

AGREEMENT FOR PROFESSIONAL CONSULTING SERVICES

THIS AGREEMENT made this 5th day of August, 2021, by and between the Town of Johnstown, Colorado, a Colorado home rule municipal corporation (“Client”), and Gould Evans, Inc., a Kansas Corporation (“Consultant”).

WITNESSETH

WHEREAS, the Client desires to engage the Consultant to render certain agreed upon professional planning services for the Rewrite of the Municipal Code related to Land Development, and the Consultant is willing to provide such services, all upon the terms set forth below.

NOW, THEREFORE, in consideration of these premises, the parties hereto agree as follows:

1. **Scope of Services**: The Consultant will undertake work assigned by Client relating to *Attachment A: Scope of Services*.
2. **Time and Performance**: The Consultant’s services shall commence upon execution of this Agreement by both parties. Once approved by the Client, the Consultant shall complete the tasks described in the Scope of Services within eighteen (18) months from the date of execution of this Agreement, unless delayed by circumstances beyond Consultant’s control.

The Consultant will exercise reasonable skill, care and diligence in the performance of its services, and will carry out its responsibilities in accordance with the customarily accepted planning practices in Consultant’s community. The Client shall be responsible for the timely delivery of data and support information requested by the Consultant in a manner that will allow the Consultant the ability to perform its services within the time frame noted above.

Compensation: The Consultant shall be compensated, a fixed fee not-to-exceed **\$153,680.00 (One-Hundred Fifty-Three Thousand Six Hundred Eighty Dollars)**, including reimbursable expenses. Consultant will bill based upon the percentage of work complete by Task, up to the maximum fees stated above. Consultant will not exceed the maximum fees stated above without written authorization from the Client.

3. **Payment**: The Client shall pay the amount due within 30 days after receipt of Consultant’s invoice. If the invoice is not paid within 30 days, the Consultant may suspend services upon written notice to the Client. If a portion of the Consultant’s statement is disputed, the Client shall pay the undisputed portion by the due date. Interests on undisputed amounts due and unpaid shall accrue at the rate of 1.5% per month from date due until paid. In any action to recover payment due, Consultant, if the prevailing party and only to the extent permitted by law, shall be entitled to recover its attorney’s fees costs. The Client shall advise the Consultant in writing of the basis for any disputed portions of the statement within 7 days of receipt of invoice. Undisputed portions of the invoice shall be timely paid by Client notwithstanding such disputed portions.
4. **Time and Expense Records**: The Consultant shall keep and maintain time and expense records relating to the scope of services described above, together with supporting receipts,

vouchers, and appropriate documentation. As necessary, these records and other appropriate documentation may be required to support invoices submitted to the Client. The Client shall have the right to examine such records as it deems necessary upon reasonable notice to the Consultant at a location in the municipal boundaries of the Town of Johnstown.

5. **Authorization of Changes:** Any changes or additional tasks required for the performance of this Agreement and any compensation due for the provision of additional services shall only be authorized by the Client in writing, and the Consultant shall first request such changes in writing. The Consultant shall be compensated for any additional tasks so approved and authorized, based upon a fee determined by the Consultant and Client for such additional professional services.
6. **Liability:** To the extent permitted by applicable law, the Consultant agrees to indemnify and hold harmless the Client, its employees, officials, agents and representatives, from any and all losses of whatever kind to the extent caused by Consultant's negligent acts or failures to act or by Consultant's willful or wanton conduct in performance of this Agreement.
7. **Disputes/Termination:** Each party may terminate this Agreement with ten (10) days' written notice to the other party. In the event of such termination, provided the Consultant is not then in default under this Agreement, the Client shall pay the Consultant its compensation and expenses to and through the actual date of termination, upon documentation of those costs by written invoice to the Client.
8. **Ownership of Documents:** Upon receipt of final payment by Consultant, all original final documents, studies or graphic materials, drawings, plans and digital files prepared by the Consultant shall be deemed property of the Client except as to confidential matters or trade secrets of the Consultant (if identified as such in writing by the Consultant), but only after the final payment by the Client for the same. The Consultant shall be permitted to retain copies, including reproducible copies, of the Consultant's drawings, specifications and other documents. The Client's right of ownership in all such documents shall not prohibit the Consultant from future utilization of design or planning drawings or concepts in the ordinary course of Consultant's business and the Client hereby grants the unrestricted permission to use all such data contained in the Consultant's drawings, text and other documents.

