

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT is made and entered into this ____ day of _____ 2022, by and between **BUC-EE'S JOHNSTOWN, LLC**, a Delaware limited liability company ("Developer"), and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, ("Town"), collectively sometimes referred to as the "Parties" and singularly as "Party."

WITNESSETH:

WHEREAS, Developer owns an interest in land located in in the NE¼ Section 10, Township 4 North, Range 68 West, 6th PM., Weld County, Colorado, described more particularly on Exhibit "A" ("Subject Property"); and

WHEREAS, the Subject Property has been annexed to the Town; and

WHEREAS, the Subject Property is being developed by Developer as the Buc-ee's Travel Center, consisting of a 74,000 square-foot convenience store, with 0.94 acre of permanent drip-irrigated landscape and 11.73 cares of temporarily irrigated native grass; and

WHEREAS, the Developer and the Town desire to set forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a current commitment by the Town for water and sewer service for the Subject Property.

NOW, THEREFORE, in consideration of the mutual promises hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance ("Ordinance"), Developer has submitted to the Town a preliminary water and sewer demand analysis for the Subject Property dated April 7, 2022. Said analysis was received by the Town, is on file with the Town and, as modified by the Town's Water Engineer by memorandum dated May 17, 2022, is hereby accepted by the Town. The analysis provides that the projected water and sewer demand for the Subject Property is as follows:

Development Component	Demand (AF/YR)	Consumption (AF/YR)
Commercial In-Building	16.71	0.84
Permanent Landscape Irrigation	1.41	1.20
Temporary Landscape Irrigation	11.73	9.97
Total	29.85	12.01

2. Water Rights Dedication and Credits.

- a. Dedication.** Developer has dedicated four (4) shares of the Consolidated Home Supply Ditch & Reservoir Company, represented by Certificate No. 7116, to the Town. The water represented by Certificate No. 7116 has been changed to include municipal use in the District Court, Water Division No. 1.
- b. Temporary Use.** Of the 29.85 acre-feet of raw water demand projected for the Subject Property, 11.73 acre-feet will be used to re-vegetate 11.73 acres to native grasses. When the native grasses are established, Developer may permanently remove the irrigation system(s) used to establish the native grasses and provide written documentation to the Town of that removal. When the Town provides written notice to Developer that it has accepted that the temporary irrigation has permanently ceased, Developer may, with the Town’s written consent, assign the 11.73 acre-feet to another project or development within the Town’s boundaries.

3. Surplus dedication credit. The dedication of the four (4) shares of the Consolidated Home Supply Ditch and Reservoir Company described in Paragraph 2, above, will provide to Developer raw water credits in excess of the water demand projected for the Subject Property. As a result of said dedication, Developer will have a surplus dedication credit with the Town of 2.15 acre-feet. The credit is calculated as follows:

Dedication Credit:	32.00 acre-feet
LESS estimated demand:	29.85 acre-feet
Net current surplus credit:	2.15 acre-feet

Upon notice and written approval of the Town, said credit may be utilized to offset increased water demands, if any, which are not currently projected for the Subject Property or may be used for other future development within the Town of Johnstown, subject to approval by the Town in subsequent agreement(s) in accordance with the requirements of the Ordinance.

4. Commitment to serve. Subject to Developer's performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Subject Property up to 16.71 acre-feet per year of water supply for commercial in-building use together with the corresponding sewer service, 1.41 acre-feet for permanent irrigation, and 11.73 acre-feet for temporary irrigation, as described above.

5. Future review of water usage and dedication requirements. In accordance with the Ordinance, the Town reserves the right to review actual water usage within the Subject Property at a point in time after water usage has been established to confirm the adequacy of the water demand projections made by the Developer, and to require additional water rights dedication and/or cash-in-lieu payments, if necessary, based on actual water usage.

