

RESOLUTION NO. 2018-08

A RESOLUTION AUTHORIZING AN AMENDMENT TO THE GOSHEN CARE CENTER JOINT POWERS BOARD JOINT POWERS AGREEMENT, DATED AS OF SEPTEMBER 1, 1996, BY AND BETWEEN GOSHEN COUNTY, WYOMING, AND THE CITY OF TORRINGTON, WYOMING.

WHEREAS, the Goshen Care Center Joint Powers Board (the "Board") is a duly organized and existing body corporate and politic under the provisions of the Wyoming Joint Powers Act, Wyo. Stat. §§ 16-1-101 through 16-1-110 (the "Joint Powers Act"), established under a Joint Powers Agreement entered into by and between Goshen County, Wyoming ("Goshen County") and the City of Torrington, Wyoming ("Torrington"), dated as of the 1st day of September, 1996 (the "Original Joint Powers Agreement"); and

WHEREAS, Goshen County and Torrington entered into the Original Joint Powers Agreement for the purpose of planning, constructing, financing and operating a nursing home facility in Torrington (the "Goshen Health Care Center"); and

WHEREAS, Goshen County and Torrington continue to assess the demand for health care facilities and services that will benefit their residents; and

WHEREAS, Goshen County and Torrington now desire to expand the services available for their seniors by constructing a 23,980 square foot, 30-unit assisted living facility on a three-acre site in Torrington that has been donated to the Joint Powers Board by Torrington (the "Assisted Living Facility"), which will promote a continuum of care and complement the Evergreen Court independent living with assistance facility and skilled nursing and memory care at the Goshen Health Care Center; and

WHEREAS, Goshen County and Torrington each constitute an "agency," under the Joint Powers Act [Wyo. Stat. § 16-1-104(a)] and are hereinafter sometimes referred to in the singular as "Participating Agency" and collectively as "Participating Agencies;" and

WHEREAS, any power, privilege or authority exercised or capable of being exercised by an agency may be exercised and enjoyed jointly with any other agency having a similar power, privilege or authority; and

WHEREAS, the Joint Powers Act [Wyo. Stat. § 16-1-104(c)(x)] provides that two (2) or more agencies may jointly plan, own, lease, assign, sell, create, expand, finance and operate public health facilities; and

WHEREAS, pursuant to Wyo. Stat. § 18-2-108, Goshen County and Torrington have the individual or joint authority to establish and operate public health facilities and to further purchase, lease, construct and operate facilities and equipment used in individual or joint operations; and

WHEREAS, Wyo. Stat. § 35-2-901(a)(x) defines "*health care facility*" as any ambulatory surgical center, *assisted living facility*, adult day care facility, adult foster care home, alternative eldercare home, birthing center, boarding home, freestanding diagnostic testing center, home health agency, hospice, hospital, freestanding emergency center, intermediate care facility for people with intellectual disability, medical assistance facility, *nursing care facility*, rehabilitation facility and renal dialysis center (emphasis added); and

WHEREAS, Wyo. Stat. § 35-2-901(xxii) defines “*assisted living facility*” as a dwelling operated by any person, firm or corporation engaged in providing limited nursing care, personal care and boarding home care, but not habilitative care, for persons not related to the owner of the facility. This definition may include facilities with secured units and facilities dedicated to the special care and services for people with Alzheimer’s disease or other dementia conditions; and

WHEREAS, Goshen County and Torrington have determined that the continued operation of the Goshen Health Care Center and the planning, constructing, financing and operating of the Assisted Living Facility (hereinafter, the Goshen Health Care Center and the Assisted Living Facility being collectively referred to as the “Health Care Facilities”) would continue to benefit residents of the Participating Agencies by providing needed health care facilities in Goshen County; and

WHEREAS, each of the Participating Agencies realizes that a joint and cooperative effort in the provision of Health Care Facilities will result in substantial economic savings and will provide methods of financing unavailable to either of the Participating Agencies operating independently; and

WHEREAS, each Participating Agency, in order to facilitate the Health Care Facilities, desires to amend the Original Joint Powers Agreement to expand the powers of the Joint Powers Board;

WHEREAS, attached hereto as EXHIBIT A, and by this specific reference is incorporated herein, is the Amended Joint Power Agreement; and

