parallel to the Pipeline, and an eighteen (18) inch vertical separation from the edge of the Pipeline and any other utility proposed to cross the Pipeline. Pipeline crossings will be as close to 90-degrees as is reasonably possible.
- ii. The Pipeline has been designed to have a minimum of four (4) feet of cover over the Pipeline. Johnstown will endeavor to require a minimum of four (4) feet of cover, over the Pipeline.
- iii. The Parties will mutually agree on appropriate separations from Pipeline appurtenances to be determined on a case-by-case basis.
- iv. To the extent practicable, if Johnstown is aware of such intended action, Johnstown will endeavor to prohibit any tree or shrub planting or permanent structure to be installed on the ground surface over the Pipeline that would impact Thornton's ability to use, operate and maintain the Pipeline.

- v. The Pipeline is designed to accommodate AASHTO HS-20 live loads. Johnstown will endeavor to prohibit any uses over the Pipeline, and will not permit any uses over the Pipeline that exceed AASHTO HS-20 live loads.
- vi. Johnstown will coordinate with Thornton when the uses of the Town right-of-way by third parties or franchises may impact the Pipeline.
- vii. Johnstown will endeavor to require compliance with the guidelines set forth in the easement agreements shown in Exhibit B.
- viii. With respect to the foregoing, the Parties recognize and agree that, as time passes, Johnstown may not readily possess the requisite knowledge to seek compliance with the guidelines contained herein. Thornton will endeavor to remain apprised of developments in Johnstown that may impact the Pipeline and to provide written notice to Johnstown of activity that it claims may impact the Pipeline.
- ix. While Johnstown shall use good faith efforts to effectuate the foregoing, nothing contained in this Paragraph 4 shall give rise to liability on the part of Johnstown. The failure to accomplish the foregoing shall not form the basis of a legal claim against Johnstown, unless such failure is the result of willful or negligent misconduct.

5. Approvals. Whenever approval or acceptance by Johnstown is necessary pursuant to any provisions of this Agreement, Johnstown shall act in a timely manner in responding to such request for approval or acceptance and, assuming compliance with the provisions of this Agreement and with all of Johnstown's Ordinance, including but not limited to those for Excavations, Chapter 11, Article II, Sections 11-21 through 11-26, shall not unreasonably withhold same.

6. Restoration of property. Thornton shall restore or repair to its original condition or as close thereto as possible, except as necessarily modified to accommodate the Pipeline, any damages caused to real or personal property that arise out of or are related to the installation, construction, operation, maintenance or repair of the Pipeline. If Thornton fails to correct the damage, Johnstown may provide Thornton with written notice and an opportunity to cure. If Thornton fails to correct the damage subsequent to notice within ten (10) calendar days, Johnstown may correct the damage and send Thornton an invoice for the restoration or repair and, if applicable, the professional fees incurred to correct the damage including, but not limited to, engineering fees and legal fees. Thornton shall have thirty (30) days to pay the invoice or be deemed to be in breach of this Agreement.

7. Failure of Pipeline. If the Pipeline were to breach, break or leak and cause damage, of any sort, to real or personal property in Johnstown, regardless of whether due to the acts or omissions of Thornton, Thornton shall promptly: (i) notify Johnstown; (ii)

take all action to cure the defect; and (iii) restore the damaged property as set forth in paragraph 6 above.

8. Notification of breaks or leaks. Thornton shall promptly notify Johnstown of any leaks or breaks discovered by Thornton within Johnstown and shall promptly take appropriate action to cure any such defect.

9. Emergency raw water interconnection. Thornton has installed on the Pipeline an Emergency Raw Water Interconnect ("Interconnect") for use by Johnstown. Johnstown's connection to and use of the Interconnect will be governed by the terms and conditions of the Intergovernmental Agreement between the Town of Johnstown, Colorado and the City of Thornton, Colorado for an Emergency Raw Water Interconnection Agreement attached as Exhibit D, and executed concurrently with this Agreement.

10. Negotiation of a carriage agreement for use of excess capacity in the Pipeline. Thornton and Johnstown agree to negotiate in good faith for a carriage agreement for Johnstown's right to use excess capacity in the Pipeline. Johnstown's use of the excess capacity in the Pipeline must be consistent with and not interfere with Thornton's use of the Pipeline. The Parties will negotiate a carriage agreement addressing, among other matters, the matters identified in the term sheet attached as Exhibit E. Failure to reach a mutually acceptable carriage agreement for use of excess capacity in the Pipeline shall not be considered a breach of this Agreement by either Johnstown or Thornton, and is not subject to specific performance by either Johnstown or Thornton.

11. Breach by Thornton - Johnstown's Remedies. In the event of a breach of any of the terms and conditions of this Agreement and until such breach is corrected, Johnstown may take such actions as are permitted and/or authorized by the ordinances of Johnstown, this Agreement, and/or other law, as Johnstown reasonably deems necessary in order to protect the public health, safety and welfare. These remedies include, but are not limited to:

- a. The refusal to issue any permit;
- b. The revocation of any permit previously issued under which construction directly related to such permit has not commenced;
- c. Specific performance of this Agreement; and
- d. Any other remedy available at law or in equity.

Unless necessary to protect the immediate health, safety and welfare of Johnstown, Johnstown shall provide Thornton ninety (90) days prior written notice of its intent to take any action under this paragraph, specifying the claimed breach or default of Thornton. If during such ninety (90) day period Thornton commences to cure the breach

described in the notice and proceeds reasonably and timely thereafter to cure the breach, any action taken by Johnstown to enforce this Agreement shall be discontinued and no further action shall be taken by Johnstown to the extent that Thornton diligently pursues the cure to completion.

12. Breach by Johnstown - Thornton's Remedies. Thornton shall have any and all remedies against Johnstown for breach of this Agreement available at law or in equity for a material breach of this Agreement by Johnstown, including but not limited to termination of the Emergency Raw Water Interconnect Agreement or specific performance for a material breach which substantially impairs Thornton's ability to install, construct, operate and maintain the Pipeline in Johnstown. Unless necessary to protect the immediate health, safety and welfare of Thornton, Thornton shall provide Johnstown ninety (90) days prior written notice of its intent to take any action under this paragraph, specifying the claimed breach or default of Johnstown. If during such ninety (90) day period Johnstown commences to cure the breach described in the notice and proceeds reasonably thereafter to cure the breach, any action taken by Thornton to enforce this Agreement shall be discontinued and no further action shall be taken by Thornton to the extent that Johnstown diligently pursues the cure to completion.

13. Insurance. Thornton agrees to maintain sufficient insurance to satisfy any and all claims and liability that may arise from installation, construction, operation, maintenance and repair of the Pipeline including restoration of property as set forth in paragraph 6. Thornton agrees that, if it were to assign this Agreement, it shall require the assignee to have and maintain appropriate insurance to satisfy any and all claims and liability.

14. Acknowledgements. It is expressly understood that Thornton and Johnstown cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Thornton City Charter and Thornton City Code, the Johnstown Home Rule Charter and Johnstown Municipal Code, and the laws of the State of Colorado. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or abrogation of each other's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of their respective city and town or its inhabitants; nor shall this Agreement prohibit the enactment by Thornton or Johnstown within their respective jurisdictions of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.

15. Notice. All notices required under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth. All notices so given shall be considered effective on the date of delivery or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

Notice to Town:

Town of Johnstown

450 S. Parish Avenue  
PO Box 609  
Johnstown, Colorado 80534

with copy to:

Town Attorney  
Law Office of Avi S. Rocklin, LLC  
1437 N. Denver Avenue #330  
Loveland, CO 80538

Notice to Thornton:

City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

with a copy to:

City of Thornton  
City Attorney  
9500 Civic Center Drive  
Thornton, CO 80229

Notwithstanding the foregoing, either Party may provide electronic mail ("e-mail") notice on the condition that the other Party acknowledges receipt of the e-mail and does not object to the delivery of notice by e-mail.