6. Payment of Water Court Transfer fees. Upon execution of this Agreement, Developer shall pay to the Town the sum of Nine Thousand dollars (\$9,000.00) as payment of the water court transfer fees required by the Ordinance. This payment is only for the dedication of 29.85 acre-feet per year of estimated water demand and estimated consumptive use of 12.01 acre-feet per year (60 SFE) for the Subject Property. Pursuant to Paragraph 5, above, if future review requires additional dedication of water, additional water court transfer fees will be required at the time of dedication. Further, in accordance with the Ordinance, additional water court transfer fees will be required in connection with future development of any property to which all or any portion of the surplus dedication credit is subsequently assigned pursuant to a future mutual agreement of the Parties in accordance with the Ordinance and this Agreement.

7. Notices. All notices required or permitted to be given hereunder shall be in writing and shall be deemed given: (a) upon hand delivery, (b) upon deposit with Federal Express, UPS or other nationally recognized overnight courier service, receipt required, or (c) when transmitted via email, provided the sending party receives a read-receipt for the email or the receiving party acknowledge receipt thereof. All notices shall be addressed as follows:

TO DEVELOPER:

BUC-EE'S Johnstown, LLC
Attn: Legal
327 FM 2004
Lake Jackson TX 77566
Email: legal@buc-ees.com

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
P.O. Box 609
450 S Parish Ave.
Johnstown, CO 80534
Email: hhill@townofjohnstown.com

**WITH A COPY TO
THE TOWN ATTORNEYS:**

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538
Email: avi@rocklinlaw.com

Peter J. Ampe
Hill & Robbins, P.C.
1160 Lincoln St., Suite 2720
Denver, CO 80264
Email: peterampe@hillandrobbs.com

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

8. Default. In the event of default by either Party hereunder, the non-defaulting Party shall notify the defaulting Party in writing of such default(s), specifying the nature and extent

thereof. If such default is not cured within thirty (30) days, the non-defaulting Party shall be entitled to such remedies as are provided by law, including the Town's ordinances.

9. Successors and assigns. The benefits and burdens of this Agreement shall respectively inure to and be binding upon the successors and assigns of the Parties hereto. This agreement shall not be assigned without the prior written consent of the other Party, which shall not be unreasonably withheld.

10. Amendment or modification. No amendment or modification of this Agreement shall be of any force or effect unless in writing and executed by the Parties hereto with the same formality as this Agreement.

11. Attorney's fees and costs. If any judicial proceedings may hereafter be brought to enforce any of the provisions hereof, including an action for specific performance and/or damages, the Town, if the prevailing party, shall be entitled to recover the costs of such proceedings, including reasonable attorney's fees and reasonable expert witness fees.

12. Waiver. The waiver of any breach of any of the provisions of this Agreement by either Party shall not constitute a continuing waiver of any subsequent breach by said Party, concerning either the same or any other provision of this Agreement.

13. Headings for convenience only. Paragraph headings and titles contained herein are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

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

15. Choice of laws and venue. This Agreement and the rights and obligations of the Parties hereto shall be governed by the laws of the State of Colorado. Venue for any legal action shall be in the County of Weld, State of Colorado.

16. Entire agreement. This Agreement constitutes the entire agreement between the Parties related to the subject matter hereof and any prior agreements pertaining thereto whether oral or written have been merged or integrated into this Agreement.

17. 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.

18. Recordation. This Agreement will be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, shall run with the Subject Property, will be binding upon the Parties hereto and the permitted successors and assigns of the Developer and will constitute notice of this Agreement to all persons or entities not parties hereto.

*IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

Signatures follow.

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1 AND 2, WELTY RIDGE SUBDIVISION – FILING NO. 1, ACCORDING TO THE PLAT RECORDED ON DECEMBER 15, 2021 AT RECEPTION NO. 4785368, AFFIDAVIT OF CORRECTION RECORDED FEBRUARY 28, 2022 AT RECEPTION NO. 4805971, COUNTY OF WELD, STATE OF COLORADO.