

**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 _____, 2020 (“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 for economic development in the Town’s 2020 budget and anticipates budgeting and appropriating funds for economic development 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. 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").

3. Financial Support. In consideration of the Services, the Town agrees to provide financial support to the JDDA on an annual basis. For the 2020 calendar year, the Town agrees to provide support in the amount of \$10,000.00. For subsequent years, the amount of the annual support shall be determined by Town Council after receipt of the annual report referenced in Paragraph 4 of this Agreement, and memorialized in a supplement to this Agreement, the form of which is attached hereto and incorporated herein by reference as Exhibit A ("Annual Financial Support Agreement").

4. Annual Report.

a. Written Report. On or before March 1 of each calendar year that this Agreement is in effect, the JDDA shall provide a written report to the Town. The report shall include, at a minimum;

1. An accounting of the previous year's expenditures and a budget for the current year;
2. 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;
3. A summary and analysis of the public events that the JDDA sponsored or supported during the previous year and of the public events that the JDDA intends to sponsor or support during the current year;
4. A summary of the downtown businesses 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
5. If available, data that measures the JDDA's success in revitalizing the downtown, promoting economic development and fostering employment opportunities

b. Oral Presentation. After submission of the written report, Town staff shall schedule a time during a regular Town Council meeting for the JDDA to make an oral presentation to Town Council.

c. Annual Award. Without limiting Town Council's discretion, Town Council anticipates determining the amount of the Town's annual financial support to the JDDA after receipt of the written report and oral presentation and thereafter direct the execution of the Annual Financial Support Agreement.

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: _____

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.

14. No Presumption. Each Party acknowledges that it has carefully read and reviewed the terms of this Agreement. Each Party acknowledges that the entry into and execution of this Agreement is of its own free and voluntary act and deed, without compulsion. 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 Agreement and with respect to all matters set forth herein. The Parties agree that this Agreement reflects the joint drafting efforts of all Parties and in the event of any dispute, disagreement or controversy arising from this agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

15. Headings. The headings used herein are for convenience purposes only and shall not limit the meaning of the language contained herein.

IN WITNESS WHEREOF, the Parties hereto have affixed their signatures below.

JOHNSTOWN DOWNTOWN DEVELOPMENT ASSOCIATION

By: _____
_____, President

STATE OF COLORADO)
) ss
COUNTY OF WELD)

SUBSCRIBED AND SWORN to before me this _____ day of _____, 2020, by _____ as the President of the Johnstown Downtown Development Association.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

TOWN OF JOHNSTOWN, COLORADO

By: _____
Gary Lebsack, Mayor

ATTEST:

By: _____
Diana Seele, Town Clerk

**EXHIBIT A
FORM OF AGREEMENT**

**ANNUAL FINANCIAL SUPPORT AGREEMENT
FOR THE ____ CALENDAR YEAR**

This Annual Financial Support Agreement for the ____ Calendar Year supplements and is incorporated into the Agreement Concerning Economic Development between the Town of Johnstown, a Colorado home rule municipal corporation (“Town”), and the Johnstown Downtown Development Association, a Colorado non-profit corporation (“JDDA”), dated _____, 2020 (“Agreement”).

1. Annual Report. Pursuant to Paragraph 4 of the Agreement, on or about ____, 20__, the JDDA provided its annual written report to the Town and, on ____, 20__, appeared before Town Council to present the report.

2. Annual Financial Support. Based upon the annual report and the JDDA’s continued commitment to provide the Services referenced in the Agreement, and for the reasons set forth in the Agreement, the Town agrees to provide financial support to the JDDA in the amount of \$_____ for the ____ calendar year.

3. Validity of Agreement. Except as modified herein, the Agreement shall remain in full force and effect.

Dated: _____, 20__.

Town of Johnstown

By: _____
Matt LeCerf, Town Manager

Accepted and agreed to by the Johnstown Downtown Development Association.

By: _____
_____, President