



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Meeting Agenda

### Town Council

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Tuesday, April 22, 2025

7:20 PM

Council Chambers

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or Immediately Following the Urban Renewal Authority Meeting

[Link to Watch or Comment Virtually: https://bit.ly/TC2025-4thTuesday](https://bit.ly/TC2025-4thTuesday)

#### I. Call Meeting to Order and Pledge of Allegiance

7:20 p.m.

#### II. Roll Call

#### III. Approval of the Agenda

#### IV. Consent Agenda

7:20-7:25 p.m.

[25-130](#)

Approval of the April 8, 2025 Town Council Meeting Minutes

**Attachments:**

[04-08-2025 Council Minutes](#)

[25-009](#)

Mental Health Awareness Month Proclamation; Sponsor Mayor Andrew J. Moore

**Attachments:**

[Proclamation](#)

[25-213](#)

Economic Development Week Proclamation; Sponsored by Council Member O'Connor

**Attachments:**

[Proclamation](#)

[25-217](#)

Proclamation Recognizing May 4 - May 10, 2025 as the 56th Annual Professional Municipal Clerks Week: Sponsor Council Member O'Connor

**Attachments:**

[2025 Municipal Clerks Week Proclamation](#)

[25-187](#)

A Resolution of the Town Council of the Town of Erie Approving a Construction Contract with JOC Construction, LLC, for the Arapahoe Ridge Sidewalk Removal and Replacement Project

**Attachments:**

[Construction Contract](#)

[Resolution 25-059](#)

[25-224](#)

A Resolution of the Town Council of the Town of Erie Approving a Development Agreement and Accepting Dedications as Shown on the

Final Plat for the Regency at Northskye Active Adult Amenity Minor Subdivision

**Attachments:**     [Resolution 25-064](#)  
                              [Development Agreement](#)  
                              [Regency At Northskye Active Adult Minor Subdivision](#)

[25-225](#)                A Resolution of the Town Council of the Town of Erie Adopting an Update to the 2025 Fee Schedule

**Attachments:**     [Resolution 25-066](#)  
                              [Fee Schedule](#)

[25-219](#)                An Ordinance of the Town Council of the Town of Erie amending Chapter 7 of Title 3 of the Erie Municipal Code, Expanding the Duties of the Board of Adjustment

**Attachments:**     [Ordinance 010-2025](#)

[25-163](#)                A Resolution of the Town Council of the Town of Erie Approving the Eleventh Amendment to the Disposition and Development Agreement with the Town of Erie and Evergreen-287 & Arapahoe, LLC

**Attachments:**     [Resolution 25-051](#)  
                              [11th Amendment to Agreement](#)  
                              [Financial Information from Evergreen](#)  
                              [Existing DDA](#)

## **V. Public Comment On Non-Agenda and Consent Items only.**

7:25-7:35 p.m.

*(This agenda item provides the public an opportunity to discuss items that are not on the agenda or consent agenda items only. The Town Council is not prepared to decide on matters brought up at this time, but if warranted, will place them on a future agenda.)*

## **VI. General Business**

[25-109](#)                Proclamation of Older Americans Month, Sponsor Council Member Emily Baer

**Attachments:**     [Proclamation](#)

7:35-7:40 p.m.  
*Presenter(s): Emily Baer, Councilmember*

[25-008](#)                National Administrative Professionals' Day Proclamation; Sponsor Mayor Andrew J. Moore

**Attachments:**     [Proclamation](#)

7:40-7:45 p.m.  
*Presenter(s): Andrew J. Moore, Mayor*

[25-010](#) Police Week and Peace Officers' Memorial Day Proclamation; Sponsor Mayor Andrew J. Moore

**Attachments:** [Proclamation](#)

7:45-7:50 p.m.

*Presenter(s): Andrew J. Moore, Mayor*

[25-239](#) PUBLIC HEARING: An Ordinance of the Town Council of the Town of Erie Providing for the Supplemental Appropriation of Money to Various Funds for the 2025 Budget Year

**Attachments:** [Town Resolution 25-068](#)  
[Ordinance and Schedule A](#)  
[Spring Supplemental 2025 Memo](#)  
[Spring Supplemental 2025 Reports](#)  
[Spring Supplemental 2025 Presentation](#)

7:50-8:20 p.m.

*Presenter(s): Sara Hancock, Director of Finance  
Cassie Bethune, Finance Manager*

## VII. Staff Reports

*Information Only*

[25-170](#) Utilities Quarterly Report

**Attachments:** [Quarterly Report - Q1](#)

[25-152](#) Environmental Services Monthly Report - March 2025

**Attachments:** [Staff Report - March 2025](#)

[25-185](#) Public Works Bi-Monthly Report

**Attachments:** [Staff Report - April 2025](#)

[25-230](#) Planning & Development Monthly Report - March 2025

**Attachments:** [Monthly Report - March 2025](#)

## VIII. Council Member Reports and Announcements

8:20-8:35 p.m.

## IX. Executive Session

[25-278](#) Executive Session: (1) To hold a conference with the Town Attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b); to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(c); and to consider the

purchase, acquisition, lease, transfer or sale of real, personal or other property, pursuant to C.R.S. § 24-6-402(4)(a); for which a topic cannot be disclosed without compromising the purpose of the executive session;

(2) To determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(c), regarding the Erie Town Center;

(3) To consider personnel matters, pursuant to C.R.S. § 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees, and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e), concerning the Town Manager's evaluation and contract.

8:35-10:05 p.m.

## **X. Adjournment**

10:05 p.m.

*(The Town Council's Goal is that all meetings be adjourned by 10:30pm. An agenda check will be conducted at or about 10:00 p.m., and no later than at the end of the first item finished after 10:00 p.m. Items not completed prior to adjournment will generally be taken up at the next regular meeting.)*





# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-130, **Version:** 1

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**SUBJECT:**

Approval of the April 8, 2025 Town Council Meeting Minutes

**DEPARTMENT:** Administration

**PRESENTER(S):** Debbie Stamp, Town Clerk

**STAFF RECOMMENDATION:**

Approve the minutes from the April 8, 2025 Town Council Meeting.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Effective Governance

**ATTACHMENT(S):**

1. 04-08-2025 Council Minutes



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Meeting Minutes

### Town Council

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Tuesday, April 8, 2025

6:30 PM

Council Chambers

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**Link to Watch or Comment Virtually:** <https://bit.ly/TC2025-2ndTuesday>

#### I. Call Meeting to Order and Pledge of Allegiance

Mayor Pro Tem Bell called the meeting to order at 6:30 p.m.

#### II. Roll Call

**Present:** 6 - Mayor Pro Tem Bell, Council Member Pesaramelli, Council Member O'Connor, Council Member Baer, Council Member Mortellaro, and Council Member Hoback

**Absent:** 1 - Mayor Moore

#### III. Approval of the Agenda

Mayor Pro Tem Bell announced that Item 25-169; A Resolution of the Town Council of the Town of Erie Approving a Consent to Assignment of a Development Agreement from Clayton Properties Group to TH Erie Highlands, LLC, has been pulled from the Agenda at the request of the Applicant.

