

**SITE DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
TOWN OF JOHNSTOWN
(BUC-EE'S JOHNSTOWN)**

This Site Development and Improvement Agreement (“Agreement”), made and entered into by and between the Town of Johnstown, Colorado, a Colorado home-rule municipal corporation (the “Town”), and Buc-ee’s Johnstown, LLC, a Delaware limited liability company (the “Developer”).

WITNESSETH:

WHEREAS, Developer is the owner of a parcel of land situated in the Town of Johnstown, County of Weld, State of Colorado, the description of which is set forth on **Exhibit A** attached hereto and incorporated herein by this reference (the “Property”); and

WHEREAS, the Property is part of the final plat the recorded in the real property records of Weld County, Colorado at Reception No. 4785368 (the “Final Plat”); and

WHEREAS, on May 2, 2022, by Resolution No. 2022-16, the Town Council approved a Site Development Plan for the Property (“Site Development Plan”), which is filed in the official records of the Town; and

WHEREAS, the Town and Platte Land and Water, LLC (“Platte Land”) executed a Development Agreement the recorded in the real property records of Weld County, Colorado at Reception No. 4785367 (the “Overall Development Agreement”) which affects the Property and provides for the release of the Property from the Overall Development Agreement upon execution of this Agreement; and

WHEREAS, Developer seeks to develop the Property and to designate such development as Buc-ee’s Travel Center (“Development”); and

WHEREAS, Developer understands and agrees that, as a further condition of approval of the Development, Developer is required to construct certain Subdivision Improvements (defined below) to the Property, that Developer is responsible for the costs and expenses of those Subdivision Improvements unless otherwise provided herein, and that the Subdivision Improvements contemplated herein are reasonable, necessary, appropriate, and directly benefit the Development; and

WHEREAS, Developer agrees to undertake and complete the Development in accordance with this Agreement, the Final Plat, the Town’s ordinances, resolutions and regulations and all other applicable laws and regulations; and

WHEREAS, the Town and Buc-ee's Colorado, LLC ("Buc-ee's Colorado") executed the Economic Incentive Agreement dated as of October 18, 2021 (the "Economic Incentive Agreement"), containing in Section 3(a), among other matters, the Town's obligations regarding review of development, land use and building permit applications for the Property; and

WHEREAS, Buc-ee's Colorado desires, by separate assignment, to assign all of its rights and obligations under the Economic Incentive Agreement to Developer and Developer desires to assume all of such rights and obligations; and

WHEREAS the Town does not object to the assignment and assumption of the Economic Incentive Agreement and agrees that, upon assignment, the Town's obligations under the Economic Incentive Agreement, including, but not limited to, its obligations in Section 3(a) of the Economic Incentive Agreement remain binding and enforceable.

NOW, THEREFORE, in consideration of the premises cited above and the mutual covenants and promises contained herein, the sufficiency of which is acknowledged, the Town and Developer agree as follows:

RECITALS

The Recitals are incorporated as if fully set forth herein.

DEFINITIONS

For the purposes of this Agreement, the following words and terms shall be defined as follows:

1.1 **"Approved Plans"** shall mean: (1) with respect to the Public Improvements, the approved "Civil Engineering Construction Plans" related to the Development and on file with Town; and (2) with respect to the Private Improvements, the approved "the Development Plan" related to the Development and on file with Town.

1.2 **"Civil Engineering Construction Plans"** shall mean the approved engineering plans for construction, installation and completion of the Public Improvements.

1.3 **"Code"** shall mean the Johnstown Municipal Code, as amended from time to time.

1.4 **"Developer"** shall mean the owner(s) of the Property described in **Exhibit A** and any heirs, successors, assigns or transferees of any of the Property described in **Exhibit A**.

1.5 “**Development**” shall mean all the Property, property rights and Subdivision Improvements within or associated with the legal description in **Exhibit A**.

1.6 “**Development Plan**” shall mean the approved plans for the construction, installation and completion of the Private Improvements.

1.7 “**Dry Utilities**” shall mean electricity, natural gas, cable and telephone.

1.8 “**Maintenance Guarantee**” shall mean a guarantee that the Public Improvements constructed shall be free from defects and failures as more fully described in Paragraphs 5.2 and 5.4 below.

1.9 “**Notice of Construction Acceptance**” shall mean the written certification that the Public Improvements are accepted, which starts the two-year warranty period as provided herein.

1.10 “**Notice of Final Acceptance**” or “**Final Acceptance**” shall mean the written certification of final acceptance of the Public Improvements and, except as otherwise provided herein, the transfer of maintenance of the Public Improvements to the Town.

1.11 “**Private Improvements**” shall mean the construction, installation and completion of privately owned and maintained common improvements in the Development including, but not limited to, stormwater improvements, landscaping, irrigation, fencing, entry signs, parks, open space, trails and postal service boxes.

1.12 “**Public Improvements**” shall mean the construction, installation, completion and dedication of public improvements required by this Agreement or otherwise constructed in the Development, including, but not limited to public thoroughfares and streets, sanitary sewer facilities, water line facilities, drainage facilities in the public right of way, irrigation structures, if any, that are not exclusively for the benefit of the Development, right-of-way landscaping and irrigation structures, street lighting and signage, and other public facilities and improvements to serve the Development. Public Improvements include, but are not limited to, the improvements listed on **Exhibit [B]**, in whatever form they are referenced, that will be dedicated to the Town and the improvements listed on **Exhibit C**.

1.13 “**Performance Guarantee**” shall mean a guarantee that the Subdivision Improvements are to be constructed in conformance with the Approved Plans.

1.14 “**Subdivision Improvements**” shall mean the Public Improvements and Private Improvements.

1.15 “**Town**” shall mean the Town of Johnstown, Colorado.

1.16 “Town Manager” shall include the Town Manager and such person’s authorized designees.

SUBDIVISION IMPROVEMENTS

2. Public Improvements

2.1 Pre- Construction

a. **Engineering Services:** Developer shall furnish, at its own expense, all engineering services in connection with design, construction, installation and improvement of the Public Improvements. Engineering services shall be performed by a professional engineer registered in the State of Colorado. Engineering services shall consist of, but not be limited to, survey, designs, plans and profiles, specifications, drawings, estimates, construction administration, and the furnishing of necessary documents in connection therewith, including but not limited to final engineering drawings, final sewer and water design plans and final drainage plans (the “Civil Engineering Construction Plans”).

b. **Civil Engineering Construction Plans:** Prior to commencing construction of the Public Improvements for the Development, Developer shall submit the Civil Engineering Construction Plans to the Town for review. Construction of the Public Improvements shall not commence until the Town provides written notice of approval of the Civil Engineering Construction Plans. Developer shall not thereafter modify the approved Civil Engineering Construction Plans without the written approval of the Town, except for minor field changes that occur during the course of construction. The Town’s review and approval of the Civil Engineering Construction Plans shall not limit or affect Developer’s responsibility or liability for design, construction and installation of the Public Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer’s written objection. The Town agrees to review and approve the Civil Engineering Construction Plans as provided for in Section 3(a) of the Economic Incentive Agreement.

c. **Phasing of the Public Improvements.** Subdivision plats, planned unit development plans or site plans requiring the construction of Public Improvements may developed in phases provided: (i) such phasing is approved by the Town and is consistent with the subdivision plats, planned unit development plans or site plans and any executed agreements pertaining to the Property; (ii) the phasing plan supports a logical sequence of development such that each phase can function independently or sequentially with a prior phase; and (iii) each sequential phase satisfies the Town’s construction standards and specifications. If phasing of the Public Improvements is approved, construction acceptance, financial security and building permit eligibility may be approved or released according to the approved phasing plan. An approved phasing plan may only be modified upon written approval of the Town.

d. **Pre-Construction Meeting.** Subsequent to the Town's approval of the Civil Engineering Construction Plans and prior to the commencement of construction, the Developer and its contractors shall participate in a pre-construction meeting with the Town's Public Works Department. Among other matters, as determined by the Town, the purpose of the meeting shall be to review: (i) the Approved Plans; (ii) permits needed for construction; (iii) relevant provisions of the Code and the Town's construction standards and specifications; and (iv) the construction inspection process and requirements for construction acceptance.

e. **Rights-of-Way, Easements and Permits:** Prior to commencing construction of the Public Improvements, Developer shall acquire, at its own expense, good and sufficient rights-of-way or easements, clear of any encumbrances, on all lands and facilities, if any, traversed by the proposed Public Improvements. All such rights-of-way and easements shall be conveyed to the Town and the documents of conveyance shall be furnished to the Town for recording. At the Town's request, Developer shall provide at its sole expense a policy of title insurance insuring title in the Town, free and clear of all liens and encumbrances, for all land, property and easements dedicated or conveyed to the Town or for public use. Any agreements or easements to which the Town may effectively become a party upon dedication or acceptance of the improvements shall be provided to the Town for review prior to execution of such agreement or easement and prior to issuance of building permits. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Public Improvements. Notwithstanding the foregoing, the Town recognizes and agrees that certain rights-of-way and easements intended to be used for access to the Property have been conveyed to the Town, clear of any encumbrances, via the Final Plat.