In the case of any future reuse of the documents by the Client without Consultant's direct professional involvement, the Consultant's and Consultant's consultants' names shall be removed from all such documents and the Consultant shall not be liable to the Client in any manner whatsoever for their reuse.

9. **Confidentiality of Findings:** Any reports, information, data or intellectual property whatsoever given or prepared as assembled by the Consultant under this Agreement shall not be made available to any individual or organization by the Consultant without the prior written approval of the Client, except for those uses specified in Item 10, Public Relations.
10. **Public Relations:** Consultant shall have the right to retain and utilize copies of all work it produces on the Project for citation and dissemination in the Consultant's resume, brochures and other generally recognized forms of professional public relations.

11. **Extent of Agreement:** This Agreement represents the entire and integrated agreement between the Client and Consultant and supersedes all prior negotiations, representations or agreement, either written or oral. This Agreement may be amended only by written instrument signed by both the Client and Consultant.
12. **Severability:** Should any of the provisions of this Agreement be determined to violate any state law or Town ordinance, that shall not affect the validity of the other terms of this Agreement and there shall be added to this Agreement a legal, valid or enforceable term or provision as similar as possible to the stricken provision.
13. **Applicable Law:** Parties agree that Colorado law is controlling in interpreting this Agreement. The venue for any disputes arising under the Agreement shall be a court of jurisdiction originating in Weld County, Colorado.
14. **Insurance:** Consultant shall maintain, at its own expense, the following insurance with insurance companies reasonably acceptable to Client:
 - (a) Professional Liability Insurance in the amount of five hundred thousand Dollars (\$500,000.00) (per claim and aggregate, with all coverage retroactive to the earlier of the date of this Agreement and the commencement of Consultant's services under this Agreement) covering personal injury, bodily injury and property damages to the extent caused by consultant's negligent acts, errors or omissions, which coverage shall be maintained for a period of three (3) years after the date of final payment under this Agreement.
 - (b) Commercial General Liability Insurance, occurrence form, (including completed operations and broad-form contractual liability) in the amount of five hundred thousand Dollars (\$500,000.00) combined single limit per occurrence and aggregate covering personal injury, bodily injury and property damage, which insurance shall name the Client as an additional insured.
 - (c) Commercial Automobile Liability Insurance, including owned, hired and non-owned vehicles, if any, in the amount five hundred thousand Dollars (\$500,000.00) covering bodily injury and property damage, which insurance shall name the Client as an additional insured.
 - (d) Worker's Compensation Insurance, which shall fully comply with applicable law, and employer's liability insurance with limits of not less than one hundred thousand Dollars (\$100,000.00) per accident / \$1 Million disease policy limit / \$1 Million disease each employee. Consultant shall provide a valid waiver executed by its worker's compensation and employer's liability insurance carrier of any right of subrogation against Client or its employees for any injury to a covered employee working on Client's premises.

Upon execution of this Agreement, Consultant shall provide to Client Certificates of Insurance reflecting the required coverages at their request. The certificates shall specify the date when such insurance expires. Each policy and each Certificates of Insurance shall provide that Client shall be given not less than thirty (30) days' written notice before cancellation, non-renewal of coverage of such insurance except for non-payment. A renewal

certificate shall be furnished to Client prior to the expiration date of any coverage, and Consultant shall give Client written notice of any reduction or other material modification in such insurance no later than thirty (30) days prior to such change.

