

Cost Sharing Intergovernmental Agreement
(Weld County Road 5 Widening and Raw Water Line Project)

This Cost Sharing Intergovernmental Agreement (the "Agreement") is made and entered into this ____ day of _____, 2021 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), and Colliers Hill Metropolitan District No. 3, a Colorado special district with an address of 2154 East Commons Ave. Suite 2000, Centennial CO 80122 (the "District") (each a "Party" and collectively the "Parties").

Whereas, pursuant to C.R.S. § 29-1-203, the Parties are authorized to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide;

Whereas, the District has completed the civil engineering plans and intends to construct the public improvements related to the widening of Weld County Road 5 and the installation of a raw water line along and adjacent to Weld County Road 5 bounded by Weld County Road 10, and north of Erie Parkway (the "Project");

Whereas, the Project includes: utility improvements such as raw water, potable water, storm sewer and sanitary sewer; roadway improvements such as grading, curb and gutter, median, sidewalk, asphalt pavement, traffic signal, pavement markings, and signage; drainage improvements such as grading and storm sewer; and erosion control as further described in **Exhibit A** (the "Infrastructure ");

Whereas, the Parties support the Project and recognize the Project and the Infrastructure mutually benefit the Parties by reducing duplication of work and costs;

Whereas, the District is willing to construct and install the Infrastructure and the Town is willing to pay its proportionate share of the costs; and

Whereas, the Parties agree it is in their best interest to share in the funding of the construction and installation of the Infrastructure as further set forth in this Agreement.

Now, Therefore, in consideration of the foregoing recitals and the mutual covenants and promises set forth below, the receipt and sufficiency of which are mutually acknowledged, the Parties hereby agree as follows:

1. Project Construction.

a. The District has designed and shall construct the Infrastructure and shall acquire and or dedicate all easements and rights-of-way necessary for the Project.

b. A timetable for completion of the Project is attached hereto as **Exhibit B** and incorporated herein by this reference. The District will make diligent and good faith efforts to meet the various Project milestones as indicated on **Exhibit B**.

c. The District shall execute a construction contract with Scott Contracting, Inc., which was competitively selected, for construction of the Project. The construction contract for the Project shall be subject to the Town's prior approval, and shall contain customary public construction contract provisions, including without limitation bonding requirements, insurance requirements, liquidated damages, acceptance provisions and a 2-year warranty.

d. The District shall administer the Project in substantially the same manner and with the same care as other District projects of a similar scope and nature. The District shall manage all change orders and costs adjustments in accordance with the construction contract.

e. No less frequently than once per month, the Parties shall hold status update and progress meetings to keep the Town reasonably informed regarding the progress of the Project construction.

2. Project Costs.

A. *Design.* Within 7 days of the Effective Date, the Town shall pay to District \$113,273.00, which represents Town's proportionate share (39.1%) of the Weld County Road 5 widening design costs, and \$21,941.25 for the Town's proportionate share (75%) of the raw water line design costs. These payments shall be full and complete satisfaction of the Town's share of the design costs for the Infrastructure.

B. *Construction.*

1. The estimated costs of construction, installation and acquisition of rights-of-way, easements and licenses necessary for the Infrastructure, including the Parties' respective proportional shares of the costs, are set forth in **Exhibit A** (the "Estimated Project Costs").

2. Throughout the Project, within 10 days of the Town's request, the District shall provide records relating to the construction of the Infrastructure, including copies of each draw request from the District's general contractor, together with paid invoices or such other documentation as may be available and reasonably requested.

3. The actual Project costs may vary from the Estimated Project Costs. Within 90 days following completion of the Project, the District shall submit to the Town a written statement of the actual final costs incurred (the "Final Project Costs") and the Parties' adjusted respective proportional shares of the Final Project Costs. If the Town objects to the Final Project Costs, the Parties shall hire a neutral third party to resolve the dispute, with the Parties equally sharing the costs, and that third party's decision on the final allocation of costs shall be final.

