

**INTERGOVERNMENTAL AGREEMENT FOR CONSTRUCTING THE  
JOHNSTOWN WATER SUPPLY PIPELINE WITHIN PROJECT LIMITS OF  
THE HOME SUPPLY BRIDGE REPLACEMENT PROJECT AT COUNTY  
ROAD 14 AND COUNTY ROAD 15H**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into as of the Effective Date (defined below), by and between THE TOWN OF JOHNSTOWN, COLORADO, a municipal corporation (the “Town”), and THE BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO for the use and benefit of the Larimer County Engineering Department (the “County”) (collectively “the Parties”).

WHEREAS, the County is managing the construction of the bridge replacement over the Home Supply Ditch and associated roadway improvements (the “Bridge Replacement”) at the intersection of County Road 14 and County Road 15H in accordance with Exhibit A; and

WHEREAS, the Town is managing the design of a water supply pipeline (the “Pipeline”) within the Bridge Replacement project limits; and

WHEREAS, the Parties agree that, to the extent possible, the Bridge Replacement and Pipeline, which together shall be referred to as “the Project” should be coordinated for economic efficiency and to improve traffic safety; and

WHEREAS, in furtherance of such economic and operational efficiencies, the Parties intend to coordinate the construction of the Bridge Replacement and Pipeline (the “Project”) and this Agreement will identify how they will cooperate and how costs will be reimbursed; and

WHEREAS, the Parties have the authority pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

NOW, THEREFORE, in consideration of the mutual covenants herein, the Parties agree as follows:

1. **Town Management of Pipeline Design.** Design work for the Pipeline is still underway. The Town or its agents will design the Pipeline. The Pipeline will be designed in a good and workmanlike manner in accordance with applicable laws and standards including Town, County, and State standards and requirements. The Town will work with the County during the design process to ensure the Parties will have a chance to review and provide comment or request changes to the design. The Town will provide a bid package which

includes any and all necessary design plans, specifications, cost estimate, and other documentation necessary to incorporate the Pipeline into the Project. The Town or its agents will provide any necessary support during construction to resolve any design issues related to the Pipeline and ensure the Pipeline is constructed in a good and workmanlike manner.

2. **1041 Regulations.** The Pipeline is undergoing review by the County in accordance with HB 74-1041 regulations. This Agreement in no way indicates or guarantees approval through the 1041 process. To the extent that the Town's Pipeline is approved through the 1041 process, the Parties wish to coordinate to minimize disruption to the traveling public and to increase safety. The County shall not be obligated to incorporate the Pipeline into the Project in the event that the Pipeline is not approved, and the County is not obligated to incorporate the Pipeline to the extent that it increases costs or delays the schedule for the Bridge Replacement. Further, to the extent that the 1041 review process puts construction of the Pipeline outside the window of the Project construction, the Town agrees that it is responsible for any such additional costs and may have to pursue their Pipeline separately from the Bridge Replacement.
3. **County Management of Project and Town Requirements.** The County or its agents will manage the construction of the Project in cooperation with the Town. The Town or its agents will inspect and approve the construction of the Pipeline. The County will procure and furnish adequate materials, supplies, equipment, and labor to perform the Project. The Pipeline will be constructed in a good and workmanlike manner in accordance with applicable laws including Town and County standards.
4. **Construction Costs.** The design of the Project is underway. The Town shall provide a bid package which includes a cost estimate for the Pipeline and the County shall provide a bid package which includes a cost estimate for the Bridge Replacement. This agreement shall be amended to include the bid packages for the Pipeline and Bridge Replacement when they are complete in Exhibit B and Exhibit C, respectively. The County shall combine the bid packages for the Pipeline and Bridge Replacement to become the bid package for the Project. Larimer County will bid the construction phase of the Project in accordance with the County's bidding procedures. Identification of construction costs will be required for the Parties' budgetary purposes and appropriations. The County will provide written notice to the Town of the construction costs after bidding is complete and throughout the duration of the Project. The Town shall have the right to review the construction costs after bidding is complete. If the construction costs of the Pipeline exceed 20% of the cost estimate for the Pipeline, the Town may terminate this Agreement.