WHEREAS, upon approval by Goshen County and Torrington, the Amended Joint Powers Agreement, along with copies of the authorizing resolutions of Goshen County and Torrington, will be submitted to the Office of the Wyoming Attorney General for approval, and upon approval copies of the Amended Joint Powers Agreement will be filed with the Goshen County Clerk and the City Clerk/Treasurer of Torrington;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF GOSHEN COUNTY, WYOMING:

Section 1. Approval and Authorization. The form of the Amended Joint Powers Agreement is hereby approved. The Chairman of the Board of County Commissioners and the County Clerk are hereby authorized and directed to execute the Amended Joint Powers Agreement. A copy of the Amended Joint Powers Agreement shall be delivered, filed and recorded as provided in the Amended Joint Powers Agreement.

Section 2. Resolution Irrepealable. After the Amended Joint Powers Amendment has been formally entered into, this resolution shall be and remain irrepealable until the Joint Powers Board has been terminated as provided in the Amended Joint Powers Agreement.

Section 3. Repealer. All resolutions or parts thereof in conflict with this resolution are hereby repealed.

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Section 4. Severability. Should any part or provision of this resolution ever be judicially determined to be invalid or unenforceable, such determination shall not affect the remaining parts and provisions hereof, the intention being that each part or provision of this resolution is severable.

ADOPTED AND APPROVED as of the 16th day of October, 2018.

GOSHEN COUNTY, WYOMING


Chairman, Board of County Commissioners

ATTEST:


County Clerk



EXHIBIT A

**GOSHEN CARE CENTER JOINT POWERS BOARD
AMENDED JOINT POWERS AGREEMENT**

The **GOSHEN CARE CENTER JOINT POWERS AGREEMENT** was originally entered into as of the 1st day of September, 1996 (the "Original Joint Powers Agreement"), and is amended as of the 16th day of October, 2018 (the "Amended Joint Powers Agreement"), by and between Goshen County, Wyoming, a body corporate and politic (hereinafter referred to as "Goshen County") and the City of Torrington, Wyoming, an incorporated municipality in Goshen County (hereinafter referred to as "Torrington"). (Torrington has become a Wyoming city since the adoption of the Original Joint Powers Agreement.) The Original Joint Powers Agreement created the **GOSHEN CARE CENTER JOINT POWERS BOARD**, a body corporate and politic, and a public corporation (the "Joint Powers Board") pursuant to the Wyoming Joint Powers Act, Wyoming Stat. §§ 16-1-101 through 16-1-110 (the "Joint Powers Act").

W I T N E S S E T H:

WHEREAS, Goshen County and Torrington entered into the Original Joint Powers Agreement for the purpose of planning, constructing, financing and operating a nursing home facility in Torrington (the "Goshen Health Care Center"); and

WHEREAS, Goshen County and Torrington continue to assess the demand for health care facilities and services that will benefit their residents; and

WHEREAS, Goshen County and Torrington now desire to expand the services available for their seniors by constructing a 23,980 square foot, 30-unit assisted living facility on a three-acre site in Torrington that has been donated to the Joint Powers Board by Torrington (the "Assisted Living Facility"), which will promote a continuum of care and complement the Evergreen Court independent living with assistance facility and skilled nursing and memory care at the Goshen Health Care Center; and

WHEREAS, Goshen County and Torrington each constitute an "agency," under the Joint Powers Act [Wyo. Stat. § 16-1-104(a)] and are hereinafter sometimes referred to in the singular as "Participating Agency" and collectively as "Participating Agencies;" and

WHEREAS, any power, privilege or authority exercised or capable of being exercised by an agency may be exercised and enjoyed jointly with any other agency having a similar power, privilege or authority; and

WHEREAS, the Joint Powers Act [Wyo. Stat. § 16-1-104(c)(x)] provides that two (2) or more agencies may jointly plan, own, lease, assign, sell, create, expand, finance and operate public health facilities; and

WHEREAS, pursuant to Wyo. Stat. § 18-2-108, Goshen County and Torrington have the individual or joint authority to establish and operate public health facilities and to further purchase, lease, construct and operate facilities and equipment used in individual or joint operations; and