15. **Assignment:** Consultant shall not assign this Agreement or any part hereof, or the right to any payments to be received hereunder, without prior written consent of Client. However, Consultant may subcontract portions of the services the subconsultants without violating this provision.
16. **Mediation:** In the event that a dispute shall arise between the parties to this Agreement, then as a condition precedent to legal action by either party, the parties agree to participate in mediation, as needed, in an effort to resolve the dispute. The parties agree to split the mediator's fees equally. The mediation shall be administered by a mutually agreeable mediation service and shall be held in Weld County, Colorado, unless another location of mutually agreed upon.
17. **Independent Contractor.** Consultant understands and agrees that Consultant is an independent Consultant and not an employee of the Client. The Client shall not provide benefits of any kind to Consultant. The Client shall not be responsible for withholding any portion of Consultant's compensation for the payment of Federal Insurance Contributions Act (FICA) tax, workers' compensation, or other taxes or benefits. CONSULTANT IS NOT ENTITLED TO UNEMPLOYMENT COMPENSATION COVERAGE FROM THE CLIENT. CONSULTANT 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 Client, Consultant may engage in any other lawful business activities during the term of this Agreement.
18. **Time.** Time is of the essence of this Agreement and of each covenant hereof. Client recognizes that Consultant's performance must be governed by sound professional practices subject to the industry recognized Standards of Care.
19. **Illegal Aliens.** Consultant shall comply with the statutory provisions prohibiting employment of illegal aliens, as set forth on Exhibit B, attached hereto and incorporated herein by such reference.
20. **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.

21. **Headings.** The headings in 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, the Parties hereto have caused this Agreement to be executed as of the day and year first written above,

FOR:

TOWN OF JOHNSTOWN, CO

Name: Gary Lebsack

Signature: _____

Title: Mayor

Date: _____

Attest: Diana Seele, Town Clerk

Signature: _____

GOULD EVANS

By: Graham Smith

Name: Graham Smith, AICP

Title: Associate Principal

STATE OF Missouri)
) ss
COUNTY OF Jackson)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2021, by Graham Smith as the Associate Principal of Gould Evans.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT A
SERVICES

Scope of Services

Task 1 – Diagnosis

The Diagnosis task is about identifying conflicts and omissions with the current regulations that keep the community from achieving their vision for the future.

Task 1.1 Public Engagement Strategy: Gould Evans will work with Town Staff and key stakeholders to develop a public engagement strategy specific to Johnstown's planning issues, past public participation experiences, existing communication networks and constituency groups. Based on our experience on similar past projects, at a minimum we see this involving the following groups:

- Staff – a tight working group of those most familiar with the day-to-day administration of the regulations, who will provide technical support, perform detailed review and comment, and provide project direction;
- Steering Committee – a broad group of interested stakeholders that will provide conceptual direction on key issues and inform the Planning and Zoning Commission and Town Council of significant policy issues.
- Focus Groups / Special Issue Subcommittees – depending on the make-up of the Steering Committee, and other input, special topic groups may be needed to provide more detailed guidance and oversight of certain topics. These groups will typically align with the Critical Issues tasks in Task 2.
- Planning and Zoning Commission and Town Council – in addition to any role on the above committees, these groups will be provided periodic project status updates at regular meetings, be presented recommendations in joint work sessions, and better prepare them for their role in the official adoption process.

A critical component of our public engagement strategy is outlining the different types and levels of information that each of these groups will need to perform their roles on this project.

Task 1.2 Plan and Regulation Review: A preliminary review of the current land use and zoning code and subdivision regulation will be completed. The review will identify the initial topics for an informed discussion among all stakeholders regarding regulatory strategies appropriate to achieve Johnstown's planning goals. The preliminary review will be expanded on by identifying specific connections to the *Johnstown Area Comprehensive Plan* and other town plans to create a plan conformance report.

Task 1.3 Steering Committee Kick-off Meeting: Outline the Public Engagement Strategy, identify primary objectives, establish timelines, and assign roles and responsibilities for different participants. A review and discussion regarding current issues with the Development Code will be facilitated and be used to inform the Plan Conformance Report.

