

**AGREEMENT CONCERNING ECONOMIC DEVELOPMENT
BETWEEN THE TOWN OF JOHNSTOWN AND THE
JOHNSTOWN DOWNTOWN DEVELOPMENT ASSOCIATION**

This Agreement Concerning Economic Development (“Agreement”) is entered into this ____ day of _____, 2022 (“Effective Date”), by and between the Town of Johnstown, a Colorado home rule municipal corporation (“Town”), and the Johnstown Downtown Development Association, a Colorado non-profit corporation (“JDDA”) (each individually a “Party” and collectively the “Parties”).

RECITALS

WHEREAS, the JDDA is a volunteer-based, non-profit organization composed of representatives from the Town’s downtown businesses and organizations; and

WHEREAS, the JDDA desires to revitalize the Town’s downtown and position the downtown area as the focal point of the Town by, among other avenues, showcasing the downtown’s unique architectural and historical characteristics, encouraging downtown businesses to market cooperatively and supporting and establishing new and existing downtown public events; and

WHEREAS, to further its stated goals and promote economic vitality, the JDDA has requested that the Town provide financial support; and

WHEREAS, the Town Council budgeted and appropriated funds that may be used for economic development in the Town’s 2022 budget and anticipates budgeting and appropriating such funds in subsequent budgets; and

WHEREAS, the Town Council desires to use a portion of economic development funds to support the JDDA and, assuming funds are budgeted and appropriated in future years and based on the conditions set forth in this Agreement, desires to continue supporting the JDDA; and

WHEREAS, the Town Council finds, determines and declares that supporting the JDDA will promote the public interest, protect and preserve economic development and sustainability and provide substantial public benefits; and

WHEREAS, the Town Council further finds, determines and declares that supporting the JDDA will provide a public benefit and further a public purpose within the meaning of Article 11, Section 2 of the Colorado Constitution; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by the Parties, the Parties agree as follows:

1. Recitals. The Recitals are incorporated into this Agreement as if fully set forth herein.

2. Services; JDDA Board. Among other activities beneficial to the downtown specifically and the Town as a whole, the JDDA hereby agrees to: (i) implement its strategic plan and goals to revitalize the Town's historic downtown; (ii) undertake activities to position the downtown as the focal point of the Town; (iii) establish and promote events for public participation in the downtown; and (iv) endeavor to create employment opportunities in the downtown ("Services"). The JDDA further agrees that the composition of JDDA's executive board will include a Town representative to act as a member of the board without voting rights.

3. Financial Support. In consideration of the Services, the Town agrees to provide financial support to the JDDA. To obtain financial support during a calendar year, the JDDA may make written requests for funds to the Town Manager and include therewith documentation supporting the request for funds. Upon review and approval of the Town Manager, the Town Manager shall cause the Town to provide funds to the JDDA. The Town Manager, however, is not authorized to release funds to the JDDA in any calendar year in an amount that exceeds \$15,000 or that may be appropriated annually in the Town fiscal year budget for the JDDA. If the JDDA requests funds exceeding \$15,000 or exceeding the amount budgeted in any calendar year, the JDDA may request such additional funds from the Town Council.

4. Reporting Requirements. To receive financial support from the Town, the JDDA agrees to satisfy the following reporting requirements:

a. Annual Report. On or before January 31 of each calendar year that this Agreement is in effect, the JDDA shall provide an annual report to the Town containing, at a minimum, the following information:

1. A list of current JDDA members and membership level;
2. The financial statement and statement of activity for the previous year;
3. A finalized budget for the current year;
4. A summary and analysis of the specific steps taken to implement the JDDA's strategic plans and goals, revitalize the downtown and perform the Services;
5. A summary and analysis of the public events that the JDDA sponsored or supported during the previous year including budget summary for each event;
6. A summary of public events that the JDDA intends to sponsor or support during the current year;
7. A summary of the downtown businesses and organizations that received direct assistance from the JDDA and of the prospective businesses with whom the JDDA discussed relocating or opening in the downtown area; and

8. If available, data that measures the JDDA's success in revitalizing the downtown, promoting economic development and fostering employment opportunities

b. Quarterly Reports: On or before the first day of the month of each fiscal quarter of each calendar year that this Agreement is in effect, except the first fiscal quarter (April 1, July 1 and October 1), the JDDA shall provide a quarterly report to the Town containing, at a minimum, the following information:

1. A financial statement and statement of activity for the previous quarter; and
2. A brief summary of the public events, organizations, and businesses that the JDDA sponsored or assisted during the previous quarter.

c. Written Funding Request: On or before July 31 of each calendar year that this Agreement is in effect, the JDDA shall provide a written funding request to the Town outlining the amount of funding requested for the following fiscal year along with a proposed budget for the following fiscal year.

d. Oral Presentation. During the last quarter of each calendar year, the JDDA shall make an oral presentation to the Town Council. The oral presentation shall include at minimum:

1. A summary of the annual report and quarterly reports submitted during the current year;
2. An overview of the JDDA activity for the current year including a financial summary; and
3. A summary of how the JDDA has supported and met its strategic plans and goals to encourage and promote the vibrancy of downtown.

5. Term and Termination. The term of this Agreement shall commence on the Effective Date and continue until terminated as provided herein. Either Party may terminate this Agreement, with or without cause, by providing the other Party with fifteen (15) days written notice.

6. Notice. All notices permitted or required under this Agreement shall be given to the respective Party at the following address, or at such other address as the respective Party may provide in writing for this purpose:

JDDA

The Johnstown Downtown Development Association
Attn: President
39 S Parish Ave., Suite 120
Johnstown, CO 80534
Email: johnstowndda@gmail.com

TOWN OF JOHNSTOWN

Town of Johnstown
Attn: Town Manager
P.O. Box 609
Johnstown, CO 80534
Email: mlecerf@townofjohnstown.com

Such notice shall be deemed given when personally delivered or when mailed, forty-eight (48) hours after deposit in the U.S. Mail, first class postage prepaid and addressed to the Party at its applicable address. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service. In the alternative, notice may be provided by electronic mail communication on the condition that the recipient acknowledges receipt of the electronic mail

7. Non-Appropriation. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being budgeted, appropriated and otherwise made available. This Agreement shall be terminated effective January 1 of the first fiscal year for which funds are not appropriated.

8. Amendments. Any alternations, variations, modifications or waivers of provisions of the Agreement, unless specifically authorized in this Agreement, shall be valid only when reduced to writing and duly signed and approved by authorized representatives of both Parties.

9. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous negotiations, understandings or agreements, whether written or oral.

10. Waiver. No waiver of any term, condition or default of this Agreement shall be deemed a continuing waiver of the same or other term, condition or default.

11. Assignment. The JDDA shall not assign or transfer its interest in this Agreement or any part thereof without the prior written consent of the Town. Any such assignment shall, in the discretion of the Town, immediately void this Agreement.

12. No Third-Party Beneficiaries; Responsibility for Services. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties under this Agreement. The Parties understand, recognize and agree that the JDDA assumes full responsibility for its acts and omissions and for the performance of the Services and that the Town is no way responsible or liable for the acts or omissions of the JDDA.

13. Authority to Execute Agreement. The Town and JDDA each warrant that the individual signing this Agreement on its respective behalf has the legal power, right and authority to enter into this Agreement so as to bind the respective Party for whom they sign to the terms of this Agreement.

