

MEMORANDUM OF UNDERSTANDING
BETWEEN THE TOWN OF JOHNSTOWN
AND THE JOHNSTOWN HISTORICAL SOCIETY

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this ___ day of _____, 2024, by and between the Town of Johnstown, Colorado, a Colorado home-rule municipality (“Town”), and the Johnstown Historical Society, a Colorado non-profit corporation (“JHS”). The Town and JHS may collectively be referred to as the “parties” or singularly as a “party.”

RECITALS

WHEREAS, the JHS is a non-profit entity whose mission is to enrich the community through the preservation, interpretation, and dissemination of collected local culture; and

WHEREAS, the Town allows the JHS to utilize space in a Town owned facility, known as the “Parish House” and located at 701 Charlotte Street, Johnstown, CO 80534 (“Facility”), free of charge, for museum and historical events and for storage of JHS owned property; and

WHEREAS, despite the JHS’s use of the space in the Facility for many years, the Town and the JHS have not formalized their business association; and

WHEREAS, to memorialize their relationship, the Town and the JHS desire to enter into this MOU.

AGREEMENT

THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Operations.** The JHS’s operations will be managed exclusively by the JHS and its Board of Directors. Upon the Town’s request, the JHS shall provide updates to the Town with respect to its operations.

2. **Staff.** The Town will assist the JHS in transitioning the Museum Director to employment with JHS begin January 1, 2025. On and after January 1, 2025, the Museum Director will be employed by JHS, and not by the Town, and the JHS shall thereafter be responsible for payment of all employment taxes, workers’ compensation and other taxes or benefits. Unless either party provides written notice to the other to cease such service, the Town agrees to continue to provide payroll processing services on behalf of the JHS. The Town shall issue monthly invoices to the JHS for all payroll-related expenditures, which shall be reimbursed to the Town by the JHS within thirty (30) days of receipt of the invoice.

3. Facility Use.
 - a. The JHS shall be entitled to use the Facility for the museum and for historical events.
 - b. The JHS shall be entitled to use the Facility for storage of personal property that is used to support the museum, and historical events. Within ten (10) days of termination of this MOU, the JHS property shall be removed from the Facility.
 - c. The JHS shall not be entitled to use the Facility for any purpose not set forth herein absent the Town's written consent. If the JHS uses the Facility for an unauthorized purpose, the Town may take corrective action it deems necessary including, but not limited to termination of this MOU as provided in Paragraph 4 or Paragraph 5.
 - d. The days and hours of operation of the Facility shall be agreed upon in writing by the JHS and the Town Council of the Town of Johnstown ("Town Council") and reviewed at least annually. At a minimum, the museum will have open hours both on weekdays and weekends.
4. Term. The term of this MOU shall commence on January 1, 2025, and terminate on December 31, 2025. Unless either party provides written notice to terminate on or before November 1 of a calendar year, this MOU shall automatically extend for additional one-year terms.
5. Termination. Notwithstanding the term of this MOU as provided in Paragraph 4 above, this MOU may be terminated if:
 - a. After written notice from the Town to the JHS and a reasonable opportunity to cure, not exceeding thirty (30) days, the JHS is in default of any provision of this MOU;
 - b. The Facility becomes damaged to such an extent that, at the Town's discretion, it would not be prudent or feasible to rebuild;
 - c. The personal property inside the Facility is damaged, destroyed or removed from the Facility, in any manner, such that the operation of the Facility as a museum is not feasible or practicable;
 - d. Upon thirty (30) days written notice from the Town to the JHS; or
 - e. Upon thirty (30) days written notice from the JHS to the Town.
6. Personal Property. The Town shall have no liability or responsibility whatsoever for the JHS's personal property and shall not be responsible for loss, theft, or damage to the JHS's property while at the Town's Facility.
7. Utilities and Maintenance. The Town shall provide and pay for all utilities, including internet service, to the Facility and maintain the Facility in good condition and repair. Modifications of the utility services are only to be made by the Town. The Town's Public Works Director is responsible for maintaining the Facility and all decisions regarding maintenance and repairs and the timing of such maintenance and repairs at the Facility will be determined by the Public Works Director. The JHS shall, within a reasonable time of

discovery, not to exceed ten (10) days, report maintenance concerns to the Town's Public Works Director. All maintenance and repairs are subject to budget appropriations approved by the Town. The JHS shall be responsible for furnishing the Town with a detailed list of maintenance items that are beyond the scope of regularly scheduled maintenance. This list should be submitted with the annual budget. The Town maintains the Facility to ensure that it retains its historical use designation and the JHS shall not undertake any action that compromises such designation.

