



# Town of Johnstown

## TOWN COUNCIL AGENDA COMMUNICATIONS

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<b>AGENDA DATE:</b>	September 6, 2023, <i>continued from August 21, 2023</i>
<b>SUBJECT:</b>	<b>Public Hearing</b> – Resolution Approving the Service Plan for High Plains Estates Metropolitan District
<b>ACTION PROPOSED:</b>	Consider Resolution No. 2023-32
<b>ATTACHMENTS:</b>	<ol style="list-style-type: none"><li>1. Proposed Service Plan</li><li>2. Redline Changes to Service Plan Presented on August 21, 2023</li><li>3. Cover Letter from Counsel for Proponents of the District</li><li>4. Summary of Estimated O&amp;M / Maintenance Costs provided by Proponents</li><li>5. Resolution Approving the Service Plan for High Plains Estates Metropolitan District</li><li>6. Notice of Public hearing</li></ol>
<b>PRESENTED BY:</b>	Town Attorney, Avi Rocklin, and Special Counsel, Carolyn Steffl of Dietze and Davis, P.C.

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**AGENDA ITEM DESCRIPTION:** *This application has been continued from August 21, 2023. Please see the fourth page of this Report for a summary of changes made since August 21, 2023.*

An application for approval of a Service Plan (“Service Plan”) was submitted for High Plains Estates Metropolitan District (“District”) by the owners of the property, pursuant to the requirements of the Special District Control Act, Title 32, Article 1, Part 2, C.R.S. The Service Plan was submitted in connection with a development known as High Plains Estates, generally located east of Interstate 25, east of the Revere development and south of Weld County Road 14 (“Property”). The Property is subject to the Klein 125 annexation agreement, dated May 3, 2004. By Ordinance 2023-241, an outline development plan was approved for the Property on February 6, 2023. The applicants are seeking a November 2023 organizational / TABOR election.

To satisfy the statutory requirements, the Service Plan includes: (1) a description of the proposed services, (2) a financial plan as to how the services are to be financed, (3) a preliminary engineering or architectural survey showing how the proposed services are to be provided, (4) a map of the proposed District boundaries, (5) an estimate of the population and valuation for assessment of the proposed District, (6) a description of the facilities to be constructed and the standards for construction, (7) a general description of the estimated cost of acquiring land, engineering services, legal services, administrative services, initial

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proposed indebtedness and estimated proposed maximum interest rates and discounts, and other major expenses related to the organization and initial operation of the District, and (8) a proposed intergovernmental agreement.

The District's service area consists of approximately 101 acres with 411 residential units anticipated. There is also a 20-acre inclusion area that may be included in the District at a subsequent date. The District is only for residential uses.

The Service Plan is generally consistent with the Model Service Plan adopted by Town Council on February 22, 2017. The maximum debt mill levy is 40 mills. The maximum operations and maintenance mill levy is 10 mills. Notwithstanding the maximum limitations, if a majority of the board of directors of the District is composed of end users (any owner, tenant or occupant of any taxable residential property), the board of directors may eliminate the maximum operations and maintenance mill levy. The maximum mill levies are subject to an assessed valuation adjustment, meaning, primarily, that if the residential assessment rate is changed (the ratio of assessed valuation to actual valuation), the mill levy may be increased above the cap so that the rate change is revenue neutral to the District.

The maximum term for imposition of a debt mill levy is twenty years for developer debt from the initial imposition of an ad valorem property tax by the District, unless the Town approves a longer term by intergovernmental agreement, and forty years for all debt, except that, if a majority of the board of directors of the District is composed of end users, the board may approve a longer term for a refinancing.

The capital plan, attached as Exhibit E to the Service Plan, estimates public improvement project costs of approximately \$33,432,885.46. The capital plan was reviewed by Greg Weeks, the Town's Engineer, who found that the total preliminary estimate of costs is probably reasonable, given the stage of the development approval. The capital costs are expected to be revised and refined throughout the development review process.

The financial plan, attached as Exhibit F to the Service Plan, provides that the District will have the ability to issue debt in the approximate par amount of \$34,072,000. The maximum debt authorization under the Service Plan is \$39,000,000, which is approximately 15% over the debt capacity in the Financial Plan to allow for flexibility in case the assessed valuation for the homes are higher than estimated.

The District is seeking to impose two fees, to be paid by the builder when a building permit is issued: a Development Fee not to exceed \$2,500 and a Water Resource Fee not to exceed \$24,500. The Water Resource Fee will be used to finance the cost of acquisition of water rights for the development. In addition, the Financial Plan includes a Recurring Fee of up to

The Town's model service plan states that the District cannot acquire, own, manage, adjudicate or develop water rights unless approved by the Town in an IGA. However, as the costs of acquiring water rights go up, several metro districts have asked the Town to allow them the authority to finance acquisition of water rights needed for the development. In this case, the owners estimate the cost of acquiring the water at \$10 million of the approximately \$33.4 million cost of public improvements.

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In 2021, the Town Council approved a service plan that authorized metro districts to acquire water rights for the High Plains Metropolitan District No. 2 and the Revere at Johnstown Metropolitan District Nos. 2-9, pursuant to some conditions/limitations. The same conditions have been added into this Service Plan, and consistent with the Revere Service Plan, Section V(A)(23) states:

23. Water Rights/Resources Limitation. The District shall not acquire, own, manage, adjudicate or develop water rights or resources except pursuant to an intergovernmental agreement with the Town. Provided however that nothing herein shall prohibit the District from reimbursing the Developer for the costs of raw water dedicated to the Town on the conditions that: (a) all raw water that the District purchases from the Developer or for which the District reimburses the Developer shall be used to meet water dedication requirements for development within the Service Area; (b) the District shall require the Developer to dedicate a sufficient amount of raw water to the Town for each phase of the development of the Project as required by the Town's Municipal Code; and (c) the District's reimbursement to the Developer shall not exceed the amount of the Developer's actual cost for the purchase of the raw water, subject to cost verification report per Section V.A.30. Prior to use of the water for the potable or non-potable needs of the development, the raw water may be leased, subject to any legal limitations.

