

Intergovernmental Agreement
(Erie Development Parcel – Revenue Sharing)

This Intergovernmental Agreement (the "Agreement") is made as of the ____ day of _____, 2022 (the "Effective Date"), by and among the Town of Erie, a Colorado statutory municipality ("Erie"), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority ("TOEURA"), and the City of Lafayette, Colorado, a Colorado home rule municipal corporation ("Lafayette") (each a "Party" and collectively the "Parties").

Whereas, the Local Government Land Use Control Enabling Act of 1974, C.R.S. §§ 29-1-201 *et seq.*, as amended (the "Act"), authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Article XIV, § 18(2) of the Colorado Constitution;

Whereas, the Act further provides that local governments may, through intergovernmental agreements, provide for revenue sharing;

Whereas, pursuant to the Act and other relevant law, the Parties previously entered into the "Intergovernmental Agreement – City of Lafayette – Town of Erie – Town of Erie Urban Renewal Authority" with an effective date of June 4, 2019 (the "Global Settlement IGA"), which, *inter alia*, provided for a plan for annexation and development of properties addressed therein, and for revenue sharing related to certain properties addressed therein;

Whereas, § II.C. of the Global Settlement IGA provides for tax revenue sharing between the Parties upon development of certain real property, depicted as "Parcel 1," "Parcel 2," "Parcel 3," and "Parcel 4" on **Exhibit A**, attached hereto and incorporated herein by this reference;

Whereas, the Global Settlement IGA further provides that the Parties will detail and memorialize the terms of such tax revenue sharing for the Erie Development Parcel in one or more separate agreements to be negotiated at the time of development of the Erie Development Parcel;

Whereas, development of the Erie Development Parcel is now underway, and the Parties desire to enter into this Agreement to address the sharing of revenues generated from the Erie Development Parcel, as contemplated in the Global Settlement IGA; and

Whereas, the functions described in this Agreement are lawfully authorized to each of the Parties that perform such functions hereunder, as provided in Article 20 of Title 29, C.R.S., as amended; and Parts 2 of Article 1 of Title 29, C.R.S., as amended; and their respective resolutions and ordinances, and in the case of Lafayette, its home rule charter.

Now therefore, in consideration of the mutual covenants and promises of the Parties contained herein and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. Definitions. All capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as in the Global Settlement Agreement. For purposes of this Agreement, the following terms shall have the following meanings:

"Erie Incentive Expenses" means the net expenses incurred by Erie and TOEURA prior to the Effective Date to incentivize the development of the Erie Development Parcel, which shall be limited to the following:

a. Contributions of real property necessary for the development of the Erie Development Parcel, which expense shall be valued at the fair value of such property at the time of contribution, net of any payments, credits, or reimbursements received or to be received by the contributing Party in consideration for such contribution; and

b. Expenses incurred to extend infrastructure to the Erie Development Parcel necessary for development of the Erie Development Parcel, net of any payments, credits, or reimbursements received or to be received by the Party towards or in consideration of such expenses; and

c. Expenses incurred for site development of the former Prince Lake parcel (depicted on **Exhibit A** as "Parcel 1"), net of any payments, credits, or reimbursements received or to be received by the Party towards or in consideration for such expenses; and

d. Expenses incurred to relocate the irrigation ditch located on the Erie Development Parcel and owned by the South Boulder Canyon Ditch Company, net of any payments, credits, or reimbursements received or to be received by the Party towards or in consideration for such expenses.

"Erie Incentive Payments" means any rebate of or payments based upon Erie Tax Revenue generated at the Erie Development Parcel, agreed to by Erie and TOEURA in an economic incentive agreement with an owner or developer of the Erie Development Parcel.

"Net Unrestricted Erie Tax Revenue" means that amount of Unrestricted Erie Tax Revenue collected, less the Erie Incentive Payments.

"Unrestricted Erie Tax Revenue" means all revenues generated by the Erie Development Parcel from the unrestricted portion of the current Erie sales and use tax rate of 3.5%, which unrestricted portion, according to § II.C.3. of the Global Settlement IGA, is 3.0%. "Unrestricted Erie Tax Revenue" also includes all revenue generated by the Erie Development Parcel from any lodging, admissions, amusement, excise, and any other

sales or activity-based taxes for activities occurring on the Erie Development Parcel, up to a tax rate of 3.0%. Any future increase in the rate of such taxes levied by Erie shall not increase the amount of Unrestricted Erie Tax Revenue that is subject to sharing under this Agreement. If at any time Erie increases its tax rate, revenue sharing payments to Lafayette shall continue to be made based on the 3.0% tax rate set forth in this paragraph. If at any time Erie reduces its tax rate to a rate less than 3.0%, the revenue sharing payments to be made to Lafayette shall be calculated based upon the Unrestricted Erie Tax Revenue generated and collected from such reduced rate.