Task 1.4 Plan Conformance Report: This report will review the existing Development Code and identify where the regulations either align or conflict with significant planning policies of the Town, rooted in the guidance provided by *Johnstown Area Comprehensive Plan*. It will also include a technical audit that looks at streamlining and improving the coordination of the regulations to improve administration and user-friendliness. The outcome of discussing this report establishes a proposed framework for the updated regulations and identify critical issues for further analysis and discussion.

Task 1.4a Engagement: The findings of the Plan Conformance Report will be presented for discussion to the Steering Committee and at a joint meeting of the

Planning Commission and Town Council. This report will prepare all of these groups for the scope and nature of the project and get direction on both the proposed framework and the critical issues. This meeting initiates the broader public engagement portion of the project.

Task 2 – Align

The Align task sets the foundation for the informed discussion among all stakeholders regarding regulatory strategies appropriate to achieve Johnstown's planning goals.

Task 2.1 Critical Issues Summaries: These summaries provide a brief (2-6 page) white paper on the key topics identified in the Plan Conformance Report. A typical code re-write may have 4 to 6 of these critical issues that are most important to the success of the project and require special facilitation. This format has proven successful in getting broad input and endorsement of concepts and approaches, without getting mired in specific regulatory language. With this direction, a more "technical" group can set about the task of drafting, reviewing and revising regulations.

Task 2.2 Public Open House: This is the public kick-off event. The open house, exhibits and supporting materials will have 3 key objectives: (1) provide clear links to the policies and priorities of *Johnstown Area Comprehensive Plan* and other long-range plans; (2) elevate the understanding of important development concepts and potential regulatory strategies; and (3) clearly convey the physical impact that existing and potential regulations have on development and investment in the community. Based on the final engagement strategy, these can either be arranged around focus groups for each topic or organized as stations for an open house, or a combination of these strategies. What is critical about this meeting is that it is the start of the discussion, and the Plan Conformance Report will be used to bring everyone to the discussion with the same basic level of information and the same understanding of the scope and nature of what may change, including a range of options for further consideration and discussion.

Task 2.3 Critical Issues Workshop: Some issues may require a more in-depth discussion with stakeholders and those impacted by potential regulatory strategies. The Critical Issues Summaries will be used to guide any continuing discussions. The format of these discussions may include sub-committees, focus groups, or special invites to defined constituencies, but will depend on the issues selected in the Diagnosis phase and on the final Public Engagement Strategy. Up to 6 specific topics or workshop break out groups could be included. The specific strategy, format and timing for this additional workshop can be finalized in the Public Engagement Strategy. The input from the Open House and any of these follow up meetings that may be necessary are coordinated into the Draft Regulation Framework or Interim Drafts based on the issue and timing of the workshop.

Task 2.4 Draft Regulation Framework: Based on the outcomes of the initial public engagement tasks and discussions, a Draft Regulation Framework will be created. It will be an annotated outline of the Development Code identifying: (1) areas in need of change – new provisions that are needed or old approaches that do not align with current policies; (2) areas to maintain in current form; and (3) areas to revise and amend, but keep the substantive provisions and intent the same. The framework will also include an "Executive Summary" which supports a section-by-section analysis with recommendations, preferred directions or topics for further review through the Initial or Interim Draft regulations.

Task 2.4a Steering Committee Meeting: The Draft Regulation Framework will be presented to the Steering Committee for additional discussion and input.

Task 3 - Launch

The Launch task will focus on the preparation of the development code regulation updates.

Task 3.1 Initial Draft: Based on the input from the Diagnosis and Align tasks, our team can craft specific regulatory strategies appropriate to Johnstown. We will prepare an initial draft of the Development Code that best implement Johnstown's plans and land development policies. As part of the initial draft regulations an updated zoning map will be provided.

Task 3.1a Steering Committee Meeting: Introduce the Steering Committee to the Initial Draft changes and initiate discussion on specific focus topics.

