

**Development Agreement**  
**(Erie Junction)**

This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2023 (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 Erie Junction LLC, a Colorado limited liability company with an address of 603 Sout Public Road, Unit 765, Lafayette, CO 80026 ("Developer") (each a "Party" and collectively the "Parties").

Whereas, Developer is the owner of the real property more particularly described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property");

Whereas, Developer wishes to develop the Property (the "Development") and has filed an application for approval of a final plat (the "Final Plat"); and

Whereas, the Town and Developer mutually acknowledge and agree that the matters hereinafter set forth are reasonable conditions and requirements to be imposed by the Town in connection with its approval of the Development, and that such matters are necessary to protect, promote and enhance the public health, safety and welfare of the Town.

Now, therefore, in consideration of the promises and the mutual covenants herein contained, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Purpose. The purpose of this Agreement is to set forth the terms, conditions and fees to be paid by Developer in connection with the improvements for the Development. All conditions in this Agreement are in addition to any requirements of the Erie Municipal Code (the "Code"), state law and other Town ordinances, and are not intended to supersede any requirements contained therein.

2. Construction of Improvements.

a. *General*. Developer shall, at its own expense, design, construct and install all public improvements necessary for the Development, including without limitation streets, alleys, curbs, gutters, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage facilities, and trails and park improvements (collectively the "Improvements"). A list of the required Improvements is set forth in **Exhibit B**, attached hereto and incorporated herein by this reference. Omission of any necessary Improvement from **Exhibit B** does not relieve Developer from responsibility for furnishing, installing or constructing such Improvement. The Improvements include two categories: General Improvements and Landscaping Improvements, as listed in **Exhibit B**.

b. *Construction Standards.* Developer shall construct the Improvements in accordance with plans approved by the Town (the "Plans"), as well as the Town's Standards and Specifications for Design and Construction of Public Improvements (the "Standards"). Developer shall furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Improvements. These services shall be performed by or under the supervision of a professional engineer licensed by the State of Colorado.

c. *Public Improvement Permit.* Before the construction of any Improvements, Developer shall obtain a Public Improvement Permit ("PIP") from the Town as provided in the Code. If the application is complete and complies with the approved plans and the Standards, the Town will issue the PIP. Developer shall reimburse the Town for any expenses incurred by the Town for consultant review of the application or associated documents. Unless otherwise approved by Town, overlot grading shall not be initiated until the Town approves drainage improvement plans by the issuance of the PIP.

d. *Testing and Inspection.* Developer shall employ, at its own expense, a licensed testing company to perform all testing of materials or construction reasonably required by the Town. Developer shall furnish copies of test results to the Town on a timely basis. At all times during construction, the Town shall have access to inspect materials and work, and all materials and work not conforming to the Plans or Standards shall be repaired or removed and replaced at Developer's expense.

e. *Rights-of-way and Easements.* Prior to construction of any Improvements that require additional rights-of-way or easements, Developer shall acquire at its own expense all such rights-of-way and easements. Any easements or rights-of-way conveyed to the Town shall be free and clear of liens, taxes and encumbrances and shall be conveyed on documents in a form acceptable to the Town.

f. *Permits.* Developer shall, at its own cost, obtain the following permits, as applicable:

- i. Any permits required by the United States Corps of Engineers;
- ii. Colorado Department of Health and Environment General Permit for Stormwater Discharges Associated with Construction Activity;
- iii. Grading, stormwater quality and right-of-way permits; and
- iv. Air Quality Permit.

g. *As-Built Drawings.* Upon completion of construction of the Improvements, Developer shall provide the Town with complete "as-built" drawings in the form required by the Standards.

h. *Applicable Law.* Developer shall at all times comply with all applicable law, including without limitation all current and future federal, state and local statutes, regulations, ordinances and rules relating to: the emission, discharge, release or threatened release of a Hazardous Material into the air, surface water, groundwater or land; the manufacturing, processing, use, generation, treatment, storage, disposal, transportation, handling, removal, remediation or investigation of a Hazardous Material; and the protection of human health, safety or the indoor or outdoor environmental, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act, 15 U.S.C. § 2601, *et seq.*; the Clean Water Act, 33 U.S.C. § 1251, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

3. Acceptance of Improvements and Warranty.

a. *Initial Acceptance.* No later than 10 days after Improvements are substantially complete, Developer shall request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval. All Improvements shall receive Initial Acceptance on or before May 1, 2024.

i. If the Improvements are satisfactory, the Town shall grant Initial Acceptance.