2.2 *Construction of Public Improvements*

a. Upon satisfaction of the conditions set forth in Paragraph 2.1 and the notice requirement set forth below, Developer shall construct the Public Improvements at its own expense in accordance with this Agreement, the Final Plat, Site Development Plan, the Civil Engineering Construction Plans, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All Public Improvements shall be installed and constructed within the rights-of-way or easements dedicated to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Public Improvements shall be materials set forth on the Town's approved material list. Workmanship and materials shall be of good quality.

b. At least seven (7) days prior to the commencement of construction, Developer shall provide written notice to all property owners within a 600-foot radius of the construction limits indicated on the Civil Engineering Construction Plans and to any other property owners who are reasonably likely to be impacted by the construction of the fact of the construction along with contact information for the Developer. Prior to the commencement of the construction, such contact list shall be provided to the Town with a copy of the notification. Notification may be by U.S. mail or by delivering a printed flyer left at each affected home or business location.

2.3 **Construction Schedule:** Developer shall construct the Public Improvements in accordance with the schedule of public improvements set forth on **Exhibit C**, attached hereto and incorporated herein by reference (“Schedule of Public Improvements”). Once construction begins, Developer shall keep the Town informed by periodic status reports of the progress of the work and a projection of when the Public Improvements will be completed as well as the cost of such Public Improvements.

2.4 **Testing:** Developer shall employ, at its own expense, a qualified independent testing company, approved by the Town, to perform all testing of materials or construction that may be reasonably required by the Town. Developer shall furnish certified copies of test results to the Town.

2.5 **Inspection:** At all times during construction of the Public Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer’s cost. All materials and work must conform to the Civil Engineering Construction Plans. Any material or work not conforming to the Civil Engineering Construction Plans shall be promptly removed, repaired or replaced, at Developer’s expense and to the satisfaction of the Town.

2.6 **Completion of Construction:** Developer shall complete construction of the Public Improvements no later than eighteen (18) months from the commencement of the construction, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town’s written consent to the extension.

2.7 **Performance Guarantee:** To secure the construction, installation, improvement and completion of the Public Improvements, Developer shall furnish to the Town a cash escrow deposited with the Town or a bond or irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the beneficiary (“Performance Guarantee”) in an amount equal to 110% of the cost of the Public Improvements, which cost shall be certified by Developer’s professional engineer, licensed in the State of Colorado and approved by the Town. The Performance Guarantee shall be released after the Notice of Construction Acceptance has been provided for the Public Improvements and notice of approval has been provided for the Private Improvements.

3. **Private Improvements**

3.1 **Pre-Construction:** Prior to commencing construction of the Private Improvements, Developer shall submit a Development Plan to the Town. The Development Plan shall contain the proposed Private Improvements for the Development, including a plan for stormwater improvements, an irrigation system, landscaping and soil amendments, fencing, entry-way signage, street signs and posts, street lighting, parks, open space, trails and postal service boxes. Landscaping and fencing shall be designed in accordance with the Town’s landscape guidelines. Construction of the Private Improvements shall not commence until the

Town provides written notice of approval of the Development Plan. Developer shall not thereafter modify the approved Development Plan without the written approval of the Town. The Town's review and approval of the Development Plan shall not limit or affect Developer's responsibility or liability for design, construction and installation of the Private Improvements, and Developer agrees to save and hold the Town harmless from any claims, fault or negligence attributable to such design, construction and installation, other than negligent designs which are required by the Town over Developer's written objection. In addition, Developer shall obtain all the requisite permits and licenses necessary for construction of the Private Improvements. The Town agrees to review and approve the Development Plan as provided for in Section 3(a) of the Economic Incentive Agreement.

3.2 ***Construction of Private Improvements:*** Upon satisfaction of the conditions set forth in Paragraph 3.1, Developer shall construct the Private Improvements at its own expense in accordance with the terms of this Agreement, the Final Plat, Site Development Plan, the Development Plan, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. All landscaping services shall be performed by a professional landscape contractor. Certification of required soil amendment shall be signed by Developer and provided to the Town. Unless otherwise approved by the Town in writing, all materials used for constructing the Private Improvements shall be new and both workmanship and materials shall be of good quality.

3.3 ***Inspection:*** At all times during construction and installation of the Private Improvements, the Town shall have the right, but not the duty, to inspect materials and workmanship, at Developer's cost. All materials and work must conform to the Development Plan. Any material or work not conforming to the Development Plan shall be promptly removed, repaired or replaced, at Developer's expense and to the satisfaction of the Town.

3.4 ***Completion of Private Improvements:*** Unless otherwise agreed in writing by the Town, the Private Improvements shall be completed no later than the date that the Public Improvements are completed, unless such completion date is extended for reasons beyond the reasonable control of Developer and Developer has obtained the Town's written consent to the extension. The Town may, at its discretion, allow Developer to defer completion of the landscaping services between December 1 and March 1 of any given year provided that sufficient surety is provided to the Town.

3.5 ***Replacement of Private Improvements:*** As replacement of the Private Improvements is necessary and warranted over time, including but not limited to decorative light fixtures, decorative street signs and all other decorative amenities in the Development, the Private Improvements shall be replaced by, as appropriate, the Developer, the homeowner's association or a metropolitan or special district. The Town shall not be responsible for replacement of the Private Improvements.

4. **Dry-Utilities**

4.1 **Utilities:** Developer shall obtain all proper conveyances and arrangements for the installation and provision of the Dry Utilities to serve the Development. Developer shall provide proof of such conveyances and arrangements to the Town, which proof may be in the form of contracts for such services, no later than the date that the Public Improvements are completed.

4.2 **Easements:** All easements approved by the utility companies shall be submitted to the Town.

ACCEPTANCE OF SUBDIVISION IMPROVEMENTS

5.1 **Notice of Construction Acceptance:** Developer shall make written application to the Town for acceptance of the Public Improvements and for review of the Private Improvements, within ninety (90) days of the completion date of the Subdivision Improvements, with the exception of the improvements for which the Town has authorized an extension of time to complete. With respect to the Public Improvements, among other documents that may be required by the Town, the written application shall include one set of reproducible “as built” drawings and an affidavit executed by Developer affirming that the Public Improvements have been paid in full, certifying the final construction costs and including documentary evidence of the construction costs. If the Town requests, Developer shall provide lien waivers, or other acceptable assurance, from all subcontractors, suppliers and materialmen who have furnished labor, material or services for the design, construction or installation of the Subdivision Improvements. The affidavit and lien waivers may be reviewed by the Town, but the Town assumes no responsibility or liability to or for anyone regarding the veracity of the information so provided.