3. Payment.

a. Within 30 days from the date that the District notifies the Town that it has approved the Scott Contracting construction contract, the Town shall deposit the Town's portion of the Estimated Project Costs into an interest bearing escrow account (the "Town Funds"), in accordance with the Escrow Agreement in the form attached as **Exhibit C** and incorporated herein by this reference (the "Escrow Agreement").

b. As a condition to deposit of the Town Funds, District shall certify to Town that District has appropriated District funds in an amount such that when the District funds are aggregated with the Town Funds, the Project funds are sufficient to meet the Estimated Project Costs.

c. The Town Funds shall be disbursed in accordance with the terms of the Escrow Agreement.

d. The District shall separately account for and use the Town Funds solely for payment of Project costs attributable to the Town. Project payments shall be made proportionately from the Town Funds and the District funds. On an ongoing basis, the District shall provide the Town with copies of approved pay requests and disbursements from Project funds.

3. Property Acquisition. The District shall undertake the acquisition of all real property interests necessary to construct the Project. Acquisition costs include the cost of appraisals, surveying, legal fees, right of way acquisition assistance, title insurance and customary closing costs, in addition to the actual easement payment to the property owner.

4. Infrastructure Ownership. Upon completion of construction and installation of the Project, the District shall be the sole owner of the drainage facilities (the "District Infrastructure") and the Town shall be the sole owner of the Weld County Road 5 improvements (the "Town Infrastructure"). The District shall convey the Town Infrastructure to the Town by bill of sale. Warranties for the Town Infrastructure shall be transferred to Town upon the Town's final payment for Town Infrastructure.

5. Miscellaneous.

a. *Assignment.* This Agreement shall not be assigned by either Party without the prior written authorization of the other Party.

b. *Governing Law and Venue.* The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be in Weld County, Colorado.

c. *No Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement.

d. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

e. *Governmental Immunity.* Nothing herein shall be construed as a waiver of any protections or immunities that the District, the Town or their respective employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended.

f. *No Joint Venture.* Notwithstanding any provision hereof, the Town shall never be a joint venture in any private entity or activity which participates in this Agreement, and the Town shall never be liable or responsible for any debt or obligation of any participant in this Agreement.

g. *Notice.* Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, to the address on the first page of this Agreement.

h. *Integration.* This Agreement, together with all exhibits attached hereto, constitute the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein or incidental thereto, and supersedes all negotiations or previous arrangements between the Parties with respect to any and all of the subject matter hereof.

i. *Recordation.* This Agreement shall be recorded in the real estate records of the Weld County Clerk and Recorder, and shall be a covenant running with the Property.

j. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Town not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

k. *Force Majeure.* No Party shall be in breach of this Agreement if such Party's failure to perform any of the duties under this Agreement is due to Force Majeure, which shall be defined as the inability to undertake or perform any of the duties under this Agreement due to acts of God, floods, storms, fires, sabotage, terrorist attack, strikes, riots, war, labor disputes, forces of nature, the authority and orders of government or pandemics.

In Witness Whereof, the Parties have executed this Agreement as of the Effective Date.

Town of Erie, Colorado

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk

**Colliers Hill Metropolitan District
No. 3**

Attest:

EXHIBIT A

Collier's Hill Weld County Road 5 and Raw Water Line

SUMMARY OF PROJECT COSTS & COST ALLOCATIONS

APRIL 15, 2021

BID SCHEDULE A: SHARED COSTS (25-75)

Collier's Hill Metro District No. 3	25%	\$	175,470.82
Town of Erie	75%	\$	526,412.45

Bid Schedule A Total: \$ 701,883.26

BID SCHEDULE B: SHARED COSTS (65.6 - 34.4)

Collier's Hill Metro District No. 3	65.6%	\$	3,480,043.23
Town of Erie	34.4%	\$	1,824,900.72

Bid Schedule B Total: \$ 5,304,943.95

TOTAL BID SCHEDULES (A & B)

Collier's Hill Metro District No. 3	60.9%	\$	3,655,514.05
Town of Erie	39.1%	\$	2,351,313.16

TOTAL BID COSTS: \$ 6,006,827.21

NON-BID COSTS

*Traffic Signal	1	LS	\$ 357,926.00	\$	357,926.00
Street Lighting	15	EA	\$ 17,000.00	\$	255,000.00
Landscaping	1	LS	\$ 50,000.00	\$	50,000.00