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Initial Acceptance. Developer shall complete all needed repairs, replacements, construction or other work within 30 days of said notice. After Developer completes the repairs, replacements, construction or other work required, Developer shall request of the Town a re-inspection of such work to determine if Initial Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement. The costs of re-inspection shall be borne by Developer.

b. *Final Acceptance.* At least 30 days before 2 years has elapsed from the issuance of Initial Acceptance, or as soon thereafter as weather permits, Developer shall

request an inspection by the Town. If Developer does not request this inspection, the Town may conduct the inspection without Developer's approval.

i. If the Improvements are satisfactory, the Town shall grant Final Acceptance.

ii. If the Improvements are not satisfactory, the Town shall provide written notice to Developer of the repairs, replacements, construction or other work required to receive Final Acceptance. After Developer completes the repairs, replacements, construction or other work required, Developer shall request of the Town a re-inspection of such work to determine if Final Acceptance can be granted, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Developer's expense. If Developer does not complete the repairs, replacements, or other work required within 30 days, Developer shall be in breach of this Agreement.

c. *Warranty.* For all Improvements to be dedicated to the Town, Developer shall provide the Town with a 2-year warranty, commencing on the date of Initial Acceptance (the "Warranty Period"). Specifically, but not by way of limitation, Developer shall warrant that: the title is marketable and its transfer rightful; the Improvements are free from any security interest or other lien or encumbrance; and the Improvements are free of defects in materials or workmanship. During the Warranty Period, Developer shall, at its own expense, take all actions necessary to maintain the Improvements and make all necessary repairs or replacements.

#### 4. Maintenance.

a. *Improvements.* Unless dedicated to and accepted in writing by the Town for maintenance, all Improvements shall be maintained by Developer. Acceptance by the Town of ownership of any Improvement does not constitute acceptance by the Town of maintenance for such Improvement. If Developer wishes to transfer maintenance obligations to the District or any other entity, including an owners' association, Developer shall obtain prior written approval from the Town.

b. *Vacant Lots/Tracts.* Developer shall be responsible for maintenance, including without limitation weed control and debris removal, on all vacant lots/tracts until such time as such lots/tracts are developed.

#### 5. Improvement Guarantee.

a. *Amount and Form.* To secure the construction and installation of the Improvements, Developer shall provide a letter of credit or cash in an amount equal to 115% of the total costs listed in **Exhibit B** (the "Improvement Guarantee"). The Improvement Guarantee may be split into two, one for the Landscape Improvements (the

"Landscape Improvement Guarantee"), and one for the General Improvements (the "General Improvement Guarantee").

b. *Timing.* Developer shall not commence construction, including without limitation staking, earth work, overlot grading or the erection of any structure, temporary or otherwise, until the Town has received and approved both the Landscape Improvement Guarantee and the General Improvement Guarantee.

c. *Draw.* If the Improvements are not constructed or completed within the periods of time specified herein, the Town may draw on the associated Improvement Guarantee to complete the Improvements. If the Improvement Guarantee is to expire within 14 days and Developer has not yet provided a satisfactory replacement, or completed the Improvements, the Town may draw on the Improvement Guarantee and either hold such funds as security for performance of this Agreement or spend such funds to finish the Improvements or correct problems with the Improvements as the Town deems appropriate. If the Town has drawn on the Improvement Guarantee, and a satisfactory replacement guarantee is provided or the Improvements have been completed, then the Town will release any funds received as a result of its draw within a reasonable period of time, or within 10 days of a request by Developer.

d. *Reduction.* Upon Initial Acceptance of all of the General Improvements, the General Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of such Improvements. The reduced General Improvement Guarantee shall be held by the Town during the Warranty Period. Upon Initial Acceptance of all of the Landscape Improvements, the Landscaping Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of such Improvements.