After the receipt of the written application, the Town shall use reasonable efforts to promptly inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to a Notice of Construction Acceptance of the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements. If the Subdivision Improvements are not satisfactory, the Town, upon coordination with Developer, shall prepare a punch list of all Subdivision Improvements that are not in compliance with the Approved Plans, subject to any changes that have been approved or required by the Town. After curing the defects and matters set forth on the punch list, Developer shall make a renewed written application to the Town for re-inspection of the Subdivision Improvements, which written application shall contain the items set forth above. The Town shall thereafter use reasonable efforts to promptly re-inspect the Subdivision Improvements. If the Subdivision Improvements are satisfactory, Developer shall be entitled to the issuance of a Notice of Construction Acceptance for the Public Improvements upon receipt of the Maintenance Guarantee and written approval of the Private Improvements.

5.2 **Maintenance Guarantee.** Prior to the issuance of the Notice of Construction Acceptance of the Public Improvements, Developer shall provide the Town with a maintenance guarantee in the form of a cash escrow deposited with the Town or a bond or irrevocable letter of credit in the form attached hereto as **Exhibit D** in which the Town is designated as the

beneficiary (“Maintenance Guarantee”). The Maintenance Guarantee shall equal fifteen percent (15%) of the total cost of the Public Improvements. The Maintenance Guarantee shall warrant and guarantee all expenses and costs for maintenance, repairs and replacements of the Public Improvements until Final Acceptance. The Maintenance Guarantee shall be released after Final Acceptance of all of the Public Improvements. The Maintenance Guarantee may also be used to ensure that the installed landscaping, a Private Improvement, is satisfactorily established during the period between the issuance of the Notice of Construction Acceptance and Final Acceptance of the Public Improvements.

5.3 ***Delivery of Notice of Construction Acceptance.*** Upon satisfaction of the conditions set forth above in Paragraphs 5.1 and 5.2, the Town shall provide written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements to Developer. At its discretion, the Town may issue a written Notice of Construction Acceptance of the Public Improvements and written approval of the Private Improvements prior to completion of all the Subdivision Improvements as long as the Performance Guarantee remains in effect for such uncompleted Public Improvements. Developer shall be entitled to obtain building permits prior to completion of all the Subdivision Improvements as set forth in Sections 7.1 and 7.2.

5.4 ***Maintenance, Repair and Replacement:*** Until Final Acceptance, Developer shall warrant the Public Improvements. Developer shall promptly perform all maintenance and make all repairs and replacements of all defects or failures of the Public Improvements at Developer’s expense and shall ensure that the installed landscaping is established. If, within ten (10) days after Developer’s receipt of written notice from the Town requesting such maintenance, repairs or replacements, Developer shall not have undertaken with due diligence to make the same, the Town may make such maintenance, repairs or replacements at Developer’s expense and shall be entitled to draw upon the Maintenance Guarantee, either before undertaking to make such repairs or at any time thereafter, or the Town may charge Developer for the costs thereof. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Maintenance Guarantee. Notwithstanding the foregoing, the Town may, at its discretion and upon written advisement to Developer, be responsible for routine maintenance of the Public Improvements (street sweeping, snow removal, etc.).

5.5 ***Final Acceptance:*** Two (2) years after the Town’s issuance of the Notice of Construction Acceptance, which time period may be extended at the Town’s discretion due to remedial or repair work that may be required by the Town during the first two (2) years, Developer shall make a written request to the Town for final inspection of the Subdivision Improvements. If the Town determines that the Subdivision Improvements are free of defects in materials and workmanship and have been repaired and maintained to the extent required, the Town shall provide certification of completion by issuance of a Notice of Final Acceptance of the Public Improvements and written approval of the Private Improvements. If the Town determines that the Subdivision Improvements are not free of defects in materials and workmanship and have not been repaired and maintained to the extent required, the Town shall

issue a written notice of non-compliance specifying the defects. Developer shall take such action as is necessary to cure the noncompliance and, upon curing the same, provide a new written request to the Town for a final inspection of the Subdivision Improvements. Failure of the Developer to make a timely request for the issuance of a Notice of Final Acceptance shall not limit the Town's rights hereunder nor shall it limit the Town's right to utilize the Public Improvements as the Town deems appropriate.

Upon issuance of the Notice of Final Acceptance, the Maintenance Guarantee shall be released to Developer, and the Town shall thereafter maintain the Public Improvements dedicated to the Town. Notice of Final Acceptance and all releases required by the Town to be recorded shall be recorded at the office of the Weld County Clerk and Recorder.

5.6 ***Owners Association:*** [Intentionally omitted.]

5.7 ***Dedication and Maintenance of Subdivision Improvements:*** Unless otherwise agreed by the Town and Developer: (1) the Public Improvements shall be owned, operated and maintained by the Town; (2) the Private Improvements shall be owned, operated and maintained by the Developer, the homeowner's association or a metropolitan district; and (3) the Dry Utilities shall be owned, operated and maintained, as appropriate and otherwise authorized, by the Developer, the homeowner's association, a metropolitan or special district or the appropriate public utility company.

WATER AND SEWER SERVICE

6.1 The Town and Developer shall enter into a Water and Sewer Service Agreement setting forth their agreement concerning water rights dedication, preliminary projections of water and sewer demand and a commitment by the Town for water and sewer service to the Development. The Water and Sewer Service Agreement, whenever executed, shall be incorporated into this Agreement and made a part hereof.

6.2 If the Developer hereinafter desires to utilize a non-potable water system to irrigate the Property, or any part thereof, the Town and Developer shall enter into a subsequent agreement regarding such system and, if appropriate, amend the Water and Sewer Service Agreement.

6.3 The Developer shall own and maintain the stormwater infrastructure for the Development.

BUILDING PERMITS

7.1 The Town shall not issue building permits for the Development until: (1) Developer has paid all applicable use tax due and owing to the Town and all other fees required by the Town, including but not limited to water and tap fees, impact fees, storm drainage fees and cash-in-lieu payments due, if any, to the Weld County School District RE-5J; (2) Developer

has installed service up to the meter pit/vault and curb stop and meter and curb stop have passed inspection unless otherwise approved by the Town in writing; (3) Developer has provided the Maintenance Guarantee; (4) the parties have entered into a Water and Sewer Service Agreement; and (5) all terms of this Agreement have been faithfully kept by Developer.

7.2 On the condition that the Performance Guarantee remains in effect and that all Subdivision Improvements be completed prior to the issuance of certificates of occupancy, the Town shall issue building permits prior to the following: (1) completion of the Subdivision Improvements, (2) issuance of the Notice of Construction Acceptance of the Public Improvements and (3) issuance of written notice of approval of the Private Improvements.

7.3 If at any time the Town determines that Developer is not in compliance with this Agreement, the Final Plat, Site Development Plan, or the Approved Plans, the Town may withhold the issuance of building permits.

OPERATION STANDARDS

8.1 Construction activity shall occur only during the times set forth in the Code.

8.2 Developer shall control all weeds growing within the Development. Prior to the commencement of construction, Developer shall provide a weed management plan to the Town, outlining the manner and frequency in which the weeds shall be controlled. The Town shall have the right to object to the weed management plan. Developer further agrees to use the appropriate herbicide and undertake mowing of the property within the Development.

8.3 Developer shall, at all times, keep any public right-of-way which is open for public use free from accumulation of waste material, rubbish, dirt and mud caused by Developer's operation. Developer shall remove such waste material, rubbish, dirt and mud no less than weekly and, at the completion of the work, shall promptly remove all debris waste materials, rubbish, dirt, mud, tools, construction equipment, machinery, building materials, trash containers, and portable toilets from the public right-of-way.

8.4 Whenever the Town determines that any activity is occurring which is not in compliance with the requirements of any federal or state regulations applicable to water quality or stormwater control, the Town may order all construction activity stopped upon service of written notice. Developer, or its contractors, shall immediately stop all activity until authorized in writing by the Town to proceed. If Developer or a responsible party is not on the site or cannot be located, the notice to stop work shall be posted in a conspicuous place upon the area where the activity is occurring and shall state the nature of the violation. It shall be unlawful for any person to fail to comply with a stop work order.