**Councilmember Mortellaro made a motion to approve the amended Agenda. Councilmember Baer seconded the motion. The motion passed by the following vote at 6:31 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

#### IV. Consent Agenda

[25-129](#) Approval of the March 25, 2025 Town Council Meeting Minutes

**Attachments:** [03-25-2025 Council Minutes](#)

[25-240](#) Approval of April 1, 2025 Council Meeting Minutes

**Attachments:** [04-01-20504-01-2025 Council Minutes](#)

[25-094](#) A Resolution of the Town Council of the Town of Erie Accepting Dedications as shown on the Final Plat for the Erie Four Corners Subdivision Filing No. 1, Amendment No. 3

**Attachments:** [Resolution No. 25-036](#)  
[Erie Four Corners Subdivision Filing No. 1 Amendment 3](#)

[25-095](#) A Resolution of the Town Council of the Town of Erie Accepting Dedications as Shown on the Erie Four Corners Subdivision Filing No. 1, Amendment No. 2 and Approving an Associated Development Agreement and Maintenance Agreement

**Attachments:** [Resolution No. 25-037](#)  
[Erie Town Center Final Plat](#)  
[Development Agreement](#)  
[Stormwater maintenance agreement](#)

[25-144](#) A Resolution of the Town Council of the Town of Erie Approving a Master Services Purchasing Agreement with Axon Enterprises, Inc. for the Purchase of Body Worn Cameras

**Attachments:** [Resolution 25-061](#)  
[Purchasing Agreement](#)  
[Axon Quote](#)

[25-169](#) A Resolution of the Town Council of the Town of Erie Approving a Consent to Assignment of a Development Agreement from Clayton Properties Group to TH Erie Highlands, LLC

**Attachments:** [Resolution 25-052](#)  
[Consent to Assignment - Partially Executed](#)  
[Assignment and Assumption of DA - Executed](#)  
[Erie Highlands Filing 18 Development Agreement - Recorded](#)

[25-173](#) A Resolution of the Town Council of the Town of Erie Approving the Regional Bikeshare Memorandum of Understanding

**Attachments:** [Resolution 25-054](#)  
[2025 Regional Bikeshare MOU](#)  
[CS Bikeshare Feasibility Study](#)  
[Apr 8 Council Presentation - Bikeshare](#)

[25-174](#) A Resolution of the Town Council of the Town of Erie Approving an Intergovernmental Agreement with the Colorado Department of

Transportation for the Colorado State Highway 52 Intersection Improvements

**Attachments:** [Resolution 25-055](#)  
[CDOT Contract](#)

[25-188](#)

A Resolution of the Town Council of the Town of Erie Approving award of a Professional Services Agreement with Kimley Horn & Associates for the Highway 52/WCR 7 Downstream Drainage Analysis

**Attachments:** [Resolution 25-058](#)  
[Professional Services Agreement](#)  
[Vicinity Map](#)

[25-229](#)

An Ordinance of the Town Council of the Town of Erie Establishing General Procedures for the Disconnection of Property from the Town, and Disconnecting Certain Real Property Owned by the Town and Located at the Southwest Corner of State Highway 287 and Arapahoe Road

**Attachments:** [Ordinance 012-2025](#)  
[S155132-2022-LEGAL EXHIBIT A](#)

**Councilmember Hoback made a motion to approve the Consent Agenda. Councilmember Mortellaro seconded the motion. The motion passed by the following vote at 6:32 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

**V. Public Comment On Non-Agenda and Consent Items only.**

Mayor Pro Tem Bell read the Public Comment rules and opened Public Comment at 6:33 p.m.

1. Dennis Crooks spoke about postponing Item 25-241.
2. Joey Krings spoke about Morgan Hill Neighborhood Park.

With no additional speakers in-person or online virtually, Mayor Pro Tem Bell closed Public Comment at 6:38 p.m.

**VI. General Business**

[25-179](#)

A Resolution of the Town Council of the Town of Erie Appointing Amanda Bailhache as the Town's Municipal Judge

**Attachments:** [Resolution 25-057](#)

[Municipal Judge Services Agreement](#)

Danielle Trujillo, Court Administrator, presented the item at 6:39 p.m.

**Council Member Baer made a motion to approve Resolution 25-057.**

**Councilmember Mortellaro seconded the motion. The motion passed by the following vote at 6:41 p.m.**

**Debbie Stamp, Town Clerk, administered the Oath of Office to Judge Bailhache.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

[25-066](#)

A Resolution of the Town Council of the Town of Erie Approving an amendment to the Five-Year Intergovernmental Agreement with Boulder County Community Services for Two Dedicated Co-Responders

**Attachments:** [Resolution 25-022](#)

[Town of Erie - CSD SI - Co-Responder 2025 IGA Amendment 1](#)

[First Amendment to Co-responder IGA \(Erie\) \(2.25.25\) \(003\)](#)

[Exhibit A- Town of Erie](#)

[2024 5 Year Intergovernmental Agreement](#)

[Statement of Work- Erie Updated 2025](#)

[EPD Flyer for Board Meeting 2. 2025 PDF](#)

Lee Mathis, Police Chief, presented the item at 6:43 p.m.

**Councilmember Hoback made a motion to approve Resolution 25-022.**

**Councilmember Baer seconded the motion. The motion passed by the following vote at 6:48 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

[25-074](#)

A Resolution of the Town Council of the Town of Erie Approving a Second Amendment to the Agreement for Professional Services with

Burns & McDonnell Engineering Company, Inc. for Design of the North Water Treatment Facility Improvements Project

**Attachments:** [Resolution 25-027](#)  
[Second Amendment to PSA](#)  
[Vicinity Map](#)  
[Presentation](#)

Malcolm Fleming, Town Manager, introduced the item at 6:49 p.m.

Brett Pugh, Burns & McDonnell Engineering, presented on the item at 6:50 p.m.

Peter Johnson, Water Counsel, joined the meeting to answer questions if necessary.

**Councilmember Hoback made a motion to approve Resolution 25-027. Councilmember Baer seconded the motion. The motion passed by the following vote at 7:36 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

[25-148](#) Update to Town of Erie Sustainability Advisory Board Ordinance 14-2018

**Attachments:** [Ordinance 011-2025](#)  
[Ordinance 14-2018](#)

Eryka Thorley, Sustainability Manager, introduced the item at 7:37 p.m.

Karen Winkler, Interim Sustainability Advisory Board Chair, presented at 7:39 p.m.

**Councilmember Hoback made a motion approve Ordinance 011-2025/ Councilmember Pesaramelli seconded the motion. The motion passed by the following vote at 7:45 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

[25-209](#)

Erie Chamber of Commerce - 2025 Action Plan Presentation

**Attachments:** [Presentation](#)

Pat Vero, Executive Director, Erie Chamber of Commerce, presented the item at 7:46 p.m.

[25-210](#)

Erie EDC - 2025 Action Plan Presentation

**Attachments:** [Presentation](#)

Kelly Block, Erie EDC Board Chair, and Victoria Meyer, Erie EDC Board Treasurer, presented the item at 8:15 p.m.