16. Assignment. Thornton shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement related to the Pipeline to any person or entity, directly or indirectly, controlling, controlled by, or under common control with Thornton without the consent of Johnstown. The terms "controlling," "controlled by," or "under common control with," shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities or otherwise. Thornton shall also have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement related to the Pipeline to any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity upon written approval by Johnstown, which shall not be unreasonably withheld. Upon such notice and written assumption of the obligations of Thornton by an assignee, the assignor shall be relieved of any further obligations or liability with respect to the performance of any of the duties or obligations of Thornton which have been assigned or transferred arising after the date such duties and obligations are assumed by the assignee. After an initial assignment by Thornton, any subsequent assignment shall require the prior written consent of Johnstown (by and through Town Council or the Town Manager).

17. Authority to Execute Documents. This Agreement must be mutually approved by Thornton's City Council and Johnstown's Town Council. Thornton City Council's approval of this Agreement will authorize the Thornton City Manager or designee to execute documents as needed to allow the installation, construction, operation and maintenance of the Pipeline in Johnstown as long as the documents are



consistent with the terms of this Agreement. Johnstown's Town Council's approval of this Agreement will authorize the Johnstown Town Manager or his or her designee to execute all documents necessary to allow the installation, construction, operation and maintenance of the Pipeline in Johnstown, including, but not limited to all easements, permits and licenses, as long as the documents are consistent with the terms of this Agreement and otherwise comply with Johnstown's Ordinances.

18. Title and Authority. The persons signing this Agreement on behalf of Thornton and Johnstown represent and warrant that he or she has full power and authority to enter into this Agreement on behalf of Thornton or Johnstown, respectively. Johnstown and Thornton understand that each is relying on such representations and warranties in entering into this Agreement.

19. Colorado Governmental Immunity Act. The Parties hereto understand and agree that they are relying on, and do not waive or intend to waive, by any provision of this Agreement, any rights, protections, or privileges provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* (the "Act"), as it is from time to time amended, or otherwise available to the Parties, their officers, or employees. Thornton acknowledges and agrees that an assignee may not have the rights, protections of privileges of the Act.

20. Entire Agreement - Amendments. This Agreement represents the entire agreement of the Parties with respect to the installation, construction, operation and maintenance of the Pipeline within Johnstown. There are no promises, terms, conditions, or obligations other than those contained herein, which shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between Thornton and Johnstown.

21. Severability. If any part, term, or provision of any portion of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, declared void or in conflict with any law of the State of Colorado by final court action, meaning that no appeal can be made or the time to appeal has expired, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the Parties shall cooperate to cure any such defect. If such defect has affected the ability of Thornton to install, construct or maintain the Pipeline in Johnstown, after cure, the Parties agree to take such reasonable steps as are necessary to allow installation, construction, maintenance and operation of the Pipeline in Johnstown in accordance with the terms of this Agreement.

22. Effective Date. This Agreement shall be effective and binding upon both Parties as of the date first set forth above.

23. Further Assurances. The Parties agree to execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

24. No Duress. The Parties agree that this Agreement is freely and voluntarily executed by them after an opportunity for each party to obtain legal advice.

25. Execution and Counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of the Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.

26. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any party institute legal suit or action for enforcement of any right or obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Weld County, Colorado.

27. Third Party Beneficiaries. This Agreement is made by and between the Parties and, to the extent permitted, successors or assigns and solely for their benefit. No third parties shall be entitled to enforce the duties or enjoy the rights created herein.

28. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, intending to be legally bound hereby as of the date first set forth above.

### **Exhibits to Agreement**

- A – Map of Pipeline in Johnstown and Johnstown Growth Management Area
- B – Easement Documents
- C – Landscaping/Improvements around Pipeline
- D – Emergency Raw Water Interconnection Agreement
- E – Term Sheet for Negotiation of Carriage Agreement

**[Signature pages follow]**

TOWN OF JOHNSTOWN, COLORADO,  
a Colorado home rule municipality

ATTEST:

\_\_\_\_\_  
Troy D. Mellon, Mayor

\_\_\_\_\_  
Hannah Hill, Town Clerk

APPROVED AS TO FORM:  
Law Office of Avi S. Rocklin, LLC  
by: Avi Rocklin, Town Attorney

\_\_\_\_\_  
Town Attorney

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF WELD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2024, by Troy D. Mellon, Mayor, Town of Johnstown.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

CITY OF THORNTON, COLORADO,  
a Colorado home rule municipality

\_\_\_\_\_  
Kevin S. Woods, City Manager

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:  
Tami Yellico, City Attorney

\_\_\_\_\_  
City Attorney

STATE OF COLORADO    )  
  )ss.  
COUNTY OF ADAMS    )

Subscribed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Kevin S. Woods, City Manager, City of Thornton, a Colorado home rule municipality.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Exhibit A to INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO

Map of Thornton Water Project through Johnstown GMA

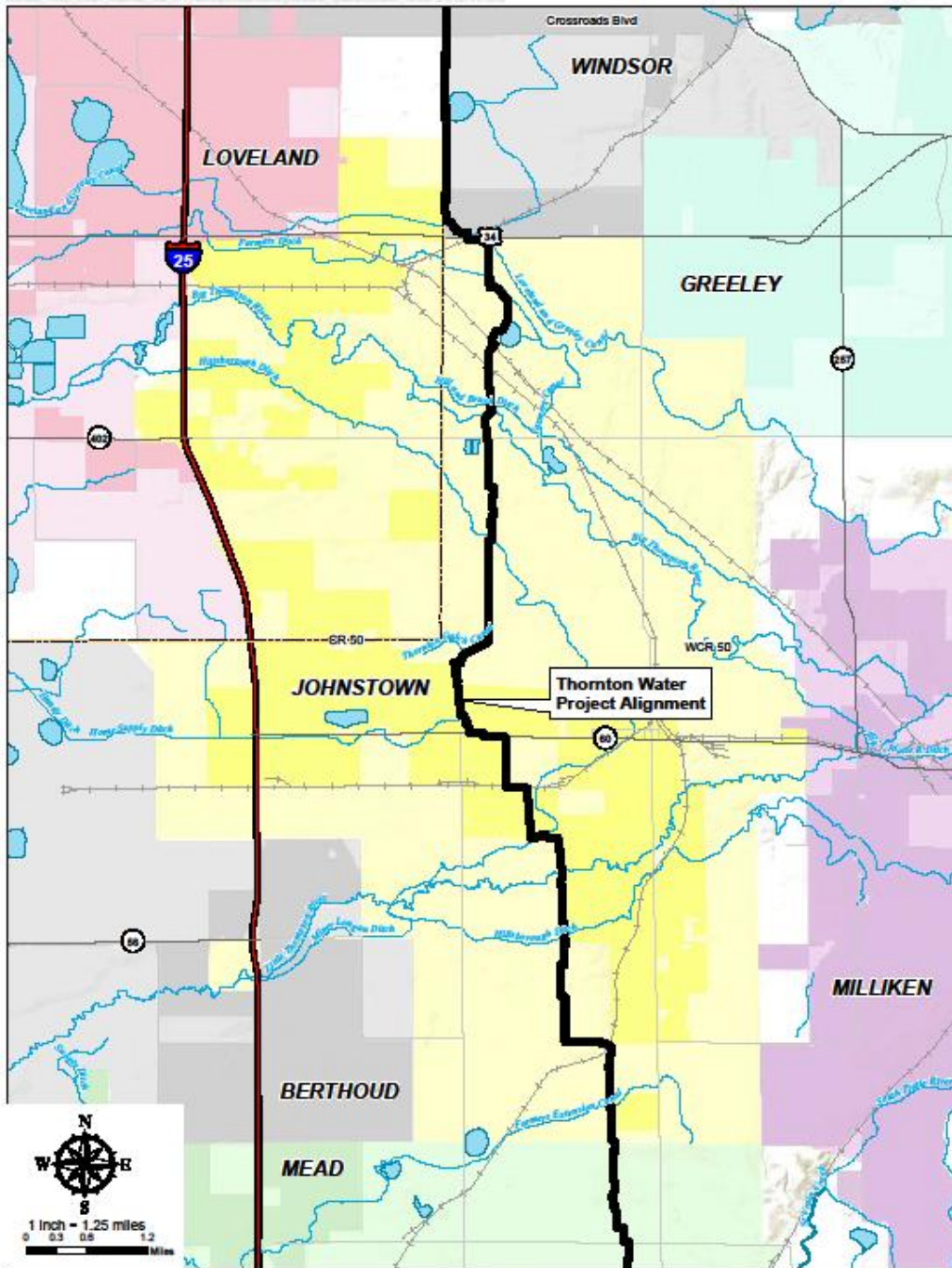


Exhibit B to INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF  
JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO –  
Easement Documents

**DEED OF PERPETUAL NON-EXCLUSIVE EASEMENT**  
(Water Line)

THIS DEED OF PERPETUAL NON-EXCLUSIVE EASEMENT is made this \_\_\_\_ day of \_\_\_\_\_, 2024, between Town of Johnstown, State of Colorado, a Colorado home rule municipal corporation, whose address is 450 S. Parish Avenue, Johnstown, Colorado 80534 (“Grantor”), and the City of Thornton a Colorado, a Colorado home rule municipality, whose address is 9500 Civic Center Drive, Thornton, Colorado 80229 (“Grantee”). Grantor and Grantee may be individually referred to as a “Party” and collectively referred to herein as “Parties.”

**WITNESSETH**

1. That for and in consideration in the amount of Ten Dollars (\$10.00) and of the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants, sells, and conveys to Grantee, its successors and assigns, a Perpetual Non Exclusive Easement (“Perpetual Easement”) on, under, through, over and across property owned by Grantor, as described and depicted in **Exhibit A (20-3 PE)** attached hereto and incorporated herein by this reference the (“Property”), to access, install, construct, use, operate, maintain, replace, repair, reconstruct, improve, relocate, inspect, survey, test and remove, at any time and from time to time as may be useful to, or required by Grantee, a single 42-inch diameter water pipeline, conduits, vaults, meters, valves, manholes, access roads, subject to paragraph 2 below, or any other underground water pipeline utility structures (including, but not limited to, communication facilities) and all necessary underground cables, wires and all improvements and appurtenances thereto, with above ground improvements limited to vent pipes and utility location markers (“Improvements”).

2. To the maximum extent practicable, Grantee shall use existing gates, public roads, trails or facilities for access to the Property.

3. Grantor reserves the right to use and occupy the Property for any and all lawful purposes consistent with the rights and privileges above granted which will not unreasonably interfere with or endanger any of Grantee’s Improvements or otherwise interfere with Grantee’s rights hereunder.

4. The Parties further agree that the uses of the Property by Grantor and the agreements concerning those uses shall be as follows:

- a. Grantor shall not itself or through other persons or entities, erect or construct any building or other structure, or drill or operate any well, or construct any permanent obstruction, on, over or in the Property, which would unreasonably interfere with Grantee’s exercise of the rights herein conveyed, without obtaining the prior specific written permission of Grantee, except that, without written permission of Grantee

and subject to Paragraph 5.b. below, Grantor has the unconditional right to erect and construct the Water Tank Improvements (defined below);

- b. Without the prior specific written permission of Grantee, Grantor may, install landscaping (except trees), pavement, curbs, gutters, sidewalks, trails, parking areas and associated curb cuts, driveways, fences, sprinkler systems, posts, poles or walls within the Property;
  - c. Grantor on behalf of itself, its employees, contractors and agents, shall take no action that would impair or in any way decrease or increase the ground level, or the lateral or subjacent support for the appurtenances and Improvements within the Property, in a manner that causes damages to or risks the integrity of the Improvements, without obtaining the prior specific written permission of Grantee;
  - d. Without liability for damage, Grantee may remove anything identified under subparagraph 4.a. herein that is placed on, over, or in the Property without the prior specific written permission of Grantee at Grantor's cost. In addition, Grantee shall have the right, to cut, trim, control and remove trees, brush, and other obstructions that injure or interfere with Grantee's occupation or enjoyment of the Perpetual Easement or Improvements.
5. Grantee hereby covenants and agrees to the following:
- a. Grantee shall restore or repair to its original condition, and in a manner that is reasonably satisfactory to the Grantor, any damages caused on the Property, arising out of the construction, reconstruction, maintenance or repair of said Improvements in the exercise of the rights hereby granted to Grantee;
  - b. Grantee understands and agrees that Grantor is constructing, or has constructed, a water tank and related pipelines and above and below ground improvements appurtenant thereto ("Water Tank Improvements") on property in close proximity to, adjacent to, near and/or congruent with the Property that is the subject of the Perpetual Easement. In exercising the rights granted herein, Grantee:
    - i. Shall not interfere with Grantor's contractors and shall coordinate Grantee's construction with Grantor's contractors;
    - ii. Shall not, at any time, damage the Water Tank Improvements and shall install its Improvements in a location within the Property that does not interfere with the Water Tank Improvements or the ability of Grantor to access the Water Tank Improvements; and
    - iii. If, contrary to the obligation set forth above, Grantee, at any time, damages the Water Tank Improvements, Grantee shall restore the Water Tank Improvements to their original condition or shall, in Grantor's discretion, pay Grantor in full for the reasonable cost of the work to repair the damaged

Water Tank Improvements, including, but not limited to, the actual costs of the repair work, an administrative fee and third-party consultant fees.

- c. Grantee shall install bollards around all at-grade and above-grade Improvements, if any.

6. Except in emergencies involving potential loss of life or damage or destruction to property or when Grantor cannot reasonably be located, Grantee shall give Grantor fourteen (14) days' notice before entry upon the Property for construction or other comparable operations, maintenance and repair involving disturbance or alteration of the Property or Grantor's property thereon.

7. In case Grantee shall permanently abandon the Perpetual Easement herein granted, and cease to use the same, all right, title and interest hereunder of Grantee shall revert to the then owner of the Property. At such time, Grantee shall remove all at-grade and above-grade Improvements and restore the Property to its original condition and shall, with respect to the below-grade Improvements, either remove the Improvements where installed by ditching and restore the Property to its original condition or purge the Improvements of product, fill the line with an inert substance and abandon the below ground Improvements in place. Grantee shall be responsible for all costs and fees related to such removal or filling in of the Improvements. Upon said permanent abandonment, Grantee shall record a release of this Perpetual Easement in the Clerk and Recorder's office in Weld County, Colorado.

8. Grantee shall be responsible for obtaining any permits, approvals and consents, and meeting any other legal obligations or requirements including those imposed by any governmental authority prior to construction of Improvements within the Property.