8. Insurance. The Town shall maintain liability insurance for the Facility. The Town shall maintain property insurance for the Facility. The Town shall not maintain property insurance for the JHS's personal property at the Facility. The JHS may, at its discretion, obtain adequate insurance coverage to protect its personal property. If the JHS obtains personal property insurance, the Town may request proof of such insurance coverage.
9. Financial Reporting Obligation. To ensure financial transparency, the JHS shall have an obligation to provide the Town with the following financial information:
 - a. Quarterly financial reports that include a balance sheet, income statement, and cash flow statement. These reports are due thirty (30) days after the completion of each month; and
 - b. Year-end financial statements, including a balance sheet, income statement and cash flow statements for the year. This report is due no later than February 1st of each year.

If the financial statements are not provided to the Town as set forth herein, the Town may, in addition to termination pursuant to Paragraph 5, suspend the JHS's access to the Facility.

10. Annual Budget. Prior to the adoption of the budget by the JHS's Board of Directors, the JHS shall prepare an annual budget and shall provide a copy to the Town for review and comment. The Town may propose amendments to the budget for the JHS's consideration. Consistent with general accounting practices, the budget shall set out the estimated revenues and expenditures for the following fiscal year and shall be submitted to the Town no later than July 31st of each year.
11. Audit. At any time during the term of this MOU and for three (3) years after the termination of this MOU, the Town may, at its sole discretion and expense, audit or have audited the JHS operations during such fiscal year and the JHS shall cooperate with any such audit by promptly making its financial records available to the auditor upon reasonable notice and during normal business hours.
12. Financial Commitment. On the condition that the JHS is in substantial compliance with the terms of this MOU, the Town agrees to provide the following:
 - a. Subject to annual appropriation by the Town Council, at its discretion, an annual stipend for employees and operations in the amount of \$71,150.00;
 - b. A one-time cash payment to the JHS in the amount of \$10,000.00. This payment is intended to support the JHS in enhancing its ability to operate independently;
 - c. Utilities for the Facility;

- d. Maintenance and repairs for the Facility; and
- e. A security system for the Facility. The Town shall have sole discretion in determining the appropriate system and setup for the property.

In addition, on an as needed basis, the Town agrees to consider providing funding for grant matches. These requests shall be presented to the Town Council and be considered as they occur with a preliminary request prior to the grant application submittal. Funding for grant applications will not be provided without the Town Council's consideration and approval.

13. Compliance. The JHS shall comply with all applicable laws, rules and regulations. The JHS shall not do or permit any action to be done that might result in a breach of this MOU. The JHS shall not permit, cause or allow others to cause anything in the Facility to be done that might result in:
- a. A violation of the law, civil or criminal;
 - b. A breach of the peace;
 - c. An increase in insurance rates;
 - d. Negative publicity for the Facility or the Town; or
 - e. A decrease in the value of the Facility.

If the JHS is found to violate any provision of the law or fines or penalties are assessed against the JHS, the JHS shall provide prompt written notice to the Town.

14. Colorado Historical Society Covenant Property Protection. The parties recognize and agree that, for as long as it is in effect, they are bound by, and subject to, the Covenant Property Protection attached hereto and incorporated herein by reference as Exhibit A.
15. Indemnification. The JHS agrees to indemnify, protect and save harmless the Town from and against any and all damages, losses, liabilities, obligations, penalties, claims, litigation, demands, defenses, judgments, suits, actions, proceedings, costs, disbursements and/or expenses (including, without limitation, reasonable attorneys' and experts' fees, expenses and disbursements) of any kind or nature whatsoever which may at any time be imposed upon, incurred by or asserted or awarded against the Town, relating to or arising from the JHS's use of the Facility.
16. Assignment. The JHS may not assign its rights or duties under this MOU without receiving the prior written consent of the Town.
17. No Third-Party Beneficiaries. This MOU is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
18. Notices. All notices, consents or other instruments provided for under this MOU shall be deemed properly given when: (1) hand-delivered; 2) sent by registered or certified mail, return receipt requested, postage prepaid, to the addresses of the parties herein set forth; or (3) sent by electronic mail return receipt requested and received. Either party, by notice to be given, may change the address to which future notices shall be sent.

