FACILITY MANAGEMENT AGREEMENT

BETWEEN

THE TOWN OF JOHNSTOWN, COLORADO

AND

YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY
D/B/A YMCA OF NORTHERN COLORADO

DATED: April 1st, 2019

This FACILITY MANAGEMENT AGREEMENT (the "Agreement"), dated as of March 1, 2019, is made by and between the **TOWN OF JOHNSTOWN, COLORADO**, a Colorado home rule municipal corporation of the State of Colorado **(the "Town**"), and the **YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY, d/b/a YMCA of Northern Colorado**, a Colorado non-profit corporation **(the "YMCA")**, through its Board of Directors. Said **"Parties"** or a **"Party**," intending to be legally bound, and for the mutual benefits and good and sufficient considerations set out below, hereby agree as follows:

## RECITALS

A. The Town is constructing a community recreation center consisting of approximately 64,000 square feet to provide its citizens a facility for recreation, meeting space and other traditional and progressive recreational and community service programs ("Facility"), which is anticipated to be completed on or about November of 2019.

B. The YMCA has extensive experience in the areas of recreation and family-based community programs and is committed to building strong kids, strong families and strong communities.

C. The YMCA has the resources, expertise and experience necessary to assist the Town in the management and operation of the Facility, and is ready, willing and able to provide the services contemplated herein.

D. On May 15, 2017, the Town and the YMCA entered into a Memorandum of Understanding, wherein the YMCA agreed to provide consulting services to the Town relating to the design and construction of the Facility ("MOU").

E. Until the Effective Date of this Agreement, as defined below, the Town and the YMCA intend to continue operating under the MOU. Upon the Effective Date, the Town and the YMCA desire to operate under this Agreement, providing for the exclusive management and operation of the Facility by the YMCA as set forth herein.

F. The Town and the YMCA intend to share responsibilities reasonably and in good faith with a mutual intent to promote public welfare through the provision of recreation programs at the new community recreation center owned by the Town and managed by the YMCA as set out in this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1
## RECITALS

1.1 Recitals. The Recitals are incorporated as if fully set forth herein.

## ARTICLE 2
## DEFINITIONS

2.1 Definitions. In addition to other terms defined in this Agreement, the following terms shall have the meanings specified below for purposes of this Agreement

**"Effective Date"** means the date that this Agreement shall be effective and shall be set forth on the Effective Date Amendment, as defined herein.

**"Facility Fiscal Year"** means a year beginning January 1 and ending on the following December 31.

**"Facility Revenues"** means all revenues and funds, of any sort, earned or derived from activities and services offered at the Facility. Facility Revenues include, but are not limited to, membership fees, program fees, donations provided or restricted to the Town or the Facility, grants provided or restricted to the Town or the Facility, Facility rental fees, preschool fees, personal trainer fees and other incidental revenue. Facility Revenues do not include capital gifts provided to the Town or the Facility, which shall be Town property.

**"Facility Expenses"** means all costs and expenses necessary to manage and operate the Facility. The Parties anticipate that the YMCA will charge an administrative fee totaling 15.3% of the costs and expenses related to the management and operation of the Facility, which amount is subject to subsequent periodic review and adjustment at least every three (3) years ("Administrative Fee"). The Parties anticipate that the Administrative Fee may decrease over time if, among other reasons, the YMCA manages additional operations. The Administrative Fee is included in the Facility Expenses and will be paid from the Operating Funds.

**"Operating Funds"** means the Facility Revenues and the Operating Subsidy needed to fund Facility Expenses during a given Facility Fiscal Year.

**"Operating Subsidy"** means the Operating Funds less the Facility Revenues and shall not exceed $500,000 per Facility Fiscal Year, except as otherwise permitted herein.

## ARTICLE 3
## EFFECTIVE DATE AND TERM

3.1 Effective Date. The Parties shall continue to operate under the MOU until approximately six (6) months prior to the opening of the Facility. When the Parties are prepared to operate pursuant to this Agreement, the Parties shall execute a written amendment setting forth the Effective Date of the Agreement, in the form attached hereto and incorporated herein by reference as Exhibit A (the "Effective Date Amendment"). The Town Manager may execute Exhibit A on behalf of the Town.

3.2 Initial Term. This Agreement shall commence on the Effective Date and shall terminate as of midnight on December 31, 2031 (the "Term").

3.3 Renewal Term(s). Unless one party gives written notice to the other at least eighteen months prior to the end of the Term, or any renewal term then in effect, terminating this Agreement, then this Agreement shall automatically renew for additional ten (10) year terms upon the same terms and conditions as those set forth in this Agreement. "Term" shall include the then current renewal term.

## ARTICLE 4
## FURNITURE, FIXTURES, COMPUTERS AND FITNESS EQUIPMENT

4.1 Furniture. The Town shall purchase and own the furniture for the Facility. Prior to purchasing the furniture, the Town shall confer with the YMCA and the YMCA shall provide advice, based on its experience and expertise, regarding the furniture to be purchased. The Town shall take into

consideration the YMCA's recommendations and endeavor, without guaranteeing, to purchase the furniture recommended by the YMCA.

4.2 Fixtures. The Town shall purchase and own the fixtures for the Facility.

4.3 Computers and Telecommunications Equipment. The Town shall purchase and own the computers and telecommunications equipment for the Facility and ensure that such equipment is compatible with the YMCA's existing carrier infrastructure. Prior to purchasing such equipment, the Town shall confer with the YMCA and the YMCA shall provide advice, based on its experience and expertise, regarding the computers and telecommunications equipment to be purchased. The Town shall take into consideration the YMCA's recommendations and endeavor, without guaranteeing, to purchase the computers and telecommunications equipment recommended by the YMCA.

4.4 Exercise, Recreation and Sports Equipment. Except as set forth below, the Town shall purchase and own the exercise, recreation and sports equipment ("Wellness Equipment") for the Facility. Prior to purchasing the Wellness Equipment, the Town shall confer with the YMCA and the YMCA shall provide advice, based on its experience and expertise, regarding the Wellness Equipment to be purchased. The Town shall take into consideration the YMCA's recommendations and endeavor, without guaranteeing, to purchase the Wellness Equipment recommended by the YMCA.