2. Revenue Sharing. Erie and TOEURA (to the extent that TOEURA receives any portion of Unrestricted Erie Tax Revenue as tax increment or otherwise), shall pay to Lafayette an amount equal to 50% of the Net Unrestricted Erie Tax Revenue generated from the Erie Development Parcel, less Lafayette's 50% share of the Erie Incentive Expenses, as further described in the following formula:

$$[0.5 * \text{Net Unrestricted Erie Tax Revenue}] - [0.5 * \text{Erie Incentive Expenses}] = X$$

If X is a positive number, X = the amount of revenue sharing payment due to Lafayette.

If X is a negative number, X = the balance of Lafayette's share of Erie Incentive Expenses remaining until revenue sharing payments will be made to Lafayette.

3. No Reduction for Sales Tax Increment. Except for Erie Incentive Payments, the amount of Net Unrestricted Erie Tax Revenue that Lafayette is entitled to receive under this Agreement shall not be affected by, or otherwise reduced by reason of, TOEURA's entitlement to sales tax increment pursuant to the Colorado Urban Renewal Law (C.R.S. §§ 31-25-101 *et seq.*), or the relevant urban renewal plan.

4. Effect of Economic Incentives. Any Erie Incentive Expenses shall be shared by Erie and Lafayette equally (50% Erie and 50% Lafayette). Any Erie Incentive Expenses incurred by TOEURA shall be allocated to Erie. Any Erie Incentive Expenses for which Lafayette is responsible pursuant to this Section shall be deducted from Lafayette's share of the Net Unrestricted Erie Tax Revenue, until such time as Lafayette's obligation for the Erie Incentive Expenses is satisfied. The foregoing notwithstanding, Lafayette shall have no obligation to pay or reimburse Erie for any portion of Lafayette's share of the Erie Incentive Expenses; rather, Lafayette's share of the Erie Incentive Expenses shall solely be considered and applied as a deduction from Lafayette's share of the Net Unrestricted Erie Tax Revenue to be shared under this Agreement.

5. Statements. Within 30 days after the Effective Date, Erie and TOEURA shall provide to Lafayette a statement of Erie Incentive Payments agreed to by Erie and TOEURA prior to the Effective Date, and a statement of Erie Incentive Expenses incurred

by Erie and TOEURA prior to the Effective Date, along with complete copies of all agreements underlying such incentives. Erie shall provide Lafayette updated statements of Erie Incentive Payments agreed to or incurred by Erie and TOEURA at least every June 1 and January 1 thereafter as long as this Agreement is in effect. To the extent any statement includes Erie Incentive Payments not included in any prior statement, a complete copy of all agreements underlying such incentives shall be provided to Lafayette.

6. Duty to Consult. Erie and TOEURA shall consult with Lafayette prior to entering into any agreements, including economic incentive agreements or amendments thereto, pertaining to the development of the Erie Development Parcel and which commit to providing Erie Incentive Payments or incurring Erie Incentive Expenses that will affect the amount of Erie Tax Revenue to be shared with Lafayette under this Agreement.

7. Accrual and Commencement of Revenue Sharing. The Parties agree that the accrual of Unrestricted Erie Tax Revenue subject to sharing with Lafayette under this Agreement began on the date of issuance of the first building permit for any construction or building activity on the Erie Development Parcel, though such building permit was issued prior to the Effective Date. The Parties further agree that the obligation to make payments of the Net Unrestricted Erie Tax Revenue sharing to Lafayette shall commence on the date on which the first certificate of occupancy is issued by Erie for a business on the Erie Development Parcel generating Erie Tax Revenue.