## 6. Reimbursement.

a. *To the Town.* Within 7 days of approval of the Final Plat, Developer shall reimburse the Town for a proportional cost of improvements previously constructed by the Town that benefit the Property. The amounts shall be as follows: for connection to the North Water Reclamation Facility interceptor, \$410 per single-family equivalent, or \$9,430.

b. *To Developer.* Developer may seek reimbursement for the oversize portion of utilities and other infrastructure and a *pro rata* portion of the cost of off-site Improvements required under this Agreement. At the time of final approval of a land use application for properties that use these Improvements, the Town may require, as a condition of approval, a proportional reimbursement to Developer. Nothing contained in this Agreement shall operate to create an obligation on the part of the Town to pay or reimburse any costs to Developer in the event such costs are not recovered by the Town as contemplated herein, for any reason, from the properties or property owners that use the Improvements.

7. Fees and Dedications.

a. *Open Space.* In lieu of land dedication, Developer shall pay the Town a fee of \$39,823. This fee shall be paid within 7 days of approval of the Final Plat.

b. *Parks.* In lieu of a land dedication, Developer shall pay the Town a fee of \$34,278. This fee shall be paid within 7 days of approval of the Final Plat.

c. *Schools.* In lieu of a land dedication, Developer shall pay the Town a fee of \$22, 931. This fee shall be paid within 7 days of approval of the Final Plat.

8. Issuance of Building Permits. Prior to the issuance of any building permits, all of the following Improvements shall be installed and shall have received preliminary approval from the Town, which requires a finding by the Town Engineer that such Improvements are safe to be used during construction: streets; street signage; water; wastewater; drainage facilities; and streetlights, provided that such streetlights may be temporary at the time of issuance of building permits, but must be permanent prior to issuance of any certificates of occupancy.

9. Indemnification. Developer hereby agrees to indemnify and hold harmless the Town, its officers, employees, agents or servants from any and all suits, actions and claims of every nature and description caused by, arising from or on account of any act or omission of Developer, or of any other person or entity for whose act or omission Developer is liable, with respect to construction of the Improvements (the "Claims"); and Developer shall pay any and all judgments rendered against the Town as the result of any suit, action or claim, together with all reasonable expenses and attorney fees incurred by the Town in defending any such suit, action or claim arising out of or related to any Claims. In addition, Developer shall pay all property taxes on property underlying the Public Improvements to be dedicated to the Town before acceptance by the Town, and shall indemnify and hold harmless the Town for any such property tax liability.

10. Developer's Representations and Warranties. Developer hereby represents and warrants to the Town that all of the following are true and correct as of the date of signature and the Effective Date: this Agreement has been duly authorized and executed by Developer as the legal, valid and binding obligation of Developer, and is enforceable as to Developer in accordance with its terms; the person executing this Agreement on behalf of Developer is duly authorized and empowered to execute and deliver this Agreement on behalf of Developer; to the best of Developer's knowledge, there is no pending or threatened litigation, administrative proceeding or other proceeding pending or threatened against Developer which, if decided or determined adversely, would have a material adverse effect on the ability of Developer to undertake its obligations under this Agreement nor, to the best of Developer's knowledge, is there any fact or condition of the Property known to Developer that may have a material adverse effect on Developer's ability to Develop the Property as contemplated; and neither the execution of this Agreement nor the consummation of the transaction contemplated by this

Agreement will constitute a breach under any contract, agreement or obligation to which Developer is a party or by which Developer is bound or affected.

11. Vested Rights. The Final Plat constitutes a site specific development plan as defined in C.R.S. § 24-68-101, *et seq.*, and Chapter 3 of Title 9 of the Erie Municipal Code, and shall create vested property rights for 3 years from the date of approval of the Final Plat, provided that all required procedures are followed. The Final Plat shall include the language required by C.R.S. § 24-68-102(4)(a). Developer shall be responsible for publication of the notice required by C.R.S. § 24-68-103(c).

