

**AMENDED AND RESTATED OPERATIONS AND MAINTENANCE
INTERGOVERNMENTAL AGREEMENT
FOR
JOHNSTOWN PLAZA
JOHNSTOWN, COLORADO**

THIS AMENDED AND RESTATED OPERATIONS AND MAINTENANCE INTERGOVERNMENTAL AGREEMENT FOR JOHNSTOWN PLAZA, JOHNSTOWN, COLORADO (“**Amended and Restated Operations and Maintenance Agreement**”) is made and entered into as of the Effective Date by and between THE TOWN OF JOHNSTOWN, COLORADO, a home-rule municipality of the Counties of Larimer and Weld, State of Colorado (“**Town**”), and JOHNSTOWN PLAZA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado (“**District**”) (collectively, the “**Parties**”).

RECITALS

WHEREAS, Johnstown Plaza, LLC, a Kansas limited liability company (“**Developer**”) is the owner and Developer of the destination retail shopping center known as Johnstown Plaza in the District and in the Town containing many square feet of new retail uses on the property (“**Project**”);

WHEREAS, the District was formed pursuant to the applicable provisions of the Colorado Special District Act by Court Order in Larimer County, District Court, Case No. 15 CV 030779 and is subject to the service plan approved by the Town of Johnstown Town Council by resolution on September 21, 2015 as the same may be modified from time to time (“**Service Plan**”);

WHEREAS, the District is authorized to finance, design, plan, construct, install, complete, operate and maintain public improvements related to and necessitated by the Project;

WHEREAS, the Service Plan contemplates that the Parties execute an operations and maintenance intergovernmental agreement defining the duties and obligations of the District to operate, maintain, repair and replace the public improvements, authorizing the Town to undertake the unfulfilled duties of the District at the District’s expense and providing the Town with access for such undertakings and confirming the District’s authority to raise revenue to pay for such activities by, among other legally available means, compelling the District to impose a mill levy to reimburse the Town for any reasonable costs incurred in the event the Town undertakes the unfulfilled duties of the District;

WHEREAS, the Parties, together with the Developer, also entered into a Comprehensive Development Agreement, Funding Plan and Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado (“**Development and Funding Agreement**”), which provides that the Town and the District enter into an operations and maintenance intergovernmental agreement requiring, among other matters, that the District operate and maintain the public improvements in a condition comparable to the initial installation plans and specifications approved by the Town, authorizing the Town to enter the public spaces to provide repair, maintenance or replacement of

the public improvements in the event the District is in breach of its obligations and compelling the District to impose a mill levy to fund the reimbursement of the Town for costs incurred;

WHEREAS, at the election held on November 3, 2015, the District presented the following Ballot Issues 5B and 5R to its eligible electors:

SHALL JOHNSTOWN PLAZA METROPOLITAN DISTRICT TAXES BE INCREASED \$5,000,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S ADMINISTRATION, OPERATIONS, MAINTENANCE, AND OTHER EXPENSES: SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD OF DIRECTORS, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED FOR THE PURPOSE OF PAYING THE DISTRICT'S OPERATIONS, MAINTENANCE, AND OTHER EXPENSES; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE IN 2015 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, THE LIMITS IMPOSED ON INCREASES IN PROPERTY TAXATION BY SECTION 29-1-301, C.R.S., OR ANY OTHER LAW WHICH PURPORTS TO LIMIT THE DISTRICT'S REVENUES OR EXPENDITURES, AS IT CURRENTLY EXISTS OR AS IT MAY BE AMENDED IN THE FUTURE, ALL WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?;

SHALL JOHNSTOWN PLAZA METROPOLITAN DISTRICT BE AUTHORIZED TO ENTER INTO ONE OR MORE MULTIPLE FISCAL YEAR FINANCIAL OBLIGATIONS EVIDENCED BY AN INTERGOVERNMENTAL AGREEMENT OR AGREEMENTS CONCERNING THE PROVISION OF PUBLIC IMPROVEMENTS WITH THE TOWN OF JOHNSTOWN, COLORADO OR ONE OR MORE OTHER GOVERNMENTAL UNITS OR GOVERNMENTALLY-OWNED ENTERPRISES, CONTAINING SUCH TERMS AND CONDITIONS AS THE BOARD OF DIRECTORS OF THE DISTRICT MAY DETERMINE TO BE NECESSARY AND APPROPRIATE AND PROVIDING FOR PAYMENTS BY THE DISTRICT IN AN AGGREGATE AMOUNT NOT TO EXCEED \$150,000,000 OF TAX REVENUES DERIVED FROM AN AD VALOREM MILL LEVY IMPOSED BY THE DISTRICT ON ALL TAXABLE PROPERTY?

