



450 S. Parish Avenue  
Johnstown, CO 80534  
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JohnstownCO.gov

## **TOWN COUNCIL CONSENT AGENDA COMMUNICATIONS**

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**AGENDA DATE:** February 05, 2024

**SUBJECT:** Subdivision Development and Improvement Agreement for Encore HoldCo, LLC for Encore Filing No.1 Subdivision

**ACTION PROPOSED:** Consideration and Approval of the Subdivision Development and Improvement Agreement with Encore HoldCo, LLC for the Encore Filing No.1 Subdivision approved June 6, 2023

**ATTACHMENTS:**

1. Subdivision Development And Improvement Agreement For Town Of Johnstown (Encore Johnstown)
2. Resolution No. 2023-26 Approving the Plat for Encore Filing No.1
3. Encore Filing 1 Plat Approved June 20, 2023

**PRESENTED BY:** Tyler Smith, Planner II

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### **AGENDA ITEM DESCRIPTION:**

Encore HoldCo, LLC has requested consideration of the Subdivision Development and Improvement Agreement with Encore HoldCo, LLC for the Encore Filing No.1 Subdivision approved on June 6, 2023. The Subdivision Plat for Encore Filing 1, encompasses approximately 189 acres located west of Colorado Blvd., north of US Hwy 34, and east of High Plains Blvd. The subdivision includes substantial public improvements, which have been detailed in civil engineering plans and reports for this Development, with additional or specific obligations outlined in Exhibit B-3 of the agreement.

The proposed agreement is based upon the Town's standard agreement and requires payment of required fees and taxes, and all construction to occur per Town-approved engineering and construction plans. Exhibit B-3 details additional obligations of the Developer, which include:

- **Prior to Town acceptance of Final Construction plans, reports, and documents**, the Town shall receive the following documents from the Developer, to include:

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- Deed of Dedication for additional right-of-way along the east side of Colorado Blvd.
  - Deed of Dedication for western half of right-of-way along Schrader Street from North Timnath Properties, LLC.
  - Deed of Dedication for right-of-way for north-west leg of west round-about and bridge crossing over Greeley & Loveland Irrigation Canal, from North Timnath Properties, LLC.
  - Written evidence of pending reviews/approvals and general conceptual acceptance of the plans, from:
    - City of Greeley
    - Greeley & Loveland Irrigation Canal
    - Town of Windsor (Colorado Boulevard street design only)
  - The developer shall design the ultimate major arterial section of Colorado Boulevard at US Hwy 34 to the northern property boundary. In addition to the foregoing, Developer may, upon written approval from the Town Manager, design and thereafter construct the eastern half of Colorado Boulevard (the portion that is within the jurisdiction of the Town of Windsor) to an interim major arterial standard.
- **Prior to the Pre-Construction Meeting** and the start of construction activities, the Town must receive a copy of all plans and permits approved by the Colorado Department of Transportation (“CDOT”) related to the improvements along the southern frontage of this Development, including the intersection at Colorado Boulevard and US Hwy 34, the Right-in/Right-out intersection of Schrader Street and US Hwy 34, and realignment of the intersection at High Plains Boulevard and US Hwy 34.
  - **Prior to the Pre-Construction Meeting** and the start of construction activities, the Town must receive a copy of all approved plans and applicable easements, agreements, or permits related to the improvements that impact the City of Greeley water lines.
  - **Prior to the Pre-Construction Meeting** and the start of construction activities, the Town must receive a copy of all approved plans and applicable easements, agreements, or permits related to the improvements that impact the Greeley & Loveland Irrigation Company.
  - **Prior to the Pre-Construction Meeting** and the start of construction activities (except as provided in Section 1 above), the Town must receive a copy of all recorded utility easements for public water, storm, or sanitary infrastructure that may be located outside of platted right-of-way dedicated to the Town or which have not been otherwise granted to the Town via the Encore Filing No. 1 subdivision plat.
  - If the Town is intended to become a party to any agreement upon Acceptance of Public Improvements, forward all agreements drafts and notices to the Town of Johnstown for review and acceptance by the Town **prior to execution and recordation**. The Town may in its sole discretion refuse to accept obligations that originate in agreements that have not been reviewed and accepted by the Town.