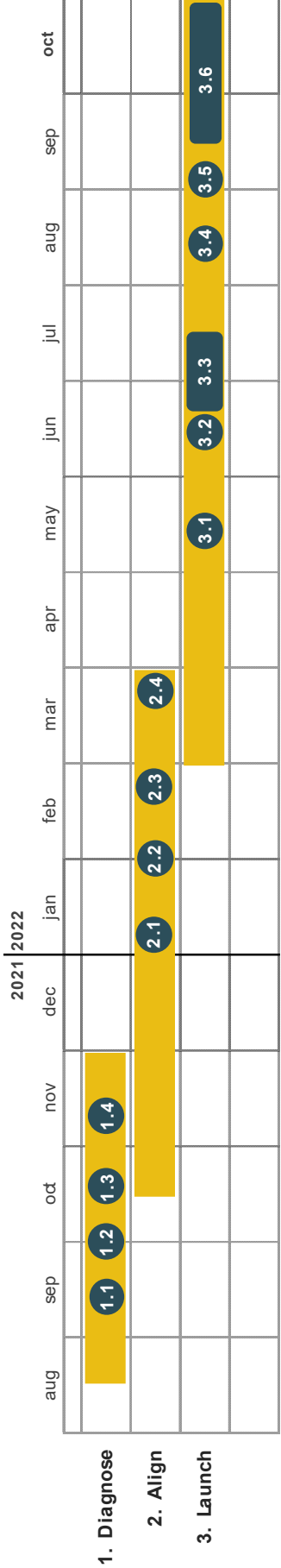
Task 3.2 Review and Comment Period: The Initial Draft and any necessary Interim Drafts are vetted through a review and comment period. Typically, this involves only the staff, Steering Committee, and any necessary sub-committees or focus groups. Following delivery of the documents, a three- to six-week period is typically necessary for these groups to consider the documents and provide feedback.

Task 3.3 Final Draft: Using the input gained from the review and comment of the Initial Draft by the Steering Committee and stakeholders, we will prepare the Final Draft of the Development Code. During this task, much of the text will be finalized, allowing us to develop detailed graphics to support the text, and finalize formatting.

Task 3.4 Public Open House / Public Official Work Session: The Final Draft also provides a good opportunity to reveal the full set of regulations to the general public. "Executive summaries" and "How to Use" guidance will be created to orient people to key regulatory strategies. This same information can be presented at a joint work session of the Steering Committee, Johnstown Planning and Zoning Commission and Town Council. It is important that this first introduction of a complete draft be presented in an informal setting outside of the official public hearing process. This will enable a better understanding of what is changing and why, and still allow time for feedback and adjustment.

Task 3.5 Adoption Draft: The Adoption Draft will incorporate comments from the discussion and review of the Final Drafts of the regulations. This draft will enter the formal review and comment process.

Task 3.6 Public Hearings: Our team will support up to three meetings for the adoption process, at least one of which is anticipated to be a public hearing before the Johnstown Planning and Zoning Commission, and at least one of which is anticipated to be the official adoption by the Town Council.



- Task 1.1 Public Engagement Strategy
- Task 1.2 Plan & Regulation Review
- Task 1.3 Kick-off Meeting
- Task 1.4 Plan Conformance Report
- Task 2.1 Critical Issues Summaries
- Task 2.2 Public Open House
- Task 2.3 Critical Issues Workshop
- Task 2.4 Draft Regulation Framework
- Task 3.1 Initial Draft
- Task 3.2 Review and Comment Period
- Task 3.3 Final Draft / Review and Comment Period
- Task 3.4 Public Open House/ Officials Work Session
- Task 3.5 Adoption Draft
- Task 3.6 Public Hearings

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

Consultant 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 the Consultant that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this public contract for services.

Consultant 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.

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

1. Notify the subcontractor and the contracting state agency or political subdivision within three days that the Consultant 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 the Consultant 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.

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