

**TOWN OF JOHNSTOWN, COLORADO  
RESOLUTION NO. 2023-40**

**RESOLUTION APPROVING AMENDED AND RESTATED SERVICE PLAN  
FOR ENCORE ON 34 METROPOLITAN DISTRICTS NOS. 1-3 AND SERVICE  
PLAN FOR ENCORE ON 34 METROPOLITAN DISTRICTS NOS. 4-7**

**WHEREAS**, the Town of Johnstown, Colorado (“Town”) is a Colorado home rule municipality, duly organized and existing under the laws of the State of Colorado and the Town’s Home Rule Charter; and

**WHEREAS**, the Town Council is vested with authority to administer the affairs of the Town; and

**WHEREAS**, pursuant to Section 32-1-204.5, C.R.S., an Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7 (the “District 4-7 Service Plan”), a copy of which is attached hereto and incorporated herein by reference as Exhibit A (collectively, “Service Plan”), was submitted to the Town Council for approval; and

**WHEREAS**, the Boards of Directors of Encore on 34 Metropolitan District Nos. 1-3 (“Boards”) have requested approval of the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Encore HoldCo, LLC, a Colorado limited liability company (“Owner”), the owner of the property within the proposed boundaries of Encore on 34 Metropolitan District Nos. 4-7 (together with Encore on 34 Metropolitan District Nos. 1-3, the “Districts”), has requested approval of the District 4-7 Service Plan; and

**WHEREAS**, pursuant to the provisions of Title 32, Article 1, Part 2, C.R.S., on September 6, 2023, and thereafter continued to September 18, 2023, the Town Council, following due notice, held a public hearing on the proposed Service Plan; and

**WHEREAS**, the Town Council considered the Service Plan and all other testimony and evidence presented at the hearing; and

**WHEREAS**, based upon the testimony and evidence presented at the hearing, the Town Council finds that the Service Plan should be approved, subject to the conditions set forth below, in accordance with Section 32-1-204.5(1)(c), C.R.S.

**NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF JOHNSTOWN, COLORADO, THAT:**

1. **Satisfaction of Statutory Requirements as to Filing and Notice.** The Town Council, as the governing body of the Town of Johnstown, Colorado, does hereby determine, based on representations by and on behalf of the proponents of the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7, including the Boards and Owner, that all of the requirements of Title 32, Article 1, Part 2, C.R.S., relating to the filing of the Service Plan for the Districts have been fulfilled and that notice of

the hearing was given.

2. ***Jurisdiction.*** Based on representations by and on behalf of the proponents of the Districts, the Town Council has jurisdiction over the subject matter of the proposed Service Plan pursuant to Title 32, Article 1, Part 2, C.R.S., as amended.

3. ***Findings.*** Pursuant to Section 32-1-204.5, C.R.S., Section 32-1-202(2), C.R.S., and Section 32-1-203(2), C.R.S., the Town Council does hereby find and determine, based on the Service Plan, the representations by and on behalf of the proponents of the Districts, including the Boards and Owner, and other evidence presented at the public hearing, that:

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

4. ***Service Plan Approved; Conditions and Limitations.*** The Town Council hereby approves the Amended and Restated Service Plan for Encore on 34 Metropolitan District Nos. 1-3 and Service Plan for Encore on 34 Metropolitan District Nos. 4-7, attached as Exhibit A, as may be revised, if at all, as set forth per section 4(e) below. This approval is given specifically subject to the following conditions and limitations pursuant to Section 32-1-204.5(1)(c), C.R.S.:

- (a) The Town's approval of the Service Plan shall not relieve the Owner, a developer or any other owner of property in the Districts of: (i) any requirement under the annexation agreement pertaining to the property within the Districts' boundaries or any other binding agreement(s); and (ii) the requirement to provide financial guarantees for construction of, and dedicate to the Town, all required public improvements.
- (b) Once the Districts have been duly organized, any material modification of the Service Plan shall require an amendment to the Service Plan, which must be approved by Town Council.
- (c) At its first meeting after the effective date of this Resolution and in no event later than sixty (60) days after the formation election of the Encore on 34 Metropolitan District Nos. 4-7, the Board of Directors of the Districts shall execute the Intergovernmental Agreement with the Town ("IGA") and the Districts' Indemnity Letter in the forms set forth as exhibits to the Service Plan presented to the Town Council at the September 18, 2023, public hearing, or in forms otherwise acceptable to the Town Attorney, and shall deliver the fully executed originals of the IGA and

Indemnity Letter to the Town within ten (10) days of the Districts' organizational meeting.

- (d) The conditions set forth in this Resolution are not intended and shall not be construed to enlarge, diminish or otherwise affect any of the requirements, limitations or other provisions of the Service Plan or the IGA.
- (e) The Service Plan shall be revised if required pursuant to additional conditions of approval set forth by the Town Council at the September 18, 2023, public hearing. If so directed, the Town Attorney shall modify the Service Plan and provide the finalized version of the Service Plan to the Town Clerk for filing with the records of the Town and to the Boards and Owner for, among other purposes, filing with the Larimer County District Court.

5. **Execution of Town IGA.** The IGA referred to in Section 4(c) above is hereby approved in essentially the same form as the copy of such IGA set forth as Exhibit D to the Service Plan, which was presented to the Town Council at the September 18, 2023, public hearing. The Mayor and Town Clerk are hereby authorized to execute the IGA on behalf of the Town provided the same has first been executed by the District.

6. **Filing of Resolution.** A certified copy of this Resolution, with the attached Service Plan, as may be amended, shall be filed in the records of the Town and submitted to the Boards and Owner of the property within the proposed boundaries of the Encore on 34 Metropolitan District Nos. 4-7 for the purpose of filing in the Larimer County District Court.

PASSED, SIGNED, APPROVED, AND ADOPTED this \_\_\_ day of \_\_\_\_\_, 2023.

**ATTEST:**

**TOWN OF JOHNSTOWN, COLORADO**

By: \_\_\_\_\_  
Hannah Hill, Town Clerk

By: \_\_\_\_\_  
Troy D. Mellon, Mayor