WHEREAS, Ballot Issues 5B and 5R were approved by the eligible electors and, among other matters, authorize the District to impose a mill levy for the District’s operations and maintenance expenses and authorize the multiple fiscal year obligations of the District set forth in this Amended and Restated Operations and Maintenance Agreement;

WHEREAS, the Parties entered into that certain Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado on or about April 18, 2016 (the “**Original Agreement**”); and

WHEREAS, the Parties have determined to modify the terms of the Original Agreement pursuant to which the District will perform its operations and maintenance duties and how it will communicate with the Town regarding such performance; and

WHEREAS, the Parties desire to set forth these modifications in this Amended and Restated Operations and Maintenance Agreement: and

WHEREAS, on or about May 23, 2017, the Parties entered into that certain First Amendment to Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza Concerning Use of Public Right-of-Way (“**First Amendment to Public ROW Agreement**”); and

WHEREAS, the Parties do not intend, by execution of this Amended and Restated Operations and Maintenance Agreement, to modify or amend the terms of the First Amendment to Public ROW Agreement; and

WHEREAS, pursuant to C.R.S. § 29-1-203, the Parties are authorized to enter into cooperative agreements and contracts for certain specified purposes, and intend that this Amended and Restated Operations and Maintenance Agreement constitute such an intergovernmental agreement with respect to the operation and maintenance of the public improvements.

AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Amended and Restated Operations and Maintenance Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Definitions. For purposes of this Amended and Restated Operations and Maintenance Agreement, the following terms have the meanings indicated below and in the Recitals:
 - A. Annual Maintenance Report. As defined in Paragraph 4 below.
 - B. CAM. Means the cost of common area maintenance services provided by the Developer.

C. CAM Charges. Means the amount of the CAM that is required to be paid to the Developer by every tenant and property owner in the Property.

D. District/Developer Operations and Maintenance Agreement. That certain District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado between the District and the Developer dated as of March 18, 2024, pursuant to which the Developer has agreed to provide, or cause to be provided the maintenance of the Public Improvements to the Maintenance Standard and to fund this maintenance from revenues received from CAM Charges.

E. District Streets. The streets that will be constructed as a part of the Public Improvements that will not be dedicated to the Town.

F. Draft Operations and Maintenance Budget. The draft operations and maintenance budget for the District for the upcoming year, to be submitted to the Town on an annual basis, including all proposed expenditures and revenue sources for the payment of all expenditures to operate and maintain the Public Improvements to the Maintenance Standard. The Draft Operations and Maintenance Budget will also include the budgeted and actual revenues and expenditures from the previous year and the budgeted and estimated year end revenues and expenditures for the current year.

G. Effective Date. The date that this Amended and Restated Operations and Maintenance Agreement is fully executed by all the Parties, which shall be the date the Amended and Restated Operations and Maintenance Agreement is executed by the Town.

H. Final Operations and Maintenance Budget. The operations and maintenance budget adopted by the District for the upcoming year, to be submitted to the Town on an annual basis, including all proposed expenditures and revenue sources for the payment of all expenditures to operate and maintain the Public Improvements to the Maintenance Standard. The Final Operations and Maintenance Budget will also include the budgeted and actual revenues and expenditures from the previous year and the budgeted and estimated year end revenues and expenditures for the current year.

I. Maintenance Standard. Maintaining the Public Improvements in first-class condition to a level equivalent to the initial installation plans and specifications approved by the Town. The Maintenance Standard includes, in addition to maintenance of the Public Improvements, the requirement that the District ensure the Public Landscaping is consistently maintained to a high quality, to include, but not be limited to, regular grass cutting, tree trimming and seasonal flower planting.

J. Pedestrian Walkways and Trails. The sidewalks, walkways and trails constructed or, as appropriate, installed as a part of the Public Improvements that have not been dedicated to the Town.

K. Property. The property known as Johnstown Plaza within the boundaries of the District.

L. Public Art. The Art located in Public Spaces that has been acquired and installed as a part of the Public Improvements that have not be dedicated to the Town.