WHEREAS, Wyo. Stat. § 35-2-901(a)(x) defines "*health care facility*" as any ambulatory surgical center, *assisted living facility*, adult day care facility, adult foster care home, alternative eldercare home, birthing center, boarding home, freestanding diagnostic testing center, home health agency, hospice, hospital, freestanding emergency center, intermediate care facility for people with intellectual disability, medical assistance facility, *nursing care facility*, rehabilitation facility and renal dialysis center (emphasis added); and

WHEREAS, Wyo. Stat. § 35-2-901(xxii) defines “*assisted living facility*” as a dwelling operated by any person, firm or corporation engaged in providing limited nursing care, personal care and boarding home care, but not habilitative care, for persons not related to the owner of the facility. This definition may include facilities with secured units and facilities dedicated to the special care and services for people with Alzheimer’s disease or other dementia conditions; and

WHEREAS, Goshen County and Torrington have determined that the continued operation of the Goshen Health Care Center and the planning, constructing, financing and operating of the Assisted Living Facility (hereinafter, the Goshen Health Care Center and the Assisted Living Facility being collectively referred to as the “Health Care Facilities”) would continue to benefit residents of the Participating Agencies by providing needed health care facilities in Goshen County; and

WHEREAS, each of the Participating Agencies realizes that a joint and cooperative effort in the provision of Health Care Facilities will result in substantial economic savings and will provide methods of financing unavailable to either of the Participating Agencies operating independently; and

WHEREAS, each Participating Agency, in order to facilitate the Health Care Facilities, desires to amend the Original Joint Powers Agreement to expand the powers of the Joint Powers Board;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained herein, it is understood and agreed between the Participating Agencies as follows:

SECTION ONE PURPOSE

The purpose of this Amended Joint Powers Agreement is to provide an efficient, orderly, and economically feasible method of continued operation of the Goshen Health Care Center and the planning, constructing, financing and operating of the Assisted Living Facility, which would be of service to and be for the benefit of the Participating Agencies and their residents.

SECTION TWO DURATION OF THE AMENDED JOINT POWERS AGREEMENT

This Amended Joint Powers Agreement and the Joint Powers Board shall be of perpetual duration; however, this Amended Joint Powers Agreement and the Joint Powers Board may be dissolved and terminated by action of both of the governing bodies [i.e., the Board of County Commissioners of Goshen County (the “Goshen County Commissioners”) and the governing body of Torrington (the “City Council and Mayor,” which together with the Goshen County Commissioners will be sometimes collectively referred to as the “Governing Bodies of the Participating Agencies”)]; provided, that this Amended Joint Powers Agreement and the Joint Powers Board shall not be dissolved or terminated so long as outstanding financial obligations of the Joint Powers Board exist or provision for their payment or other satisfaction has not been made.

SECTION THREE CREATION, ORGANIZATION AND COMPOSITION OF JOINT POWERS BOARD

There has been created, pursuant to the Joint Powers Act (Wyo. Stat § 16-1-106), the “Goshen Care Center Joint Powers Board” (hereinafter referred to as the “Joint Powers Board”).

1. The Joint Powers Board shall consist of seven (7) members, all of whom shall be qualified electors of Goshen County. Pursuant to the Joint Powers Act (Wyo. Stat. § 16-1-106), it is not incompatible office holding for an officer or legal representative of Goshen County or Torrington to be a member of the Joint Powers Board.

2. The City Council and Mayor of Torrington shall appoint one (1) member who shall be an incumbent member of the City Council, to the Joint Powers Board; and six (6) members, one (1) of whom shall be an incumbent member of the Goshen County Commissioners, shall be appointed by the Goshen County Commissioners.

3. The said members shall be appointed within five (5) days of approval of this Joint Powers Agreement by the State Attorney General, and within fifteen (15) days after their appointment, the members of the Joint Powers Board shall hold an organizational meeting and shall determine by mutual agreement the terms of the members. Said appointments shall follow the following formula:

The initial appointments shall be by mutual agreement with staggered terms of one (1), two (2) and three (3) years and are subject to reappointment. Thereafter, appointments for a full term shall be for three (3) year staggered terms. Vacancies for unexpired terms shall be filled by appointment by the Governing Bodies of the Participating Agencies. Members of the Joint Powers Board may be removed by the respective Governing Bodies of the Participating Agencies.