Notwithstanding the foregoing, upon conferral with the Town as to the type and quantity, the YMCA may lease certain equipment ("Leased Wellness Equipment"). At this time, the Parties anticipate that the YMCA may lease the major cardiovascular and strength equipment. Within ninety (90) days after the Effective Date, the Parties shall set forth a list of the agreed-upon Leased Wellness Equipment, in the form attached hereto and incorporated herein by reference as Exhibit B. The Town Manager may execute Exhibit B on behalf of the Town. The cost of the Leased Wellness Equipment shall be paid from the Operating Funds. If this Agreement terminates for any reason, the YMCA shall endeavor to assign the leases to the Town and the Town shall, absent extraordinary circumstances, such as unacceptable or overly burdensome lease terms, assume the obligations thereunder.

4.5 Alternative Purchasing Arrangement. With respect to the purchases set forth in this Article 4, to the extent the YMCA is able to obtain a cost savings due to its existing relationships with vendors, the YMCA shall endeavor to pursue such cost savings on behalf of the Town. If the Town is not able to purchase the items directly from the vendors to achieve such cost savings, upon written approval of the Town, the YMCA agrees to purchase the items on behalf of the Town. The YMCA shall submit invoices to the Town for the purchases, and the Town shall pay or reimburse the same within forty-five (45) business days of the Town's receipt thereof.

4.6 Timing of Purchase; Removal of Items. Except for the Leased Wellness Equipment, the Town shall purchase the items set forth in this Article 4 in a timely manner so that they are delivered at least thirty (30) days prior to the opening of the Facility. The YMCA shall lease the Leased Wellness Equipment in a timely manner so that they are delivered at least thirty (30) days prior to the opening of the Facility. Upon termination or expiration of this Agreement, except for the Leased Wellness Equipment that is not otherwise assigned to the Town as set forth in Section 4.4, the items described in this Article 4 shall not be removed from the Facility.

4.7 Replacement. Subsequent to the initial purchase, the YMCA, shall replace any of the items described in this Article 4 from the Operating Funds. The Town shall own the replacement items.

## ARTICLE 5
## MANAGEMENT AND OPERATION

5.1 Management and Operation by YMCA. Subject to the terms and conditions of this Agreement, including receipt of the payments described herein, the YMCA shall provide services as an independent contractor to the Town with respect to the management and operation of the Facility during the Term, as more particularly set forth in this Agreement, including:

a. Facility Management. The YMCA shall manage and operate the Facility, including the provision of programs and services, in accordance with the YMCA's general operating standards and procedures, and the rules, regulations and member standards adopted by, as amended from time to time, Y-USA. The YMCA shall have the exclusive right to operate the Facility and shall be solely responsible for the programs and services offered by it at the Facility and any services provided by the YMCA off the premises of, but incidentally related to, the Facility.

The YMCA agrees to operate the Facility generally during hours in accordance with similar facilities operated by the YMCA. Notwithstanding the foregoing, such hours and manner of operations may be reasonably adjusted on a temporary basis from time-to-time by the YMCA based on weather and demand for services at the Facility, upon prior written notice to the Town.

The YMCA may establish rules and regulations governing the use of the Facility (such as those set forth in a membership handbook, staff manual, operating policy and procedures or Y-USA guidelines). At least thirty (30) days prior to the implementation of rules and regulations, the YMCA shall provide a copy to the Town for review and comment.

b. Routine Maintenance and Repair. The YMCA shall be responsible for routine maintenance of the Facility. Routine maintenance shall mean, but necessarily be limited to, regular, normal upkeep in support of preventive maintenance and minor repair of the Facility and the associated equipment, as necessary to keep or return it to its intended use or prevent further damage. Such upkeep, maintenance and minor repair shall also include, but, not be limited to, changing of filters; removal of waste; adding consumables to the pool equipment; maintenance of and repairs to the heating and air conditioning system (HVAC); maintenance of and repairs to the plumbing system; maintenance of and repairs to any other appliance, equipment, fixture or device in the Facility; and replacement of electric lights inside and outside the Facility. The YMCA shall coordinate with the Town to utilize appropriate contractors for repairs while materials and equipment are under warranty. The YMCA shall also provide janitorial and custodial services for the Facility and shall maintain all vending machines within the Facility. The cost of all labor and materials with respect to the routine maintenance set forth herein shall be the YMCA's responsibility.

c. Exterior and Site Maintenance. The YMCA shall be responsible for, and shall maintain in good, safe and operable condition, the exterior of the Facility, as well as all maintenance, upkeep, security, pursuant to Section 5.2(c) below, and other obligations and liabilities regarding the exterior of the Facility, which shall include all exterior maintenance, including, but not limited to, lawn care, snow removal, fences, roofs, roofing membrane and parking lot and lighting maintenance.

d. Building and Equipment Maintenance. The YMCA's responsibilities shall include day-to-day maintenance of the Facility, its major systems, and all improvements located thereon, including all storm and sanitary sewers, gas, water, telephone, electrical facilities and other utilities, which shall be kept in good order, repair and operating condition. Except as provided in

Section 5.2 below, the YMCA shall promptly make all necessary repairs, replacements, renewals, alterations and additions to the Facility and all improvements to the fixtures and equipment located thereon, to Town standards, as articulated by the Town, and to YMCA brand standards and expectations. The YMCA shall, including other obligations, upgrade the Facility and all improvements and appurtenances located in the Facility to accommodate a change in function or purpose, new technology, or to make the Facility compliant with changes in laws, regulation, codes or standards. The YMCA shall make foundation and structural repairs, including, but not limited, to those required to keep the Facility and all other improvements and appurtenances located in the Facility operable in a safe manner, such as, but not limited to, upgrades or improvements to the roof, walls, supporting structures, pipes, heating/air-conditioning system, plumbing system, windows, glass, doors, surveillance and security equipment, fixtures, swimming pools, parking lots and all fixtures and other miscellaneous equipment necessary for the YMCA's operation of the Facility.