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- **Prior to the Pre-Construction Meeting** and the start of construction activities, Developer shall obtain Town approval of the Encore Off-Site Storm Sewer Improvement Construction Plans.
- **Prior to December 31, 2025**, Developer or District shall construct the northern leg of High Plains Boulevard as shown in the Approved Plans for the Development and the intersection improvements, including signalization, at US Hwy 34, as provided in the Encore Filing No. 1 Construction Plans approved by the Town and by the Encore Development, US Hwy 34, County Road 3 to County Road 13, US Hwy 34 Access Improvement Plans dated January 27, 2023 approved by CDOT for Developer’s Encore Filing No. 1 Development (the “High Plains Boulevard Improvements”). Upon completion of the construction of the High Plains Boulevard Improvements and acceptance by the Town, at Developer’s request, Developer shall be entitled to partial reimbursement of the costs incurred by Developer for the same and the Town agrees to enter into a reimbursement agreement with Developer wherein the Town will endeavor in good faith to recover a proportionate share of the certified costs associated with the intersection improvements at US Hwy 34 and High Plains Boulevard and the crossing of the Loveland and Greeley Canal from the benefited property owners within the boundaries of, or that may be annexed to, the Town.
- **Prior to Notice of Construction Acceptance**, Developer or District is obligated to design, construct, and install all required improvements along US Hwy 34 and receive CDOT Acceptance, per plans approved by CDOT and the Town referenced in Sec. 2 of this Exhibit.
- **Upon Town’s good faith determination that an application for a site plan approval in the Development will cause the Town’s sanitary sewer transmission line serving the Development to exceed capacities then available in said sanitary sewer transmission line and written notice of the same from the Town**, Developer or District shall design and construct (as a condition of approval for the above referenced site plan approval), or financially participate in the design and construction of any necessary off-site sanitary sewer transmission line improvements or expansions to create adequate capacities to support full development of lands north of U.S. 34 (“Off-Site Sanitary Sewer Improvements”). Development and permitting in the Development may be limited by current capacities available in the sanitary sewer transmission line serving the Development until such Off-Site Sanitary Sewer Improvements are constructed and accepted by the Town.
  - Upon completion of the construction of the Off-Site Sanitary Sewer Improvements and acceptance by the Town (if constructed by Developer), at Developer’s request, Developer shall be entitled to partial reimbursement of the costs incurred by Developer for the same and the Town agrees to enter into a Reimbursement Agreement with Developer or District, or any third-party who constructs such improvement, wherein the Town will endeavor in good faith to recover a proportionate share of the certified costs of the of the Off-Site Sanitary Sewer Improvements from benefitted property owners.

- **Prior to Notice of Construction Acceptance**, Developer is required to complete a 16-inch looped water transmission line that extends from the east side of the Johnstown North Water tank, south through the Development to the northern boundary of the US Hwy 34 right-of-way (the “Water Line Improvements”).
  - **Prior to Pre-Construction Meeting**, Developer shall obtain Town-approved public improvement construction plans for construction of the Water Line Improvements. Except as the scope may be modified, if at all as approved by the Town, the Water Line Improvements shall be completed prior to the issuance of Notice of Construction Acceptance for the Development. The developer shall be responsible for obtaining applicable easements, agreements, or permits required for the Water Line Improvements.
  - **Prior to Pre-Construction Meeting**, Developer shall provide an updated certified engineering cost estimate for the Water Line Improvements prior to construction and provide performance guarantees as outlined in Section 2.7 of this Agreement.
  - **Upon completion of the construction of the Water Line Improvements and acceptance by the Town**, at Developer’s request, Developer shall be entitled to partial reimbursement of the costs incurred by Developer for the same and the Town agrees to enter into a Reimbursement Agreement with Developer wherein the Town will endeavor in good faith to recover a proportionate share of the certified costs of the Water Line Improvements from benefitted property owners.
  - **To ensure adequate pressure and reliability in the water distribution system**, Developer shall design the bore and casing infrastructure across US Hwy 34 at a location approved by the Town and CDOT at the Developer’s cost. Prior to notice of construction acceptance, Developer shall construct the bore and casing improvements. Developer may, within thirty (30) days following completion of the construction of the bore and casing improvements and issuance of notice of construction acceptance, provide an invoice to the Town for cost of the bore and casing improvements, which invoice shall include a certification of the costs of the construction and materials. The Town agrees, within thirty (30) days of receipt of such invoice, to reimburse the Developer for the certified costs. The Town shall be entitled to reimbursement for such costs from benefitted property owners.
  - Notwithstanding the foregoing, if the Town were to grant economic incentives to Developer with respect to development of any portion of the Property, beyond those set forth in the Annexation Agreement dated March 20, 2006 and recorded in the real property records of Larimer County at Reception No. 2006-0027835 (“Annexation Agreement”), Developer shall be responsible for both the design and construction costs associated with the bore and casing improvements. In such case, the Town agrees to enter into a reimbursement agreement with Developer, if desired, wherein the Town will endeavor in good faith to recover a proportionate

share of the certified construction costs associated with the bore and casing improvements from benefitted property owners.

- **Prior to: (i) Notice of Construction Acceptance, (ii) the abandonment of the current access of County Road 3 and (iii) the opening of the new alignment and access of County Road 3**, Developer shall ensure paved access is provided to the existing residence and farm located on Parcel 8511000005.
- **Prior to construction, including but not limited to the construction and installation of utility infrastructure improvements**, south of the “Reference Line,” as identified on **Exhibit A** to this **Exhibit B-3**, which is attached hereto and incorporated by reference, Developer shall obtain approval from the Town and CDOT.
- If the Town were to grant economic incentives to Developer with respect to development of any portion of the Property, beyond those set forth in the Annexation Agreement, the Town may require, as part of those incentives, that the property south of the Reference Line be dedicated to the Town for no monetary consideration.

**LEGAL ADVICE:**

The agreement was prepared by the Town Attorney and follows the Town’s typical agreement template.

**FINANCIAL ADVICE:**

N/A

**RECOMMENDED ACTION:** Approve the Subdivision Development and Improvement Agreement with Encore HoldCo, LLC., for the Encore Filing 1 Subdivision.

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*Reviewed and Approved for Presentation,*



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Town Manager

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