9. Other than the Intergovernmental Agreement Between the Town of Johnstown, Colorado and the City of Thornton, Colorado executed on or about the date of this instrument and the terms set forth herein, the Parties hereto agree that neither has made or authorized any agreement with respect to the subject matter of this instrument, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either Party, its agents or employees.

10. This Perpetual Easement and the grant contained herein are subject to all restrictions, reservations, rights-of-way, easements, documents or agreements existing of record in the Clerk and Recorder's office in Weld County, Colorado at the time this deed is recorded. Except as provided herein, Grantor makes no additional representations or warranties (including warranties of title) in or by this Perpetual Easement or any grant herein.

11. The covenants herein contained shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors and assignees.

12. The signatories hereto warrant that they have full and lawful authority to make the grant, covenants and promises herein above contained as Grantor, and the covenants and promises herein above made as Grantee.



13. The Parties agree that this Perpetual Easement shall be recorded, at Grantee's sole cost, in the Clerk and Recorder's office in Weld County, Colorado.

IN WITNESS WHEREOF, the Parties have executed this Deed of Perpetual Easement effective as of the date first written above.

**[Signature Pages Follow]**







## EXHIBIT A

Thornton Water Project – CIP 12-777

Town of Johnstown

PN: 105929400001

Parcel: 20-3 PE

Date: November 17, 2022

### LEGAL DESCRIPTION

A strip of land, 50.00 feet in width, located in the N1/2 of the S1/2 of the SE1/4 of Section 29, T4N, R67W of the 6th P.M., County of Weld, State of Colorado, described as follows:

COMMENCING at the C-S-S1/64 Corner of said Section 29 from which the C-S1/16 Corner of said Section 29 bears N00°47'16"W, 659.53 feet (Basis of Bearing), thence S89°17'17"E, 68.35 feet along the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of that 30-foot Petroleum Pipeline Easement granted to Duke Energy Field Services, LP as described in instrument recorded August 29, 2001, as Reception No. 2879033 of the records of Weld County, Colorado, and the POINT OF BEGINNING;

Thence N0°47'36"W, 295.21 feet along a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the Northerly Line of that tract of land conveyed to the Town of Johnstown as described in Warranty Deed recorded August 4, 2006, as Reception No. 3409281 of the records of Weld County, Colorado;

Thence N89°17'28"W, 50.02 feet along the Northerly Line of that tract of land as described as said Reception No. 3409281 to a point on a line that is 10.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement;

Thence S0°47'36"E, 295.21 feet along a line that is 10.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29;



**EXHIBIT A**

Thence S89°17'17"E, 50.02 feet along the South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement and the POINT OF BEGINNING.

Area = 14,761 square feet (0.339 acres), more or less.

**NOTICE:** According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

  
Frank N. Drexel 24305  
Colorado Professional Land  
Surveyor No. 24305  
1500 Kansas Ave #2-E, Longmont, CO 80501  
Date: 11-17-22

File: 20-3 PE 111722-Lgl.doc

Project: 1302-1



EXHIBIT A

SW1/4  
SEC. 29

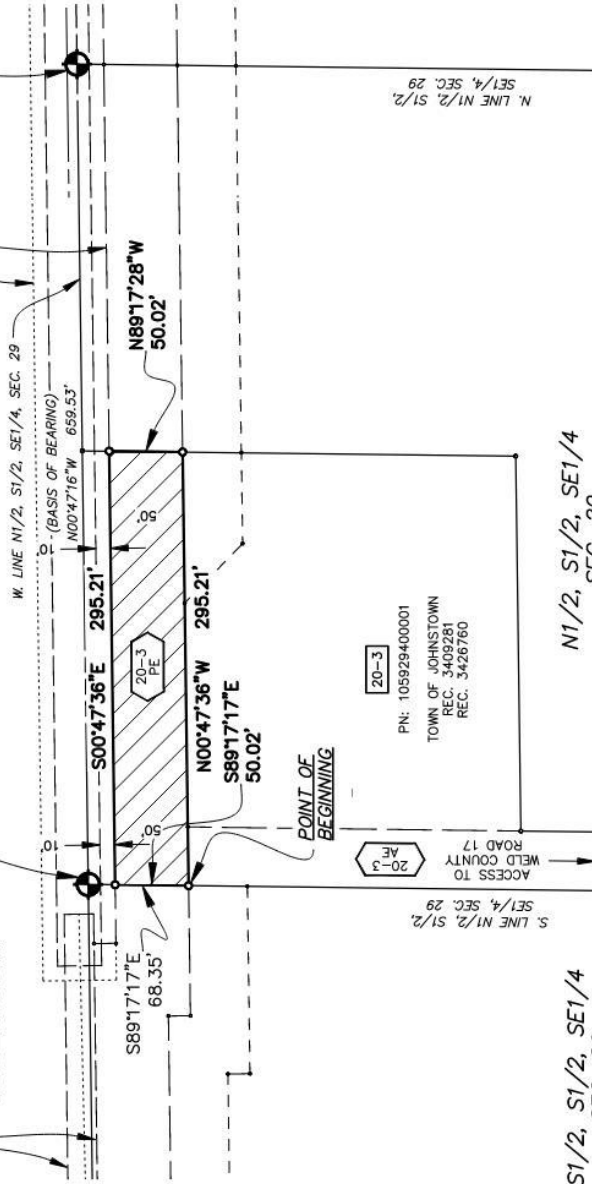
POINT OF COMMENCEMENT

C-S-S1/64 COR. SEC. 29  
T4N, R67W, 6TH P.M.  
FOUND #6 REBAR W/ 3-1/2"  
ALUM. CAP. MKD. "X" KING SURVEYORS  
ING. LUND LS. 34995, 2007/12/12  
BELOW GRAVEL PAD SURFACE  
0.07'S. & 0.01"W.

20' PETROLEUM PIPELINE ESMT.  
DCP MIDSTREAM, LP  
REC. 3460782  
PORTION OF ESMT.  
MAY NOT EXTEND  
EAST OF SECTION LINE.

C-S1/16 COR. SEC. 29  
NOT FOUND OR SET.

30' PETROLEUM PIPELINE ESMT.  
50' TEMP. CONSTRUCTION ESMT.  
DUKE ENERGY FIELD SERVICES, LP  
REC. 2879033  
PORTION OF ESMT.  
MAY NOT EXTEND  
EAST OF SECTION LINE.



S1/2, S1/2, SE1/4  
SEC. 29

N1/2, S1/2, SE1/4  
SEC. 29

Scale: 1"=100'  
Date: 11/17/22  
Dwg: 13201-EE  
Sheet 3 of 3

NOTE: THIS EXHIBIT MAP IS INTENDED ONLY AS AN AID TO FOLLOW THE ATTACHED LEGAL DESCRIPTION AND DOES NOT REPRESENT A LAND SURVEY PLAT ACCORDING TO COLORADO STATUTES.



## TEMPORARY ACCESS AND CONSTRUCTION EASEMENT

THIS TEMPORARY ACCESS AND CONSTRUCTION EASEMENT, is made this \_\_\_\_\_ day of \_\_\_\_\_, 2024, Town of Johnstown, State of Colorado, a Colorado municipal corporation whose address is 450 S. Parish Avenue, Johnstown, Colorado 80534 (“Grantor”), and the City of Thornton, a Colorado home rule municipality (“Grantee”), located at 9500 Civic Center Drive, Thornton, Colorado 80229. Grantor and Grantee may be individually referred to as a “Party” and collectively referred to herein as “Parties.”

