

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between **A C ICE COMPANY, INC.**, a Colorado Corporation (“Developer”) and **THE TOWN OF JOHNSTOWN**, a Colorado municipal corporation, (“Town”), collectively sometimes referred to as the “Parties”.

WITNESSETH:

WHEREAS, the Developer owns an interest in land comprised of approximately 2.24 acres and known as Lot 1, Block 2, Filing 4 of the Final Plat I-25 Gateway Center, Replat “A”, more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed as an ice storage and distribution warehouse that will include a 14,563 square-foot building footprint of which: 1,040 square-feet will be an office/reception area, including 2 restrooms and break room; a 3,300 square-foot shop and dry storage area, including a service sink; and approximately 10,000 square feet of freezer space and staging area (collectively, the “Project”). The Project will include 0.10 acre of spray-irrigated turf and 0.18 acre of drip-irrigated mulched shrubs and trees, all sourced from the Town’s potable water system; and

WHEREAS, I-25 Gateway Center, LLC, a Colorado limited liability company, previously dedicated ten (10) shares of stock in the Consolidated Home Supply Ditch and Reservoir Company to the Town to supply the required water for those certain lands in the development known as the I-25 Gateway Center; and

WHEREAS, after execution of four separate water and sewer service agreements with the Town, on October 7, 2019, the Town and I-25 Gateway Center, LLC entered into an Addendum to Water Sewer Service Agreements with the Town (“Addendum”), wherein the parties agreed that, based on the initial dedication of water and the then existing use of the water, I-25 Gateway Center, LLC had a surplus raw water credit with the Town in the amount of 33.917 acre-feet; and

WHEREAS, I-25 Gateway Center, LLC desires to assign a portion of the raw water credit to the Developer to supply the necessary water demand for the Project, as evidenced in Exhibit B, attached hereto and incorporated herein by reference; and

WHEREAS, based on such assignment, the Developer and the Town desire to set forth their agreement concerning water rights dedication and use of the raw water, preliminary projections of water and sewer demand, and a current commitment by the Town for water and sewer service for the Project.

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, and incorporating the foregoing recitals into the agreement, the Parties hereto agree as follows:

1. Water and Sewer Demand Studies. In compliance with the Town Water Rights Dedication Ordinance, Chapter 13, Sections 13-111 through 13-126, inclusive, of the Johnstown Municipal Code, as amended, (“Ordinance”), Developer has submitted to the Town a preliminary Water and Sewer Demand Analysis for the Project dated August 11, 2020. Said analysis was received by the Town and is on file with the Town and as modified by the Town’s Water Engineer by memorandum dated September 24, 2020, is hereby accepted by the Town as to the Potable Water demands. Said analysis addresses the projected water and sewer demands for the Project as follows:

| Development Component (Potable) | Demand (AF/YR) | Consumption (AF/YR) |
|---------------------------------|----------------|---------------------|
| In-building use | 1.10 | 0.06 |
| Landscaping irrigation | 0.52 | 0.44 |
| Total potable water use | 1.62 | 0.50 |

2. Water Rights Dedication. I-25 Gateway Center, LLC has dedicated to the Project 1.62 acre-feet of its existing raw water credit, as shown in Exhibit B.

3. 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 Project up to 1.62 acre-feet per year of potable water supply together with the corresponding sewer service.

4. 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 Project, 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 based on actual water usage.

5. Payment of Water Court Transfer fees. Within ten days of the execution of this Agreement, Developer shall pay to the Town the sum of Four Hundred Eighty-Six Dollars (\$486.00) as payment of the Water Court Transfer Fees required by the Ordinance, based upon three (3) single family equivalent units.

6. Notices. All notices, demands, or other documents required or desired to be given, made or sent to either Party under this Agreement shall be made in writing, shall be deemed effective upon receipt and shall be personally delivered, sent by electronic mail or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO DEVELOPER:

A C Ice Company, Inc.
Attn: Edward Churchwell
221 Hospital Road
Brush, CO 80723

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534
Email: dseele@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.
1660 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.

7. 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 and the non-defaulting Party desires to seek recourse, the Parties shall participate in mediation, the costs of which shall be shared equally by both Parties. If mediation is not successful after a ninety-day period, either Party may then commence an action in a court of competent jurisdiction, and shall be entitled to such remedies as are provided by law, including the Town's ordinances.

8. 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.

9. 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.

10. 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.

11. 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.

12. 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.

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

14. Choice of laws. 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 claim, proceeding or action shall be in Weld County, State of Colorado.

15. Entire agreement and Authorization. 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. Each of the undersigned represents to the others that he/she is authorized by his/her respective entity to execute this Agreement on behalf of that entity.

16. 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.

17. Recordation. This Agreement may be recorded by the Town at Developer's expense in the office of the Clerk and Recorder of Weld County, Colorado, and, effective as of the date of such recordation, this Agreement shall run with the Subject Property, shall be binding upon the Parties hereto and the permitted successors and assigns of the Developer and shall 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 on Separate Page]

A C Ice Company, Inc.

By: _____

Name: Edward Churchwell

Title: President

STATE OF COLORADO)

) ss

COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021 by Edward Churchwell as President of A C Ice Company, Inc.

Witness my hand and official seal.

Notary Public

Address

Telephone

My Commission Expires:

TOWN OF JOHNSTOWN, COLORADO,
a municipal corporation

By: _____

Gary Lebsack, Mayor

ATTEST:

By: _____

Diana Seele, Town Clerk