8.5 In the event that Developer fails to perform the work specified in Paragraphs 8.2, 8.3 or 8.4 within a reasonable time period after receiving written notice from the Town, as determined by the Town, the Town may, in addition to other remedies, including those set forth

in Paragraph 7.3, perform the work required and charge Developer for said cost. Developer shall pay the Town for all costs incurred by the Town in the performance of the above said service within ten (10) days of the Town submitting an invoice for said services. If Developer does not remit the costs, in addition to other remedies, the Town may draw on the Performance Guarantee or Maintenance Guarantee.

8.6 Developer shall ensure that Developer's subcontractors cooperate with the Town's construction inspectors in all manners. Developer shall take all steps necessary to prevent its construction activities from damaging adjacent properties.

DEVELOPMENT STANDARDS

9.1 Developer shall comply with the requirements contained in the Annexation Agreement recorded in the real property records of Weld County, Colorado at Reception No. 3560161, except as specifically amended by the Economic Incentive Agreement and this Agreement.

9.2 Except as otherwise provided in this Agreement, the Final Plat, Site Development Plan, or Approved Plans, Developer shall comply with the Code, the Town's zoning ordinances, subdivision regulations, landscape guidelines and construction standards and specifications and the Johnstown Design Guidelines or, if operative with respect to the Development, the approved design guidelines.

9.3 Intentionally deleted.

9.4 Upon completion of construction, Developer shall provide complete construction drawings and final as-built drawings to the Town in print and digital form, in a manner that conforms to the Town's format and content requirements.

9.5 Developer shall take all necessary steps to prevent its construction activities from harming water quality, water bodies and wetlands. All drainage and holding ponds shall be kept free of standing water by whatever means possible including, but not limited to, pumping water out of any holding ponds.

LIABILITY, INSURANCE AND COST REIMBURSEMENT

10.1 ***Indemnification:*** Developer hereby agrees to indemnify and hold the Town, its employees, agents, representatives, insurers and self insurance pool harmless from and against any and all suits, demands, actions, damages, liability, losses, claims, fees and expenses, including attorney's fees, resulting or arising in any way from any breach or default of this Agreement or any acts or omissions of Developer, its employees, agents, consultants, representatives or subcontractors, except to the extent caused by gross negligence or willful misconduct of the Town. Developer shall promptly investigate, handle, respond to, and provide defense for and defend against any such liability, claims or demands at the sole expense of

Developer. Developer also agrees to bear all costs, expenses and attorney's fees related thereto whether or not such liability, claims or demands are groundless, false or fraudulent.

10.2 **Insurance:** Developer shall for itself and for its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of the Public Improvements and Private Improvements maintain such liability insurance including general liability, contractors liability, professional liability, comprehensive automobile liability and sufficient public liability insurance as will protect the Town, its employees, agents and representatives against any and all potential liability, claims, damage, demands, losses, and expenses which may be incurred or asserted pursuant to Paragraph 10.1 above. Liability insurance shall be in the minimum amount of One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) aggregate, or such greater amounts as may be established by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as may be amended. From and after the Effective Date until issuance of the Notice of Final Acceptance, the Developer shall list the Town, its officers, employees, agents and representatives, as additional insured on such liability policies. Whenever requested by the Town, Developer agrees to promptly submit certificates of insurance evidencing sufficient amounts, types and duration of insurance and showing the Town, its officers, employees, agents and representatives, as additional insureds. Developer shall not be relieved of any liability, claims, demands or other obligations assumed or set forth in this Development Agreement by reason of its failure to procure or maintain such insurance, or by reason of its failure to procure or maintain insurance in sufficient amounts, durations or types. In addition to the insurance specified above, Developer shall maintain workers compensation insurance, if so required by law, and shall require its contractors, subcontractors, representatives and agents engaged in the design, construction or installation of improvements to maintain workers compensation insurance in the amount required by law.

10.3 **Drainage Liability:** Developer shall indemnify and hold the Town harmless from any liability the Town may have on account of any change in the nature, direction, quantity, or quality of drainage flow resulting from the Development. In addition, Developer shall reimburse the Town for any and all costs, fees, and expenses, including attorney's fees, which the Town incurs in acquiring any rights-of-way or easements which the Town is required to acquire or condemn or which the Town is held to have acquired or condemned for drainage as a result of this Development. This provision shall survive Final Acceptance and the termination of this Agreement.

10.4 **Tax Liability:** Developer shall pay all outstanding taxes, encumbrances or obligations on any property dedicated or conveyed to the Town prior to or at the time of such dedication or conveyance, and shall indemnify and hold the Town harmless from any and all encumbrances, obligations or tax liability incurred prior to the dedication or conveyance to the Town.

10.5 **Use Tax:** Developer shall pay all applicable use tax due and owing to the Town prior to the commencement of construction.

10.6 **Cost Reimbursement to Town:** Buc-ee's Colorado and the Town executed a Cost Agreement dated August 2, 2021. The Town shall be entitled to use the funds deposited with the Town pursuant to such agreement for professional consultants, including, but not limited to engineers, testing and inspection companies and attorneys, engaged by the Town to process and complete the Development. To the extent the deposit is not sufficient, Developer agrees to execute a separate cost agreement with the Town or assume the obligations of Buc-ee's Colorado under the existing Cost Agreement. No matter how accomplished, Developer agrees to reimburse the Town for the costs set forth above.

10.7 **Colorado Governmental Immunity Act:** Nothing in this Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, its employees, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended.

DEFAULTS AND REMEDIES

11.1 A default by Developer shall exist if Developer fails to fulfill or perform any material obligation contained in this Agreement, the Final Plat, Site Development Plan, or the Approved Plans, or Developer fails to comply with the Town's ordinances, resolutions and regulations and all other applicable laws and regulations. In the event of a default, the Town shall deliver written notice to Developer of such default and Developer shall have ten (10) business days from receipt of such notice to cure the default. If the default is not of a type that may be cured within such ten (10) day period, Developer may provide written notice to the Town within such period that it is actively and diligently pursuing such cure and Developer shall thereafter have a reasonable time to cure the default, provided that Developer is at all times within that extended period actively and diligently pursuing a cure. In case of emergency, as determined by the Town, such written notice shall be deemed waived and the Town may proceed as it deems necessary at the expense of Developer or the issuers of the Performance Guarantee or Maintenance Guarantee.

11.2 If the default arises subsequent to the issuance of the Notice of Construction Acceptance and the default is not timely cured, the Town may draw on the Maintenance Guarantee. If the default relates to the improvement secured by the Performance Guarantee and the default is not timely cured, the Town may draw on the Performance Guarantee. In addition, and without limitation, if the default is not timely cured, the Town may withhold approval of any or all building permits, certificates of occupancy, water meters or tap hook-ups for any area within the Development. Notwithstanding these rights and remedies, the Town may pursue whatever additional remedies it may have against Developer or anyone, either at law, equity or pursuant to this Agreement. The Town's remedies shall be cumulative.

11.3 Should Developer default in any obligation under this Agreement, the Town may, at its discretion, complete such Subdivision Improvements at Developer's expense. The Town

shall estimate the cost of such improvements and give notice to Developer to pay such cost estimate. The Town shall use such payment for said improvements and refund any money collected in excess of the actual cost of said improvements. Should payment not be made within thirty (30) days of such notice, the Town may assess the amount of the cost estimate, plus ten percent (10%) to defray the cost of collection as provided by state law, to the Property and file a lien against the Property, such lien to have priority over all liens except (i) general taxes and prior special assessments and (ii) any deed of trust filed of record prior to the date such lien is filed by the Town. The Town may file such lien at any time after said thirty (30) days while Developer is in default of this Agreement.

SPECIAL PROVISIONS

12.1 The additional terms, conditions or provisions relating to the Development are set forth in **Exhibit B**, which is attached hereto, incorporated herein by this reference, and made a part of this Agreement.

12.2 **Release from Overall Development Agreement.** The Property is hereby released from the Overall Development Agreement.

MISCELLANEOUS

13.1 **No Waiver:** Delays in enforcement or the waiver of any one or more breaches of this Agreement by the Town shall not constitute a waiver of any of the remaining terms or obligations.