### WITNESSETH

1. That for and in consideration of the sum of TEN DOLLARS and of the covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Grantor hereby grants to Grantee a Temporary Access and Construction Easement (“TCE”) for ingress and egress through, to, in, on, over, across and along property owned by Grantor, as described and depicted in **Exhibit A (20-3 REV TE)** attached hereto and incorporated herein by this reference the (“Property”) for the purpose of construction and installation of water pipelines including all improvements and appurtenances related thereto (“Improvements”). This TCE further includes the right to use the Property for construction of the Improvements and equipment and material storage during construction.

2. The term of this TCE shall commence thirty (30) days after Grantee gives written notice to Grantor at the address set forth above of Grantee’s intent to commence construction and shall continue for a term of eighteen (18) months from the date stated in the notice of intent to commence construction. Grantor also grants to Grantee the option to extend this TCE on a month-to-month basis, not to exceed one (1) year from the date of expiration hereof, upon Grantee’s written notice to Grantor of exercise of the option to extend this TCE.

3. Grantee covenants and agrees to restore the Property, including landscaping, fences, or other improvements existing on the Property at the time this TCE commences to a condition acceptable to the Town and comparable to its condition prior to construction.

4. During the term of this TCE, Grantor shall not itself, or through its employees, contractors or agents, erect or construct any building or other structure, or drill or operate any well, or construct any permanent obstruction, or allow the installation of other utilities on, over or in the Property within said TCE, which may interfere with Grantee’s full enjoyment of the rights hereunder, except that, during the term of this TCE, in coordination with Grantee, Grantor has the unconditional right to erect and construct a water tank and related pipelines and other above and below ground improvements appurtenant thereto on, over, in and/or under the Property.

5. Other than the Intergovernmental Agreement Between the Town of Johnstown, Colorado and the City of Thornton, Colorado executed on or about the date of this instrument and the terms set forth herein, the Parties hereto agree that neither has made or authorized any agreement with respect

to the subject matter of this instrument, and no oral representation, promise, or consideration different from the terms herein contained shall be binding on either Party, its agents or employees.

6. The covenants herein contained shall be binding upon and inure to the benefit of the Parties hereto, their respective heirs, personal representatives, successors and assignees.

7. The signatories hereto warrant that they have full and lawful authority to make the grant, covenants and promises herein above contained as Grantor, and the covenants and promises herein above made as Grantee.

8. The Parties agree that this TCE shall be recorded, at Grantee's sole cost, in the office of the Weld County Clerk and Recorder.

IN WITNESS WHEREOF, the Parties hereto have executed this Temporary Access and Construction Easement effective as of the date first written above.

**GRANTOR:**

Town of Johnstown, State of Colorado, a Colorado municipal corporation

\_\_\_\_\_  
Matthew LeCerf, Town Manager

ATTEST:

\_\_\_\_\_  
Hannah Hill, Town Clerk

STATE OF COLORADO            )  
  )ss.  
COUNTY OF WELD                )

Subscribed and acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 2024, by  
Town of Johnstown, State of Colorado, a Colorado municipal corporation.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
Notary Public







## EXHIBIT A

Thornton Water Project – CIP 12-777

Town of Johnstown  
PN: 105929400001  
Parcel: 20-3 REV TE

Date: November 17, 2022

### LEGAL DESCRIPTION

A strip of land, 40.00 feet in width, located in the N1/2 of the S1/2 of the SE1/4 of Section 29, T4N, R67W of the 6th P.M., County of Weld, State of Colorado, described as follows:

COMMENCING at the C-S-S1/64 Corner of said Section 29 from which the C-S1/16 Corner of said Section 29 bears N00°47'16"W, 659.53 feet (Basis of Bearing), thence S89°17'17"E, 68.35 feet along South Line of the N1/2 of the S1/2 of the SE1/4 of said Section 29 to a point on a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of that 30-foot Petroleum Pipeline Easement granted to Duke Energy Field Services, LP as described in instrument recorded August 29, 2001, as Reception No. 2879033 of the records of Weld County, Colorado; Thence N0°47'36"W, 192.34 feet along a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the POINT OF BEGINNING;

Thence continuing N0°47'36"W, 102.87 feet along a line that is 60.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement to the Northerly Line of that tract of land conveyed to the Town of Johnstown as described in Warranty Deed recorded August 4, 2006, as Reception No. 3409281 of the records of Weld County, Colorado;

Thence S89°17'28"E, 40.01 feet along the Northerly Line of that tract of land as described as said Reception No. 3409281 to a point on a line that is 100.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement;

Thence S0°47'36"E, 61.82 feet along at line that is 100.00 feet Easterly of, as measured at right angles from and parallel with, the Easterly Line of said 30-foot Petroleum Pipeline Easement;



**EXHIBIT A**

Thence S44°12'24"W, 56.57 feet to the POINT OF BEGINNING.

Area = 3,294 square feet (0.076 acres), more or less.

**NOTICE:** According to Colorado law you **must** commence any legal action based upon any defect in this survey within three years after you first discovered such defect. In no event, may any action based upon any defect in this survey be commenced more than ten years from the date of the certification shown hereon.

  
Frank N. Drexel 24305  
Colorado Professional Land  
Surveyor No. 24305  
1500 Kansas Ave #2-E, Longmont, CO 80501  
Date: 11-17-22

File: 20-3 TE 111722-Lgl.doc

Project: 1302-1



EXHIBIT A

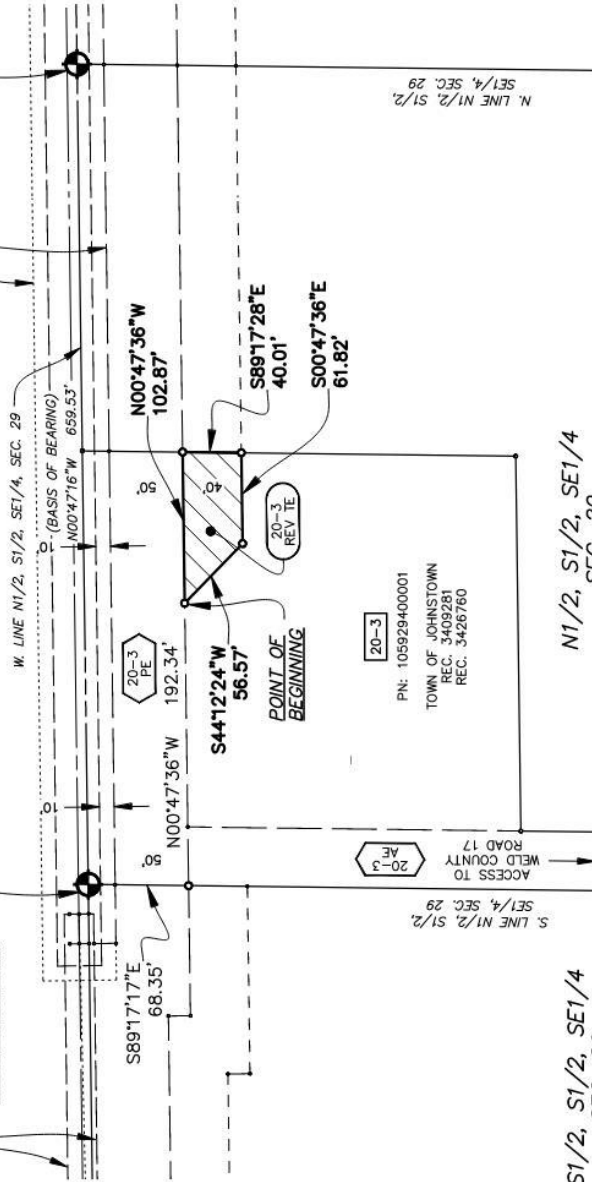
SW1/4  
SEC. 29

**POINT OF COMMENCEMENT**  
C-S-S1/64 COR. SEC. 29  
T4N, R67W, 6TH P.M.  
FOUND #6 REBAR W/ 3-1/2"  
ALUM. CAP MKD. "KING SURVEYORS  
INC LUND LS 34995 2006" 0.2'  
BELOW GRAVEL PAD SURFACE  
0.07'S. & 0.01'W.