M. Public Improvements. The improvements owned and maintained by the District, including but not limited to Public Spaces, the Public Art, the Public Plazas, the Public Parking Facilities, the Pedestrian Walkways and Trails, District Streets and the Public Landscaping.

N. Public Landscaping. The landscaping constructed or, as appropriate, installed in the Public Spaces as a part of the Public Improvements that have not been dedicated to the Town.

O. Public Parking Facilities. The parking lots and structures constructed or installed in the Public Spaces as a part of the Public Improvements that have not been dedicated to the Town.

P. Public Plazas. The plazas constructed or installed in the Public Spaces as a part of the Public Improvements that have not been dedicated to the Town.

Q. Public Spaces. The property upon which the Public Art, Public Parking Facilities, Public Plazas, Public Streets and Pedestrian Walkways and Trails are located.

3. Operation and Maintenance of Public Improvements. The District shall maintain the Public Improvements to the Maintenance Standard. The District shall perform maintenance of the Public Improvements based on the Maintenance Standard at regular intervals to sustain the Maintenance Standard. The Town shall at all times retain the right to determine whether the District is properly operating and maintaining the Public Improvements as required herein.

- a. Without limiting the District's obligations to the Town as set forth in this Amended and Restated Operations and Maintenance Agreement, the District has entered into the District/Developer Operations and Maintenance Agreement of even date herewith pursuant to which the Developer will perform the operations and maintenance of the Public Improvements to the Maintenance Standard.
- a. The District may only amend the District/Developer Operations and Maintenance Agreement after receipt of the prior written approval of the amendment by the Town.
- b. The District may only agree to the assignment by the Developer of the Developer's obligations under the District/Developer Operations and Maintenance Agreement after receipt of the prior written approval of the assignment by the Town.
- c. The District may only enter into an agreement with a subsequent owner or owners of property within the Property, or affiliates of a subsequent owner or owners of property within the Property, related to the operations and

maintenance of the Public Improvements after receipt of prior written approval of the Town to such agreement.

4. Annual Maintenance Report. The District shall provide an Annual Maintenance Report to the Town by April 1 of each calendar year, documenting: (1) the dates of inspections of the Public Improvements during the prior calendar year; (2) the remedial actions, if any, undertaken during the prior calendar year; (3) the Public Improvements, if any, requiring modification, repair or reconstructive work during the current calendar year, the schedule to accomplish such work and the source of funding for such work; and (4) the plan for repair and replacement of the pavement associated with the District Streets, Pedestrian Walkways and Trails, Public Parking Facilities and Public Plazas for the next consecutive ten (10) years and the for the next consecutive three (3) years for the remaining Public Improvements. If the Town Manager objects to the schedule to accomplish the work set forth in subpart (3) above or the schedule proposed in the District's reserve plan, the District shall promptly, within fifteen (15) days, revise and resubmit the Annual Maintenance Report to address or conform to the Town's recommendations and requirements.

5. Annual Budget and Appropriations. The District agrees to budget and appropriate sufficient funds annually to operate and maintain the Public Improvements to the Maintenance Standard.

- a. Draft Operations and Maintenance Budget. On or before September 15th of every year beginning in 2024, the District shall send the Draft Operations and Maintenance Budget to the Town for the ensuing year. The Draft Operations and Maintenance Budget shall reflect the anticipated revenues to be available for the provision of the operations and maintenance, whether from the CAM Charge or the imposition of property taxes, or some combination of both.
- b. Town Comment Period. The Town shall have thirty (30) days after receipt of the Draft Operations and Maintenance Budget to provide written comments to the District regarding, among others:
 - i. Concerns or comments regarding the status of maintenance of the Public Improvements in the current year or what is proposed in the Draft Operations and Maintenance Budget, or both.
 - ii. Concerns or comments regarding the amount or source of the anticipated revenue for funding of the anticipated expenditures in the Draft Operations and Maintenance Budget.
- c. Final Operations and Maintenance Budget. The District shall adopt a Final Operations and Maintenance Budget as a part of its annual budget process, that includes the Draft Operations and Maintenance Budget for that fiscal year, with amendments required to address the concerns and comments received from the Town to the Town's satisfaction, and will appropriate the funds for expenditure as set forth in the Final Operations Maintenance Budget.

