



# Town of Johnstown

## TOWN COUNCIL AGENDA COMMUNICATIONS

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**AGENDA DATE:** January 3, 2022

**SUBJECT:** Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado (containing a form of Escrow Agreement as Exhibit E)

**ACTION PROPOSED:** Consider Agreement

**ATTACHMENTS:** 1. Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado

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

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**AGENDA ITEM DESCRIPTION:** Ledge Rock Center, LLC (“Developer”) and Ledge Rock Center Commercial Metropolitan District (“District”) have requested that the Town cooperate 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 (“Project”), by conveying approximately 33 acres of land owned by the Town to the District and providing a two-percent sales tax credit against taxable transactions occurring within the property to be used to pay bonds that will be issued by the District to finance public improvements and the purchase of land. The terms and conditions related to the Town’s participation in the Project as well as the Developer and the District’s rights and obligations related thereto are set out in the proposed Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado (“Agreement”).

The Project is still in the preliminary stages. The Developer and the District do not own all the land, land use approvals have not been obtained, public improvements have not been fully defined and budgets are incomplete. Nevertheless, to move the process forward, the Developer and the District have requested that the Town Council consider the Agreement at this preliminary stage in order that they have a better understanding of their rights and obligations moving forward.

The material terms of the Agreement are as follows:

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- The Project is estimated to contain 785,000 square feet of commercial and retail development.
- The Project will be constructed on at least three parcels of property (additional parcels may be added at a subsequent date):
  - The commercial portion of the Anderson parcel, which was or is being purchased by the Developer, consisting of approximately 35.857 acres, situated east of High Plains Boulevard;
  - The Town parcel, referred to in the Agreement as the “Oxy Parcel No. 1,” which will be conveyed by the Town to the District, consisting of approximately 33.22 acres, situated west of High Plains Boulevard; and
  - A third parcel, anticipated to be purchased by the Town and then sold to the Developer, referred to in the Agreement as the “Oxy Parcel No. 2,” consisting of approximately 25.14 acres, situated south of the Oxy Parcel No. 1.
- The Project is anticipated to be constructed in two phases. Phase I of the Project will contain approximately 285,000 square feet of retail use, a 2.5 acre Park-n-Ride facility and two hotels. Phase II of the Project will contain an estimated total of 500,000 square feet of retail uses. At this stage, the Developer has a committed anchor for Phase I of the Project.
- To finance the public improvements, the District intends that there will be three bond issuances, one in each of the years 2022, 2024 and 2026. The Developer seeks to net approximately \$150,000,000 from the bond issuances for the payment of public improvements and the cost to purchase the land, except that the bond funds will not be used for the purchase of Oxy Parcel No. 1.
- Prior to the issuance of any bonds, the following conditions are required to occur unless such condition is waived or modified by the Town:
  - Town Council approval of an amendment to the Service Plan(s) as appropriate and necessary;
  - Town Council approval of a Preliminary Plat;
  - Execution of an Advance Reimbursement and Payment Agreement between the District and the Developer related to the Developer’s advancement of funds for public improvement costs to the District;
  - Town Council adoption of a sales tax ordinance providing the sales tax credit;
  - Recordation of a “Public Improvement Fee Covenant” relating to, among other matters, the Credit PIF and Add-on PIF (defined below).
  - Recordation of a “Payment in Lieu of Taxes Covenant” requiring a payment in lieu of taxes for any uses that are exempt from property taxation;

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- Execution of an Escrow Agreement among the Town, Developer, District and an escrow agent in the form attached as Exhibit F to the Agreement;
  - Execution of an Operations and Maintenance Agreement between the Town and the District related to the ongoing obligation to maintain the Project as a first class facility; and
  - The District's submission of documents, including a feasibility analysis, thirty (30) days before a bond issuance containing, among other matters, the financing plan for the proposed issuance and the build out assumptions and revenue assumptions for the repayment of Bonds.
- Prior to the release of any bonds funds, the District and Developer will be required to enter into a Subdivision Improvement and Development Agreement with the Town outlining the public improvements specific to the development and containing special conditions related to the development (the "Exhibit B-3" special conditions).
  - The Town will receive 1.5% of the sales tax generated from the Project and will provide a 2% sales tax credit, known as the Credit PIF, to the retailers. The retailers will remit the Credit PIF to a trustee for payment of the bonds. Unless otherwise approved by the Town, the Credit PIF will only be available to pay bonds until December 1, 2051, or until the bonds are fully paid, whichever is earlier, except that the Credit PIF will only be available for developer bonds until December 1, 2047.
  - In addition to the Credit PIF, the Developer will impose a 2.5% fee, an Add-On PIF, on all taxable transactions, which amount, along with the Credit PIF, will be used to pay the bonds. The Developer is required to continue imposing the Add-On PIF while debt is outstanding and may continue to impose the fee after the debt is re-paid to use the funds to maintain the retail facility.
  - The District will not be entitled to secure any financing for the public improvements with a mortgage or encumbrance on the property.
  - The Developer will contribute the "new money" received from the Johnstown Plaza bond refinancing to pay for public improvements at the Project and will not be entitled to repayment from the District, at a later date, for those funds.
  - A form of escrow agreement is attached to the Agreement. The escrow agreement directs how the bonds funds will be released to the District and the Developer. A final form of escrow agreement, with reference to specific dollar amounts for release, will be provided to the Town Council for consideration prior to each bond issuance. The material terms of the form of escrow agreement are as follows:

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- The creation of two accounts: (i) the Bond Proceeds Account and (ii) the Developer Funds Account.
- The Town Manager will have administrative discretion to disburse funds from the Bond Proceeds Account and 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.
- The Developer Funds Account will hold a portion of the funds released from the Bond Proceeds Account, in an amount to be agreed upon with each issuance, and be used to pay for the private improvements.
- Funds from the Developer Funds Account will be released based on either of two methodologies, in 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.
- Each 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, to be decided with each bond issuance, 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.

**LEGAL ADVICE:**

The Town Attorney and the Town’s Special Counsel, MaryAnn McGeady, prepared the Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado.

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**FINANCIAL ADVICE:**

The Town is contributing two percent (2%) of its sales tax revenue to the Project for approximately thirty (30) years.

**RECOMMENDED ACTION:** Approve the Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado.

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**SUGGESTED MOTIONS:**

**For Approval:** I move to approve the Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado, and authorize the Mayor to execute the agreement.

**For Denial:** I move to deny approval of the Development and Reimbursement Agreement, Ledge Rock Center Commercial, Johnstown, Colorado.

*Reviewed and Approved for Presentation,*



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Town Manager