*Final pricing to be based on approved CD's

TOTAL NON-BID COSTS: \$ 662,926.00

CONSTRUCTION HARD COSTS

		TOTAL BID + NON-BID COSTS:	\$ 6,669,753.21
		TOTAL BID + NON-BID COSTS (W/ 8% CONTINGENCY):	\$ 7,203,333.47
Material Testing (2.5% of Hard Costs)		2.5%	\$ 180,083.34
Construction Surveying/Staking (2.5% of Hard Costs)		2.5%	\$ 180,083.34

TOTAL HARD COSTS: \$ 7,563,500.14

SOFT COSTS

Construction Management	4.5%	\$	340,357.51
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TOTAL SOFT COSTS: \$ 340,357.51

TOTAL COMBINED COSTS : \$ 7,903,857.65

ALLOCATION TOTALS

Collier's Hill Metro District No. 3	60.9%	\$	4,813,449.31
Town of Erie	39.1%	\$	3,090,408.34

EXHIBIT B - Weld County Rd. 5 Widening & Raw Water Line Project - IHC Scott preliminary schedule (page 2 of 3)

ID	Task Mode	Task Name	Duration	Start	Finish	Predecessors	Successors	Apr 18, '21	F	Jul 25, '21	S	Oct 31, '21	S
41		Asphalt Pave Flora View Dr.	6 days	Wed 8/18/21	Wed 8/25/21								
42		First Lift	5 days	Wed 8/18/21	Tue 8/24/21	40	43						
43		Top Lift	1 day	Wed 8/25/21	Wed 8/25/21	42							
44		12" Water Main	14 days	Tue 7/6/21	Fri 7/23/21								
45		Connect to Existing 12" Main in WCR 5	13 days	Tue 7/6/21	Thu 7/8/21	30	46						
46		Install 12" Main WCR 5	7 days	Fri 7/9/21	Mon 7/19/21	45	47						
47		Clear Water Test	3 days	Tue 7/20/21	Thu 7/22/21	46	48						
48		Connect to Existing 12" Main at HS	1 day	Fri 7/23/21	Fri 7/23/21	47	52						
49		Traffic Control	1 day	Fri 7/30/21	Fri 7/30/21								
50		Traffic Control (Close WCR 5 North of I)	1 day	Fri 7/30/21	Fri 7/30/21								
51		Storm in WCR 5	1 day	Mon 7/26/21	Mon 7/26/21								
52		36" RCP Crossing	1 day	Mon 7/26/21	Mon 7/26/21	48	54,56						
53		Install Depressions on Existing 12" in WCR 5 (4 EA)	4 days	Tue 7/27/21	Fri 7/30/21								
54		Install Depressions	4 days	Tue 7/27/21	Fri 7/30/21	52	67						
55		Mill WCR 5 From HS North to CR 10	4 days	Tue 7/27/21	Fri 7/30/21								
56		Mill WCR 5 From HS North to CR 10	4 days	Tue 7/27/21	Fri 7/30/21	52	58						
57		Earthwork HS North to CR 10	15 days	Mon 8/2/21	Fri 8/20/21								
58		Balance & Fine Grade	5 days	Mon 8/2/21	Fri 8/6/21	56	59						
59		Agg Base Course	5 days	Mon 8/9/21	Fri 8/13/21	58	60						
60		Prep Curb & Gutter	5 days	Mon 8/16/21	Fri 8/20/21	59	62						
61		Curb & Gutter HS North to CR 10	5 days	Mon 8/23/21	Fri 8/27/21								
62		Curb & Gutter	5 days	Mon 8/23/21	Fri 8/27/21	60	64						
63		Asphalt Paving HS North to CR 10	7 days	Mon 8/30/21	Wed 9/8/21								
64		Prep Paving	2 days	Mon 8/30/21	Tue 8/31/21	62	65						
65		Paving Full Depth	5 days	Wed 9/1/21	Wed 9/8/21	64							
66		18" & 24" RCP Storm WCR 5	37 days	Mon 8/2/21	Wed 9/22/21								
67		24" Stormline 4	2 days	Mon 8/2/21	Tue 8/3/21	54	68						
68		Storm Main by HS	20 days	Wed 8/4/21	Tue 8/31/21	67	69						
69		Stilling Basin and Inlets	15 days	Wed 9/1/21	Wed 9/22/21	68							
70		Milling WCR 5 From North HS Ent. South on East side to Erie Parkway	5 days	Mon 7/12/21	Fri 7/16/21								
71		Mill WCR 5 East Side	5 days	Mon 7/12/21	Fri 7/16/21	73							
72		Earthwork From North HS Ent. South on East side to Erie Parkway	24 days	Mon 7/19/21	Thu 8/19/21								
73		Balance & Fine Grade	7 days	Mon 7/19/21	Tue 7/27/21	71	74						
74		Agg Base Course	7 days	Wed 7/28/21	Thu 8/5/21	73	75						
75		Prep Curb & Gutter	10 days	Fri 8/6/21	Thu 8/19/21	74	77						
76		Curb & Gutter From North HS Ent. South on East side to Erie Parkway	6 days	Fri 8/20/21	Fri 8/27/21								
77		Curb & Gutter	6 days	Fri 8/20/21	Fri 8/27/21	75	79						