All repairs and alterations on buildings and fixtures shall be and remain the sole and exclusive property of the Town.

e. Personnel. The YMCA shall be responsible for the management, supervision, hiring and discharge of all staff employed at the Facility. Without limitation, the YMCA shall employ welcome desk staff, instructors, fitness center attendants, swim instructors, lifeguards, supervisory personnel, maintenance personnel and other personnel necessary to operate the Facility. With input from the Town, the YMCA shall employ a Facility Director to manage the Facility. YMCA employees shall receive benefits pursuant to the personnel policies developed for the Facility based on YMCA Association policy. Such benefits shall include, but are not limited to, worker's compensation and unemployment insurance.

f. Supplies. The YMCA shall be responsible for purchasing and paying for all consumable supplies related to the operation of the Facility.

g. Utilities. The YMCA shall be responsible for paying the utility costs associated with the normal operation of the Facility, including, but not limited to: electric, gas, phone, cable and refuse disposal.

h. Membership and Program Fees. The YMCA shall determine the membership fees for each level of membership and the program fees based upon the cost of program delivery. The YMCA shall endeavor to ensure that the membership fees support the possibility of membership for all members of the public regardless of income and, if deemed appropriate, may employ a graduated membership fee structure based on income level. The YMCA agrees to provide the same membership benefits to Town employees that it provides to YMCA employees. At least thirty (30) days prior to the implementation of the membership fee schedule, the YMCA shall provide such schedule to the Town. The YMCA shall keep the Town apprised of membership information in its Monthly Reports, as defined below.

i. Facility Programs.

1. Traditional Programs. The YMCA shall offer traditional YMCA programs and services at the Facility. The YMCA shall provide swimming instruction, water fitness activities, and other swimming related activities and offer classes and instruction for aerobics, strength training, cardiovascular workouts and stretching.

2. Non-Traditional Programs. In addition to the traditional programs, the YMCA may offer, but is not required to offer, non-traditional programs including, but not limited to, birthday parties, family programming, senior programming and teen services. In any event, the Facility shall be available to the public to rent for birthday parties, family events, senior programs and teen programs.

3. Community Programs. The YMCA may offer community programs that involve incidental utilization of the Facility. These programs may include, but are not limited to, youth sports, camping, summer child care and educational pre-school. Upon written notice and approval of the Town, which shall be provided absent a scheduling conflict, the YMCA shall have access to all Town parks to run such programs, at no additional fee to the YMCA.

4. Cost of Participation in Facility Programs. In its discretion, the YMCA shall determine the cost of the traditional, non-traditional and community programs. Such costs shall be paid by the program participants directly to the YMCA and be part of the Facility Revenues.

5. Town Use of Facility. The Town, in its discretion and subject to availability, may use the Facility to hold Town events and functions twelve (12) times per year without payment of a fee and may, upon agreement of the YMCA, use the Facility on additional occasions.

j. Informational Meetings. Upon request of the Town, the Parties shall conduct informational meetings to discuss the status of the Facility, the programs and fees offered to members of the public and any other matters related to the operations and management of the Facility. The Parties anticipate that such discussions will, in any event, occur during the budgeting process.

k. Financials. The YMCA shall keep separate financials for the Facility and such financials shall be available to the Town upon reasonable request.

l. Marketing. The YMCA shall coordinate and produce basic membership and program marketing material, and the Town agrees to support such marketing efforts. Unless otherwise agreed, the Facility shall be named the "Johnstown Community YMCA." In signage and marketing material, the YMCA may indicate that the Facility is owned by the Town and operated by the YMCA. The Town reserves the right to sell naming rights to the Facility, to either a major individual or corporate donor. If the Town desires to sell the naming rights and omit the reference to the "YMCA," the Town shall be required to obtain the YMCA's prior written approval. The Town may, in its reasonable discretion, assign names to various rooms and/or areas in the Facility.

m. Software Systems. The YMCA shall be responsible for all software programs for the computer system, including, but not limited to, SaaS products such as personnel and payroll software, financial and accounting software and membership and programming software.

n. Illegal Use Prohibited. The YMCA may not use, or permit the use of, the Facility, or any part thereof, for any use or purpose that violates any applicable law, regulation or ordinance.

o. Inspections. The YMCA shall permit the Town and the Front Range Fire Rescue Authority to inspect the Facility at all reasonable times and make modifications necessary to comply with any applicable law, regulation or ordinance.

5.2 Service Provided by the Town. The Town shall provide the following services:

a. Telephone. The Town shall install a standard phone line and handsets for the Facility for use by the YMCA. The YMCA may, in its discretion, install additional phone lines or phone systems. Once installed and operative, the YMCA shall maintain the phone lines and pay the associated fees for the phone system. Upon expiration or termination of this Agreement: (i) the Town, if appropriate, will be responsible for terminating its telephone services for the Facility, including fire and security alarm phone line services, and will cover any associated termination fees, and (ii) the YMCA will be responsible for terminating its telephone services for the Facility and will cover any associated termination fees.

b. Information Technology ("IT") System. The Town shall purchase and own a computer hardware system and/or provide wireless internet connections for the Facility for use by the YMCA. Such systems will be consistent with Town's standard configurations as if the Town were operating the Facility and will meet the YMCA's minimum operating requirements. In its discretion, the YMCA may enhance the minimum operating requirements. Once purchased and operative, the YMCA shall maintain the computer hardware systems. Upon expiration or termination of this Agreement: (i) the Town, if appropriate, will be responsible for terminating its IT services for the Facility, including fire and security alarm phone line services, and will cover any associated termination fees, and (ii) the YMCA will be responsible for terminating its IT services for the Facility and will cover any associated termination fees.

c. Security System. The Town shall provide an operating security system for the Facility, to include video surveillance across the Facility, including, but not limited to, cameras for the parking lots and child care areas, and, if appropriate, contract with a third-party provider for the required security system monitoring and maintenance services. Once installed and operative, the YMCA shall pay the associated fees for the security system.

d. Non-Routine Maintenance. The Town shall be responsible for the non-routine maintenance of the Facility, which, if the cost to repair or replace the item exceeds Two Thousand Five Hundred Dollars ($2,500.00) and extends the life of the item beyond one-year, shall include: (1) the major repair and replacement of the HVAC system, plumbing system, boiler, air handler, chiller, pipes, fire alarm panel or electrical panel; (2) foundation, walls and structural repairs; (3) roof repairs and replacement; and (4) capital expenditures and improvements necessary to safely maintain the Facility. Notwithstanding the foregoing, the YMCA shall be responsible for the routine maintenance of the Facility even if the cost of the maintenance of any particular item exceeds Two Thousand Five Hundred Dollars ($2,500.00).