20' PETROLEUM PIPELINE ESMT.  
DCP MIDSTREAM, LP  
REC. 3460782  
PORTION OF ESMT.  
MAY NOT EXTEND  
EAST OF SECTION LINE.

C-S1/16 COR. SEC. 29  
NOT FOUND OR SET.

30' PETROLEUM PIPELINE ESMT.  
50' TEMP. CONSTRUCTION ESMT.  
DUKE ENERGY FIELD SERVICES, LP  
REC. 2879033  
PORTION OF ESMT.  
MAY NOT EXTEND  
EAST OF SECTION LINE.



S1/2, S1/2, SE1/4  
SEC. 29

N1/2, S1/2, SE1/4  
SEC. 29

Scale: 1"=100'  
Date: 11/17/22  
Dwg: 13201-EE  
Sheet 3 of 3

NOTE: THIS EXHIBIT MAP IS INTENDED ONLY AS AN AID TO FOLLOW THE ATTACHED LEGAL DESCRIPTION AND DOES NOT REPRESENT A LAND SURVEY PLAT ACCORDING TO COLORADO STATUTES.



Exhibit C to INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF  
JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO

STANDARDS FOR LANDSCAPING/IMPROVEMENTS AROUND PIPELINE

1. Uses allowed over and within ten (10) feet of the centerline of the pipeline
  - a. Streets, including paved or dirt roads, curb and gutter, drainage ditches
  - b. Sidewalks or trails – sidewalks and trails will be designed to accommodate light trucks without causing damage
  - c. Landscape irrigation systems, excluding valve boxes and controllers
  - d. Turf grass
2. Uses not allowed over and within ten (10) feet of the centerline of the pipeline
  - a. Trees and shrubs
  - b. Buildings
  - c. Irrigation system valve boxes or controllers
3. Uses allowed more than ten (10) feet from the centerline of the pipeline
  - a. Trees and shrubs as long as the mature plant canopy does not extend to within ten (10) feet of centerline of pipeline

Exhibit D to INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO

INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO FOR AN EMERGENCY RAW WATER INTERCONNECTION

THIS INTERGOVERNMENTAL AGREEMENT ("Agreement"), is made and entered into effective the \_\_\_\_\_ day of \_\_\_\_\_, 2024 by and between Town of Johnstown, a Colorado home rule municipality ("Johnstown"), and the City of Thornton, a Colorado home rule municipality ("Thornton"), collectively (the "Parties").

WITNESSETH:

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, *et seq.*, and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, Thornton plans to install, construct, operate and maintain a water pipeline, generally referred to as the Thornton Water Project and appurtenances thereto ("the Pipeline"); and

WHEREAS, Johnstown owns and operates a water system which is supplied water from various sources; and

WHEREAS, emergency water supply situations may occur during which the best interests of the health, safety and welfare of Johnstown would be served if Johnstown's system were connected to the Pipeline in a manner that Thornton could assist Johnstown during such an emergency; and

WHEREAS, simultaneously herewith, the Parties are entering into an Intergovernmental Agreement between the Town of Johnstown, Colorado and the City of Thornton, Colorado related to the installation, construction, operation and maintenance of the Pipeline ("Primary Agreement").

NOW, THEREFORE, in consideration of the foregoing and the terms, covenants, conditions and provisions hereinafter set forth and other good and valuable consideration, the receipt and adequacy of which are hereby confessed and acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Purpose. The purpose of this Agreement is to set forth the terms and conditions to allow for the installation, construction, operation and maintenance of an emergency raw water interconnection between the Pipeline and Johnstown's water system. All

conditions contained herein are in addition to applicable state statutes, and are not intended to supersede such requirements, except as specifically provided in this Agreement. All exhibits attached hereto are incorporated herein by this reference and are an integral part hereof.

2. Interconnect construction. Thornton has constructed and installed a twelve (12) inch "T" and valve ("Interconnect") as part of the construction and installation of the Pipeline. The Interconnect is located as described on the plan and profile sheets for the Pipeline provided to Johnstown as provided in the Primary Agreement.
3. Johnstown connection to Interconnect. Johnstown, at Johnstown's expense, shall have the right to connect its raw water system to the Interconnect. Johnstown's connection to the Interconnect shall include facilities necessary to accurately and remotely control and measure the flow of water through the Interconnect to Johnstown's raw water system, both on an instantaneous basis and on a totalizing basis, and to prevent backflow from Johnstown's raw water system through the Interconnect to the Pipeline. Thornton shall have the right to review and approve the design of the facilities connecting the Interconnect to Johnstown's raw water system prior to construction and operation of Johnstown's connection to the Interconnect. Thornton's approval shall not be unreasonably withheld.
4. Ownership of facilities. Thornton shall own and be responsible for all Interconnect facilities up to and including the Interconnect valve. Johnstown shall own and be responsible for the connection to the Interconnect valve and all facilities downstream of the Interconnect valve. Johnstown will purchase and convey to Thornton a meter compatible with Thornton's systems that is capable of accurately and remotely measuring the flow of water through the Interconnect.
5. Maintenance and inspection of Johnstown facilities. Thornton shall have the right to inspect Johnstown's Interconnect-related facilities at any time, and Thornton reserves the right to refuse service through the Interconnect if such facilities are not maintained in a condition to ensure accurate control and measurement of any water deliveries, and to protect Thornton's water system from backflow from Johnstown's water system.
6. Use of Interconnect. The Interconnect shall be used in the event of an emergency if Thornton is capable of, as defined below, providing raw water. For purposes of this Agreement, an emergency is a main break or other infrastructure failure which causes partial or total inability of Johnstown's raw water system to provide adequate water for fire protection and/or domestic water service. A shortage of untreated water available to Johnstown's water system (or its water rights) due to drought or other hydrologic conditions shall be considered on a case-by-case basis at Thornton's discretion.
7. Capable of providing raw water.
  - a. Thornton shall not be deemed capable of providing raw water for events that affect the structure, integrity or operation of the Pipeline or the source of water