All vacancy appointments shall be made by the governing body which made the appointment of the retiring member. In the event a vacancy should occur prior to the expiration of the retiring member's term, the successor shall be appointed for the unexpired portion of the retiring member's term and the appointment shall be made by the governing body which made the appointment of the retiring member.

4. At the organizational meeting the Joint Powers Board shall also elect from its membership a Chairman, Vice-Chairman, Secretary and Treasurer. The Secretary of the Joint Powers Board shall notify the Participating Agencies of the Joint Powers Board's organization and shall file a certificate showing its organization with the Goshen County Clerk and the Wyoming Secretary of State.

5. The Joint Powers Board shall meet at the call of the Chairman, upon oral or written request of a majority of the Joint Powers Board members, within five (5) days after the request is given by any Participating Agency, or in any event not less than once each three (3) months.

SECTION FOUR POWERS AND DUTIES OF THE JOINT POWERS BOARD

1. The Joint Powers Board may employ technical, legal, administrative and clerical assistance as necessary, and engage the services of research, consulting and management agencies or entities within the limits of its authorized and available funds, as may be agreed upon from time to time.

2. The Joint Powers Board shall adopt such policies, by-laws, and regulations, not inconsistent with this Joint Powers Agreement or the Joint Powers Act, as it deems necessary to carry out the business of the Joint Powers Board.

3. The Joint Powers Board shall:

a. Keep minutes of all meetings during which official action is taken as well as financial records. Such minutes and records shall be public records.

b. Fix the time and place of regular meetings; provided, that a regular meeting shall be held at least once each three (3) months.

c. Cooperate with and solicit the advice, counsel, and recommendations of the Governing Bodies of the Participating Agencies.

d. Keep the Governing Bodies of the Participating Agencies advised as to its progress and supply the elected officials thereof with annual written reports concerning its activities and finances.

4. The Joint Powers Board may:

a. Sue and be sued in the name in which the Joint Powers Board is designated.

b. Acquire, hold, convey, lease, rent, and manage property, real and personal, for the benefit of the Participating Agencies, either alone or jointly with public or private agencies, institutions, persons, or corporations.

c. Enter into agreements with any public or private agency, institution, person, or corporation for the performance of acts or furnishing of services or facilities by or for the Joint Powers Board or Participating Agencies.

d. Employ legal counsel and bear the cost of litigation.

e. Accept or reject any federal, state, or private gift, grant, bequest or devise of money, property or services.

f. Utilize the services of any officer or employee of the Participating Agencies, with the approval of the Governing Bodies of the Participating Agencies,

g. Insure against loss of property.

h. Subject to the approval of the Governing Bodies of the Participating Agencies, employ such other persons or entities as may be necessary to carry out the purposes of this Joint Powers Agreement.

i. Additionally, the Joint Powers Board shall have all other powers and duties enumerated in or reasonably implied from the Joint Powers Act and the statutes of the State of Wyoming.

SECTION FIVE HEALTH CARE FACILITIES FINANCING

The Joint Powers Board may formulate any plan or plans for financing the construction or improvement of the Health Care Facilities as it may deem appropriate. The Joint Powers Board may solicit and obtain funds from any of the following sources:

a. the contribution of funds from one (1) or more of the Participating Agencies which would be available to each agency if proceeding individually;

b. bond issues by one (1) or more of the Participating Agencies to construct, improve or acquire an interest in the Health Care Facilities in the same manner as bonds may be issued by the agency for its individual construction, improvement or acquisition of such a facility;

c. gifts, donations or grants of federal money;

d. the issuance by the Joint Powers Board of its revenue bonds under the authority of the Joint Powers Act [Wyo. Stat. 16-1-107(a)(iii)], to be repaid solely from the foregoing sources of funds or any revenue received by the Joint Powers Board from the ownership, lease or operation of property or interest in property owned, leased or controlled by the Joint Powers Board. The resolution authorizing the issuance of said revenue bonds and each revenue bond issued thereunder shall contain a recital that the bonds do not constitute a general obligation of the Joint Powers Board or of either of the Participating Agencies, but shall be payable solely from a special fund to contain the revenue to be derived from the ownership, lease or operation of property or interest in property owned, leased or controlled by the Joint Powers Board, and, further, that the lien of the pledge of the revenues constitutes a first lien, but not necessarily an exclusively first lien, on said revenues.