13.2 **Severability:** If any provisions or parts of this Agreement are judged to be unenforceable or invalid, to the extent practicable, such judgment shall not affect, impair or invalidate the remaining parts of this Agreement, the intention being that the various parts and provisions hereof are severable.

13.3 **Recording of Agreement:** This Agreement shall be recorded and shall be a covenant running with and against all the Property, property rights and improvements contained within the Development described in **Exhibit A** in order to put prospective owners, purchasers, successors, assigns, and others acquiring any interest in the property on notice as to the terms and obligations herein. No lots, tracts or parcels may be separately conveyed prior to recording the Agreement.

13.4 **Binding Effect:** Unless otherwise provided herein, this Agreement shall be binding upon Developer's heirs, successors, assigns, transferees and any other person or entity acquiring or purchasing any interest in any of the Property described in the attached **Exhibit A**.

13.5 **Transfer or Assignments:** In the event of a sale or transfer of any portion of the Development, the seller or transferor and the purchaser or transferee shall be jointly and severally liable for the performance of each of the obligations contained in this Agreement

unless, prior to the transfer or the sale, a written agreement satisfactory to the Town delineating and allocating the various rights and obligations for the Subdivision Improvements has been approved and executed by the Town.

13.6 ***Title and Authority:*** Developer expressly warrants and represents to the Town that it is the record owner of the Property and further represents and warrants that the undersigned has full power and authority to enter into this Agreement. Developer understands that the Town is relying on the representations and warranties contained herein in approving in entering into this Agreement.

13.7 ***Notice:*** All notices, consents, applications or other instruments provided for under this Agreement shall be deemed properly given and received: (1) when personally delivered and received, when sent by messenger service, or when forwarded by facsimile or electronic mail delivery, but only upon confirmation of receipt of such facsimile or electronic mail; (2) on the next day after deposit for delivery with a nationally-recognized overnight courier service; or (3) three business days after deposit in the United States mail, by certified mail with return receipt requested, postage prepaid and addressed as follows:

TO DEVELOPER:

Buc-ee's Johnstown, LLC
Attention: Legal
327 FM 2004
Lake Jackson TX 77566
Email: legal@buc-ees.com

TO TOWN:

Town of Johnstown
Attention: Town Manager
450 So. Parish
P. O. Box 609
Johnstown, CO 80534
Email: MLeCerf@JohnstownCO.gov

13.8 ***Costs and Attorney Fees.*** If the Developer breaches this Agreement, the Developer shall pay the Town's reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Agreement. Nothing herein shall be construed to prevent or interfere with the Town's rights and remedies specified elsewhere in the Agreement.

13.9 ***Vested Right.*** The Final Plat shall have vested rights for a period of three (3) years from the date of this Agreement. If, after such time, no reasonable and substantial efforts have commenced to construct the Subdivision Improvements, as determined by the Town at its sole discretion, said plat may be vacated by action of the Town.

13.10 ***Warranty of Developer:*** Developer warrants that the Subdivision Improvements shall be installed in a good and workmanlike manner and in compliance with the Approved Plans, this Agreement, the Final Plat, Site Development Plan, the Town's ordinances, resolutions and regulations and all other applicable laws and regulations and shall be substantially free of any defects in materials and workmanship.

13.11 **Governing Law and Venue.** This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Agreement shall be in Weld County, Colorado.

13.12 **No Presumption.** 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. 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.

13.13 **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this Agreement must be in writing and signed by the parties.

13.14 **Compliance with the Law.** Developer shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Agreement.

13.15 **No Third-Party Beneficiaries.** No person or entity, other than a party to this Agreement, shall have any right of action under this Agreement including, but not limited to, lenders, lot or home buyers and materialmen, laborers or others providing work, services or materials for the Subdivision Improvements shall not have any right of action under this Agreement.

13.16 **Force Majeure.** Neither party shall be liable for a failure to perform hereunder if such failure is the result of force majeure, which shall mean causes beyond the reasonable control of a party such as acts of God, labor strikes, war, terrorism, fire, pandemic or epidemic or action or inaction of government authorities.

13.17 **Headings.** The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

IN WITNESS WHEREOF, and agreeing to be fully bound by the terms of this Agreement, the parties have set their hands below on this _____ day of _____, 2022 (the "Effective Date").

(Signatures on following page.)

BUC-EE'S JOHNSTOWN, LLC

By: 
Joe O'Leary, Vice President

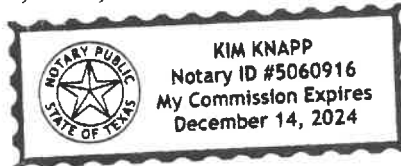
ml



STATE OF TEXAS)
) ss.
COUNTY OF BRAZORIA)

SUBSCRIBED AND SWORN to before me this 9 day of August, 2022, by Joe O'Leary, Vice President of Buc-ee's Johnstown, LLC, a Delaware limited liability company, on behalf of said limited liability company.

WITNESS my hand and official seal.

My commission expires: 12.14.24




Notary Public

TOWN OF JOHNSTOWN, COLORADO
a municipal corporation

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Hannah Hill, Town Clerk

**SITE DEVELOPMENT AND IMPROVEMENT AGREEMENT
FOR
THE TOWN OF JOHNSTOWN
(BUC-EE'S COLORADO)**

EXHIBITS

TABLE OF CONTENTS

EXHIBIT A:	Legal Description of the Property
EXHIBIT B:	Additional Terms, Conditions or Provisions
EXHIBIT C:	Schedule of Public Improvements
EXHIBIT D:	Form of Performance Obligation

EXHIBIT A

**LEGAL DESCRIPTION
(Property)**

Lots 1 and 2, Welty Ridge Subdivision – Filing No. 1, according to the plat recorded on December 15, 2021 at Reception No. 4785368. County of Weld, State of Colorado.

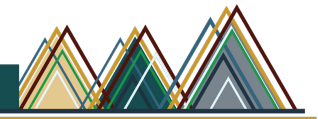
EXHIBIT B

ADDITIONAL TERMS, CONDITIONS OR PROVISIONS

- 1) Prior to Notice of Construction Acceptance, Developer shall pay to the Town a cash-in-lieu amount for a proportional share of the planned West Johnstown Water Tank at a calculated pro rata cost of \$970/SFE, multiplied by the Development's demand of 45.26 SFE's, for a total of \$43,902.
- 2) A utility easement for the on-site domestic water meter vault shall be delineated and granted by separate document to the Town, prior to Notice of Construction Acceptance.
- 3) Developer shall participate in a signage and wayfinding program, as designed by/for the Town and approved by the Public Works Director, through fabrication and installation of signage on or adjacent to the Weld County Road 48 rights-of-way, as shown in Exhibit B-1, noted as "Buc-ee's". Final signage location, size, and quantity will be determined based on traffic signage rules and guidelines.
- 4) Developer may be obligated to execute a crossing agreement, or other similar form of agreement, with the Consolidated Home Supply Ditch and Reservoir Company. If so, Developer shall obtain the Town's approval of the form of the agreement before the Developer executes the agreement and, upon Final Acceptance, unless otherwise required by the Town, assign the agreement to the Town.