TO JHS:

Johnstown Historical Society
Attention: Clair Hull
701 Charlotte St.
Johnstown, CO 80534

Email: clairhull@msn.com

TO TOWN:

Town of Johnstown
Attention: Town Manager
450 S. Parish
P. O. Box 609
Johnstown, CO 80534

Email: mlecerf@johsntownco.gov

19. Waiver. No consent or waiver, express or implied, by the Town to or of any breach or default by the JHS in the performance by the JHS of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default by the Town. Failure on the part of the Town to complain of any act or failure to act or to declare the JHS in default, irrespective of how long such failure continues, shall not constitute a waiver by the Town of its rights hereunder.

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

21. Costs and Attorney's Fees. If any judicial proceedings may hereafter be brought to enforce any of the provisions of this MOU, 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.

22. Mediation. In the event of any dispute arising under this Agreement, except in the case of an action for injunctive relief, the parties shall submit the matter to mediation prior to commencing legal action and shall share equally in the cost of the mediation.

23. Entire Agreement and Amendments. This MOU constitutes the entire agreement and understanding between the parties and supersedes all prior agreements or understandings. Any amendment to this MOU must be in writing and signed by the parties. Unless the Town agrees to waive the notice period, the JHS shall provide the Town with at least sixty (60) days' notice of request for an amendment to this MOU.

24. No Presumption. Each party acknowledges that it has carefully read and reviewed the terms of this MOU. Each party acknowledges that the entry into and execution of this MOU 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 MOU and with respect to all matters set forth herein. The parties agree that this MOU reflects the joint drafting efforts of all parties and in the event of any dispute, disagreement or controversy arising from this MOU, the parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

25. 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 MOU

This MOU is entered into on the ____ day of _____, 2024, and upon signature of the authorized representatives of each party, shall become effective and binding on each party.

TOWN OF JOHNSTOWN

ATTEST:

By: _____
Meghan Martinez, Town Clerk

By: _____
Matt LeCerf, Town Manager

JOHNSTOWN HISTORICAL SOCIETY

ATTEST:

_____, Secretary

By: _____
Name: _____
Title: _____

EXHIBIT A
Covenant Property Protection

[Attached]

Johnstown Historical Society Ltd
Retaining Wall Reconstruction
Project #2023-01-028

Exhibit E

COVENANT PROPERTY PROTECTION

I. Parties: This Agreement is by and between the State of Colorado for the use and benefit of the Department of Higher Education, History Colorado, the Colorado Historical Society, 1200 Broadway, Denver, Colorado 80203 and **Town of Johnstown**, Property Owner, PO Box 609, Johnstown, Colorado 80534.

II. Property: the Harvey J. Parish House-Parish House Museum located at 701 Charlotte Street, Johnstown, Colorado, in Weld County, which has been listed in the National Register of Historic Places, and is more particularly described as follows:

JOH 21730 E65' L4-5-6 BLK3 1ST ADD TO PARISH HEIGHTS

III. Preservation of Property:

A. EASEMENT: If required, in the sole discretion of the State, the provisions in the following paragraph are hereby incorporated into this agreement:

Easement Required: Yes No

- i. Property Owner shall place or cause to be placed on the property title a perpetual easement, which easement shall be transferred to an organization qualified to hold easements of this kind under Section 170(h)(3) of the Internal Revenue Code and Internal Revenue Service Regulations, Section 1.170A-14(c).
- ii. The easement shall, at a minimum, prohibit any alteration of the premises, which would affect the exterior appearance of the property unless first authorized by the easement holding organization with appropriate exceptions to permit routine maintenance. Other necessary language shall protect the interests of the easement holding organization in the event of damage to the property, and shall further require that the easement be transferred to a similar organization in the event that the selected organization becomes unable for any reason to perform its obligations pursuant to the easement agreement.
- iii. Property Owner agrees that the easement form and any associated costs shall be subject to the approval of the State. State shall pay the costs for the easement in the amount(s) set forth in Exhibit B.

B. COVENANT: The Property Owner hereby agrees to the following for a period of 20 years commencing on the date it is filed with the County Recorder.