SECTION SIX NET EARNINGS OF JOINT POWERS BOARD

No part of the net earnings of the Joint Powers Board shall be distributed to, or inure to the benefit of, any member, officer, agent or employee of the Joint Powers Board, or to any private individual, except that reasonable compensation may be paid for services duly rendered by individuals other than officers or members of the Joint Powers Board and reimbursements may be made for expenses duly incurred, to or for the Joint Powers Board affecting one or more of its authorized purposes.

SECTION SEVEN OWNERSHIP OF THE HEALTH CARE FACILITIES

Ownership of the Health Care Facilities, and all property, whether real or personal, tangible or intangible, including all contract rights in connection therewith, and any improvements to be made thereto will be held by the Joint Powers Board and will not be further set over or alienated in any manner while the bonds or any other obligations of the Joint Powers Board issued in connection therewith are outstanding except as security for the payment of the principal of, premium, if any, and interest on such bonds.

SECTION EIGHT CONSTRUCTION, OPERATION, MAINTENANCE AND BUDGET FOR THE HEALTH CARE FACILITIES

The Joint Powers Board shall be solely responsible for: (a) the construction or improvement of the Health Care Facilities; (b) the complete and full operation and maintenance of the Health Care Facilities, including, but not limited to the payment of all, if any, salaries, required taxes, payments in lieu of taxes, assessments, insurance premiums and utilities; and (c) the establishment and maintenance of a budget for the Health Care Facilities. The Joint Powers Board may fulfill any or all of these responsibilities through agreements with a Participating Agency or Agencies or another third party or parties.

**SECTION NINE
TERMINATION, DISSOLUTION AND DISTRIBUTION**

The Joint Powers Board shall continue in existence until terminated as provided above; provided, however, that the Joint Powers Board and this Amended Joint Powers Agreement shall not be terminated, and shall continue in existence until all outstanding obligations of the Joint Powers Board, including all bond requirements of its bonds, shall have been fully paid and satisfied or provision for such payment shall have been made.

Further after satisfaction of all debts and obligations and upon termination and dissolution, the Joint Powers Board shall distribute, set over, transfer, convey or assign all facilities, improvements or other property owned or leased by the Joint Powers Board to Goshen County.

**SECTION TEN
RESTRICTIONS**

It is clearly understood that this Joint Powers Agreement expressly limits the Joint Powers Board to plan, create, expand, acquire, install, equip, construct, finance and operate the Health Care Facilities.

**SECTION ELEVEN
SEVERABILITY**

The terms, provisions and conditions of this Amended Joint Powers Agreement are severable. If any term or provision of this Joint Powers Agreement or its application to any person or circumstance is determined by a court of proper jurisdiction to be invalid, such invalidity shall be limited to such person, circumstance, term or provision and shall not affect other persons, circumstances, terms or provisions which can be given effect without the invalid provision or application.

This Amended Joint Powers Agreement is made and entered into as of the date set forth on the first page hereof, in accordance with the authorization by Resolutions adopted by majority vote of the duly elected members of the Governing Bodies of the Participating Agencies at duly called meetings thereof as noted below.

(Signature pages follow)

(Signature page for Goshen County, Wyoming)

By Resolution No. 2018-08, adopted October 16, 2018.

ATTEST:

GOSHEN COUNTY, WYOMING


County Clerk


Chairman, Board of County Commissioners



(Signature page for City of Torrington, Wyoming)

By Resolution No. 2018-12, adopted October 16, 2018.

ATTEST:

CITY OF TORRINGTON, WYOMING

City Clerk/Treasurer

Mayor

APPROVAL BY ATTORNEY GENERAL

In accordance with Wyo. Stat. § 16-1-105(a)(ii), this Amended Joint Powers Agreement has been reviewed and the Attorney General has determined that the Amended Joint Powers Agreement is compatible with the laws and constitution of the State of Wyoming. The approval of this Amended Joint Powers Agreement by the Attorney General is limited to the terms and conditions of the Amended Joint Powers Agreement itself, and the approval does not extend to any individual project nor the financing of any individual project contemplated under the Amended Joint Powers Agreement.

APPROVED this _____ day of _____, 2019.

**Bridget Hill
Attorney General
State of Wyoming**