6. Town Inspection; Notice; Cure. The Town shall have the right to enter the Property at all reasonable times to inspect the Public Improvements. If, upon inspection, the Town, in its sole discretion, determines that the District has failed to properly operate, maintain, repair or replace the Public Improvements to the Maintenance Standard, the Town may provide written notice to the District of the default, requiring that corrective work be performed within thirty (30) days or, if the failure cannot be cured in thirty (30) days, then commenced in thirty (30) days, and diligently pursued to completion. The Town may, in its sole discretion, extend the time period for the corrective work. The Town's receipt of an Annual Maintenance Report shall not limit or otherwise act as a waiver of the Town's right to inspect the Public Improvements and require corrective work as set forth herein. The Town's rights hereunder shall exist regardless of whether the Town Manager requests a modification to the schedule as set forth in Paragraph 4.

7. Town Performance of Maintenance and District Reimbursement Obligation. If the corrective work is not performed or commenced and diligently pursued within the time specified in Paragraph 6 above, the Town may enter the Property and perform the corrective work to bring the applicable Public Improvements to the Maintenance Standard. Upon completion of the work, the Town shall provide written notice of the cost of the corrective work to the District, which may include, at the Town's discretion, the Town's administrative costs in the amount of ten percent (10%) of the cost and the Town's reasonable attorney's fees. The District shall reimburse the Town's costs within thirty (30) days of receipt of the written notice. Notwithstanding the foregoing, if the Town, in its sole discretion, determines that corrective work needs to be immediately performed to protect the public health or safety, the Town may undertake to complete such corrective work without providing notice to the District and shall be entitled to reimbursement for the costs of such work as set forth herein.

8. Imposition and Pledge of Mill Levy.

- a. If the Final Operations and Maintenance Budget anticipates revenue from property taxes, the District shall certify a mill levy in the amount set forth in the Final Operations and Maintenance Budget.
- b. If the District does not reimburse the Town prior to November 1 of the fiscal year in which the Town submits its invoice pursuant to Paragraph 7 above, and the District is unable to pay prior to the end of such fiscal year, then, by November 15 of such fiscal year, the District shall certify a mill levy that is sufficient, however in no event shall such mill levy exceed 20 mills, to fully reimburse the Town for the outstanding costs and for interest at the statutory rate, which shall be paid as soon as possible after the District's receipt of the tax revenue collected as a result of the mill levy. For invoices submitted on or after November 1 of any given year that are not paid pursuant to Paragraph 7 and the District is unable to pay, the District shall certify the mill levy, which mill levy shall not exceed 20 mills, by November 15 of the following fiscal year.
- c. In addition, if the revenue collected in any year that is included in the Final Operations and Maintenance Budget is not collected as budgeted, from either CAM Charges or property taxes, the District shall:

- i. Provide the Town with written notice as to the deficiency in revenue and the District's plan to fund the deficiency; and
- ii. Certify a mill levy that is sufficient to fund such deficiency in the following fiscal year if the deficiency is not funded as provided in the District's plan, however in no event shall the mill levy required to be imposed by this subsection exceed 20 mills minus any mill levy to be imposed to reimburse the Town pursuant to Section 8.a. above.

9. Legal Opinions. On or prior to the seventh day after the Effective Date, the District will deliver an opinion of its counsel addressed to the Town, solely with respect to this Amended and Restated Operations and Maintenance Agreement, which opinion will state in substance that, assuming this Amended and Restated Operations and Maintenance Agreement has been duly authorized, executed and delivered by the Parties hereto, the Amended and Restated Operations and Maintenance Agreement constitutes a valid and binding agreement of the District enforceable according to its terms, subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other law affecting the enforcement of creditors' rights generally and subject to the application of general principles of equity. Such opinion may also contain additional exceptions or qualifications as are agreed to in writing by the Town and the District. From time to time, the Town may otherwise request a new opinion from the District's counsel at the Town's cost and expense.

10. Term. This Amended and Restated Operations and Maintenance Agreement shall commence on the date first shown above and, unless sooner terminated by mutual written consent of the Parties pursuant to the process set forth in Section 12, shall continue in perpetuity.