EXHIBIT B-1
Signage and Wayfinding Program

Buc-ee's Signage Types & Locations



*** Auto Directional Sign Double-Sided (Johnstown)**

\$15,000 - \$30,000
(approximate, final costs based on final design drawings*)

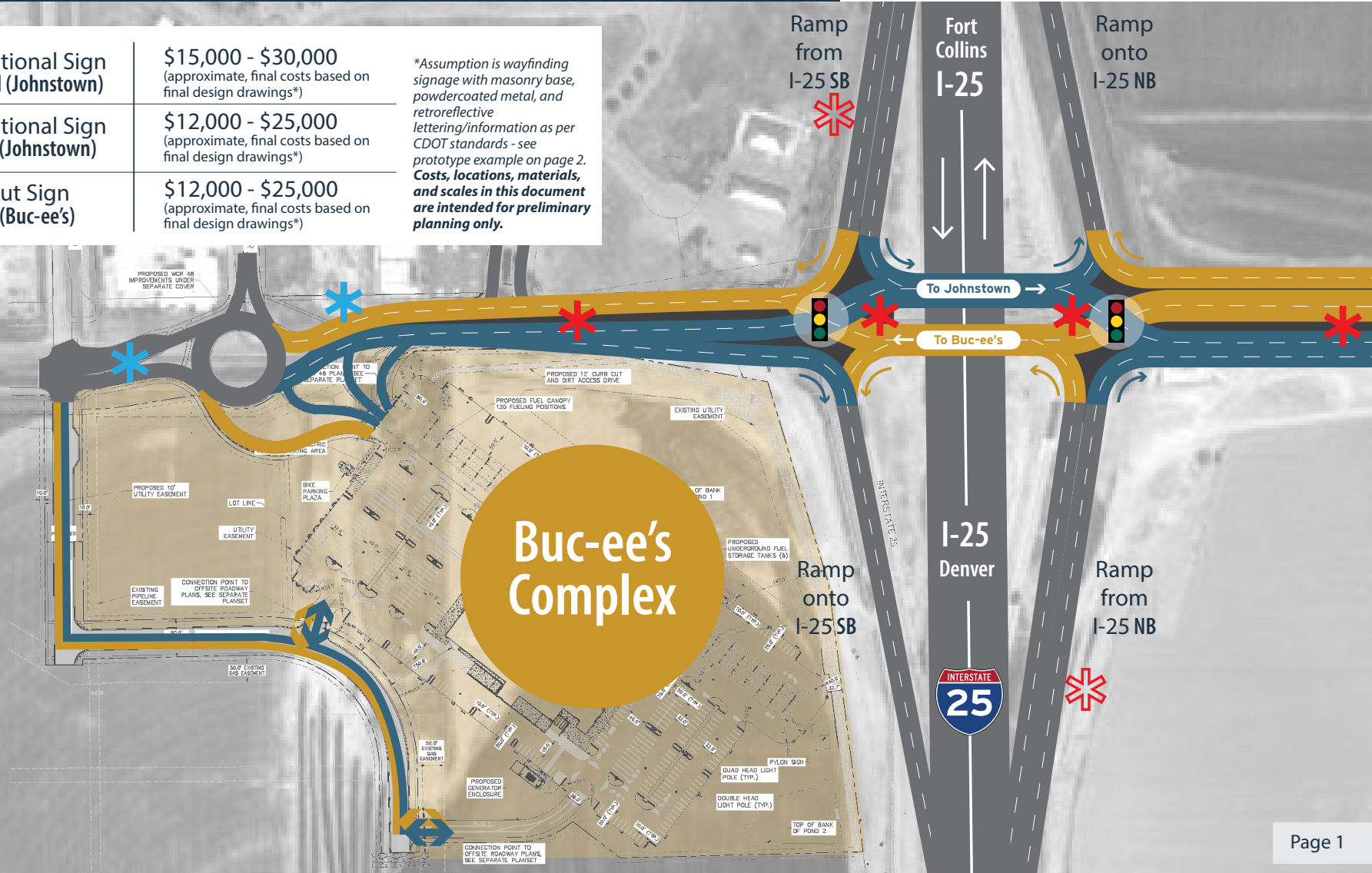
*** Auto Directional Sign Single-Sided (Johnstown)**

\$12,000 - \$25,000
(approximate, final costs based on final design drawings*)

*** Roundabout Sign Single-Sided (Buc-ee's)**

\$12,000 - \$25,000
(approximate, final costs based on final design drawings*)

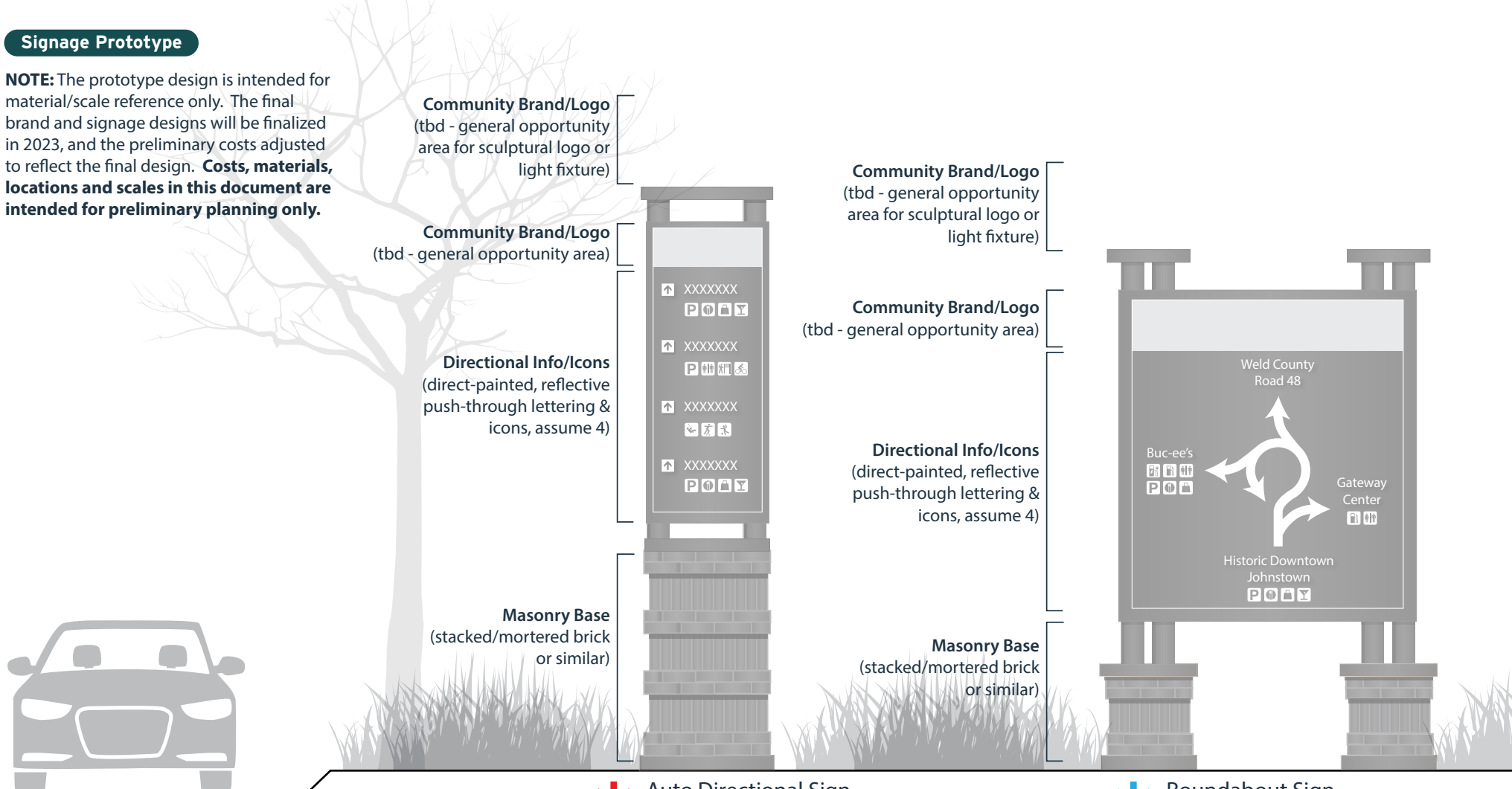
**Assumption is wayfinding signage with masonry base, powdercoated metal, and retroreflective lettering/information as per CDOT standards - see prototype example on page 2. Costs, locations, materials, and scales in this document are intended for preliminary planning only.*



Buc-ee's Signage Types & Locations

Signage Prototype

NOTE: The prototype design is intended for material/scale reference only. The final brand and signage designs will be finalized in 2023, and the preliminary costs adjusted to reflect the final design. **Costs, materials, locations and scales in this document are intended for preliminary planning only.**