[25-241](#)

A Resolution of the Town Council of the Town of Erie Authorizing Erie Highlands Metropolitan Districts Nos. 1 and 2 to Impose a Service and Facility Fee

**Attachments:** [Resolution 25-067](#)

[Town of Erie Presentation re EHMD Nos 1 and 2 - Fee - 04.08.2025 2](#)

[Correspondence to Town of Erie - Erie Highlands Metro Districts 1 and 2 Service and Facility Fees](#)

[Erie Highlands Settlement Agreement - Fully Executed 2](#)

[Cost Sharing Agreement bw EHMD 1 and 2 - 03.05.2025 \(Executed\) 1](#)

[DRAFT EHMD Nos 1 and 2 General Fund Budget 04.08.2025 1](#)

Jeff Herb, Legal Counsel for Metropolitan District 1, and Joan Pritchey, Legal Counsel for Metropolitan District 2, presented the item at 8:40 p.m.

Mayor Pro Tem Bell allowed individuals to provide comments on this item.

The following spoke:

1. Jim Davis
2. Josh Malm, President of Metro District 1
3. Tony Fillius

**Councilmember Hoback made a motion to approve Resolution 25-067.**

**Councilmember Baer seconded the motion. The motion passed by the following vote at 9:44 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

[25-243](#)

Schedule date for public hearing on Parkdale North PD Amendment and Preliminary Plat No. 4

Malcolm Fleming, Town Manager, presented the item at 9:44 p.m.

**Councilmember Mortellaro made a motion to schedule the Parkdale North PD Amendment and Preliminary Plat No 4 for April 22, 2025. Councilmember Pesaramelli seconded the motion. The motion passed by the following vote at 9:47 p.m.**

**Ayes** 6 - Mayor Pro Tem Bell  
Council Member Pesaramelli  
Council Member O'Connor  
Council Member Baer  
Council Member Mortellaro  
Council Member Hoback

**Absent** 1 - Mayor Moore

## **VII. Staff Reports**

## **VIII. Council Member Reports and Announcements**

Councilmembers spoke about an opening on Sustainability Advisory Board, a Congratulations to Erie PD on raising \$8,900 for Special Olympics, the I-25 Coalition Meeting last week, Arbor Day/Earth Day is April 26, 2025 10am - 1pm, Jason Shimmel & Councilmember O'Connor attended Blackrock Elementary, the Consortium of Cities talked about Sustainability, and Representative Woog is seeking opposition for SB25002.

## **IX. Adjournment**

Mayor Pro Tem Bell adjourned the meeting at 9:55 p.m.

Approved \_\_\_\_\_  
Mayor

Attest \_\_\_\_\_  
Town Clerk





# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-009, **Version:** 1

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**SUBJECT:**

Mental Health Awareness Month Proclamation; Sponsor Mayor Andrew J. Moore

**DEPARTMENT:** Police

**PRESENTER(S):** Lee Mathis, Chief  
Council Sponsor Mayor Andrew J. Moore

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Mental Health Month started in 1949 by Mental Health America. Around half of all people in the U.S. will meet the criteria for a diagnosable mental health condition at some point in their lives. Addressing mental health symptoms early is critically important for overall health. With mental health entering more and more of our daily conversations, it's critical that everyone has a solid foundation of knowledge and moves the conversation forward in the community.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Engaged and Diverse Community
- ✓ Small Town Feel
- ✓ Safe and Healthy Community
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Proclamation



## **Mental Health Awareness Month Proclamation**

**Whereas,** the Town of Erie recognizes mental health is essential to everyone's overall health and well-being as all people experience times of difficulty and stress in their lives; and

**Whereas,** the Town of Erie understands mental health conditions are real and prevalent in our community and prevention is an effective way to reduce the burden of mental health conditions; and

**Whereas,** there is a strong body of research which supports specific tools all people can use to better handle challenges, and protect their health and well-being with early and effective treatment, and those individuals with mental health conditions can recover and lead full, productive lives; and

**Whereas,** each business, school, government agency, healthcare provider, organization and community member shares the burden of mental health problems and has a responsibility to promote mental wellness and support prevention efforts.

**Now, therefore,** I, Andrew J. Moore, Mayor of The Town of Erie, do hereby proclaim May 2025 to be Mental Health Awareness Month. I urge every community member to commit to increasing awareness and understanding of mental health, the steps our community members can take to protect their mental health, and the need for appropriate and accessible services for all people.

**Dated this 22<sup>nd</sup> day of April, 2025**

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**Andrew J. Moore, Mayor**

**Attest:**

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**Debbie Stamp, Town Clerk**



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-213, **Version:** 1

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**SUBJECT:**

Economic Development Week Proclamation; Sponsored by Council Member O'Connor

**DEPARTMENT:** Economic Development

**PRESENTER(S):** Council Member Brian O'Connor, Sponsor  
Julian Jacquin, Director of Economic Development & TOEURA

**TIME ESTIMATE:** N/A

**FISCAL SUMMARY:** N/A

**POLICY ISSUES:**

This matter has minimal policy implications.

**STAFF RECOMMENDATION:**

Accept Proclamation.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Economic Development Week was created by the International Economic Development Council (IEDC) in 2016. The week was created to increase awareness of local programs that create jobs, advance career development opportunities, and improve communities' quality of life. Over the last eight years, more than 500 Economic Development Week proclamations have been made throughout the United States and Canada. Proclamations have been approved in all 50 states, with more than 60 communities officially proclaiming Economic Development Week.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Attractive Community Amenities
- ✓ Engaged and Diverse Community
- ✓ Prosperous Economy
- ✓ Small Town Feel
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Proclamation





## **ECONOMIC DEVELOPMENT WEEK PROCLAMATION**

**WHEREAS**, a strong and resilient economy is the foundation of a thriving community, and the Town of Erie is committed to fostering an environment where businesses can grow, entrepreneurs can innovate, and residents can prosper; and

**WHEREAS**, the success of Erie's local economy is made possible through the dedicated efforts of the Erie Chamber of Commerce, the Erie Economic Development Council, Upstate Colorado, the Small Business Development Center, the Town of Erie, and other organizations that support business expansion, job creation, and economic sustainability; and

**WHEREAS**, these partners actively cultivate entrepreneurship, support emerging businesses, and collaborate with industry leader, educators, real estate professionals, and policymakers to create opportunities for business investment, development of a skilled, competitive workforce, and long-term economic stability; and

**WHEREAS**, economic development is a driving force behind job creation, business retention, and community growth, helping to strengthen Erie's local economy, support families, and enhance the quality of life for all; and

**WHEREAS**, through strategic planning and forward-thinking initiatives, Erie continues to position itself as a vibrant and community and remains one of the most desirable places to live, work, and play.

**NOW, THEREFORE**, I, Council Member Brian O'Connor, on behalf of Andrew J. Moore, Mayor of The Town of Erie do hereby recognize the week of May 11 through May 17, 2025, as "Economic Development Week", and encourage all residents, businesses, and community leaders to recognize the vital role economic development plays in shaping a prosperous future for Erie and region.

**DATED THIS 22<sup>nd</sup> DAY OF APRIL, 2025**

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**Andrew J. Moore, Mayor**

**ATTEST:**

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**Debbie Stamp, Town Clerk**



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-217, **Version:** 1

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**SUBJECT:**

Proclamation Recognizing May 4 - May 10, 2025 as the 56th Annual Professional Municipal Clerks Week: Sponsor Council Member O'Connor

**DEPARTMENT:** Administration

**PRESENTER(S):** Debbie Stamp, Town Clerk  
Council Member Brian O'Connor, Sponsor

**STAFF RECOMMENDATION:**

Approve Proclamation

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

May 4 through May 10, 2025 is designated the 56th Annual Professional Municipal Clerks Week. Initiated in 1969 by the International Institute of Municipal Clerks (IIMC), Municipal Clerk's week is endorsed by all of its members throughout the United States, Canada and 15 other countries. In 1984 and in 1994, Presidents Ronald Reagan and Bill Clinton, respectively, signed a Proclamation officially declaring Professional Municipal Clerks Week the first full week of May and recognizing the essential role Municipal Clerks play in local government.