Project: WCR 5 Initial Schedule - J Date: Thu 4/15/21	Task		Project Summary		Inactive Milestone		Manual Summary Rollup		Deadline	
	Split		External Tasks		Inactive Summary		Manual Summary		Critical	
	Milestone		External Milestone		Manual Task		Start-only		Critical Split	
	Summary		Inactive Task		Duration-only		Finish-only		Progress	

Exhibit C Escrow Agreement

This Escrow Agreement is made and entered into this ____ day of April, 2021 (the "Escrow Agreement"), by and between Colliers Hill Metropolitan District No. 3, a quasi-municipal corporation and political subdivision of the State of Colorado (the "District"), the Town of Erie, Colorado, a Colorado municipal corporation with an address of P.O. Box 750, Erie, CO 80516 (the "Town"), and UMB Bank, N.A. as escrow agent (the "Escrow Agent") (each a "Party" and collectively the "Parties").

Whereas, concurrent with the execution of this Escrow Agreement, the District and the Town entered into a Cost Sharing Intergovernmental Agreement (Weld County Road 5 Widening and Raw Water Line Project) (the "IGA"), whereby the Parties agreed that the Town will deposit funds in the amount of its portion of the Estimated Project Costs (as defined therein) in an interest bearing escrow account.

Now therefore, in consideration of the promises and agreements of the Parties and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

Article I – Escrow Deposit

1.1 Appointment of Escrow Agent. The Parties hereby appoint Escrow Agent to serve as escrow agent for the Escrow Property (defined below), and Escrow Agent hereby accepts the appointment and agrees to act on the terms and conditions set forth herein. Escrow Agent agrees to hold and disburse the Escrow Property strictly in accordance with this Escrow Agreement.

1.2 Establishment and Funding of Escrow Account. The Escrow Agent shall create, in accordance with the IGA and pursuant to this Escrow Agreement, a special fund and separate trust account designated as the "Weld County Road 5 Widening and Raw Water Project Account" (the "Escrow Account"). The Escrow Agent hereby acknowledges receipt of the sum of \$3,090,408.34 from the Town as the Town's portion of the Estimated Project Costs (the "Escrow Property"). The Escrow Agent is hereby instructed to, and agrees that it shall, deposit the Escrow Property into the Escrow Account.

1.3 Escrow Agent as Eligible Public Depository. The Escrow Agent acknowledges that the Escrow Property is a "public deposit," as such term is defined in the Public Deposit Protection Act of the State of Colorado, C.R.S. § 11-10.5-101, *et seq.* (the "Act"). The Escrow Agent, as of the date of this Escrow Agreement, is an "eligible public depository," as defined in said Act. If, at any time in the future, the Escrow Agent is no longer an "eligible public depository," as defined in the Act, the Escrow Agent agrees to provide immediate written notice of the same to the Parties.

1.4 Investments.

(a) The Escrow Agent is authorized and directed to deposit, transfer, hold and invest the Escrow Property and any investment income pursuant to the written direction of the Parties. Any investment earnings and income on the Escrow Property shall become part of the Escrow Property and shall be disbursed pursuant to Section 1.5 below. If the Escrow Agent is not provided written directions concerning investments of moneys held pursuant to this Agreement, the Escrow Agent shall invest such moneys in a money market fund. Unless otherwise confirmed or directed in writing, an account statement delivered periodically by the Escrow Agent to the Parties shall confirm that the investment transactions identified therein accurately reflect the investment directions of the Parties, unless the Parties notify the Escrow Agent in writing to the contrary 30 days of the date of such statement.