 Auto Directional Sign
 Double-Sided (Johnstown)

 Roundabout Sign
 Single-Sided (Buc-ee's)

Buc-ee's Signage Types & Locations



Signage Construction & Engineering Details, Rules & Regulations

US Department of Transportation Federal Highway Administration - Manual on Uniform Traffic Control Devices (MUTCD)

2004 Edition with 2012 Supplement:
https://mutcd.fhwa.dot.gov/ser-shs_millennium.htm

Weld County Sight Distance Triangle Information

Weld County Engineering and Construction Criteria, Section 4.4:
<https://www.weldgov.com/files/sharedassets/public/departments/public-works/documents/evans-folder/2020-weld-county-engineering-and-construction-criteria-final-version-2021-03-17.pdf>

Important CDOT References

The following are references to use when verifying the final signage design to comply with CDOT standards:

Section 614 - Maintaining Traffic

<http://www.dot.state.oh.us/Divisions/ConstructionMgt/OnlineDocs/2009MOP/600%20Incidentals/614/614%20Maintaining%20Traffic.htm>

Example of CDOT Special Use Permit:

<https://www.codot.gov/business/permits/utilitiesspecialuse/documents/ExampleStandardProvisionsForPermits.pdf>

CDOT 2019 Standard Specifications for Road and Bridge Construction:

<https://www.codot.gov/business/designsupport/cdot-construction-specifications/2019-construction-specifications/2019-specs-book>

CDOT Guide Signing Policies & Procedures:

<https://www.codot.gov/library/traffic/traffic-manuals-and-guidelines/fed-state-co-traffic-manuals/colorado-guide-signing-policies-and-procedures-2012-1>

2019 M-S Standard Plans:

<https://www.codot.gov/business/designsupport/2019-and-2012-m-standards/2019-m-standards-plansdures-2012-1>

Informational Letter Heights Per Travel Speeds

Please refer to the following chart when checking letter heights for each sign:

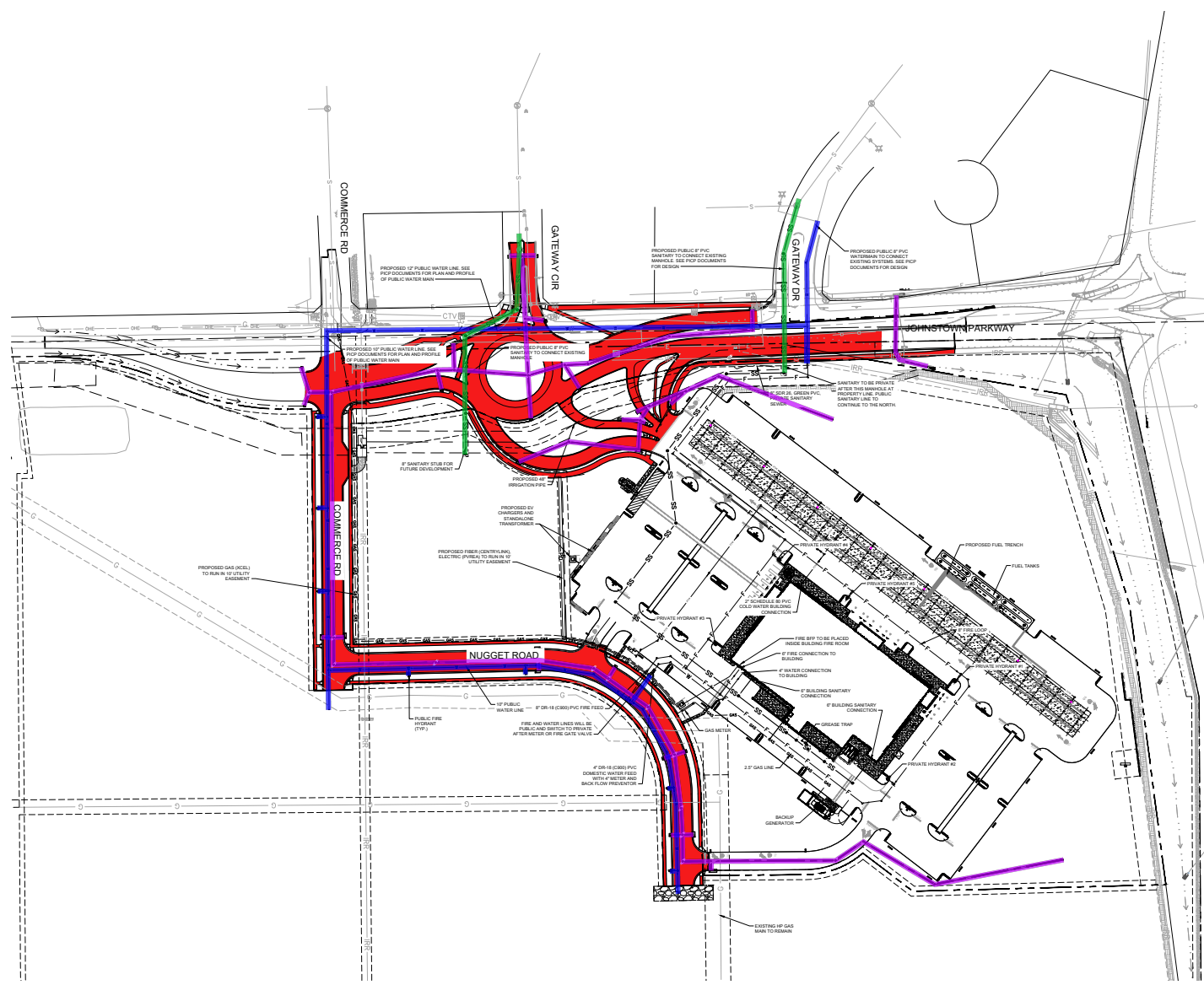
Letter Size vs. Distance			Viewing Exposure in Seconds				
Character Height	Optimal Viewing Distance	Max Viewing Distance	Speed of Viewer				
			20 mph	30 mph	40 mph	50 mph	60 mph
3"	30'	100'	3.4	2.5	1.7	1.3	.9
4"	40'	150'	5.1	3.4	2.5	2.0	1.4
6"	60'	200'	6.8	4.5	3.4	2.7	1.9
8"	80'	350'	12.0	7.9	5.9	4.7	3.4
9"	90'	400'	13.6	9.0	6.8	5.4	3.8
10"	100'	450'	15.3	10.2	7.6	6.1	4.3
12"	120'	525'	17.9	11.9	8.9	7.1	5.1
15"	150'	630'	21.5	14.3	10.7	8.5	6.1
18"	180'	750'	25.59	17.0	12.7	10.2	7.3
24"	240'	1000'	34.1	22.7	17.0	13.6	9.7
30"	300'	1250'	42.6	28.4	21.3	17.0	12.1
36"	360'	1500'	51.1	34.0	25.5	20.4	14.6
42"	420'	1750'	59.7	39.7	29.8	23.8	17.0
48"	480'	2000'	68.2	45.4	34.1	27.2	19.4
60"	600'	2500'	85.3	56.81	42.6	34.1	24.3

The letter style used for measuring is a sans serif face with medium stroke, such as Arial Bold. Based on black letters on white background. Distance may vary 10% with various color combinations. Viewing ranges approximate.

EXHIBIT C

**SCHEDULE OF PUBLIC IMPROVEMENTS
(ATTACHED)**

ALL UTILITIES SHOWN ARE BASED ON RECORD DRAWINGS AND FIELD SURVEY. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES. THE CONTRACTOR SHALL BE RESPONSIBLE FOR VERIFYING THE LOCATION AND DEPTH OF ALL UTILITIES.