## ARTICLE 6
## FINANCIAL CONSIDERATIONS

6.1 Fiscally Sound Operation. The YMCA shall use commercially reasonable best efforts to operate the Facility in a fiscally sound manner to achieve break-even or surplus status during each year of the Term. All of the YMCA's obligations under this Agreement are intended to be paid for by the Operating Funds. The Parties anticipate and agree that the YMCA shall endeavor to operate the Facility with funds derived solely from the Facility Revenues and, if such revenues are not sufficient, then from the Operating Subsidy. The YMCA shall not be obligated to fund the Facility Expenses with YMCA revenue that is separate and distinct from the Facility Revenues. The YMCA shall maintain and account for Facility Revenues and Expenses within the YMCA's accounting system. Facility Revenues shall not be used to pay for any YMCA expenses except for the Facility Expenses.

6.2 Operating Subsidy. The Town recognizes and agrees that, if the Facility Revenues are not sufficient to cover the operations of the Facility, the YMCA shall not be responsible for any shortfall and the Town will be required to subsidize Facility operations through the Operating Subsidy. The Town agrees that, subject to budgeting and appropriations, it shall fund the Operating Subsidy on annual basis. The YMCA agrees that it will prudently and in a commercially reasonable manner operate the Facility to ensure the Facility Revenues and the Operating Subsidy are sufficient to cover the operations of the Facility.

The Parties agree that the Operating Subsidy shall not exceed $500,000.00 in any given year. Upon receipt of a monthly invoice from the YMCA delivered prior to the first day of a given month, payment of the Operating Subsidy shall be made by the Town to the YMCA in the amount of $41,666 per month on or about the first day of each calendar month and shall be deemed late if not paid by the tenth day of a given month.

Notwithstanding the foregoing, the monthly payment of $41,666 shall not be due and payable until the Facility opens to the public. From the Effective Date until the date that the Facility opens to the public, the Town shall pay the YMCA the amounts set forth on the Effective Date Amendment.

If, at any time during a Facility Fiscal Year, the YMCA becomes aware that Facility Expenses may exceed the Operating Funds, or, stated differently, that an operational loss may exceed $500,000, the Parties shall forthwith meet and confer and endeavor to plan a reduction of expenses to meet the anticipated deficit, while maintaining YMCA programming, safety and quality standards. If the Parties are not able to reach agreement and the YMCA seeks additional funds to operate the Facility, the matter shall forthwith be presented to the Town Council for a determination about how to proceed and/or whether to budget and appropriate additional funds for that Facility Fiscal Year.

If, at the end of a Facility Fiscal Year, the Operating Subsidy is less than $500,000, creating an operating surplus, the Parties shall reconcile the difference during January of the following calendar year. The YMCA shall be entitled to retain an amount equal to 21.3% of the difference between $500,000 and the actual Operating Subsidy amount as an incentive bonus administrative fee. For any remaining funds resulting from the operating surplus, the Town may direct that: (1) the YMCA return the additional funds; (2) the YMCA keep the additional funds and use such funds to offset the monthly payment of the Operating Subsidy for the then-current calendar year; or (3) the additional funds be used by the YMCA to improve the Facility in a manner agreed upon by the Town.

After three (3) operational Facility Fiscal Years, the Parties shall meet to discuss the Operating Subsidy and whether it should be adjusted based on actual Facility Revenues and Facility Expenses. If Town Council is not agreeable to an adjustment reasonably satisfactory to the YMCA, the YMCA may terminate this Agreement as set forth in Section 8.3. If the Parties agree upon an adjustment to the Operating Subsidy, such agreement shall be set forth as a written amendment to this Agreement. Otherwise, the original amounts of the Operating Subsidy will remain as is.

6.3 Reports to Town.

a. Monthly Reports. In concurrence with the YMCA's monthly finance committee meetings, the YMCA shall provide a monthly report to the Town, which shall contain financial information related to the Facility and be in same format as the reports generated for the YMCA's other branches. If the Town desires a different format, the Town agrees to pay the YMCA for the additional costs associated with the additional work. The Town may

request, and the YMCA shall thereafter provide, reports related to membership information, program participation and similar miscellaneous items at the Facility.

b. YMCA Annual Audits; Operating Statements. The YMCA shall provide the Town with an annual audit for the Facility when it is approved by the YMCA's finance committee for the prior Facility Fiscal Year. The audit shall be performed in accordance with generally acceptable accounting procedures by the YMCA's regular outside certified public accounting firm. The YMCA shall provide the Town with unaudited operating statements within sixty (60) days after the end of each calendar quarter.

6.4 Maintenance of Accounting Records; Town Audits. On an ongoing basis, the YMCA shall prepare and maintain accurate records of Facility Revenues and Facility Expenses. Such records shall specifically include, but not be limited to, and copies of bank statements, deposit slips and such documentation of Facility receipts as is customary at other YMCA branches. The YMCA agrees to keep these records for a period of seven (7) years after the conclusion of any Facility Fiscal Year and further agrees that such financial records shall be open and available to the Town Manager, the Town Finance Director and other persons authorized by them for examination upon reasonable notice during business hours. In the Town's discretion, the YMCA shall make all documentation available for examination at either the Facility, the Town or the Town's auditor's offices.

At any time within three (3) years after the conclusion of a Facility Fiscal Year, the Town may, at its sole expense, audit or have audited the YMCA's operations during such Facility Fiscal Year and the YMCA shall cooperate with any such audit by promptly making its financial records available to the auditor upon reasonable notice and during normal business hours. If the Town's audit indicates that the YMCA's records deviate in a significant manner from the Monthly Reports and audit reports provided by the YMCA to the Town, the YMCA shall pay the cost of the Town's audit.

