



# Town of Johnstown

## TOWN COUNCIL AGENDA COMMUNICATIONS

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**AGENDA DATE:** June 6, 2022

**SUBJECT:** Escrow Agreement for Ledge Rock Center Commercial

**ACTION PROPOSED:** Consider Escrow Agreement for Ledge Rock Center Commercial

**ATTACHMENTS:** 1. Escrow Agreement for Ledge Rock Center Commercial (“Escrow Agreement”)

**PRESENTED BY:** Avi Rocklin, Town Attorney  
MaryAnn McGeady, Special Counsel

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**AGENDA ITEM DESCRIPTION:** On January 3, 2022, the Town, Ledge Rock Center, LLC (“Developer”) and Ledge Rock Center Commercial Metropolitan District (“District”) entered into the Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado (“Development Agreement”) related to the Town’s cooperation in the development of Ledge Rock Center Commercial, a commercial retail center to be located at the southeast corner of Interstate 25 and State Highway 60 (“Ledge Rock Project”). The Development Agreement contained a form of escrow agreement related to the distribution of funds from bond proceeds. The parties agreed to execute a final form of the escrow agreement prior to the District’s first issuance of bonds. Consistent therewith, for consideration is the Escrow Agreement for the 2022 Special Revenue Series A and Series B Bonds Ledge Rock Center Commercial Metropolitan District (“2022 Bonds”) by and among the Town, the Developer, the District and UMB Bank, N.A., a national banking association as escrow agent (“Escrow Agreement”).

The District anticipates issuing bonds in the approximate amount of \$100,605,000 with net proceeds for use at the Ledge Rock Center Commercial project in the approximate amount of \$76,541,238. The District will use the bond funds for construction of public improvements and the Developer will use the funds for construction of private improvements.

The Escrow Agreement directs how the bonds funds will be released to the District and the Developer. The material terms of the Escrow Agreement are as follows:

- The creation of two accounts: (i) the Bond Proceeds Account and (ii) the Developer Funds Account.
- The Bond Proceeds Account will hold bond funds that will be released to pay verified eligible costs for public improvements, the payment of soft costs incurred prior to the bond issuance and the purchase of land.

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- The Developer Funds Account will hold funds transferred from the Bond Proceeds Account subsequent to verification and be used to pay for private improvements, including vertical construction of the retail buildings and tenant improvements.
- The District anticipates purchasing land from the Developer in the approximate amount of \$41,000,000. The Developer will thereafter transfer those funds into the Developer Funds Account.
- The Town Manager will have administrative discretion to disburse funds from the Bond Proceeds Account and the Developer Funds Account.
- Funds from the Developer Funds Account will be released based on either of two methodologies, at the Town Manager's discretion:
  - The lease verification methodology, allowing the release of \$160 per square foot upon evidence of an executed lease and related information and an additional \$40 per square foot upon the tenant opening for business or issuance of a certificate of occupancy; or
  - The construction progression methodology, allowing the release of \$200 per square foot incrementally based on construction thresholds, such as issuance of a building permit, tenant improvement permit and certificate of occupancy.
- The Escrow Agreement will terminate when all the funds from the Bond Proceeds Account and Developer Funds Account are released.
- If funds remain in the Bond Proceeds Account after a certain amount of time, the Town and the District will decide how to utilize the funds or the funds will be returned to the bond trustee to pay the bonds.

Because the precise allocation of the bond proceeds between the Bond Proceeds Account and Developer Funds Account will not be known until after the District's bond issuance, Town staff is requesting that the Town Council approve the Escrow Agreement with authority for the Town Manager and Town Attorney to revise the form of the agreement, if warranted, after the bonds are issued and then direct the Mayor to sign the agreement.

**LEGAL ADVICE:**

The Town Attorney and the Town's Special Counsel, MaryAnn McGeady, prepared the Escrow Agreement for Ledge Rock Center Commercial.

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**FINANCIAL ADVICE:**

N/A

**RECOMMENDED ACTION:** Approve the Escrow Agreement for Ledge Rock Center Commercial.

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Escrow Agreement for Ledge Rock Center Commercial, authorize the Town Manager and Town Attorney to revise the Escrow Agreement, if warranted, after the issuance of bonds by the Ledge Rock Center Commercial Metropolitan District to modify the allocation of bond proceeds between the Bond Proceeds Account and Developer Funds Account, and thereafter authorize the Mayor to execute the Escrow Agreement.

**For Denial:** I move to deny approval of the Escrow Agreement for Ledge Rock Center Commercial.

*Reviewed and Approved for Presentation,*



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Town Manager