Typical Responsibilities of the Municipal and Deputy Clerks

- Maintain official board minutes, ordinance books, and all records and documents.
- Index all official actions of board.
- Issue licenses and permits.
- Process contracts and agreements.
- Keep community history and vital records.
- Receive, distribute, and file correspondence from residents and other governmental agencies.
- Administer elections, registration, and voting.
- Act as a key liaison between local government and residents.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Small Town Feel
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Proclamation



**Proclamation for 56<sup>th</sup> Annual  
Professional Municipal Clerks Week May 4-10, 2025**

**Whereas**, the Office of the Professional Municipal Clerk, a time honored and vital part of local government exists throughout the world, and

**Whereas**, the Office of the Professional Municipal Clerk is the oldest among public servants, and

**Whereas**, the Office of the Professional Municipal Clerk provides the professional link between residents, the local governing bodies and agencies of government at other levels, and

**Whereas**, Professional Municipal Clerks have pledged to be ever mindful of their neutrality and impartiality, rendering equal service to all, and

**Whereas**, Professional Municipal Clerks serves as an information center on functions of local government and community, and

**Whereas**, Professional Municipal Clerks continually strive to improve their capability and their municipalities' service through participation in education programs, seminars, workshops and the annual meetings of their state, provincial, county and international professional organizations, and

**Whereas**, it is most appropriate that we recognize the accomplishments of Professional Municipal Clerks.

**Now therefore**, I, Brian O'Connor, on behalf of Andrew J. Moore, Mayor of the Town of Erie, do recognize the week of May 4 through 10, 2025, as Professional Municipal Clerks Week, and further extend appreciation to our Professional Municipal Clerk, and to all Professional Municipal Clerks for the vital services they perform and their exemplary dedication to the communities they represent.

**Dated this 22<sup>nd</sup> day of April, 2025**

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**Andrew J. Moore, Mayor**

**Attest:**

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**Debbie Stamp, Town Clerk**





# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-187, **Version:** 1

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**SUBJECT:**

A Resolution of the Town Council of the Town of Erie Approving a Construction Contract with JOC Construction, LLC, for the Arapahoe Ridge Sidewalk Removal and Replacement Project

**DEPARTMENT:** Parks and Recreation

**PRESENTER(S):** Luke Bolinger, Director of Parks and Recreation

**FISCAL SUMMARY:**

Cost as Recommended:	\$258,877.69
Balance Available:	\$260,000,000
Budget Line Item Number:	210-50-810-605000-100273
New Appropriation Required:	No

**POLICY ISSUES:** This project involves removing and replacing the current sidewalk, thus has minimal policy implications. Council appropriated funding for this purpose in the 2025 Budget.

**STAFF RECOMMENDATION:**

Approve the Resolution of the Town Council of the Town of Erie Approving a Construction Contract with JOC Construction, LLC, for the Arapahoe Ridge Sidewalk Removal and Replacement Project.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Parks & Open Space (P&OS) Division of the Parks & Recreation (P&R) Department has assumed responsibility for maintaining a section of sidewalk along Arapahoe Road, east of the North 111th Street intersection. A maintenance agreement signed in November 2022 formalized this transition, shifting responsibility from the Arapahoe Ridge Homeowners Association (HOA) to P&OS. While P&OS now maintains the sidewalk, the HOA remains responsible for local trail connectors, landscaping, and irrigation.

Significant deterioration has created serious safety and accessibility concerns. The concrete has developed extensive cracks, crumbling edges, and uneven surfaces. Nearly half of the sidewalk sections show visible damage, posing hazards to pedestrians. The sidewalk no longer meets ADA standards, which require immediate remediation of vertical surface changes of ¼ inch or more to prevent trip hazards. Multiple sections exceed this threshold, making safe passage difficult, particularly for individuals with mobility challenges.

Approximately 12 years ago, several of the most damaged sections were replaced to extend the sidewalk's lifespan. While these repairs provided temporary improvements, they have since deteriorated, and new cracks have formed. Given the extent of the deterioration, patchwork repairs are no longer a viable solution. A full sidewalk replacement is necessary to restore structural integrity, ensure ADA compliance, and provide a safe, durable surface for public use. This capital improvement project prioritizes safety, long-term durability, and minimal disruption to the community. The project includes removing and hauling off the existing concrete and pouring a new sidewalk that meets current safety and accessibility standards.

The P&OS Division has worked closely with the HOA management company and HOA leadership to coordinate scheduling, ensure access, and address any potential impacts on HOA-maintained property. Additionally, P&OS has developed clear communication strategies to keep HOA members and Erie residents informed throughout the project.

**Fiscal Impact:**

The Town approved this capital improvement project during the 2025 budget cycle, allocating \$260,000 for its completion. In accordance with Section 8, Cooperative Purchasing of the Town's Purchasing Policy, the Parks & Recreation Department selected JOC Construction LLC for this project. JOC Construction LLC is an approved vendor through the Gordian Job-Order Contracting cooperative purchasing process for labor and materials for this project. The Town has been a member of this cooperative platform since 2022. Participating in approved cooperative purchasing allows governments, educational entities and non-profits to take advantage of competitively bid goods and services for routine projects. The process is also streamlined allowing for quicker procurement timelines

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Attractive Community Amenities
- ✓ Well-Maintained Transportation Infrastructure
- ✓ Safe and Healthy Community
- ✓ Effective Governance
- ✓ Environmentally Sustainable
- ✓ Fiscally Responsible

**ATTACHMENT(S):**

1. Construction Contract
2. Resolution 25-059

**Construction Contract**  
**(Arapahoe Ridge Sidewalk Removal and Replacement – PR-25-04))**

This Construction Contract (the "Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and between the Town of Erie, a Colorado home rule municipality with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and JOC Construction, LLC, ("Contractor") (each a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. Scope of Work**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Work set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. No change to the Scope of Work, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the Town.

B. Contractor shall complete the Scope of Work within 120 days of the Town's issuance of a Notice to Proceed.

**II. Term and Termination**

This Contract shall commence on the Effective Date, and shall terminate when all the work described in the Scope of Work is completed to the Town's satisfaction, or upon the Town's providing Contractor with 30 days advance written notice, whichever occurs first; provided that the indemnification and warranty provisions of this Contract shall survive termination.

**III. Compensation**

Upon final acceptance by the Town of the work set forth in the Scope of Work, the Town shall pay Contractor an amount not to exceed \$258,877.69 (the "Contract Price"), subject to the requirements of C.R.S. § 38-26-107. If Contractor completes the Scope of Work for a lesser amount than the Contract Price, Contractor shall be paid the lesser amount.

**IV. Ownership**

Any materials, items, and work specified in the Scope of Work, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Work constitutes a "work made for hire." To the

extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

#### **V. Keep Jobs in Colorado Act**

Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that they have resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.