6.5 Annual Budgets. Prior to adoption of the budget by the YMCA's Board of Directors, the YMCA shall prepare an annual budget for the Facility ("Facility Budget"). During development of the Facility Budget, the YMCA shall meet and confer with the Town. At least thirty (30) days prior to final adoption of the Facility Budget, and no later than October 1 of any given year, the YMCA shall provide a copy to the Town for review and comment. Consistent with general accounting practices, the Facility Budget shall set out the estimated revenues and expenditures for the following Facility Fiscal Year.

6.6 Tax Revenue. If, at any time, the Town obtains new tax revenue earmarked to pay for or offset the costs and expenses related to the management and operation of the Facility, the Parties shall promptly meet and, if appropriate, amend this Agreement to reflect a new financial structure that may include elimination, or a reduction, of the Operating Subsidy.

## ARTICLE 7
## INSURANCE/INDEMNITY

7.1 Property. The Town, at its sole cost and expense, shall obtain and maintain, throughout the Term, a policy or policies of insurance to keep the Facility, its improvements and equipment insured against loss or damage by fire, lightning and all other insurable risks, in an amount equal to the replacement cost thereof as determined by the Town and its insurer. The insurance under this Section shall name the Town as sole loss payee and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town and the YMCA. The insurance required pursuant to this Section may be maintained by the Town through a public entity self-insurance pool or a generally recognized responsible insurance company or companies authorized to do business in the State of Colorado, as may be selected by the Town. In the event of a loss or damage under this Section, the

Town will be responsible for any claim not fully covered by insurance due to any applicable deductible, policy limits or exclusions.

7.2 Liability. The YMCA shall obtain and maintain throughout the term of this Agreement commercial general liability insurance protecting the Town and the YMCA against claims of personal injury, death and property damage. Such commercial general liability insurance shall provide minimum protection of One Million Dollars ($1,000,000) per occurrence and Two Million Dollars ($2,000,000) in the aggregate with an umbrella policy of Five Million Dollars ($5,000,000), which insurance coverage may be provided by primary and umbrella policies, and by policies with multiple locations. Any required deductible or co-insurance amount shall be paid by the YMCA. The insurance under this Section shall name the Town as an additionally insured party and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town. The Town has and shall maintain general liability insurance coverage in the amount of three hundred fifty thousand dollars ($350,000.00) for injury to one person, or nine hundred, ninety thousand dollars ($990,000.00) for injury to two or more persons in any single occurrence, or such greater amounts as may be established by the Colorado Governmental Immunity Act, C.R.S. 24-10-101 *et seq.* ("CGIA"), as may be amended from time to time.

7.3 Auto Liability. The YMCA shall obtain and maintain throughout the term of this Agreement comprehensive automobile liability insurance with minimum combined single limits for bodily injury and property damage of not less than Five Hundred Thousand Dollars ($500,000) per person in any one occurrence and One Million Dollars ($1,000,000) for two or more persons in any one occurrence, and auto property damage insurance of at least Fifty Thousand Dollars ($50,000) per occurrence, with respect to each of the YMCA's owned, hired or non-owned vehicles assigned to or used in performance of services under this Agreement. Any required deductible or co-insurance amount shall be paid by the YMCA. The insurance under this Section shall name the Town as an additionally insured party and shall provide that such insurance may not be canceled without at least fifteen (15) days' advance written notice to the Town.

7.4 Workers' Compensation. The YMCA shall obtain and maintain throughout the term of this Agreement workers' compensation insurance, including employer's liability (at the minimum limits required by the state of Colorado) for all YMCA personnel employed by or at the instance of the YMCA, including waiver of subrogation by the insurance carrier with respect to the Town. Such insurance shall be in accordance with the requirements of the most current and applicable State workers' compensation insurance laws in effect from time to time.

7.5 Certificates; other Terms. Each Party shall provide the other with certificates of coverage evidencing the coverages and payment of the premium(s) for said coverage. The Certificates or other forms evidencing such insurance shall be provided on or before the beginning of the occupancy of the Facility by the YMCA, and at the time each date the insurance is renewed or the insurance company or self-insurance pool is changed. Each Party shall notify the other immediately in writing if any of the insurance policies required hereunder are canceled or become ineffective, or if a notice of cancellation or ineffectiveness is received by the Party, unless that Party has arranged for equivalent coverage to commence on or before the date of cancellation or ineffectiveness. Every policy required of the YMCA above shall be primary insurance, and any insurance carried by the Town, its officers, or its employees, shall be excess and not contributory insurance to that provide by the YMCA. Failure on the part of the YMCA to procure or maintain policies providing the required coverages, conditions, and minimum limits shall constitute a material breach of contract upon which the Town may terminate this Agreement, or at its discretion may procure or renew any such policy and may pay any premiums in connection therewith, and all monies so paid by the Town shall be repaid by the YMCA to the Town upon demand, or the Town may offset the cost of the premiums against any monies due to the YMCA from the Town.

7.6 Cooperation. The Town and the YMCA shall cooperate fully with each other in filing any proof of loss with respect to any insurance policy or insurance pool covering the events described in this Article. In no event will the YMCA voluntarily settle, or consent to the settlement of any claim of or against the Town without the written consent of the Town.

7.7 Indemnity. The YMCA shall indemnify, defend and hold harmless the Town against and from all liability for claims, damages, costs, losses and expenses resulting from, arising out of, or in any way connected with negligent or intentional acts or omissions of the YMCA, its employees, agents or invitees on or about the Facility.

7.8 Town Liability. The Town shall be responsible for liability from actions in tort in the manner and to the extent provided by the CGIA. The Town and the YMCA understand and agree that the Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the CGIA, as from time to time amended, or otherwise available to the Town, its officers, or its employees or authorized volunteers.

## ARTICLE 8
## TERMINATION

This Agreement shall be subject to the following termination provisions. In the event of any termination or expiration of this Agreement, neither Party shall be relieved from any financial obligations each may owe to the other as a result of liabilities incurred during the course of this Agreement.