- available to Thornton beyond its reasonable control, including but not limited to: 1) acts of God (such as, but not limited to, fires, explosions, earthquakes, drought, and floods); 2) acts of war (whether declared or not), hostilities, invasion, act of foreign enemies, terrorism or civil disorder; 3) any legal prohibition to operating the Pipeline or delivery of Thornton's source water (the fact that the water is not decreed for use in Johnstown shall not give rise to a claim that Thornton is not capable of providing raw water); 4) contamination of the source water such that Thornton would not take such source water into its municipal supply; 5) loss of electrical power; 6) accident, breakage, or equipment failure causing the Pipeline to be inoperable; or 7) other unforeseeable circumstance beyond the control of Thornton and which Thornton cannot avoid even by using its best efforts.
- b. Thornton shall not be deemed capable of providing raw water in situations where Thornton, in its sole discretion, needs one hundred percent (100%) of either the Pipeline capacity or Thornton's source water or both, for delivery of or use of its source water for its own municipal uses. If the Interconnect has been activated and Thornton needs the Pipeline capacity or its source water as described herein, Thornton may cease deliveries and deactivate the Interconnect upon twelve (12) hours written notice to Johnstown.
- c. If Johnstown has requested Thornton to activate the Interconnect and Thornton is not capable of providing raw water as provided in paragraph 7.a. or 7.b. above, Thornton shall notify Johnstown of the nature and expected duration of such event and shall thereafter keep Johnstown informed of the status of Thornton's capability of providing raw water. Thornton shall use all reasonable means to overcome the effects of such event and to provide raw water as soon as reasonably practicable.
8. Activation of Interconnect. In the event of an emergency, as defined in paragraph 6, Johnstown shall notify Thornton of its intent to activate the Interconnect to deliver raw water into Johnstown's system. The request for activation shall be made by calling the phone number provided by Thornton in the Standard Operating Procedure (SOP), as defined in paragraph 9. If an emergency exists, and Thornton is capable of providing raw water, Thornton shall grant permission to allow Johnstown to activate the Interconnect.
9. Operation of Interconnect. Johnstown and Thornton shall develop a Johnstown Emergency Raw Water Interconnect SOP for operation of the Interconnect. Among other matters, the SOP will address that minimum flows may be required depending on the situation. The Interconnect shall not be operated without a mutually agreed-upon SOP executed by Thornton's Executive Director for Infrastructure (or equivalent) and Johnstown's Utility Director. The Parties agree to act in good faith to develop an SOP that satisfies the intent and purposes of this Agreement. The Parties may amend the SOP from time to time to reflect changing conditions, personnel, or other matters referenced in the SOP.



10. Deactivation of Interconnect. Johnstown shall make all reasonable efforts to resolve the emergency situation and curtail deliveries from the Interconnect as soon as possible. So long as Thornton is capable of providing raw water, Johnstown shall have the right to use the Interconnect for a reasonable time period to allow it to resolve the emergency situation. Johnstown will notify Thornton of its intent to stop delivery of water through the Interconnect as soon as is reasonably possible after such intent is known by Johnstown. When deliveries have ceased, Johnstown will close the Interconnect valve per the procedures provided in the SOP.
11. Billing. Billing for water delivered to Johnstown through the Interconnect shall be at the lowest rate available regardless of consumption volume and, in no case, no higher than Thornton charges its then-existing customers for raw water delivery. However, additional operation and maintenance costs will be charged if Thornton must start up and operate the Pipeline to make emergency Interconnect deliveries to Johnstown to the extent that Pipeline is not otherwise delivering water and Thornton is capable of delivering water. Thornton shall bill Johnstown within sixty (60) days following delivery, and payment shall be due within thirty (30) days of the billing date.
12. Water pressure. Thornton makes no guarantee of pressure of water available through the Interconnect, and Johnstown understands and acknowledges that significant pressure fluctuations may occur.
13. Water quality. Thornton makes no guarantee as to the quality of the water available through the Interconnect, and Johnstown understands and acknowledges that significant quality fluctuations may occur. Johnstown further understands and acknowledges that the water delivered through the Interconnect may be of significantly different quality than Johnstown's other raw water sources, and accepts all responsibility related to commingling of water pursuant to this Agreement, including, but not limited to, approval by any state or federal agency to use water from the Pipeline as a water source.
14. Term. This Agreement shall be effective for a ten-year term beginning on the date of execution hereof. Upon expiration of the ten-year period, this Agreement shall be automatically renewed for additional ten-year periods until terminated by Johnstown. Johnstown may terminate this Agreement at any time by providing sixty (60) days prior written notice of termination of the Agreement. Johnstown may not terminate the Agreement until all amounts owed Thornton have been paid. Thornton may only terminate the Agreement as provided in paragraph 15.
15. Termination. If either Party fails to comply with a material term of this Agreement, the non-defaulting Party may provide notice of the alleged performance failure to the other Party and the Parties shall within thirty (30) days meet and confer in good faith in an effort to agree on a resolution of the breach. If the Parties are unable to resolve the dispute despite such good faith efforts, then either Party may, at its option, commence mediation. The mediation shall occur at a location that is within fifty (50) miles of

Johnstown, unless the Parties agree to a different location, and the cost shall be split equally between the Parties. If the Parties are not able to resolve the dispute within sixty (60) days of the commencement of mediation, in addition to other remedies available at law, then either Party may provide ninety (90) days written notice to terminate this Agreement.

16. Use of Thornton water. All water furnished pursuant to this Agreement is on a leasehold basis for the use of Johnstown and its customers for all the various purposes for which Thornton has been decreed the right to appropriate water. Water delivered to Johnstown through the Interconnect for use by Johnstown and its customers is for primary use only and does not include any right to make a succession of uses of such water. Upon completion of the primary use by Johnstown or its customers all dominion and control over the water delivered through the Interconnect reverts completely to Thornton. Except as otherwise provided, all property rights to the water to be furnished by Thornton hereunder are reserved by Thornton, provided, however, that nothing herein shall be deemed or construed as creating an obligation on Thornton to separate said water from any material added to it in use by Johnstown or its customers or as creating any obligation on Thornton regarding the treatment of any wastewater generated by the use of water delivered to Johnstown through the Interconnect. It is mutually agreed that there is no obligation on Johnstown to create any particular volume of return flow from water delivered pursuant to this Agreement. Johnstown will cooperate with Thornton to provide any water accounting information required by the State Engineer's Office from use of the Interconnect.
17. Thornton's water rights. It is specifically acknowledged by Johnstown that the water to be delivered in the Pipeline is associated with Thornton's Northern Project Decree on Remand Case No. 87CW332. Thornton's water is not decreed for use in or by Johnstown, and any use by Johnstown is subject to administration, including curtailment, by the State Engineer's Office.
18. Acknowledgements. It is expressly understood that Thornton and Johnstown cannot be legally bound by the representations of any of its officers or agents or their designees except in accordance with the Thornton City Charter and Thornton City Code, the Johnstown Home Rule Charter and Johnstown Municipal Code, and the laws of the State of Colorado. Nothing contained in this Agreement shall constitute or be interpreted as a repeal of existing codes or ordinances, or as a waiver or abrogation of each other's legislative, governmental, or police powers to promote and protect the health, safety and general welfare of their respective city and town or its inhabitants; nor shall this Agreement prohibit the enactment by Thornton or Johnstown within their respective jurisdictions of any fee, ordinance, resolution, rule or regulation which is of uniform and general application.
19. Notice. All notices required under this Agreement shall be in writing, except for notices regarding activation of the Interconnect provided in paragraph 7 above, and shall be hand-delivered or sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the Parties herein set forth. All notices so given

shall be considered effective on the date of delivery or seventy-two (72) hours after deposit in the United States mail with the proper address as set forth below. Either party by notice so given may change the address to which further notices shall be sent.

Notice to Town: Town of Johnstown  
450 S. Parish Avenue  
PO Box 609  
Johnstown, Colorado 80534

with copy to: Town Attorney  
Law Office of Avi S. Rocklin, LLC  
1437 N. Denver Avenue #330  
Loveland, CO 80538

Notice to Property Owner: City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

with a copy to: City Attorney  
City of Thornton  
9500 Civic Center Drive  
Thornton, CO 80229

Notwithstanding the foregoing, either Party may provide electronic mail ("e-mail") notice on the condition that the other Party acknowledges receipt of the e-mail and does not object to the delivery of notice by e-mail.