#### **VI. Miscellaneous**

A. *Governing Law and Venue.* This Contract shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in \_\_\_\_\_ County, Colorado.

B. *Integration.* This Contract and any attached exhibits constitute the entire agreement between Contractor and the Town, superseding all prior oral or written communications.

C. *Third Parties.* There are no intended third-party beneficiaries to this Contract.

D. *Notice.* Any notice under this Contract shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address included on the first page of this Contract.

E. *Severability.* If any provision of this Contract 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.

F. *Modification.* This Contract may only be modified upon written agreement of the Parties.

G. *Assignment.* Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

H. *Governmental Immunity.* The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

I. *Rights and Remedies.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Contract by the Town shall not constitute a waiver of any of the other terms or obligation of this Contract. The rights and remedies of the Town under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract 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.

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 or liability beyond the current fiscal year.

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

**Town of Erie, Colorado**

\_\_\_\_\_  
Andrew J. Moore, Mayor

Attest:

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**Contractor**

By: Signed by:  
Kiryl Kavalenka  
1688568E721E42B

State of Colorado )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(Seal)

\_\_\_\_\_  
Notary Public

## **Exhibit A Scope of Work**

This project involves the removal and replacement of an existing concrete sidewalk, ensuring the new installation meets safety and quality standards. The work includes all necessary preparations, safety measures, demolition, site clearing, and installation of a new 6-inch-thick concrete sidewalk, as well as final site cleanup to make the area safe for pedestrian use. All work shall be in accordance with Town of Erie Standards and Specifications.

### **Equipment and Safety Measures:**

- Contractor shall provide all necessary equipment to safely remove the existing concrete sidewalk and install a new one
- Contractor shall implement pedestrian traffic control measures, including detours, barriers, and signage, to ensure safety during construction
- Contractor shall install warning signs, such as "Construction Ahead," to notify pedestrians and nearby traffic
- Contractor shall coordinate inspections as required / if required
- Contractor shall be responsible for protection of all surfaces including those not in the scope of work from construction dust, debris or damage during construction up until final acceptance. The methods of protection including wood, plastic, paper or other means for sealing / protecting furniture, sidewalks, doors or windows, etc.
- Contractor shall be responsible for 48 hours advanced notice to coordinate Utility Interruptions

### **Demolition and Site Preparation:**

- Contractor shall remove the existing sidewalk using appropriate equipment and techniques to minimize disruption
- Contractor shall properly dispose of all debris generated from the removal process in accordance with local regulations
- Contractor shall clear and prepare the site for the installation of the new sidewalk

### **Base Preparation:**

- Contractor shall provide and install a layer of compactable aggregate under the new sidewalk as a base
- Contractor shall compact the aggregate to achieve 50% compaction, ensuring a stable foundation for the concrete

### **Formwork and Concrete Installation:**

- Contractor shall construct wood forms to shape and support the new 6-inch-thick concrete sidewalk
- Contractor shall pour and install the new concrete sidewalk to the specified dimensions and depth
- Contractor shall cut expansion joints into the sidewalk at 5-foot intervals to allow for thermal movement and prevent cracking
- Contractor shall finish the surface of the sidewalk with a broom finish to ensure a non-slip surface for pedestrians

### **Curing and Final Steps:**

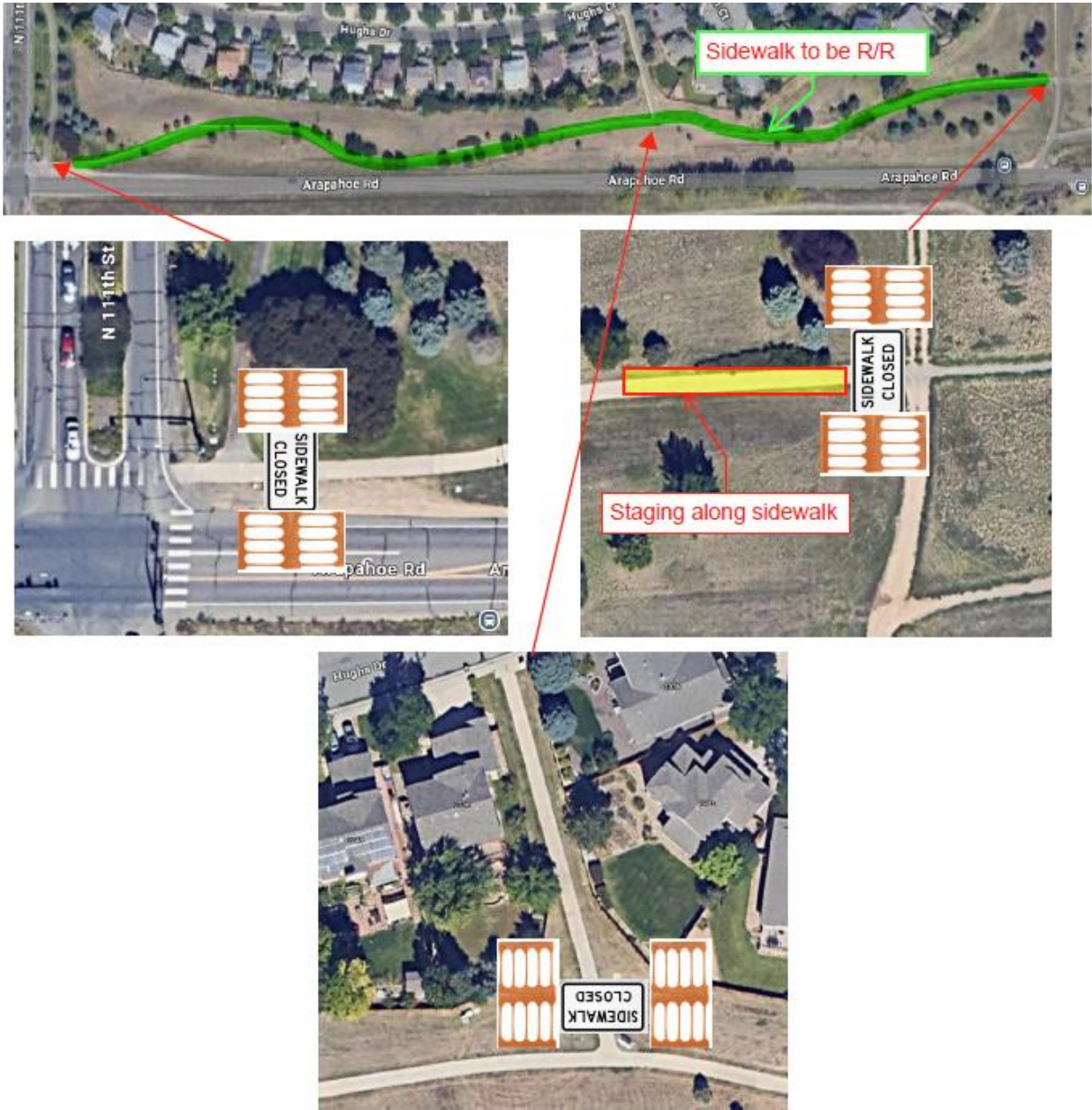
- Contractor shall apply a curing agent to the new concrete to promote even curing and enhance strength and durability
- Contractor shall remove all formwork once the concrete has set sufficiently

### **Site Cleanup and Demobilization:**

- Contractor shall demobilize all equipment and materials from the site.
- Contractor shall perform a final site cleanup to ensure the area is safe and ready for pedestrian use
- Contractor shall be responsible for protection of all surfaces including those not in the scope of work from construction dust, debris or damage during construction up until final acceptance. The methods of protection including wood, plastic, paper or other means for sealing / protecting furniture, sidewalks, doors or windows, etc.
- Contractor shall be responsible for daily job site clean-up and will make provisions for disposing of all debris. There shall not at any time be any material or debris left on site that could endanger the public



Arapahoe Ridge Trail Site & Staging Maps



**Notice to Proceed**

Date: \_\_\_\_\_  
\_\_\_\_\_

Contractor Name

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

RE: \_\_\_\_Job Order Contract # \_\_\_\_\_

Dear \_\_\_\_\_:

This letter is your Notice to Proceed, effective as of the date cited below. This notice is in reference to the Construction Contract between you and the Town of Erie concerning the \_\_\_\_\_.