8.1 No Termination Until After One Full Fiscal Year. Absent extraordinary circumstances and a material breach of the Agreement, neither Party may provide notice of termination of this Agreement until after December 31, 2021.

Notwithstanding the foregoing, if the Town fails to pay the Operating Subsidy as provided herein, the YMCA may provide sixty (60) days written notice to terminate. If the Operating Subsidy is thereafter paid, the YMCA shall withdraw the notice of termination. If the Operating Subsidy is not paid in full, the YMCA may, in its discretion, terminate this Agreement without participating in mediation, and such termination due to the Town's failure to pay shall be subject to the terms of Section 8.5 below.

8.2 Early Termination by Mutual Agreement. By mutual agreement, the YMCA and the Town may terminate this Agreement for any or no reason in an agreed-upon time period.

8.3 Termination by Either Party for Cause. With the exception of a default related to the Town's failure to pay the Operating Subsidy, if either Party substantially fails to honor its contractual commitments, the non-defaulting Party may provide written notice of intended termination to the other Party. Such notice shall specify the manner in which the defaulting Party has failed to perform its contractual undertakings. The defaulting Party shall have sixty (60) days after receipt of said notice in which to cure all defaults giving rise to the notice of intended termination, provided that the defaulting Party shall have an additional period to cure any default upon written notice to the non-defaulting Party to the extent such Party cannot reasonably cure such default within the sixty (60) day period, as long as such Party commences reasonable curative actions within such sixty (60) days and diligently prosecutes such actions to completion. If the non-defaulting Party reasonably determines that the defaulting Party has satisfactorily implemented corrective action, the notice of intended termination shall be withdrawn.

If, at the conclusion of the cure period, the default is not remedied to the satisfaction of the non-defaulting Party, the non-defaulting Party may commence mediation as set forth below in Section 9.2. If

mediation is not successful within sixty (60) days, unless the Parties mutually agree to an extension, the non-defaulting party may terminate this Agreement upon written notice without prejudice to any other rights and remedies.

8.4 Termination due to Casualty Loss. If the Facility is damaged by fire or other casualty and such damage prevents the Facility from being operated in substantially the same manner as it was operated prior to such casualty or damage, and such damage is not repaired by the Town within sixty (60) days after the date of such fire or casualty (or, in the case of a repair reasonably requiring more than sixty (60) days, if Town has not commenced such repair) or if such damage cannot reasonably be repaired or restored in full within one hundred eighty (180) days after the date of such fire or casualty, the Town or the YMCA shall have the right to terminate this Agreement by written notice to the other delivered not more than ninety (90) days following the occurrence of the damage. If the Facility is damaged by fire or other casualty and neither the Town nor the YMCA elects to terminate this Agreement, the Town shall promptly repair or reconstruct the damage to the Facility.

If the Facility is wholly inoperative due to fire or other casualty and the Town intends to repair the damage, the Town shall only be required to pay the reasonable portion of the Operating Subsidy necessary to meet ongoing and recurring expenses during the period of the repair. If the Facility is partially damaged by fire or other casualty and the Facility is reasonably capable of remaining open to the public, the Town shall continue to pay the Operating Subsidy to the YMCA unless an equitable adjustment is deemed to be appropriate.

In any event, if the Facility is damaged by fire or other casualty, the Parties shall promptly meet to discuss the status of the Facility, including, but not limited to, the efforts to repair the damage, the ability to use the Facility and whether an equitable adjustment to the Operating Subsidy is appropriate.

8.5 Termination Without Notice or Failure to Appropriate. If the Town were to otherwise terminate this Agreement prior to or at the end of a Term without providing eighteen (18) months' notice, or by a failure to appropriate, then the Town would be required to compensate the YMCA for the YMCA's costs related to the termination in the amount of $150,000.

## ARTICLE 9
## DISPUTE RESOLUTION; REMEDIES

9.1 Conferral. The Town and the YMCA desire to attempt to reach an amicable resolution of any disputes and controversies that may arise between them under this Agreement as quickly as is reasonably practicable and in a mutually beneficial manner. To foster a positive working relationship, the Parties shall endeavor, prior to providing a written notice of intended termination as set forth in Section 8.3 above, to arrange a meeting between the senior staff of the Town and the YMCA to attempt to resolve the dispute. Such meeting shall be held within fifteen (15) days of a request, unless otherwise provided in this Agreement.

9.2 Mediation. If a dispute arises under this Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the Parties shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in the subject matter of the dispute. If the Parties are unable to agree upon a mediator, the Parties shall apply to the Judicial Arbiter Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties.

9.3 Rights and Remedies at Law and Equity; Injunctive Relief. Unless the Parties otherwise agree, if the mediation is not completed within sixty (60) days, then either Party may pursue the rights and

remedies it may have at law and equity. Notwithstanding the foregoing, a Party shall not be required to mediate with respect to an action of the type for which a Party is entitled at law or in equity to immediate judicial injunctive relief or judicial specific performance arising out of the activity to be enjoined or caused to be performed to prevent irreparable harm or injury.

9.4 Remedies Cumulative; Legal Expenses. The various rights and remedies of the Parties under this Agreement or allowed by law shall be cumulative. In the event either [or both] Party(ies) hereto shall be obligated to secure legal counsel to enforce (or defend against) any alleged default under this Agreement, then the prevailing Party, to the extent permitted by law, shall be entitled to recover against the other Party reasonable attorneys' fees, and all costs and fees so incurred through all appellate proceedings as may be required.

## ARTICLE 10
## FORCE MAJEURE

If either Party shall be delayed or hindered in or prevented from the performance of any act required under this Agreement by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power or other utilities, terrorist acts, riots, insurrection, war, fire, floods or other acts of God, providing such cause is not due to the willful act or neglect of the Party delayed in performing the work or doing the acts required under the terms of this Agreement (collectively, "Force Majeure"), then performance of such act shall be excused for the period of the delay, and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

The provisions of this Article shall not be applicable to delays resulting from the inability of a Party to obtain financing or to proceed with its obligations under this Agreement because of a lack of funds.