11. Town's Limited Obligations. Nothing in this Amended and Restated Operations and Maintenance Agreement shall be construed to require the Town to inspect, operate, maintain, repair or replace the Public Improvements. The Town's undertaking of any of the District's obligations as set forth in this Amended and Restated Operations and Maintenance Agreement shall not relieve the District from the continuing obligations to inspect, operate, maintain, repair or replace the Public Improvements as set forth in this Amended and Restated Operations and Maintenance Agreement, the Service Plan, the Development and Funding Agreement and as otherwise required.

12. Modification and Amendments. This Amended and Restated Operations and Maintenance Agreement, including but not limited to the Maintenance Standard referenced herein, may only be modified, amended, terminated or superseded in writing by the Parties in an amendment to this Amended and Restated Operations and Maintenance Agreement that is properly approved and executed in accordance with applicable law.

13. Notices. Any notice or communication required under this Amended and Restated Operations and Maintenance Agreement between the Parties must be in writing, and may be given either personally, sent by certified mail, return receipt requested, or delivered by electronic mail. If personally delivered, a notice will be deemed to have been given when delivered to the party to whom it is addressed. If given by certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the

addressees designated below as the Party to whom notices are to be sent, or (ii) three days after a certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If sent by electronic mail, a notice will be deemed to have been given upon acknowledgement of receipt of the electronic mail by the intended recipient. A Party may, by giving written notice to the other Party, designate additional persons to whom notices or communications shall be given or designate any other address in substitution of the address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

If to the Town:

Matt LeCerf, Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534
mlecerf@johnstownco.gov

With a copy to:

Avi Rocklin, Town Attorney
19 Old Town Square, Suite 238
Fort Collins, CO 80524
avi@rocklinlaw.com

and

MaryAnn M. McGeady
Elisabeth A. Cortese
McGeady Becher P.C.
450 East 17th Avenue, Suite 400
Denver, CO 80203-1254
legalnotices@specialdistrictlaw.com

If to the District:

Johnstown Plaza Metropolitan
District
c/o Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203
doleary@spencerfane.com

With a copy to:

David O'Leary
Spencer Fane LLP
1700 Lincoln Street, Suite 2000
Denver, CO 80203
doleary@spencerfane.com

14. No Waiver. Delays in enforcement or the waiver of any one or more breaches of this Amended and Restated Operations and Maintenance Agreement shall not constitute a waiver of any of the remaining terms or obligations.

15. Assignment; Binding Effect. This Amended and Restated Operations and Maintenance Agreement shall be binding upon and, except as otherwise provided in this Amended and Restated Operations and Maintenance Agreement, shall inure to the benefit of the Parties' successors in interest. The District may, subject to the Town's prior written consent, assign its obligation to inspect, operate, maintain, repair and replace the Public Improvements under this Amended and Restated Operations and Maintenance Agreement. Notwithstanding the foregoing, the District shall remain liable for the obligation to reimburse the Town for the costs

of corrective work as set forth in Paragraph 7 of this Amended and Restated Operations and Maintenance Agreement.

16. No Joint Venture or Partnership. No form of joint venture or partnership exists between the Parties hereto, and nothing contained in this Amended and Restated Operations and Maintenance Agreement will be construed as making the Parties joint venturers or partners.

17. No Third Party Beneficiaries. No person or entity, other than a party to this Amended and Restated Operations and Maintenance Agreement, shall have any right of action under this Amended and Restated Operations and Maintenance Agreement including, but not limited to, lenders, lot buyers and materialmen, laborers or others providing work, services or materials for the Public Improvements.

18. Colorado Governmental Immunity Act. Nothing in this Amended and Restated Operations and Maintenance Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the Town, Town Officials, employees, contractors, or agents, or any other person acting on behalf of the Town and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended. Nothing in this Amended and Restated Operations and Maintenance Agreement shall be construed to waive, limit or otherwise modify any governmental immunity that may be available by the law to the District, District Officials, employees, contractors, or agents, or any other person acting on behalf of the District and, in particular, governmental immunity afforded pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as amended.