(b) Subject to the requirements of this Escrow Agreement, the Escrow Agent is hereby authorized and directed to sell or redeem any such investments as it deems necessary to make any payments or distributions required under this Escrow Agreement. The Escrow Agent shall have no responsibility or liability for any loss which may result from any investment or sale of investment made pursuant to this Escrow Agreement. The Escrow Agent may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. The Escrow Agent is specifically authorized to implement its automated cash investments system to assure that cash on hand is invested and to charge reasonable cash management fees, which may be deducted from income on investments. The Parties acknowledge that the Escrow Agent is not providing investment supervision, recommendations, or advice.

1.5 Disbursements. The Escrow Agent is authorized to make disbursements of the Escrow Property under the following conditions:

(a) Periodically, but not more than once per month, the District may request a disbursement from the Escrow Property to pay for progress payments due for the construction of the Project (as defined in the IGA) by delivering to each of the Escrow Agent and the Town a request for disbursement, setting forth the amount requested for disbursement (each, a "Disbursement Request") and attaching thereto invoices for payment and a project budget review and comparison. Each Disbursement Request shall contain a finding and determination by the District that the costs described therein constitute costs of design and construction of the Project. Prior to each such disbursement, the Escrow Agent must receive from the Town its written consent to such disbursement; provided, however, that if the Escrow Agent does not receive a written response from Town to any such Disbursement Request on or before 5:00 p.m. (Mountain Time Zone) on the day that is 15 days after the day upon which the Escrow Agent receives

such Disbursement Request, then Town shall be deemed to have consented to such disbursement and the Escrow Agent shall be fully authorized to make the disbursement set forth in the applicable Disbursement Request. The Parties acknowledge and agree that the Escrow Agent is not responsible for reviewing or checking the accuracy of the Disbursement Request or accompanying invoices and supporting documents, its duty being to pay the Disbursement Request upon the consent of the Town, whether written or deemed, upon which consent the Escrow Agent may conclusively rely.

(b) Upon the completion of the Project under the IGA, the District shall provide a copy of the Town's Initial Acceptance thereof to the Escrow Agent, upon the receipt of which, the Escrow Agent shall disburse to Town all of the remaining Escrow Property, if any, including any and all interest accrued thereon.

1.6 Termination. Upon the disbursement of all of the Escrow Property, including any interest and investment earnings thereon, this Escrow Agreement shall terminate and be of no further force and effect.

Article II – Duties of the Escrow Agent

2.1 Scope of Responsibility. Notwithstanding any provision to the contrary, the Escrow Agent is obligated only to perform the duties specifically set forth in this Escrow Agreement, which shall be deemed purely ministerial in nature. Under no circumstances will the Escrow Agent be deemed to be a fiduciary to any Party or any other person under this Escrow Agreement. The Escrow Agent will not be responsible or liable for the failure of any Party to perform in accordance with this Escrow Agreement. The Escrow Agent shall neither be responsible for, nor chargeable with, knowledge of the terms and conditions of any other agreement, instrument, or document other than this Escrow Agreement, whether or not an original or a copy of such agreement has been provided to the Escrow Agent; and the Escrow Agent shall have no duty to know or inquire as to the performance or nonperformance of any provision of any such agreement, instrument, or document. References in this Escrow Agreement to any other agreement, instrument, or document are for the convenience of the Parties, and the Escrow Agent has no duties or obligations with respect thereto. This Escrow Agreement sets forth all matters pertinent to the escrow contemplated hereunder, and no additional obligations of the Escrow Agent shall be inferred or implied from the terms of this Escrow Agreement or any other agreement.

2.2 Attorneys and Agents. The Escrow Agent shall be reimbursed as set forth in Section 3.4 for any and all compensation (fees, expenses and other costs) paid and/or reimbursed to such counsel and/or professionals. The Escrow Agent may perform any and all of its duties through its agents, representatives, attorneys, custodians, and/or nominees.

2.3 Reliance. The Escrow Agent shall not be liable for any action taken or not taken by it in accordance with the direction or consent of the Parties or their respective agents, representatives, successors, or assigns. The Escrow Agent may conclusively rely and shall not be liable for acting or refraining from acting upon any notice, request, consent, direction, requisition, certificate, order, affidavit, letter, or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons, without further inquiry into the person's or persons' authority. Concurrent with the execution of this Escrow Agreement, the Parties shall deliver to the Escrow Agent a list of authorized signers with a sample of the signature of each authorized signer. Notwithstanding anything contained herein to the contrary, in the event the Escrow Agent has actual knowledge of a default by either Party hereunder or receives a written notice of default from either Party, it shall suspend disbursements of the Escrow Property until such time as Escrow Agent receives a written notice from the non-defaulting Party authorizing additional disbursements.