## ARTICLE 11
## NOTICES

Any notice required or permitted to be given pursuant to this Agreement shall be effective and valid if in writing, and delivered personally by reputable express courier or delivery service, or sent by verifiable facsimile machine (with a copy by first class mail postage prepaid) or by certified or registered U.S. Mail postage prepaid, return receipt requested, as follows:

If to the Town:

TOWN OF JOHNSTOWN
Attn: Town Manager
450 S. Parish Avenue
Johnstown, CO 80534
Phone: (970) 587-4664
Facsimile: (970) 587-0141

If to the YMCA:

YMCA of NORTHERN COLORADO
Attn: Chief Executive Officer
2800 Dagny Way
Lafayette, CO 80026
Phone: (303) 664-5455
Facsimile: (303) 664-5456

With a copy to:

Law Office of Avi S. Rocklin, LLC
Attn: Avi S. Rocklin, Esq.
1437 N. Denver Avenue, #330
Loveland, CO 80538
Phone: (970) 419-4226
Facsimile: (970) 797-1806

With a copy to:

Inside/Out Advisors, LLC
Attn: Holden J. Bank, Esq.
1384 North Park Drive
Lafayette, CO 80026
Phone: (303) 241-4248

Unless otherwise specified, notice shall be deemed given when received, but if delivery is not accepted, on the earlier of the date delivery is refused or the third day after the same is deposited with the United States Postal Service. Notices given by counsel to either Party shall be deemed given by such Party. Any person or entity may by written notice to the others change the address for such person or entity's receipt of notices.

Notwithstanding the foregoing, either Party may give notice by E-mail delivery on the condition that the other Party acknowledges receipt of the E-mail and agrees in a responsive E-mail communication to accept notice in such manner.

## ARTICLE 12
## GENERAL PROVISIONS

12.1 Governing Law and Venue. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any legal action shall be in Weld County, State of Colorado.

12.2 Modification of Agreement. The terms, covenants and conditions of this Agreement may not be amended or modified except by a subsequent written instrument signed by both Parties.

12.3 No Waiver by Prior Actions. The failure of either Party to insist upon the strict performance of any term, covenant or condition of this Agreement to be performed or observed by the other Party shall not constitute a waiver or relinquishment of the subsequent right to require strict performance of any such term, covenant or condition.

12.4 Severability. If any portion(s) of this Agreement shall, for any reason, be held invalid or unenforceable, such portion(s) shall be ineffective only to the extent of any such invalidity or unenforceability, and the remaining portion(s) shall nevertheless be valid, enforceable and of full force and effect; provided, however, that if the invalid provision is material to the overall purpose and operation of this Agreement, then this Agreement shall terminate upon the severance of such provision.

12.5 Entire Agreement. This Agreement, the exhibits attached hereto, and all amendments constitute the entire understanding and agreement of the Parties and supersede any prior written or oral agreement pertaining to the subject matter hereof.

12.6 Authorized Representatives. Until a Party provides written notice of an alternative representative or representatives, the following named persons shall be deemed an authorized representative for each Party with respect to this Agreement and the other Party shall be entitled to rely on the actions and communications of said person(s) to be those of such Party so long as the same are within the scope of this Agreement:

Town: The Town Manager shall be designated as the Town's authorized representative.

YMCA: The Chief Executive Officer or Chief Volunteer Officer, or any person subsequently designated in writing by the Chief Executive Officer, shall be designated as the YMCA's authorized representative.

12.7 Further Actions; Reasonableness and Cooperation; Time for Consent. Each Party agrees to take such further actions and to execute such additional documents or instruments as may be reasonably requested by the other Party to carry out the purpose and intent of this Agreement. Except where expressly stated to be in a Party's sole discretion, or where it is stated that a Party has the ability to act in its sole judgment or for its own uses or purposes, wherever it is provided or contemplated in this Agreement that a Party must give its consent or approval to actions or inactions by the other Party or a third person in connection with the transactions contemplated hereby, such consent or approval will not be unreasonably withheld or delayed, nor will any other determinations that must be made by a Party in the course of performing and administering this Agreement be unreasonably made. The Town and the YMCA each also agree to cooperate with and reasonably assist each other in good faith in carrying out the purpose and intent of this Agreement and the overall goals and purposes for the Facility. If no deadline is set herein for a Party to approve or consent to an action or inaction by the other Party or a third person, such approval or consent shall be given or affirmatively withheld in writing within twenty (20) days after it is requested in writing, or it shall be deemed given.

12.8 Relationship of the Parties; No Third-Party Beneficiaries. This Agreement shall not create a partnership or joint venture between the Parties and is limited to the specific purposes set out herein. Neither Party shall be the agent of, or have any rights to create any obligations or liabilities binding on, the other Party. The Parties do not intend to confer any benefit hereunder on any other person or entity other than the Parties hereto. The YMCA understands and agrees that it is an independent contractor and the Town shall not provide benefits of any kind to the YMCA, its officers, employees or agents.

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

12.10 Return of Records. Upon termination of this Agreement, the YMCA shall return to Town all records, notes, documents and other items that were provided by the Town to the YMCA or otherwise created by the Town for the YMCA to use during the term of this Agreement for the operation of the Facility. In addition, the YMCA shall provide all membership information to the Town and a listing of all Facility program participants for the last three (3) years.

12.11 Captions; Recitals and Exhibits; Agreement Preparation. Captions used throughout this Agreement are for convenience and reference only and the words contained herein shall in no way be deemed to explain, modify, amplify or aid in the interpretation or construction of the provisions of this Agreement. The Recitals found at the beginning of this Agreement and Exhibits A and B and any properly adopted amendments, supplements or replacements thereto are incorporated herein by reference and are important and material parts of this Agreement. In any interpretation, construction or determination of the meaning of any provision of this Agreement, no presumption whatsoever shall arise from the fact that the Agreement was prepared by or on behalf of any Party hereto.