5. **Shared Construction Items.** Costs for construction bid items which are not bid separately but necessary for construction of both the Bridge Replacement and the Pipeline (e.g. mobilization, construction surveying, etc.), shall be paid for at a pro rata amount based on the proportional share of the construction costs (not including shared construction bid items) of each Party for the Project.
6. **County Accounting and Town Invoice.** The County shall maintain accurate accounts of all expenditures for the Project and shall provide the Town with a final accounting of all associated backup documentation for the costs after construction is complete. The County shall send an invoice to the Town when the Project is complete. The Town shall have thirty (30) days after receipt of the invoice to provide comments, if any, to the County and pay the undisputed portion of the invoice. If the Town disputes a portion of the invoice, the Town and the County shall confer in good faith to resolve the dispute.
7. **Construction Team Cooperation.** The Town and County shall each designate a representative to serve on the Project construction team. The Town and County will cooperate in the oversight of the construction process. Such oversight shall include input by appropriate technical specialists from both the Town and the County staff. The County will be responsible for inspection and approval of all construction elements within the scope of the Bridge Replacement and the Town will be responsible for inspection and approval of all construction elements within the scope of the Pipeline.
8. **Employee Status.** All employees of each governmental entity who perform any services in relation to this Agreement shall remain the employees solely of the governmental entity employing them to perform such services and not of any other party hereto. No Party shall obtain, by virtue of paying or being reimbursed for any personnel costs, any direct control over the management, scheduling or facilities operated by the other Party.
9. **County and Town Obligations.**
  - a. The County will contract for the construction of the Project in accordance with the bid package provided by the Town and will not approve additional Pipeline work without written prior approval from the Town.
  - b. The County agrees to pay all costs for construction of the Bridge Replacement and the Town agrees to pay all costs for construction of the Pipeline. Shared construction items shall be paid proportionally in accordance with Section 5.

- c. The Town agrees to design and maintain the Pipeline to meet County standards, including maintaining the Pipeline at a depth of at least two feet below the box culvert and roadway subgrade.
- d. The Pipeline shall be owned by the Town. Installation, construction, repair, and maintenance of the Pipeline shall be entirely without cost or expense to the County. The Town shall notify the County promptly in advance of any future waterline maintenance activities or repairs. In the event that future roadway improvements by the County require relocation of the Pipeline, the County shall notify the Town and the County and the Town shall thereafter coordinate in good faith regarding the relocation of the Pipeline.
- e. The contractor retained by the County to construct the Project shall provide the Town and the County with accurate as-built horizontal and vertical survey data (coordinates in State Plane and elevations in NAVD 88) describing the location of the pipeline and all appurtenant structures.
- f. The County shall not be responsible for any claims, damages, liability and court awards, including costs and expenses incurred as a result of any action or omission of the Town or its officers, employees, and agents, in connection with the performance of this Agreement. The Town shall not be responsible for any claims, damages, liability and court awards, including costs and expenses incurred as a result of any action or omission of the County or its officers, employees, and agents, in connection with the performance of this Agreement. Nothing in this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, or limitations of liability available to any party by law.

**10. Effective Date, Term and Termination.**

- a. This Agreement is effective as of the date the last Party signs this Agreement (“Effective Date”) and will continue until terminated.
- b. This Agreement will terminate upon the completion of construction of the Pipeline with a written and signed acknowledgment of the Parties. Additionally, either Party may terminate this Agreement with or without cause on at least one year's prior written notice to the other Party. In the event that the Town terminates, the County will have the option of continuing with the Project or terminating the Project. In the event the County continues with the Project, the Town will be responsible to pay the County the full amount of its share due for the Project (less its pro rata share of any savings if the Project costs less than originally anticipated) provided that the costs are related only to the installation of the Pipeline. If

the County terminates the Project, the Town shall only be responsible for its pro rata share of costs of the Pipeline incurred up to the effective date of the Town's termination.