2.4 Right Not Duty Undertaken. The permissive rights of the Escrow Agent to do things enumerated in this Escrow Agreement shall not be construed as duties.

2.5 No Financial Obligation. No provision of this Escrow Agreement shall require the Escrow Agent to risk or advance its own funds or otherwise incur any financial liability or potential financial liability in the performance of its duties or the exercise of its rights under this Escrow Agreement.

Article III – Provisions Concerning Escrow Agent

3.1 Resignation or Removal. The Escrow Agent may resign by furnishing written notice of its resignation to the Parties, and the Parties may remove the Escrow Agent by furnishing to the Escrow Agent a joint written notice of its removal along with payment of all fees and expenses to which it is entitled through the date of termination. Such resignation or removal, as the case may be, shall be effective thirty (30) days after the delivery of such notice or upon the earlier appointment of a successor, and the Escrow Agent's sole responsibility thereafter shall be to safely keep the Escrow Property and to deliver the same to a successor escrow agent as shall be appointed by the Parties, as evidenced by a joint written notice filed with the Escrow Agent or in accordance with a court order. If the Parties have failed to appoint a successor escrow agent prior to the expiration of 30 days following the delivery of such notice of resignation or removal, the Escrow Agent may petition any court of competent jurisdiction for the appointment of a successor escrow agent or for other appropriate relief, and any such resulting appointment shall be binding upon the Parties.

3.2. Compensation. The Escrow Agent shall be entitled to compensation for its services in the amount of _____ (\$____), which compensation shall be paid equally by the Parties upon execution of this Escrow Agreement.

3.3 Disagreements. If any conflict, disagreement or dispute arises between, among, or involving any of the parties hereto concerning the meaning or validity of any provision hereunder or concerning any other matter relating to this Escrow Agreement, or the Escrow Agent is in doubt as to the action to be taken hereunder, the Escrow Agent may, at its option, retain the Escrow Property until the Escrow Agent (i) receives a final non-appealable order of a court of competent jurisdiction or a final non-appealable arbitration decision directing delivery of the Escrow Property, (ii) receives a written agreement executed by each of the parties involved in such disagreement or dispute directing delivery of the Escrow Property, in which event the Escrow Agent shall be authorized to disburse the Escrow Property in accordance with such final court order, arbitration decision, or agreement, or (iii) files an interpleader action in any court of competent jurisdiction.

3.4 Merger or Consolidation. Any corporation or association into which the Escrow Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer all or substantially all of its corporate trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which the Escrow Agent is a party, shall be and become the successor escrow agent under this Escrow Agreement and shall have and succeed to the rights, powers, duties, immunities and privileges as its predecessor, without the execution or filing of any instrument or paper or the performance of any further act.

3.5 Attachment of Escrow Property; Compliance with Legal Orders. In the event that any Escrow Property shall be attached, garnished or levied upon by any court order, or the delivery thereof shall be stayed or enjoined by an order of a court, or any order, judgment or decree shall be made or entered by any court order affecting the Escrow Property, the Escrow Agent is hereby expressly authorized, in its sole discretion, to respond as it deems appropriate or to comply with all writs, orders or decrees so entered or issued, or which it is advised by legal counsel of its own choosing is binding upon it, whether with or without jurisdiction. In the event that the Escrow Agent obeys or complies with any such writ, order or decree it shall not be liable to any of the Parties or to any other person, firm or corporation, should, by reason of such compliance notwithstanding, such writ, order or decree be subsequently reversed, modified, annulled, set aside or vacated.

3.6 Force Majeure. The Escrow Agent shall not be responsible or liable for any failure or delay in the performance of its obligation under this Escrow Agreement arising out of or caused, directly or indirectly, by circumstances beyond its reasonable control, including, without limitation, acts of God; earthquakes; fire; flood; wars; acts of terrorism; civil or military disturbances; sabotage; epidemic; riots; interruptions, loss or malfunctions of utilities, computer (hardware or software) or communications services; accidents; labor disputes; acts of civil or military authority or governmental action; it being understood that the Escrow Agent shall use commercially reasonable efforts which are consistent with

accepted practices in the banking industry to resume performance as soon as reasonably practicable under the circumstances.