Please note that in accordance with the Construction Contract, Work must commence within 10 days of the date of this Notice, and all Work must be substantially completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of this Notice, which shall be the \_\_\_\_ day of \_\_\_\_\_, 2025, and finally completed within \_\_\_\_\_ days of the date of this Notice, which shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

\_\_\_\_\_, Project Manager

\_\_\_\_\_

Date

**Certificate of Final Payment (submitted per Job Order)**

With reference to Contract Number \_\_\_\_\_ dated \_\_\_\_\_, 2025, between the undersigned Contractor and the Town of Erie, for: Job Order Contract \_\_\_\_\_ at Erie, CO.

The undersigned hereby certifies that all costs, charges and expenses incurred by it on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises, and/or used in connection with its Work under the Contract have been duly paid.

The undersigned further certifies that to its best knowledge and belief (based upon reasonable investigation) each of its subcontractors and material men have duly paid all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Undersigned's Work under the Contract.

In consideration of \$\_\_\_\_\_ representing final payment under the Contract, the undersigned hereby releases and discharges the Owner and Owner's property from all claims, liens and obligations of every nature arising out of or in connection with the performance of the Work.

As additional consideration for the final payment, and to the fullest extent permitted by law, the undersigned agrees to indemnify and hold harmless Owner from and against all costs, losses, damages, claims, causes of action, judgments and expenses arising out of or in connection with claims against Owner which may be asserted by the undersigned or any suppliers, subcontractors of any tier or any of their representatives, officers, agents and employees for the costs, losses, damages, claims, causes of action, judgments and expenses and expenses that are attributable to the act, omission, error, professional error, mistake, negligence or other fault of the undersigned.

The foregoing shall not relieve the Undersigned of its obligations under the provisions of the Contract as amended, which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Contractor

**Certificate of Final Acceptance (Submitted per Job Order)**

TO: \_\_\_\_\_ Date: \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Project Title: \_\_\_\_\_

This is to advise you that a final inspection of the referenced Work has been made and all work and material was found to be satisfactory. Therefore, the Work is considered to be complete in accordance with the approved plans, specifications and contract documents.

In accordance with the Contract, all Warranty periods shall begin as of the date of this letter.

Town of Erie  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **General Provisions**

### **Part 1. Definitions**

#### **1.01 Contract Documents:**

- A. Construction Contract;
- B. General Provisions
- C. Special Provisions;
- D. Town of Erie Standard Specifications for the Design and Construction of Public Improvements;
- E. Construction Task Catalog®;
- F. Technical Specifications (Gordian);
- G. Construction Drawings (if applicable);
- H. Certificate of Insurance Verification;
- I. Notice of Award;
- J. Documentation submitted by Contractor prior to Notice of Award; and

#### **Documents Submitted with Each Job Order:**

- A. Notice to Proceed;
- B. Payment and Performance Bond;
- C. Certificate of Final Payment; and
- D. Final Acceptance Form.

#### **1.02 Contract Amendment:**

A written order issued by the Town after execution of the Contract authorizing a revision to the Contract as a whole.

#### **1.03 Town:**

The Town of Erie, Colorado.

#### **1.04 Contract:**

The entire written agreement covering the performance of the Work described in the Contract Documents.

#### **1.05 Contract Price:**

The amount set forth in Section 4 of the Construction Contract.

#### **1.06 Contract Time:**

The time for completion of the Work as set forth in Section 3 of the Construction Contract.

#### **1.07 Day:**

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

**1.08 Final Completion:**

The date as certified by the Project Manager when all of the Work is completed and final payment may be made.

**1.09 Project Manager:**

The Town's duly authorized representative in connection with the Work.

**1.10 Subcontractor:**

Any person, firm or corporation with a direct contract with Contractor who acts for or on behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

**1.11 Substantial Completion:**

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Work, or when the Town may occupy or take possession of all or substantially all of the Work and put it to beneficial use for its intended purposes.

**1.12 Work:**

All the work specified, indicated, shown or contemplated in the Contract Documents, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

**Part 2. Time****2.01 Time of the Essence:**

All times stated in the Contract Documents are of the essence.

**2.02 Final Acceptance:**

Upon Final Completion, the Project Manager will issue final acceptance.

**2.03 Changes in the Work:**

The Town reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Job Order Price and the Job Order Completion Time. All changes shall be authorized by a written Supplemental Job Order signed by the Project Manager. The Supplemental Job Order shall include appropriate changes in the Job Order Proposal and the Job Order Completion Time. The Work shall be changed and the Job Order Price and Job Order Completion Time modified only as set forth in the written Supplemental Job Order. Any adjustment in the Job Order Price resulting in a credit or a charge to the Town shall be determined by mutual agreement of the parties before the work set forth in the Supplemental Job Order is commenced. If a Supplemental Job Order results in an increase in the Job Order Price, approval of the Erie Town Council shall be required, and if such approval is not obtained, the Town shall have no payment obligation regardless of whether the Work pursuant to the Supplemental Job Order has been performed.

2.04 Delays:

A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, unanticipated adverse weather conditions, or other unavoidable casualties beyond Contractor's control other than unanticipated adverse weather conditions, the Contract Time shall be extended for a reasonable period of time. "Weather" means precipitation, temperature, or wind, and an "adverse weather condition" means weather that on any calendar day varies from the average weather conditions for that day by more than 100% as measured by the National Oceanic and Atmospheric Administration. The term "unanticipated adverse weather conditions" means the number of days in excess of the anticipated adverse weather days per month as set forth below:

Monthly Anticipated Adverse Weather Days											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	4	4	4	6	3	4	2	3	3	2	5

*By reason of example only*, if in March there are two days when the snowfall exceeds the average snowfall for that day by 100%, those two days will have experienced an adverse weather condition. However, there will have been no unanticipated adverse weather condition in March, because there are four anticipated adverse weather days in March, which should be accounted for in the schedule. If, however, there are 5 days in which the snowfall exceeds the average snowfall by 100%, an unanticipated adverse weather condition will have occurred, and Contractor shall be entitled to request an extension of Job Order Completion Time.

- B. Any request for extension of the Job Order Completion Time shall be made in writing to the Project Manager not more than 7 days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work and should be contained in a Supplemental Job Order.
- C. Contractor shall not be entitled to any increase in the Job Order Price, or to damages, or to additional compensation as a consequence of any such delays.