8. Payment. Subject to the receipt of Net Unrestricted Erie Tax Revenue by Erie or TOEURA, Erie and TOEURA shall remit to Lafayette, within 60 days following the close of the last quarterly sales tax reporting period of each calendar year, any amounts that may be due to Lafayette pursuant to this Agreement. Moreover, within 60 days following the close of the last quarterly sales tax reporting period of each calendar year, Erie shall provide to Lafayette an accounting showing the following for the previous calendar year: the amount of Unrestricted Erie Tax Revenue received by Erie and TOEURA; the amount of Erie Incentive Payments to be deducted from the Unrestricted Erie Tax Revenue; the amount of Net Unrestricted Erie Tax Revenue subject to sharing under this Agreement; the amount of Lafayette's 50% share of the Erie Incentive Expenses; and the amount of the revenue sharing payment due to Lafayette for the relevant calendar year, or the balance remaining of Lafayette's share of Erie Incentive Expenses as of the end of the relevant calendar year.

9. Collection. Nothing in this Agreement shall be construed as imposing upon Erie any obligation to exert special efforts in the collection of Erie Tax Revenue. The Parties acknowledge that Erie is currently a statutory municipality and Erie's sales taxes are collected by the State of Colorado, and as such, there may be delays in receipt of sales tax revenue by Erie and subsequent remittance of the Net Unrestricted Erie Tax Revenue to Lafayette.

10. Term. This Agreement shall continue in perpetuity unless terminated by agreement of the Parties. It is the intent of the Parties that this Agreement shall remain in effect for the longest period of time permitted by law.

11. Examination of Records. The Parties agree that any duly authorized representative of Lafayette shall have access to and the right to examine any non-confidential documents, books, files, and other records of Erie and TOEURA relevant to monitoring Erie's and TOEURA's compliance with the terms of this Agreement. To the extent that Lafayette notifies Erie or TOEURA that it is necessary to examine confidential records in Erie's or TOEURA's possession in order to monitor compliance with the terms of this Agreement, the Parties agree to confer and discuss under what terms Lafayette may access the confidential records, including without limitation the provision of such records subject to a reasonable confidentiality agreement that effectively protects the confidentiality of such records and complies with applicable laws, rules, and regulations.

12. Non-Compliance. If a Party fails to comply with the provisions of this Agreement, the other Party or Parties, after providing written notice to the noncomplying Party and upon the failure of the noncomplying Party to achieve compliance within 90 days after said notice, may maintain an action for any and all remedies available at law or in equity, in a court of competent jurisdiction in Boulder County, Colorado.

13. Miscellaneous.

a. *Assignment*. This Agreement shall not be assignable by any 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 Boulder 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 rights, protections or immunities that any Party or its employees, officials or attorneys may have under the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 *et seq.*, as amended.

f. *Notices*. Notices under this Agreement shall be sufficiently given if sent by regular U.S. mail, postage prepaid, or by hand delivery to the person designated below for each Party at the indicated address unless otherwise designated in writing.

Erie:

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

Lafayette:

City of Lafayette
1290 South Public Road
Lafayette, Colorado 80026
Attn: Finance Director

TOEURA:

Town of Erie Urban Renewal Authority
P.O. Box 750
Erie, CO 80516
Attn: Executive Director

g. *Integration.* This Agreement, together with all exhibits attached hereto, constitutes the entire understanding and agreement of the Parties, integrates all the terms and conditions mentioned herein, and supersedes all negotiations or previous arrangements between the Parties with respect to the subject matter hereof, other than the Global Settlement Agreement, which shall remain in full force and effect in accordance with its terms.

h. *Recordation.* This Agreement shall be recorded in the real estate records of the Boulder County Clerk and Recorder, and shall be a covenant running with the Erie Development Parcel property.

i. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligations of Erie or Lafayette 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.

j. *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.

k. *Reliance.* The Parties understand that each is relying upon all of the promises made by the others in this Agreement, and each agrees (i) not to assert to any court or other body the invalidity or unenforceability of any portion of this Agreement unless such challenge is based upon a change in the law occurring after the Effective Date of this Agreement; (ii) to promptly notify the other Party of any legal action which might affect this Agreement; (iii) to allow the other Party to participate in such legal

action as the other Party deems appropriate, consistent with court rules; and (iv) to defend the Agreement in such legal action to the maximum extent consistent with law and court rules.

*[The remainder of this page is intentionally left blank.
Signatures begin on the following page.]*

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

Town of Erie Urban Renewal Authority

Jennifer Carroll, Chair

Attest:

Heidi Leatherwood, Town Clerk

City of Lafayette, Colorado

DocuSigned by:


Jaideep Mangat, Mayor

Attest:

DocuSigned by:


Lynnette Beck, GMC, City Clerk

Exhibit A

Erie Development Parcel