Article IV - Miscellaneous

4.1 Successors and Assigns. This Escrow Agreement shall be binding on and inure to the benefit of the Parties and the Escrow Agent and their respective successors and permitted assigns. No other persons shall have any rights under this Escrow Agreement. No assignment of the interest of any of the Parties shall be binding unless and until written notice of such assignment shall be delivered to the other Party and the Escrow Agent and shall require the prior written consent of the other Party and the Escrow Agent (such consent not to be unreasonably withheld).

4.2 Escheat. The Parties are aware that under applicable state law, property which is presumed abandoned may under certain circumstances escheat to the applicable state. The Escrow Agent shall have no liability to the Parties, their respective heirs, legal representatives, successors and assigns, or any other party, should any or all of the Escrow Property escheat by operation of law.

4.3. Notices. All notices, requests, demands, and other communications required under this Escrow Agreement shall be in writing, in English, and shall be deemed to have been duly given if delivered (i) personally, (ii) by facsimile transmission with written confirmation of receipt, (iii) by overnight delivery with a reputable national overnight delivery service, (iv) by mail or by certified mail, return receipt requested, and postage prepaid. or (v) by electronic transmission; including by way of e-mail (as long as such email is accompanied by a PDF or similar version of the relevant document bearing an authorized signature, which such signature shall, in the case of each of the Parties, be a signature provided to the Trustee pursuant to Section 2.3, as applicable), with e-mail confirmation of receipt. If any notice is mailed, it shall be deemed given five business days after the date such notice is deposited in the United States mail. If notice is given to a party, it shall be given at the address for such party set forth below. It shall be the responsibility of the Parties to notify the Escrow Agent and the other Party in writing of any name or address changes. In the case of communications delivered to the Escrow Agent, such communications shall be deemed to have been given on the date received by the Escrow Agent.

To District: Colliers Hill Metropolitan District No. 3
2154 E. Commons Avenue, Suite 200
Centennial, Colorado 80122
Phone: 303-858-1800
Email: sallen@wbapc.com
Attn: Sean Allen

To the Town: Town Administrator, Town of Erie
P.O. Box 750
Erie, CO 80516

To Escrow Agent: UMB Bank, n.a.
1670 Broadway
Denver, CO 80202
Phone: 303-839-2220
Email: Leigh.Lutz@umb.com
Attn: Leigh Lutz

4.4. Governing Law and Venue. This Escrow Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and venue for any legal action arising under this Agreement shall be in Weld County, Colorado.

4.5 Entire Agreement. This Escrow Agreement sets forth the entire agreement and understanding of the parties related to the Escrow Property.

4.6 Amendment. This Escrow Agreement may be amended, modified, superseded, rescinded, or canceled only by a written instrument executed by the Parties and the Escrow Agent.

4.7 Waivers. The failure of any party to this Escrow Agreement at any time or times to require performance of any provision under this Escrow Agreement shall in no manner affect the right at a later time to enforce the same performance. A waiver by any party to this Escrow Agreement of any such condition or breach of any term, covenant, representation, or warranty contained in this Escrow Agreement, in any one or more instances, shall neither be construed as a further or continuing waiver of any such condition or breach nor a waiver of any other condition or breach of any other term, covenant, representation, or warranty contained in this Escrow Agreement.

4.8 Headings. Section headings of this Escrow Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions of this Escrow Agreement.

4.9 Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which when executed shall be deemed to be an original, and such counterparts shall together constitute one and the same instrument.

4.10 Electronic Storage. The Parties hereto agree that the transactions described herein may be conducted and related documents may be stored by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original

documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

IN WITNESS WHEREOF, this Escrow Agreement has been duly executed as of the date first written above.

Colliers Hill Metropolitan District No. 3,
a quasi-municipal corporation and political
subdivision of the State of Colorado

By: _____
President

Attest:

Secretary

UMB Bank, N.A.

By: _____

Town of Erie, Colorado

Jennifer Carroll, Mayor

Attest:

Heidi Leatherwood, Town Clerk