2.05 No Damages for Delay:

In strict accordance with C.R.S. § 24-91-103.5, the Town shall not amend the Contract Price or any Price associated with an individual Job Order to provide for additional compensation for any delays in performance which are not the result of acts or omissions of the Town or persons acting on behalf of the Town.

Part 3. Contractor's Responsibilities

3.01 Completion/Supervision of Work:

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in

good standing. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with applicable laws, ordinances, rules and regulations. Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

### **3.02 Duty to Inspect:**

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the Town of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

### **3.03 Furnishing of Labor and Materials:**

A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.

B. In all purchases of supplies, materials and provisions to be incorporated or otherwise used by Contractor in the Work, Contractor shall use supplies, materials and provisions produced, manufactured or grown in Colorado if such supplies, materials and provisions are not of inferior quality to those offered by competitors outside of Colorado.

C. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*

### **3.04 Employees and Safety:**

A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Work any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.

B. Contractor shall be responsible to the Town for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Town.



C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the work site and adjacent property.

### **3.05 Cleanup:**

A. Contractor shall keep the work site and adjoining ways free of waste material and rubbish. Contractor shall remove all waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon completion of its Work, conduct general cleanup operations on the work site, including the cleaning of all surfaces, paved streets and walks. Contractor shall also conduct such general cleanup operations on adjacent properties disturbed by the Work.

B. If Contractor fails to perform the cleanup required by this Section, after written notice, the Town may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the Town the costs incurred by the Town for such cleanup, or the Town shall have the right to withhold said amount from any final payment due to Contractor.

### **3.06 Payment of Royalties and License Fees:**

Contractor shall pay all royalties and license fees necessary for the Work, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the Town harmless from such actions.

### **3.07 Taxes, Licenses and Permits:**

Contractor shall pay all taxes imposed by law in connection with the Work and shall procure all permits and licenses necessary for the prosecution of the Work. Contractor shall obtain a Town tax-exempt number for exemption from the Town's sales tax.

### **3.08 Samples and Shop Drawings:**

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents.

### **3.09 Compliance with Laws and Regulations:**

Contractor 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; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; 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.

### **3.10 Subcontractors:**

- A. Contractor shall furnish to the Project Manager at the time each Job Order Proposal is submitted, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.
- B. Contractor shall not employ a subcontractor to whose employment the Town reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.
- C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents and shall incorporate the relevant provisions of the Contract Documents.

### **3.11 Corrective Work:**

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform, within the time period approved by the Project Manager. The Town's review, approval or acceptance of, or payment for any work shall not be construed as a waiver of any rights under this Contract or any cause of action arising out of the performance of this Contract.

### **3.12 Other Contracts:**

The Town reserves the right to let other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the work site necessary to perform their contracts.

### **3.13 Communication:**

Contractor shall direct all communications to the Town regarding the Work to the attention of the Project Manager.

## **Part 4. Termination**

### **4.01 Labor Disputes:**

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site, Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the

Work because of such picket or other form of labor dispute, the Town may terminate the services of Contractor after giving 48 hours' written notice of its intent to do so.

#### **4.02 Default:**

The Town may terminate this Contract upon 30 days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the Town shall not be the Town's exclusive remedy, and the Town may pursue such other remedies lawfully available to the Town including without limitation an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

### **Part 5. Warranties**

#### **5.01 Warranty of Fitness of Equipment and Materials:**

Contractor represents and warrants to the Town that all equipment and materials used in the Work, and made a part of the Work, or placed permanently in the Work, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

#### **5.02 General Warranty:**

Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of 2 years from the date of final acceptance of the Work by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Work which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the Town, the Town may withdraw from the Payment and Performance Bond any and all amounts necessary to complete the required work. The expiration of the warranty period 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.

### **Part 6. Bonds, Insurance and Indemnification**

#### **6.01 Indemnification:**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Contract or the Contract Documents, to the extent that such injury, loss or damage is attributable to the act, omission, error,

professional error, mistake, negligence or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

B. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the Town, Contractor agrees to pay the Town or reimburse the Town for defense costs incurred by the Town in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

C. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6) and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Contract, the extent of Contractor's obligation to defend, indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **6.02 Notice of Claim:**

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the Town in writing of the nature of the claim within 24 hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the Town apprised of the disposition of the claim, and Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

## **6.03 Insurance:**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Contract. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Contract.

#### **6.04 Performance and Payment Bond:**

Contractor shall furnish a Payment and Performance Bond in the full amount of the Job Order Price on all Job Orders valued \$50,000 and above, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. This bond shall remain in effect at least until 2 years after the date of Final Completion.

### **Part 7. Payment**

#### **7.01 Progress Payments:**

A. The Town shall make periodic progress payments to Contractor for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit copies of invoices from subcontractors or supplies and partial waivers executed by each.

B. Progress payments shall be in an amount equal to 95% of the Work actually completed. Completed Work shall include materials and equipment not incorporated in the Work but delivered to the work site and suitably stored.

C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

D. For all other Job Orders, the Owner may make partial, monthly payments based on the percentage of the work completed.

## **7.02 Final Payment:**

Upon final acceptance of the Work, the Town shall make final payment to Contractor pursuant to C.R.S. § 38-26-107.

## **7.03 Liquidated Damages:**

A. Because time is of the essence and delayed performance causes a compensable, yet difficult to precisely ascertain, damage to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in each Job Order Proposal, as modified through approved Supplemental Job Order(s), Contractor shall be assessed the following amounts which constitute a reasonable estimate of the actual damages such delay would cause the Town:

<b>Value of Job Order</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820
\$12,000,000 or greater	\$2,250

B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the Town of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Job Order Completion Time. Liquidated damages may be deducted from any

payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town.

#### **7.04 Oral Agreements Prohibited:**

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Erie Town Council. The Town acknowledges that sufficient funds have been appropriated to pay the Contract Estimated Annual Value, but Contractor shall not rely upon the appropriation of any funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Erie Town Council.

#### **7.05 Items Not Included in Bid:**

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically accounted for by Contractor in their bid Adjustment Factor(s).

#### **7.06 Changes in Quantity:**

- A. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.
- B. All other Changes in the Work shall be addressed by Section 8 of the Job Order Contract Special Conditions: Changes in the Work.

#### **7.07 Bid Price Adjustments:**

- A. When a major item is increased to more than 125% or decreased below 75% of the original quantity stated in the original Job Order, the Price Proposal shall be modified by written Supplemental Job Order. Payment for major items shall be calculated by the terms of the Supplemental Job Order.
- B. A "major spike" is defined as a spike in a specific material cost of more than 25% above what the cost of that material was on the date the Construction Task Catalog® was issued. If a major spike occurs, Contractor may submit a request for a price modification to a Unit Price or individual Job Order. To initiate such a request, Contractor shall:
  - 1. Identify the specific material that has experienced a major spike;
  - 2. Identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike; and
  - 3. Demonstrate that the spike exists by submitting at least 3 quotes on material supplier letterhead to show that the current price is a "major spike".
- C. The Town, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a NPP item. The adjustment will be for the difference between the material cost at the time the Construction Task Catalog® was issued

times the quantity stated in the Job Order. The adjustment will not include any other markup, and the NPP adjustment factor will not apply.