20. Assignment. Thornton shall have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement related to the Pipeline to any person or entity, directly or indirectly, controlling, controlled by, or under common control with Thornton without the consent of Johnstown. The terms "controlling," "controlled by," or "under common control with," shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an entity whether through the ownership of voting securities or otherwise. Thornton shall also have the right to assign or transfer all or any of its interests, rights, or obligations under this Agreement related to the Pipeline to any other person or entity having the legal authority and financial ability to perform the obligations being assigned to such person or entity after at least thirty (30) days prior written notice to Johnstown and obtaining Johnstown's consent, which shall not be unreasonably withheld. Upon such notice and written assumption of the obligations of Thornton by an assignee, the assignor shall be relieved of any further obligations or liability with respect to the performance of any of the duties or obligations of Thornton which have been assigned or transferred arising after the date such duties and obligations are assumed by the assignee.

21. Authority to execute documents. This Agreement must be mutually approved by Thornton's City Council and Johnstown's Town Council. Thornton City Council's approval of this Agreement will authorize the Thornton City Manager to execute other documents as needed as long as the documents are consistent with the terms of this Agreement. Johnstown's Town Council's approval of this Agreement will authorize the Johnstown Town Manager or his or her designee to execute all documents necessary to allow for operation and maintenance of the Interconnect in Johnstown, including, but not limited to all easements, permits and licenses, as long as the documents are consistent with the terms of this Agreement.
22. Title and authority. The persons signing this Agreement on behalf of Thornton and Johnstown represent and warrant that he or she has full power and authority to enter into this Agreement on behalf of Thornton or Johnstown, respectively. Johnstown and Thornton understand that each is relying on such representations and warranties in entering into this Agreement.
23. Colorado Governmental Immunity Act. The Parties hereto understand and agree that they are relying on, and do not waive or intend to waive, by any provision of this Agreement, any rights, protections, or privileges provided by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 et seq., as it is from time to time amended, or otherwise available to the Parties, their officers, or employees.
24. Entire agreement - amendments. This Agreement represents the entire agreement of the Parties with respect to the installation and operation of the Interconnect. There are no promises, terms, conditions, or obligations other than those contained herein, which shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between Thornton and Johnstown.
25. Severability. If any part, term, or provision of any portion of this Agreement is held by a court of competent jurisdiction to be illegal, unenforceable, declared void or in conflict with any law of the State of Colorado by final court action, meaning that no appeal can be made or the time to appeal has expired, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held to be invalid, and the Parties shall cooperate to cure any such defect. If such defect has affected the ability of Thornton to install, construct or maintain the Interconnect in Johnstown after cure, the Parties agree to take such reasonable steps as are necessary to allow installation, construction, maintenance and operation of the Interconnect.
26. Effective date. This Agreement shall be effective and binding upon both Parties as of the date first set forth above.
27. Further assurances. The Parties agree to execute such additional documents and take such additional action as may be necessary to effectuate the intent of this Agreement.

28. No duress. The Parties agree that this Agreement is freely and voluntarily executed by them after an opportunity for each party to obtain legal advice.
29. Execution and counterparts. This Agreement may be executed and filed in any number of counterparts, all of which when taken together shall constitute the entire agreement of the Parties. Signature pages may be removed from any counterpart and attached to another counterpart to constitute a single document.
30. Governing law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Should any party institute legal suit or action for enforcement of any right or obligation contained herein, it is agreed that exclusive venue of such suit or action shall be in Weld County, Colorado.
31. Third party beneficiaries. This Agreement is made by and between the Parties and, to the extent permitted, successors or assigns and solely for their benefit. No third parties shall be entitled to enforce the duties or enjoy the rights created herein.
32. Captions. The captions to this Agreement are inserted only for the purpose of convenient reference and in no way define, limit or prescribe the scope or intent of this Agreement or any part thereof.
33. Approvals. Whenever approval or acceptance of either Party is necessary pursuant to any provisions of this Agreement, such Party shall act in a timely manner in responding to such request for approval or acceptance and shall not unreasonably withhold such approval or acceptance.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties, intending to be legally bound hereby as of the date first set forth above.

**[Signature pages follow]**

TOWN OF JOHNSTOWN, COLORADO,  
a Colorado home rule municipality

ATTEST:

\_\_\_\_\_  
Troy D. Mellon, Mayor

\_\_\_\_\_  
Hannah Hill, Town Clerk

APPROVED AS TO FORM:  
Law Office of Avi S. Rocklin, LLC  
by: Avi Rocklin, Town Attorney

\_\_\_\_\_  
Town Attorney

STATE OF COLORADO    )  
  ) ss.  
COUNTY OF WELD        )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_ 2024, by Troy D. Mellon, Mayor, Town of Johnstown.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
NOTARY PUBLIC

CITY OF THORNTON, COLORADO,  
a Colorado home rule municipality

\_\_\_\_\_  
Kevin S. Woods, City Manager

ATTEST:

\_\_\_\_\_  
Kristen N. Rosenbaum, City Clerk

APPROVED AS TO FORM:  
Tami Yellico, City Attorney

\_\_\_\_\_  
City Attorney

STATE OF COLORADO    )  
  )ss.  
COUNTY OF ADAMS    )

Subscribed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2024,  
by Kevin S. Woods, City Manager, City of Thornton, a Colorado home rule municipality.

WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

Exhibit E to INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO

TERM SHEET FOR NEGOTIATION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND THE CITY OF THORNTON, COLORADO FOR CARRIAGE OF WATER

1. Excess capacity (as available – no guarantees):
  - a. Johnstown has an option to lease excess, as-available, capacity AFTER Thornton’s use and AFTER any other parties with an applicable valid lease of excess capacity in TWP.
  - b. Priority to use excess capacity as between multiple entities shall be in the order of the date of any fully executed lease agreement with each entity.
2. Johnstown’s right to use excess capacity is subject to Thornton’s use of the TWP and any other use of excess capacity that other entities may lease prior to Johnstown’s lease of excess capacity.
3. Cost breakdown shall be an established rate per 1,000 gallons of water delivered for billing purposes, and shall include the following components:
  - a. Carriage Charge. To account for the costs Thornton will incur in operating, maintaining and replacing the Thornton pipeline, pumps, and other appurtenances needed for delivery of Johnstown’s water, Johnstown will pay a Carriage Charge to Thornton for all water delivered to Johnstown’s pre-determined delivery point. Such Carriage Charge shall be determined at the time the IGA is entered into by the parties.
  - b. Parties pay any costs that are solely attributed to their operations (example, if Johnstown wants to operate at a time that Thornton is not operating the pipeline, and there is a demand or “ratchet” power charge, Johnstown would pay all of that charge). Minimum flows may apply, depending on the situation.
  - c. Thornton may increase the water delivery rate once per year to account for inflation or other operational and maintenance cost impacts. The initial rate will be based on a baseline Consumer Price Index for the Denver region defined upon the initial date of water delivery to Johnstown.
4. Thornton must approve the source water to ensure no degradation of the quality of water in the pipeline. Thornton will provide minimum water quality standards as an exhibit to the IGA. Thornton’s source water quality data can be shared upon request.
5. The agreement shall establish a finite term for water delivery that can be renewed upon request by Johnstown. Renewal is not guaranteed and will depend on available capacity at the time of the renewal request.
6. Thornton must approve all connection points and associated facilities that connect to the pipeline to ensure no impact to the system hydraulics and operations. All costs for



Johnstown connections to the TWP Pipeline, including associated facilities, shall be paid by Johnstown.

7. Thornton cannot guarantee pressure of water delivered to Johnstown.
8. The IGA will identify the timing and procedures for requesting water deliveries to ensure efficient operations for both entities.
9. Johnstown is responsible for obtaining all necessary permits or other permissions to deliver their water in TWP (Northern, WSSC, Larimer County, Weld County, State Engineer, Water Court, etc.).