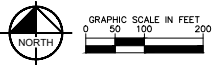


- LEGEND:**
- — — — — PROPERTY LINE
 - - - - - PROPOSED EASEMENT
 - - - - - EXISTING EASEMENT
 - PROPOSED FIRE HYDRANT
 - ▨ PROPOSED SIDEWALK
 - W — W — PROPOSED WATER LINE
 - W — W — EXISTING WATER LINE
 - F - F - F - PROPOSED FIRE LINE
 - SS — SS — PROPOSED SANITARY SEWER PIPE
 - PROPOSED SANITARY SEWER CLEANOUT
 - ⊙ PROPOSED SANITARY SEWER MANHOLE

- JOHNSTOWN UTILITY NOTES:**
- CONTRACTOR SHALL INSTALL ALL UTILITIES PER JOHNSTOWN DESIGN CRITERIA AND CONSTRUCTION MANUAL.
 - SECTION 2615 FOR DIP PIPES, 2622 FOR PVC PIPES. NOTE THE TRACER REQUIREMENT FOR PVC
 - ON-SITE FH TO BE YELLOW FIRE HYDRANTS WITH A RED HAT.

- DRF HYDRANT NOTES**
- NO VEHICLE PARKING SHALL BE PERMITTED IN FRONT OF THE FIRE SPRINKLER SYSTEM'S FIRE DEPARTMENT CONNECTION (FDC) OR ANY ON-SITE FIRE HYDRANT
 - FIRE HYDRANTS SHALL BE AS SPECIFIED IN THE ADOPTED IFC AND BY THE TOWN OF JOHNSTOWN AND FRFR. THEY SHALL INCLUDE 5 SIDED OPERATING NUTS AND TURN COUNTER—CLOCKWISE TO OPEN.
 - THE MAIN OUTLET SHALL BE FACING THE BUILDING WITH A MINIMUM 18-INCH CLEARANCE FROM THE FINISHED GRADE TO THE CENTER OF THE MAIN OUTLET CONNECTION.
 - NEW HYDRANTS SHALL BE SET BACK A MINIMUM OF 3 FEET FROM THE CURB FACE AND SHALL BY AT LEAST 3 FEET (INCLUDING OVERHEAD) FROM VEGETATION AT FULL MATURITY, WITH THE EXCEPTION OF GRASS AND GROUND COVER, AS WELL AS FENCES, BUSHES, TREES, ROCKS, WALLS, OR ANY OTHER OBJECT THAT WOULD INTERFERE WITH HYDRANT OPERATION. MINIMUM 6 FEET OVERHEAD CLEARANCE SHALL BE PROVIDED FOR EACH HYDRANT.
 - HYDRANTS NOT PROTECTED BY APPROVED CURBS SHALL HAVE VEHICLE IMPACT PROTECTION INSTALLED PER CHAPTER 3 OF THE ADOPTED INTERNATIONAL FIRE CODE, AS WELL AS REQUIRED SIGNS.
 - CURBS ADJACENT TO FIRE HYDRANTS SHALL BE PAINTED RED 15 FEET, CENTERED ON THE HYDRANT, OR HAVE APPROVED NO PARKING – FIRE LANE SIGN POSTED.
 - PRIVATE HYDRANTS SHALL BE PAINTED RED. PRIVATE HYDRANTS SHALL BE PAINTED YELLOW WITH A RED HAT.

- PUBLIC WATER IMPROVEMENTS
- PUBLIC STORM SEWER IMPROVEMENTS
- PUBLIC SANITARY SEWER IMPROVEMENTS
- PUBLIC ROAD IMPROVEMENTS



NO.	REVISION	BY	DATE
3	SDP SUBMITTAL #2	KW	06-15-2022
2	SDP SUBMITTAL #1	KW	06-15-2022
1	SDP SUBMITTAL #2	KW	02-24-2022

Kimley-Horn
 ©2022 KIMLEY-HORN AND ASSOCIATES, INC.
 4582 South Ulster Street, Suite 1800
 Denver, Colorado 80237 (303) 228-2200
 DESIGNED BY: KEW
 DRAWN BY: DNP
 CHECKED BY: KEW
 DATE: 06/15/2022

BUC-EE'S #60 JOHNSTOWN, CO
 5201 NUGGET ROAD, BERTHOUD, CO 80513
 SDP AND CONSTRUCTION DOCUMENTS
 OVERALL UTILITY PLAN

FOR REVIEW ONLY
 NOT FOR
 CONSTRUCTION
Kimley-Horn
 Kimley-Horn and Associates, Inc.

PROJECT NO.
 196094000
 SHEET
 C-21

EXHIBIT D
FORM
BOND AND IRREVOCABLE LETTER OF CREDIT



Site Improvement Bond

Bond No: _____

KNOW ALL MEN BY THESE PRESENTS, that we, _____, as Principal, and _____, a _____, authorized to do business in the State of _____, as Surety are held and firmly bound unto _____, as Obligee in the penal sum of _____, Dollars (\$_____), lawful money of the United State of America, for the payment of which truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, _____ has agreed to construction in _____ for the following improvements:

NOW THEREFORE THE CONDITION OF THE OBLIGATION IS SUCH that if the said Principal shall construct, or have construction, the improvements herein described and shall save the Obligee harmless from any loss, cost or damage by reason of its failure to complete said work, then this obligation shall be null and void; otherwise to remain in full force and effect.

THIS BOND WILL TERMINATE upon written acceptance of the improvements by the obligee to the Principal and/or Surety.

Signed, sealed and dated this _____ day of _____, _____.

Principal

Witness: _____

BY: _____

Atlantic Specialty Insurance Company

Witness: _____

BY: _____

_____, Attorney-in-fact

605 Highway 169 North, Suite 800
Plymouth, Minnesota, USA 55441
Web: intactspecialty.com/surety
E-mail: surety@intactinsurance.com

NAME OF ISSUING BANK _____
ADDRESS OF ISSUING BANK _____

Town of Johnstown
450 So. Parish
P. O. Box 609
Johnstown, CO 80534

ATTENTION: TOWN OF JOHNSTOWN ATTORNEY AND TOWN MANAGER

We hereby establish, at the request and for the account of this Irrevocable Letter of Credit in favor of the Town of Johnstown in the amount of \$_____. The purpose of this Letter of Credit is to secure performance of a Site Development and Improvement Agreement for Buc-ee's Johnstown, dated the ___ day of _____, 2022, between the Town of Johnstown and Buc-ee's Johnstown, LLC, a Delaware limited liability company.

You are hereby authorized to draw on sight by drafts or written demands up to the aggregate amount of \$_____. The sole condition for payment of any demand made or draft drawn against this Irrevocable Letter of Credit is that the Town's demand or draft be accompanied by a letter, on the Town's stationery, signed by the Town Manager to the effect that "the Town of Johnstown has declared a default under the Development Agreement."

Partial and multiple drawings are permitted hereunder.

We hereby agree with the Town of Johnstown and its drawers, endorsers, and bona fide holders of demands made or drafts negotiated under this Letter of Credit that the same shall be duly honored upon presentation and delivery of the documents as specified above.

This Irrevocable Letter of Credit is not transferable.

This Letter of Credit shall be for a twelve (12) month term from the date of execution hereof. It is a condition of this Letter of Credit that it shall be automatically renewed, without amendment, for additional periods of one year each from the present or any future expiration date, unless, at least sixty (60) calendar days prior to the effective expiration date, the Town Manager notifies you in writing delivered by certified U.S. mail, return receipt requested, to your address set forth above that the Town of Johnstown elects not to renew this Letter of Credit for any further additional period. Upon your receipt of our written notification of impending expiration, you may draw the unused balance of this Irrevocable Credit upon your written demand or your sight draft. With the exception of C.R.S. §4-5-108(b) concerning the period of time in which to honor or reject a draft, demand or credit, this Letter of Credit shall be governed and construed in accordance with the laws of the State of Colorado. In the event of a conflict between the provisions of the Colorado Uniform Commercial Code and the provisions hereof, the provisions hereof shall control.

Signed this _____ day of _____, 20_____.

Issuing Bank: _____

By: _____

Officer's Title: _____

Address: _____

STATE OF)
) ss.
COUNTY OF)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20_____, by _____ as the _____ of _____.

WITNESS my hand and official seal.

My commission expires:

Notary Public