



450 S. Parish Avenue  
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JohnstownCO.gov

## TOWN COUNCIL AGENDA COMMUNICATIONS

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**AGENDA DATE:** March 18, 2024

**SUBJECT:** Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado and District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado

**ACTION PROPOSED:** Consider (1) Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado and (2) District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado

**ATTACHMENTS:**

1. Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado
2. District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado

**PRESENTED BY:** Town Attorney, Avi Rocklin, and Special Counsel, MaryAnn McGeady of McGeady Becher P.C.

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**AGENDA ITEM DESCRIPTION:** For consideration is the Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado (“Amended and Restated Agreement”) by and between the Town and the Johnstown Plaza Metropolitan District, a quasi-municipal corporation and political subdivision of the state of Colorado (“District”). If approved, for subsequent consideration is the District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado (“District/Developer Agreement”), by and between the District and the Johnstown Plaza, LLC, a Kansas liability company (“Developer”), whereby the Town would sign as a third-party beneficiary only.

On or about April 18, 2016, the Town and the District entered into that certain Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado (“Original Agreement”), concerning the District’s obligation to operate and maintain the public improvements

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in Johnstown Plaza. The District desires to restructure the contractual obligation and contract with the Developer to operate and maintain the public improvements. The Developer anticipates obtaining funding for the improvements from the common area maintenance charges paid by the Developer's tenants. To recognize the restructured process, Town Staff is proposing that the Town Council consider the Amended and Restated Agreement. If approved, the District and Developer would thereafter enter into a separate agreement, the District/Developer Agreement, whereby the Developer would be obligated to undertake the operations and maintenance obligations.

The proposed Amended and Restated Agreement is similar to the Original Agreement in many respects. The District would still be required to ensure the proper operation and maintenance of the public improvements and would still be required to provide an annual maintenance report to the Town on or before April 1 of each year. In addition to the obligations set forth in the Original Agreement, the District would be required to provide an operations and maintenance budget to the Town on or before September 15 of each year and the Town would have thirty (30) days thereafter to review and provide comments regarding the status of the maintenance of the public improvements and the amount or source of the anticipated revenue to fund the operations and maintenance obligations.

The District/Developer Agreement recognizes that the District is contracting with the Developer to operate and maintain the public improvements and that the Developer is required to impose and collect common area maintenance charges from tenants to obtain funding for such obligations. The Town is not a party to that agreement but would sign as a third-party beneficiary, providing the Town with the right to enforce the obligations.

#### **STRATEGIC PLAN ALIGNMENT:**

- Healthy & Resilient Economy
  - *Drive projects and initiatives that promote Johnstown as a premier destination for business*
  - *Support the local labor market and work with partners to grow diverse employment opportunities*
- Quality Infrastructure & Facilities
  - *Establish and maintain levels of service*

#### **LEGAL ADVICE:**

The Town's Special Counsel, with review by the Town Attorney, prepared the Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado and the District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado.

#### **FINANCIAL ADVICE: N/A**

**RECOMMENDED ACTION:** Approve Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado and District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado.

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado, and the District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado, and authorize the Mayor to sign the agreements.

**For Denial:** I move to deny approval of the Amended and Restated Operations and Maintenance Intergovernmental Agreement for Johnstown Plaza, Johnstown, Colorado, and the District/Developer Operations and Maintenance Agreement for Johnstown Plaza, Johnstown, Colorado.

*Reviewed and Approved for Presentation,*



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Town Manager