Subsequent to issuance of any debt, the District is required to provide the Town with the District's resolution approving the debt issuance, setting forth the parameters of the issuance, the bond counsel's opinion letter, a certification from the District that the debt issuance complies with the terms of the Service Plan and a copy of the marketing documents associated with the debt.

The District will establish and maintain a public website, and will timely post a copy of all of the following documents: a) call for nominations, b) the transparency notice, c) the recorded declaration of covenants if the District provides Covenant Enforcement and Design Review Services, d) a copy of this Service Plan and all amendments thereto, e) all approved budgets, audits, meeting minutes, Board orders and resolutions, f) any Rules and Regulations adopted by the Board, g) all meeting agendas, and h) any other requirements pursuant to law. The District will also e-mail calls for nominations to any email address maintained by the county and otherwise provide notice as required by law. In addition, the proponents added the following language, per the Town's request:

Distribution of Call for Nominations. Unless otherwise waived in writing by the Town Manager, at such time as there are residential End Users within the District, the District shall include the Call for Self-Nominations for director elections as a prominent part of a newsletter, annual report, billing insert, billing statement, letter, voter information card or other notice of election, or other informational mailing mailed by each District to the eligible electors of the District, in the timeframe required by statute for providing the notice, in addition to complying with any other notice requirements of the Special District Act and the Colorado Local Government Election Code.

Pursuant to state law, the Town Council must approve the Service Plan before the District is formed and entitled to operate. The Service Plan must be approved through a public hearing process. Upon approval,

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the Service Plan, along with a petition for organization of the District, must be submitted to the Weld County District Court, who will then hold a hearing on the petition and order an election regarding the organization of the District. Notice of this public hearing before the Town Council was published in *The Johnstown Breeze* and provided to interested persons by the proponents of the District.

### ***Changes from Service Plan presented on August 21, 2023***

The proponents made some changes to the Service Plan, following the Town Council questions and discussion on August 21, 2023, summarized below. Enclosed in the Council Packet are copies of the pages that have been changed, with the changes marked. In addition, the Financial Plan has been updated.

1. *Recurring Operations and Maintenance Fee:* The Financial Plan attached to the Service Plan authorizes the Districts to impose and collect a Recurring Fee for Operations and Maintenance expenses, up to \$1,200 per unit (subject to a 3% annual increase), in addition to collection of an Operations and Maintenance Mill Levy of up to 10 Mills. The proponents plan to present information on September 6, 2023, regarding the need for this Recurring Fee. In addition, they added the following language to Sec. V.A.17:

The authorization to impose and collect the Recurring Fees set forth in the Financial Plan shall expire four years after the issuance of the first certificate of occupancy within the District, unless (1) a majority of the Board of the District are End Users and such District Board authorizes the imposition of Recurring Fees; or (2) continued imposition of the Recurring Fees is approved by the Town, either administratively or by formal action of Town Council, at the discretion of the Town Manager.

2. *Water Resources Fee.* The proponents added the following language to Sec. V.A.23 to clarify that the Water Resources Fee would be paid prior to issuance of a building permit (i.e. by the home-builder, not the residents) and would only be available to use for purchase of water.

The District is authorized to impose a one-time Water Resources Fee, which would be due and payable to the District at or prior to the initial issuance of a building permit for the unit. The Water Resources Fee may only be used to repay Debt issued for the purpose financing the costs of raw water dedicated to the Town.

In addition, the Financial Plan (and thus the Maximum Debt Authorization) relies on an assumption that the District has imposed (and collected) \$10 million in Water Resources Fees. Therefore, we asked that they add a condition that the Maximum Debt Authorization would be \$29 Million, instead of \$39 Million in the event that the District does not finance raw water costs.

3. *Development Fee.* The proponents have reduced the amount of the maximum one-time Development Fee from \$3,000 to \$2,500.

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**LEGAL ADVICE:**

The Town Attorney and the Town’s Special Counsel have reviewed the Service Plan. Pursuant to Sections 32-1-204.5 and 32-1-203(2), C.R.S., the criteria for approval of a Service Plan are:

- a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed district;
- b. The existing service in the area to be served by the proposed district is inadequate for present and projected needs;
- c. The proposed district is capable of providing economical and sufficient service to the area within its proposed boundaries; and
- d. The area to be included in the District has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

**FINANCIAL ADVICE:**

The Town has not engaged an outside financial consultant to review the Financial Plan, but it has been reviewed by Special Counsel, Carolyn Steffl. In addition, applicant’s consultant, Piper Sandler & Co., provided a letter stating that, subject to certain assumptions, the Financial Plan shows the District’s ability to discharge the proposed indebtedness consistent with the limitations in the Service Plan.

**RECOMMENDED ACTION:** Approve Resolution No. 2023-32.

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve Resolution No. 2023-32, a Resolution Approving the Service Plan for High Plains Estates Metropolitan District.

**For Approval with Conditions:** I move to approve Resolution No. 2023-32 a Resolution Approving the Service Plan for High Plains Estates Metropolitan District, with the following modifications to the proposed Service Plan, \_\_\_\_\_, and direct the Town Attorney to revise the Service Plan accordingly.

**For Denial:** I move to deny approval of Resolution No. 2023-32, a Resolution Approving the Service Plan for High Plains Estates Metropolitan District.

*Reviewed and Approved for Presentation,*



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Town Manager