19. Insurance. District shall, at a minimum, carry insurance in the types and amounts set forth below:

A. District shall acquire and maintain, during the entire term of the Amended and Restated Operations and Maintenance Agreement, statutory workers' compensation insurance coverage, commercial general liability insurance coverage and automobile liability insurance coverage in no less than the amounts set forth in subparagraph D below. Town shall be named as an additional insured on District's commercial general liability insurance and automobile liability insurance. Such additional insured coverage provides defense and indemnity coverage only for actions arising from District's acts, actions, omissions or neglect but shall not provide defense or indemnity coverage for Town's own acts, actions, omissions or neglect or for unproven allegations. Any such policy of insurance obtained to comply with this paragraph shall provide that Town shall receive thirty (30) days written notice prior to the policy's cancellation, non-renewal or modification to any provisions of such policy affecting the insurance coverage requirements under the Amended and Restated Operations and Maintenance Agreement.

B. Prior to commencing any work under the Amended and Restated Operations and Maintenance Agreement, District shall provide Town with a certificate or certificates evidencing the insurance required by this paragraph, as well as the amounts of coverage for the respective types of coverage. If the coverage required under this paragraph expires during the term of the Amended and Restated Operations and Maintenance Agreement,

District shall provide replacement certificate(s) evidencing the continuation of the required policies.

C. If any policy obtained by District is a claims-made policy, the following conditions shall apply: the policy shall provide District the right to purchase, upon cancellation or termination by refusal to renew the policy, an extended reporting period of not less than two (2) years. District agrees to purchase this extended reporting period. If the policy is a claims-made policy, the retroactive date of any renewal of such policy shall not be later than the date the Amended and Restated Operations and Maintenance Agreement is signed by the Parties to the Amended and Restated Operations and Maintenance Agreement. If District purchases a subsequent claims-made policy in place of any prior policy, the retroactive date of such subsequent policy shall be no later than the date the Amended and Restated Operations and Maintenance Agreement is signed by the Parties to the Amended and Restated Operations and Maintenance Agreement.

D. District shall acquire and maintain during the entire term of the Amended and Restated Operations and Maintenance Agreement, statutory workers' compensation insurance coverage, comprehensive general liability insurance coverage, and automobile liability insurance coverage in the following amounts:

i. Workers' Compensation Insurance in accordance with applicable law, including employers' liability.

ii. Commercial general liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each occurrence; \$2,000,000.00 general aggregate. Coverage shall include all major divisions of coverage and be on a comprehensive basis including:

- a. premises operations;
- b. personal injury liability without employment exclusion;
- c. blanket contractual;
- d. broad form property damages;
- e. medical payments; and
- f. independent contractors coverage.

iii. Commercial automobile liability insurance in the amount of \$1,000,000.00 combined single limit bodily injury and property damage, each accident covering any auto.

iv. All coverages specified above shall waive any right of subrogation against Town and its Council members, officers, agents, and employees; such waiver of subrogation shall apply solely to acts, actions, omissions or neglect of District, and in

no way limits the right of subrogation for acts, actions, omissions or neglect of Town or others. The policies shall state: "Permission is expressly granted to the insured to waive any right of subrogation against an individual, firm or corporation in accordance with the terms of the agreement provided such waiver is executed in writing prior to any occurrence giving rise to claims hereunder."

20. District Indemnity. To the extent permitted by law, the District shall defend, indemnify, assume all responsibility for and hold the Town, its Council members, officers, agents, and employees, collectively the "Indemnified Parties" or singularly, each an "Indemnified Party") harmless, including without limitation, for attorney's fees and costs, from all claims or suits for and damages to property and injuries to persons, including accidental death, that may be caused by any of the District's activities undertaken pursuant to this Amended and Restated Operations and Maintenance Agreement.

A. If any claim relating to the matters indemnified against pursuant to this Amended and Restated Operations and Maintenance Agreement is asserted against an Indemnified Party that may result in any damage for which any Indemnified Party is entitled to indemnification under this Amended and Restated Operations and Maintenance Agreement, then the Indemnified Party shall promptly give notice of such claim to the District.

B. Upon receipt of such notice, the District shall have the right to undertake, by counsel or representatives of its own choosing, the good faith defense, compromise or settlement of the claim, such defense, compromise or settlement to be undertaken on behalf of the Indemnified Party.

C. The Indemnified Party shall cooperate with the District in such defense at the District's expense and provide the District with all information and assistance reasonably necessary to permit the District to settle and/or defend any such claim.

D. The Indemnified Party may, but shall not be obligated to, participate at its own expense in a defense of the claim by counsel of its own choosing, but the District shall be entitled to control the defense unless the Indemnified Party has relieved the District from liability with respect to the particular matter.

