

WATER AND SEWER SERVICE AGREEMENT

THIS WATER AND SEWER SERVICE AGREEMENT (“Agreement”) is made and entered into this ____ day of _____, 2021, by and between the **THOMPSON SCHOOL DISTRICT R2-J**, a political subdivision of the State of Colorado (“School District”), and **THE TOWN OF JOHNSTOWN**, a Colorado home rule municipal corporation, (“Town”), collectively sometimes referred to as the “Parties.”

WITNESSETH:

WHEREAS, the School District owns an interest in approximately 16 acres of land within the Town of Johnstown, located at 3550 Barkwood Drive, Johnstown, Colorado 80534, and more specifically described in the attached Exhibit A (“Subject Property”); and

WHEREAS, the Subject Property is being developed to include a 130,000 square-foot school with a capacity for up to 1,000 students, 4.11 acres of irrigated turf and 0.78 acres of drip-irrigated mulched planting beds (“Project”); and

WHEREAS, the School District 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 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, 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”), the School District has submitted to the Town a preliminary Water and Sewer Demand Analysis for the Project, which analysis was subsequently amended and re-amended September 21, 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 a second revised memorandum dated September 23, 2020, is hereby accepted by the Town as to the potable water demands. The analysis provided by the School District addresses the projected water and sewer demands for the Project as follows:

Development Component (Potable)	Demand (AF/YR)	Consumption (AF/YR)
In-building water use	2.54	0.13
Irrigation of 4.11 acres turf	10.28	8.74
Drip irrigation of 0.78 mulched beds	1.17	0.99
Total potable water use	13.99	9.86

In addition to the above listed water demand, the School District will irrigate an area of up to 2.69 acres to re-establish native vegetation. This irrigation will be allowed in an amount up

to 2.69 acre-feet per year for not more than 3 irrigation seasons after the execution of this agreement. After the end of the third irrigation season, this area will no longer be irrigated. Continued irrigation of this area will be a material breach of this agreement.

2. Water Rights Dedication. Within 10 days after the mutual execution of the Agreement, the School District will dedicate to the Town 2 shares of stock in the Consolidated Home Supply Ditch & Reservoir Company, which shares have been changed to include municipal use, totaling 16 acre-feet of usable water per year (“Water Stock”). If this dedication is not made within the required time period, this Agreement will be voided without further action from either of the Parties.

3. Surplus dedication credit. The dedication of the Water Stock and other supplies described in paragraph 2, above, has provided potable raw water credits in excess of the water demand projected for the Project. As a result of said dedication, The School District will have a surplus dedication credit with the Town of approximately 2.01 acre-feet. The credit is calculated as follows:

Credit for Potable Water Dedicated:	16.00 acre-feet
LESS:	
Estimated Potable Demand:	13.99 acre-feet
Net current surplus potable credit:	2.01 acre-feet

4. Commitment to serve. Subject to the School District’s performance of all the covenants contained herein and payment of all required fees, the Town commits to provide to the Project up to 13.99 acre-feet per year of potable water supply together with the corresponding sewer service.

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 Project, at a point in time after water usage has been established, to confirm the adequacy of the water demand projections made by the School District, and to require additional water rights dedication and/or cash-in-lieu payments based on actual water usage.

6. Payment of Water Court Transfer fees. Upon execution of this Agreement, the School District must pay to the Town the sum of FOUR THOUSAND TWO HUNDRED DOLLARS (\$4,200) as payment of the Water Court Transfer Fees required by the Ordinance. This payment is only for the required dedication of 13.99 acre-feet per year of estimated potable water demand and estimated potable consumptive use of 9.86 acre-feet per year (28 SFE) for the Project and has not been assessed against any of the surplus dedication credit of 2.01 acre-feet. If the actual demand for the Project increases, additional fees will be required. Further, in accordance with the Ordinance, additional 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 Town’s Ordinance. If an upward adjustment in demand is warranted based on actual water

usage as described in paragraph 5, above, the Water Court Transfer Fee will also be increased proportionately

7. 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 or mailed postage prepaid, certified mail, return receipt requested, as follows:

TO THE SCHOOL DISTRICT:

Thompson School District R2-J
Attn: Superintendent
800 South Taft Ave.
Loveland, CO 80537

TO THE TOWN:

Town of Johnstown
c/o Town Clerk
450 S. Parish Ave.
Johnstown, CO 80534

WITH A COPY TO THE
SCHOOL DISTRICT'S ATTORNEYS:

Caplan & Earnest LLC
3107 Iris Ave., Suite 100
Boulder, CO 80301

WITH A COPY TO
THE TOWN ATTORNEYS:

Avi Rocklin, Esq.
Johnstown Town Attorney
1437 N. Denver Avenue, #330
Loveland, CO 80538

Peter J. Ampe
Hill & Robbins, P.C.
1660 Lincoln St., Suite 2720
Denver, CO 80264

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 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.

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. 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 Larimer or Weld County, State of Colorado.

16. 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.

17. Recordation. This Agreement may be recorded by the Town at School District's expense in the office of the Clerk and Recorder of Larimer 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 School District 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.

THOMPSON SCHOOL DISTRICT R2-J

By: _____

Name:

Title:

STATE OF COLORADO)

) ss

COUNTY OF _____)

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2021 by
_____ as _____ of Thompson School District.

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