12. Breach.

a. *Remedies*. If Developer breaches this Agreement, the Town may take such action as permitted or authorized by law, this Agreement or the ordinances of the Town, as the Town deems necessary to protect the public health, safety and welfare. The Town's remedies include without limitation:

- i. The refusal to issue any building permit or certificate of occupancy;
- ii. The revocation of any building permit previously issued under which construction directly related to such building permit has not commenced, except a building permit previously issued to a third party;
- iii. A demand that the Improvement Guarantee be paid or honored; or
- iv. Any other remedy available at law or in equity.

b. *Notice*. Unless necessary to protect the immediate health, safety and welfare of the Town, or to protect the interest of the Town with regard to the Improvement Guarantee, the Town shall provide Developer 30 days' written notice of its intent to take any action under this Section, during which Developer may cure the breach.

c. *Nature of Remedies*. The rights and remedies of the Town under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the Town's legal or equitable remedies, or the period in which such remedies may be asserted, for work negligently or defectively performed.

13. Miscellaneous.

a. *Assignment*. This Agreement shall not be assigned by Developer in whole or in part without the prior written authorization of the Town.

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 the Town 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. *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.



## **Exhibits List**

**Exhibit A** – Legal Description

**Exhibit B** – Improvements

**Exhibit A**  
**Legal Description**

**PARCEL I:**

PART OF THE SW 1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., COUNTY OF WELD, STATE OF COLORADO; BEGINNING AT THE SE CORNER OF LOT 1, BLOCK 4, HUNT'S FIRST ADDITION TO THE TOWN OF ERIE; THENCE S 00° 46' 00" E ALONG THE WEST RIGHT OF WAY LINE OF A 20 FOOT ALLEY A DISTANCE OF 211.09 FEET TO A POINT ON THE NORTH RIGHT OF WAY LINE OF BALCOM STREET; THENCE S 89° 24' 41" W ALONG SAID NORTH LINE A DISTANCE OF 567.21 FEET TO A POINT ON THE EAST RIGHT OF WAY LINE OF WELD COUNTY ROAD NO 1; THENCE N 00° 05' 54" W ALONG SAID EAST LINE A DISTANCE OF 208.93 FEET TO THE SW CORNER OF LOT 11 OF SAID BLOCK 4; THENCE N 89° 11' 30" E ALONG THE SOUTH LINE OF SAID BLOCK 4 A DISTANCE OF 564.77 FEET TO THE POINT OF BEGINNING, EXCEPT PART OF THE SW 1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO: BEGINNING 20 FEET WEST OF THE SOUTHWEST CORNER OF LOT 1, BLOCK 2, HUNTS FIRST ADDITION TO THE TOWN OF ERIE; THENCE WEST 96 FEET; THENCE NORTH 131.7 FEET; THENCE EAST 96 FEET; THENCE SOUTH 131.7 FEET TO POINT OF BEGINNING.

**PARCEL II:**

PART OF THE SW 1/4 OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., WELD COUNTY, COLORADO: BEGINNING 20 FEET WEST OF THE SOUTHWEST CORNER OF LOT 1, BLOCK 2, HUNTS FIRST ADDITION TO THE TOWN OF ERIE; THENCE WEST 96 FEET; THENCE NORTH 131.7 FEET; THENCE EAST 96 FEET; THENCE SOUTH 131.7 FEET TO POINT OF BEGINNING.