E. If the District elects to undertake such defense by its own counsel or representatives, the District shall give notice of such election to the Indemnified Party within ten (10) days after receiving notice of the claim from the Indemnified Party.

F. If the District does not so elect or fails to act within such period of ten (10) days, the Indemnified Party may, but shall not be obligated to, undertake the sole defense thereof by counsel or other representatives designated by it, such defense to be at the expense of the District.

G. The assumption of such sole defense by the Indemnified Party shall in no way affect the indemnification obligations of the District.

21. Mediation. If a dispute arises under this Amended and Restated Operations and Maintenance Agreement that the Parties are not able to mutually resolve, prior to commencing

litigation, the non-breaching Party shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator and shall endeavor to find a mediator having experience in construction-related matters. If the Parties are unable to agree upon a mediator, either Party may apply to the Judicial Arbitrator Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties.

22. Governing Law and Venue. This Amended and Restated Operations and Maintenance Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado and Municipal Code of the Town of Johnstown. Venue for any claim, proceeding or action arising out of this Amended and Restated Operations and Maintenance Agreement shall be in Larimer or Weld County, Colorado.

23. Severability. If any term, provision, covenant or condition of this Amended and Restated Operations and Maintenance Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Amended and Restated Operations and Maintenance Agreement shall continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining or substantially deprive such Party of the benefit of its bargain under this Amended and Restated Operations and Maintenance Agreement. The Parties shall cooperate in reforming this Amended and Restated Operations and Maintenance Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition.

24. Costs and Attorneys' Fees. If the District breaches this Amended and Restated Operations and Maintenance Agreement, the District shall pay the Town's reasonable costs and expenses, including attorney's fees, incurred in the enforcement of the terms, conditions and obligations of this Amended and Restated Operations and Maintenance Agreement.

25. Entire Agreement. This Amended and Restated Operations and Maintenance Agreement constitutes the entire agreement and understanding between the Parties and supersedes all prior agreements or understandings, except that this Amended and Restated Operations and Maintenance Agreement does not supersede, amend or replace the First Amendment to Public ROW Agreement.

26. No Presumption. Each party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Amended and Restated Operations and Maintenance Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Amended and Restated Operations and Maintenance Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any party because of authorship.

27. Findings. The Town hereby finds and determines that execution of this Amended and Restated Operations and Maintenance Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town and the provisions of this Amended and Restated Operations and Maintenance Agreement are consistent with the Comprehensive Plan and development laws, regulations and policies of the Town. The District Board finds that this

Amended and Restated Operations and Maintenance Agreement is in the best interests of the District.

28. Further Assurances. Each Party shall execute and deliver to the others all such other further instruments and documents as may be reasonably necessary or requested by another Party to confirm or clarify the intent of the provisions of this Amended and Restated Operations and Maintenance Agreement, and to carry out and effectuate this Amended and Restated Operations and Maintenance Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Amended and Restated Operations and Maintenance Agreement.

29. Authority. The signatories to this Amended and Restated Operations and Maintenance Agreement affirm and warrant that they are fully authorized to enter into and execute this Amended and Restated Operations and Maintenance Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Amended and Restated Operations and Maintenance Agreement have been made.

30. Compliance with the Law. The District shall comply with all federal, state and local laws and regulations in the performance of the obligations under this Amended and Restated Operations and Maintenance Agreement.

31. Headings. The paragraph headings herein are for the convenience and reference of the Parties and are not intended to define or limit the scope or intent of this Amended and Restated Operations and Maintenance Agreement.

32. Counterparts. This Amended and Restated Operations and Maintenance Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties have executed this Amended and Restated Operations and Maintenance Agreement as of the set forth above.

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JOHNSTOWN PLAZA METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the state of Colorado

Date: _____

By: _____
Its President

ATTEST:

Secretary

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado was acknowledged before me this ___ day of _____ 2024, by _____ as President and _____ as Secretary of JOHNSTOWN PLAZA METROPOLITAN DISTRICT, a quasi-municipal corporation of the state of Colorado.

Witness my hand and official seal.

My commission expires: _____

Notary Public

THE TOWN OF JOHNSTOWN
a home-rule municipality of the County of Weld,
State of Colorado

Date: _____

By: _____
Troy D. Mellon, Mayor

ATTEST:

Hannah Hill, Town Clerk