- i. Without the express written permission of History Colorado, no construction, alteration, movement, relocation or remodeling or any other activity shall be undertaken or permitted to be undertaken on the Property which would alter the architectural appearance of the Property, adversely affect the structural soundness of the Property, encroach on the open

**Johnstown Historical Society Ltd
Retaining Wall Reconstruction
Project #2023-01-028**

Exhibit E

land area of the Property, or adversely affect such prominent landscape features as trees, hedges, fences, walls or paths. Such work, when permitted shall be performed according to the Secretary of the Interior's *Standards for the Treatment of Historic Properties and the Guidelines for Preserving, Rehabilitating, Restoring, and Reconstructing Historic Buildings*, issued and as may from time to time be amended by the U.S. Secretary of the Interior, hereinafter collectively referred to as the "*Standards*". In all events, the Property Owner further agrees at all times to maintain the Property in a good and sound state of repair and to maintain the Property according to the *Standards* so as to prevent deterioration of the Property.

- ii. In the event of severe damage or total destruction to the Property (defined, for the purpose of this provision, as sudden damage or loss caused by fire, earthquake, inclement weather, acts of the public enemy, riot or other similar casualty) not due to the fault of the Property Owner this provision shall terminate as of the date of such damage or destruction.
- iii. History Colorado, or a duly appointed representative of History Colorado, shall be permitted to inspect the Property at all reasonable times in order to ascertain if the above conditions are being observed.
- iv. When Section B is for COVENANT, within sixty (60) days of the completion of this Award, Property Owner covenants and agrees that History Colorado will record this Exhibit with the county clerk and recorder for the county in which the property is located. Property Owner further covenants and agrees that this Exhibit will constitute a binding covenant that will run with the land.
- v. When section B is for LETTER OF AGREEMENT, History Colorado will maintain record of this Exhibit until the expiration of the letter of agreement period.
- vi. The provisions of this Paragraph will cease to be effective upon the conveyance of an approved easement if such is required pursuant to EASEMENT Paragraph above.

Johnstown Historical Society Ltd
Retaining Wall Reconstruction
Project #2023-01-028

Exhibit E

SIGNATURE PAGE

*Persons signing for Owner hereby swear and affirm that they are authorized to act on Parties' behalf and acknowledge that the State is relying on their representations to that effect.

<p>OWNER Town of Johnstown</p> <p><u><i>Gary Lebsack</i></u> *Signature of Authorized Officer for Owner</p> <p>Date: <u>1-11-23</u></p>
<p><u>Gary Lebsack</u> Printed Name of Authorized Officer</p> <p><u>Mayor</u> Title of Authorized Officer</p>

PROPERTY OWNER NOTARIZATION:

STATE OF COLORADO, Weld COUNTY:

On this 11 day of January, 2023, before me the undersigned, a Notary Public for said State, personally appeared Gary Lebsack, to me personally known, who stated that he/she is Mayor, that no seal has been procured by said Town, and that the foregoing instrument was signed on behalf of said Town by authority of its Town Council, and that as such officer, he/she acknowledged that he/she executed the foregoing instrument as his/her voluntary act and the voluntary act of the Town.

<p>HANNAH VICTORIA HILL Notary Public State of Colorado Notary ID # 20184028995 My Commission Expires 07-18-2026</p>
--


Hannah Victoria Hill
NOTARY PUBLIC

Exhibit A - MOU

Johnstown Historical Society Ltd
Retaining Wall Reconstruction
Project #2023-01-028

Exhibit E

STATE OF COLORADO
 Jared S. Polis, Governor
 History Colorado
 Dawn DiPrince, Executive Director or Designee


 By: Dawn DiPrince, Executive Director or Designee

Date: 12/6/2022

STATE OF COLORADO, CITY & COUNTY OF DENVER:

On this 6 day of December, 2022, before me the undersigned, a Notary Public for said State, personally appeared **Dawn DiPrince**, to me personally known, who stated that she is **Executive Director of History Colorado**, that no seal has been procured by said organization, and that the foregoing instrument was signed on behalf of said organization by authority of its Board of Directors, and that as such officer, she acknowledged that she executed the foregoing instrument as her voluntary act and the voluntary act of the State of Colorado-Department of Higher Education, History Colorado, the Colorado Historical Society.

DANY MCCOY
 Notary Public
 State of Colorado
 Notary ID # 20164031357
 My Commission Expires 12-16-2024
 NOTARY PUBLIC