- c. The Parties recognize the legal constraints imposed upon them by the constitutions, statutes, and regulations of the State of Colorado and of the United States and imposed upon Larimer County and the Town of Johnstown by their respective charters and codes, and, subject to such constraints, the Parties intend to carry out the terms and conditions of this Agreement. Notwithstanding any other provision in this Agreement to the contrary, in no event shall any party exercise any power or take any action which shall be prohibited by applicable law.
  - d. If either party defaults in its performance of any obligation under this Agreement, the non-defaulting party shall provide written notice of such default to the defaulting party. The defaulting party shall have thirty (30) calendar days following the date such notice is effective to cure, or to make substantial efforts to cure, the default. If the default continues uncured, and without substantial effort to cure such default, for such period, the non-defaulting party, at its option, may immediately terminate this Agreement or may elect to treat this Agreement as being in full force and effect. If the non-defaulting party elects to treat this Agreement as being in full force and effect, such party may bring an action for damages.
11. **Appropriations.** The Parties represent that sufficient appropriations exist to pay their respective obligations under this Agreement, and that no change orders will issue for the Project unless appropriations exist to cover any increased costs to the Parties. Notwithstanding the foregoing, each party's financial obligations under this Agreement are subject to annual appropriation by their respective governing bodies. Such financial obligations shall not constitute or give rise to a general obligation or other indebtedness of either party within the meaning of any constitutional or statutory provision or limitation of the State of Colorado nor a mandatory charge or requirement against either party in any ensuing fiscal year beyond the current fiscal year.
12. **No Third-Party Beneficiaries:** This Agreement is for the sole benefit of the County and the Town, and nothing herein shall be construed as giving any benefits, rights, remedies, or claims to any other person or entity. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the County and the Town. Any services or benefits which third parties receive as a result of this Agreement are incidental.
13. **No Waiver:** No term or condition of this Agreement shall be construed or interpreted as a waiver, either express or implied, of the monetary limits,

notice requirements, immunities, rights, benefits, defenses, limitations and protections available to the County or Town under any applicable law, including but not limited to the Colorado Governmental Immunity Act, as now written or hereafter amended; nor shall a waiver of any breach of this Agreement be deemed to constitute a waiver of any subsequent breach of the same provision of this Agreement.

14. **Severability:** If any provision of this Agreement, or the application of such provision to any person, entity, or circumstance, shall be held invalid, the remainder of this Agreement, or the application of such provision to persons, entities, or circumstances other than those in which it is held invalid, shall not be affected thereby.
15. **Force Majeure:** Notwithstanding anything contained herein to the contrary, it is agreed that in the event and to the extent that fire, flood, earthquake, natural catastrophe, explosion, accident, war, illegality, act of God, or any other cause beyond the control of any of the Parties hereto, or strikes and labor troubles (whether or not within the power of the party affected to settle the same) prevents or delays performance by any party to this Agreement, such party shall be relieved of the consequences thereof without liability, so long as and to the extent that performance is prevented by such cause; provided, however, that such party shall exercise due diligence in its efforts to resume performance within a reasonable period of time.
16. **Good Faith and Fair Dealing.** Each Party agrees to act in good faith in dealing with one another pursuant to this Agreement. Each Party hereby promises that it shall cooperate with each other in achieving the goal of this Agreement, which is to construct the Project while improving traffic safety by working cooperatively with one another.
17. **Authority:** The persons who sign and execute this Agreement represent that they are duly authorized to execute this Agreement in their individual or representative capacity.
18. **Binding Effect:** The Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.
19. **Counterpart Signatures:** The Parties agree that counterpart signatures of this Agreement shall be acceptable and that execution of the Agreement in the same form by each and every party shall be deemed to constitute full and final execution of the Agreement.
20. **Electronic Signature:** The Parties agree that this Agreement and related documents may be executed and stored by electronic means.

21. **Governing Law and Venue:** This Agreement shall be governed by the laws of the State of Colorado, and venue shall be in the County of Larimer, State of Colorado.

*Remainder of Page Intentionally Blank  
Signature Page Follows*

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

TOWN OF JOHNSTOWN, COLORADO,

By: \_\_\_\_\_  
Michael P. Duncan, Mayor

ATTEST:

\_\_\_\_\_  
Hannah Hill, Town Clerk

\_\_\_\_\_  
Date

APPROVED AS TO FORM:

\_\_\_\_\_  
Law Office of Avi S. Rocklin, LLC  
By: Avi Rocklin, Town Attorney

BOARD OF COUNTY COMMISSIONERS  
OF LARIMER COUNTY, COLORADO  
For the use and benefit of the Larimer County Engineering Department

By: \_\_\_\_\_  
Chair

ATTEST:

Approved as to form:  
Date: \_\_\_\_\_

\_\_\_\_\_  
Deputy Clerk to the Board

\_\_\_\_\_  
Asst. County Attorney