12.12 Assignment/Delegation. Neither Party may assign its rights or delegate its duties under this Agreement without the prior written consent of the other Party, in its sole discretion. In such case, the assignee shall execute into a written agreement, agreeing to be bound by the terms of this Agreement.

12.13 Publicity. The YMCA shall, to the extent reasonably practicable, confer and coordinate public announcements and other publicity concerning the Facility with the Town.

12.14 Execution; Counterparts. Each person executing this Agreement in a representative capacity warrants and represents that he or she has authority to do so and, upon request by the other Party, proof of such authority in customary form will be furnished to the other Party. This Agreement may be executed at different times and in two or more counterparts and all counterparts so executed shall for all purposes constitute one agreement, binding on the Parties hereto, notwithstanding that both Parties may not have executed the same counterpart.

12.15 Survival. All provisions of this Agreement, which by their terms provide for or contemplate obligations or duties of a Party which are to extend beyond the expiration or termination of this Agreement (and the corresponding rights of the other Party to enforce or receive the benefit of such obligations or duties), shall survive such expiration or termination.

12.16 Sale of Facility. In the event that the Town decides to sell the Facility to a non-governmental entity or the Town receives a bona fide offer to purchase the Facility from a non-governmental entity, the Town shall provide written notice to the YMCA and provide the YMCA with a right of first refusal to purchase the Facility. If the YMCA desires to purchase the Facility, the YMCA shall have thirty (30) days from receipt of the notice to enter into a purchase and sale agreement with the Town for the purchase of the Facility upon mutually-agreeable terms. If the Parties are not able to agree upon terms, the Town may sell, or offer to sell, the Facility to a third party. If the Town were to sell the Facility to a third party, this Agreement would terminate upon the consumption of the sale.

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN

By: _____

Name: Gary Lebsack

Title: Mayor

Date: 4/1/19

YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY
d/b/a YMCA of Northern Colorado

By: _____

Name: Chris Colucci

Title: CEO

Date: 3/14/19

Attest:

_____

Diana Seele, Town Clerk

**EXHIBIT A**

EFFECTIVE DATE AMENDMENT
TO THE FACILITY MANAGEMENT AGREEMENT
BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND
YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY
D/B/A YMCA OF NORTHERN COLORADO

This EFFECTIVE DATE AMENDMENT, dated as of October 1, 2019, is made by and between the TOWN OF JOHNSTOWN, COLORADO, a Colorado home rule municipal corporation of the State of Colorado (the "Town"), and the YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY, d/b/a YMCA of Northern Colorado, a Colorado non-profit corporation (the "YMCA"), through its Board of Directors.

WHEREAS, the Town of Johnstown and the Young Men's Christian Association of Boulder Valley d/b/a YMCA of Northern Colorado executed a Facility Management Agreement on March ___, 2019 ("Agreement"); and

WHEREAS, the terms used herein shall have the meaning(s) set forth in the Agreement; and

WHEREAS, pursuant to Section 3.1 of the Agreement, the Parties agreed to execute an Effective Date Amendment approximately six (6) months prior to the opening of the Facility to the public; and

WHEREAS, pursuant to Section 6.2 of the Agreement, the Parties agreed to set forth the funds that would be due and owing from the Town to the YMCA during the interim period between the Effective Date of the Agreement and the date that the Facility opens to the public; and

WHEREAS, the Parties hereby desire to memorialize their intent with respect to the foregoing.

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Effective Date. The Effective Date of the Agreement shall be October 1, 2019.

2. Operating Subsidy from the Effective Date to the Date the Facility Opens to the Public. Until the Facility opens to the public, the Town shall pay the YMCA the following amounts:

| Month | Amount |
|---|---|
| [To Be Inserted] | [To Be Inserted] |
| October 2019 | $8,505.61 |
| November 2019 | $7,175.61 |
| December 2019 | $7,270.61 |
| January 2020 | $18,110.78 |
| February 2020 | $21,229.20 |
| March 2020 | $27,415.61 |

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN

By: _____
Name:
Title: Town Manager

Attest: _____
Diana Seele, Town Clerk

YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY
d/b/a YMCA of Northern Colorado

By: _____
Name: Chris Cohen
Title: CEO

**EXHIBIT B**

LEASED WELLNESS EQUIPMENT AMENDMENT
TO THE FACILITY MANAGEMENT AGREEMENT
BETWEEN THE TOWN OF JOHNSTOWN, COLORADO AND
YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY
D/B/A YMCA OF NORTHERN COLORADO

This LEASED WELLNESS EQUIPMENT AMENDMENT, dated as of _____, 2019, is made by and between the TOWN OF JOHNSTOWN, COLORADO, a Colorado home rule municipal corporation of the State of Colorado (the "Town"), and the YOUNG MEN'S CHRISTIAN ASSOCIATION OF BOULDER VALLEY, d/b/a YMCA of Northern Colorado, a Colorado non-profit corporation (the "YMCA"), through its Board of Directors.

WHEREAS, the Town of Johnstown and the Young Men's Christian Association of Boulder Valley d/b/a YMCA of Northern Colorado executed a Facility Management Agreement on March ___, 2019 ("Agreement"); and

WHEREAS, the terms used herein shall have the meaning(s) set forth in the Agreement; and

WHEREAS, pursuant to Section 4.4 of the Agreement, the Parties agreed to execute an amendment to the Agreement setting forth the agreed-upon Leased Wellness Equipment; and

WHEREAS, the Parties hereby desire to memorialize their intent with respect to the foregoing.

NOW, THEREFORE, in consideration of the covenants and agreement contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree that the YMCA shall lease the following equipment, which shall collectively be the Leased Wellness Equipment:

Equipment

[To Be Inserted]

TOWN PURCHASED EQUIPMENT OUTRIGHT MSL

IN WITNESS WHEREOF, the Parties have executed this Agreement.

TOWN OF JOHNSTOWN

By:_____
Name:
Title: Town Manager
Attest:

_____
Diana Seele, Town Clerk

YOUNG MEN'S CHRISTIAN ASSOCIATION
OF BOULDER VALLEY
d/b/a YMCA of Northern Colorado

By:_____
Name: Chris Colver
Title: CEO