**Exhibit B  
Improvements**

Item	Quantity	Units	Unit Price	Total Price
<b>Water</b>				
Bend	4	EA	\$694.00	\$2,776.00
Connect to existing Water Main	2	EA	\$7,089.00	\$14,178.00
Fire Hydrant Assembly	3	EA	\$9,344.00	\$28,032.00
Testing & Disinfection	1	LS	\$1,000.00	\$1,000.00
Valve	8	EA	\$2,500.00	\$20,000.00
Water Main (8" C-900 DR-18)	800	LF	\$42.00	\$33,600.00
Water Main Lowering	1.5	EA	\$4,000.00	\$6,000.00
Water Service (3/4" Type K Copper)	23	EA	\$3,585.00	\$82,455.00
			Subtotal	\$188,041.00
<b>Sanitary</b>				
Connect to existing Sewer Main	2	EA	\$5,299.00	\$10,598.00
Manhole (48" Diameter)	3	EA	\$5,299.00	\$15,897.00
Sanitary Main (8" SDR-35 PVC)	658	LF	\$50.00	\$32,900.00
Blueboard Install on Shallow Main & Services	1052	LF	\$12.00	\$12,624.00
Sewer Service (4" SDR-35 PVC)	23	EA	\$2,350.00	\$54,050.00
Flow Fill Crossings	22	EA	\$1,250.00	\$27,500.00
			Subtotal	\$153,569.00
<b>Storm Sewer</b>				
Chase Drain	3	EA	\$3,250.00	\$9,750.00
Inlet (5' Type R)	1	EA	\$6,565.00	\$6,565.00
Inlet (10' Type R)	1	EA	\$7,565.00	\$7,565.00
Inlet (15' Type R)	1	EA	\$11,625.00	\$11,625.00
Manhole (48" Diameter)	2	EA	\$6,921.00	\$13,842.00
Ornamental Metal Fence for Retaining Wall	195	LF	\$105.00	\$20,475.00
Outlet Structure w/ Micropool	1	EA	\$30,000.00	\$30,000.00
HERCP (14"x23" Diameter)	280	LF	\$135.00	\$37,800.00
HERCP (19"x30" Diameter)	160	LF	\$135.00	\$21,600.00
RCP (18" Diameter)	48	LF	\$75.00	\$3,600.00
RCP (24" Diameter)	24	LF	\$93.00	\$2,232.00
RCP FES (18" Diameter)	1	EA	\$5,025.00	\$5,025.00
RCP FES (24" Diameter)	1	EA	\$7,315.00	\$7,315.00
Retaining Wall Around Detention Pond	1250	SF	\$35.00	\$43,750.00
Trickle Channel (2' Width)	78	LF	\$67.00	\$5,226.00
			Subtotal	\$226,370.00
<b>Streets</b>				
Asphalt (6" HMA)	1180	SY	\$41.50	\$48,970.00
Asphalt Patching for Utilities	291	SY	\$66.40	\$19,322.40
Concrete Pavement (6" Thick)(Unreinforced) in Alley	1600	SY	\$71.50	\$114,400.00
Concrete Cross Pan and Apron	140	SY	\$80.00	\$11,200.00
Curb Ramp	8	EA	\$1,400.00	\$11,200.00
Sidewalk	7740	SF	\$6.00	\$46,440.00
Vertical Curb and Gutter	1225	LF	\$30.00	\$36,750.00
Signing	2	EA	\$500.00	\$1,000.00
Parking and Crosswalk Striping	1	ALLOW	\$5,000.00	\$5,000.00
Street Light	1	EA	\$2,500.00	\$2,500.00

			Subtotal	\$296,782.40
<b>ROW Landscape and Irrigation</b>				
Native Seeding	1590	SF	\$1.00	\$1,589.95
Wood Mulch	2732	SF	\$2.00	\$5,463.78
Landscape Fabric	2732	SF	\$1.00	\$2,731.89
Trees	3	EA	\$500.00	\$1,500.00
Shrubs	76	EA	\$50.00	\$3,800.00
Perennials	0	EA	\$25.00	\$0.00
Grasses	6	EA	\$25.00	\$150.00
Concrete Mow Band	42	LF	\$28.00	\$1,176.00
Irrigation	4322	SF	\$1.20	\$5,186.21
			Subtotal	\$21,597.83
<b>Private Tract Landscape and Irrigation</b>				
Native Seeding	9112	SF	\$1.00	\$9,112.23
Wood Mulch	6813	SF	\$2.00	\$13,626.42
Landscape Fabric	6813	SF	\$1.00	\$6,813.21
Trees	10	EA	\$500.00	\$5,000.00
Shrubs	157	EA	\$50.00	\$7,850.00
Perennials	49	EA	\$25.00	\$1,225.00
Grasses	16	EA	\$25.00	\$400.00
Concrete Mow Band	66	LF	\$28.00	\$1,848.00
Seatwalls	60	LF	\$50.00	\$3,000.00
Flagstone Paving	345	SF	\$25.00	\$8,625.00
Art Installations	1	LS	\$5,000.00	\$5,000.00
Water Use Interp sign	1	LS	\$1,200.00	\$1,200.00
Irrigation	15925	SF	\$1.20	\$19,110.53
			Subtotal	\$82,810.39
			<b>Total</b>	<b>\$969,170.62</b>