D. The Town, at its option, may also determine that a drastic decrease in a material cost warrants the same NPP adjustment downward in the Unit Price or a Job Order.

### **7.08 Eliminated Items:**

Should any items contained in the Job Order Price Proposal be found unnecessary for completion of the Work, the items shall be eliminated. The Job Order Price shall be modified through written Supplemental Job Order, and the amount of the Supplemental Job Order shall be the eliminated quantity multiplied by the unit price stated in the Construction Task Catalog®, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

### **7.09 Materials Stored But Not Incorporated:**

Payments may be made to Contractor for materials stored on the work site but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Work and conforms with the Contract Documents. Payments shall not exceed 85% of the price shown in the Job Order or 100% of the certified invoice cost of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

### **7.10 Cost Records:**

Contractor shall make cost records available to the Town if the Town deems it necessary to determine the validity and amount of any item claimed.

## **Part 8. Miscellaneous**

### **8.01 Publications:**

Any and all publications relating to the Work and authored by Contractor or any of its subcontractors shall be submitted to the Town for its prior written approval of the content of the publication. If the Town disapproves of the content of the publication, the author shall withdraw it from publication. The term "publication" as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

### **8.02 Confidentiality:**

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared



or assembled by Contractor under this Contract shall, to the extent permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the Town. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the Town in writing before responding.

### **8.03 Independent Contractor:**

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the Town's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other benefits.

### **8.04 Conflicts:**

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Contract Modifications (later takes precedence over earlier).
2. Construction Contract.
3. Addenda.
4. Job Orders (including Detailed Scopes of Work, Job Order Proposals and any Supplemental Job Orders).
5. Job Order Contract Special Conditions.
6. Request for Bids.
7. Special Provisions.
8. General Provisions.
9. Town Technical Specifications.
10. Standards and Specifications for Design and Construction of Public Improvements. \*Most recent iteration.
11. Construction Task Catalog®.
12. Gordian Technical Specifications.
13. Supplemental Specifications.
14. Detailed Plans (Calculated dimensions will govern over scaled dimensions).

## **Special Provisions**

### 1. General.

A. All labor, services, material, and other work necessary for construction shall be provided by Contractor, including without limitation: managing the budget; scheduling and coordinating work meetings; conducting field tests and geotechnical studies; preparing exhibits and participating in formal and informal public meetings at locations provided by the Town; and timely processing field orders, change orders, Supplemental Job Orders and notices of substantial completion.

B. Contractor shall carefully examine all Work, and shall be solely responsible for the character, quality, and quantities of Work, materials, and compliance with the Contract Documents.

C. Contractor shall identify any and all necessary easements for construction and maintenance of the Work.

### 2. Other Regulations.

A. Contractor shall ensure that the Work is in compliance with the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and other applicable codes and specifications.

B. In case of any discrepancy between any of the requirements set forth in the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and these Contract Documents, the more stringent requirement shall apply. If any questions arise as to which requirement is more stringent than another, the Project Manager shall be authorized to determine which is more stringent, and the Project Manager's decision shall be final.

### 3. Representatives. Contractor shall have at the work site at all times as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and being thoroughly experienced in the type of work being performed. The Town shall have a representative on the job site to observe work for conformance with the Contract Documents (Job Order(s)).

### 4. Work Administration. The Town shall administer the Work, including the finalization of all Job Orders, any Supplemental Job Orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in the Contract Documents.

### 5. Engineer. The Engineer for this Work shall be the Town Engineer.

6. Inspections and Testing.

A. Contractor shall be responsible for performing materials testing. In addition to the materials testing performed by Contractor, the Town may conduct Quality Assurance testing at its own discretion.

B. Contractor shall coordinate its construction schedule with the testing agency and Town so that key inspection points may be observed. If Contractor fails to provide reasonably adequate notice or proceeds without the required inspection, the subject work shall be re-exposed or redone in its entirety, while the inspector is present. No extra compensation shall be awarded to Contractor for extra work due to Contractor's failure to coordinate inspections with the testing agency or the Town. All costs associated with Contractor's failure to coordinate inspections shall be borne by Contractor.

C. Contractor shall perform construction inspections. Contractor shall attend any pre-construction meeting(s) and be available to provide technical assistance during the course of construction as necessary. Contractor shall provide site visits and reviews upon request from the Town during the construction phase to ensure compliance with the intent of the plans and to resolve any potential conflicts. Contractor shall provide a written summary after each site visit.

D. Contractor shall be responsible for scheduling the final inspection with the Town.

7. Construction Schedule.

A. At the time of the Pre-construction Conference (Joint Scope Meeting), Contractor shall prepare and submit to the Town for review a construction schedule including: proposed daily construction hours; details of all construction items; start and finish dates; confirmation and dates for coordinating all utility relocation and/or interruptions; and the same information for all subcontractor(s). The schedule shall not be changed without prior notification and review by the Town. The schedule shall be in the form of a chart of suitable scale to indicate approximately the percentage of Work scheduled for completion at any time. Contractor shall enter on the chart the actual progress at the end of each 2-week interval as directed by the Town and shall deliver to the Town 3 copies thereof on a biweekly basis.

B. Contractor shall also prepare and submit a schedule of the anticipated manpower by title and duty. The manpower shall be adequate for orderly flow of work and completion within the time specified in the Contract Documents.

C. All construction activities shall be coordinated with the Project Manager.

8. Saturday, Sunday, Holiday and Night Work.

A. The majority of work shall be performed during Normal Working hours as described in the Bid Schedule. Normal Working hours is work performed including the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, except for Town

holidays. If Work is identified outside of those hours and days, it will be deemed as Other than Normal Working hours, which shall include the hours of 6:00 p.m. to 7:00 a.m., Monday through Friday and all day Saturday, Sunday and Town Holidays. Lane closures are restricted to 8:30 a.m. to 3:30 p.m. on arterial and collector streets, except for such work as may be necessary for proper care, maintenance, and protection of Work already completed, or in cases where the Work would be endangered or if hazards to life or property would result.

B. If Contractor and Town agree it is necessary to perform work on Saturdays, Sundays, holidays, or at night, Contractor shall make prior arrangements with the Town and receive written approval at least 48 hours before such time. Such approval may be revoked by the Town if Contractor fails to maintain adequate equipment and lighting at night for the proper control, and inspection of the work. If Work is performed without the Town's prior approval, and as a result the Town had not assigned inspectors to the work, the Town may declare Work performed during this period of time defective.

9. Progress Reports.

A. Progress reports and progress/manpower schedules shall be updated and submitted to the Project Manager at the end of each 2-week period, or at such other times as the Project Manager may request. Contractor shall also forward to the Project Manager, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work.

B. If the completion of any part of the Work or the delivery of materials is behind the approved schedule, Contractor shall submit a plan acceptable to the Project Manager for bringing the Work up to schedule. The Town shall have the right to withhold progress payments for the work if Contractor fails to update and submit the progress/manpower schedule and reports as specified.

10. Pre-construction Conference. See Section 5.4 of the Job Order Contract Special Conditions for Joint Scope Meeting Conference requirements.

11. Permit Fees. All fees for permits issued by the Town shall be waived.

12. Existing Utilities.

A. The Work shall be coordinated with all impacted utility companies, districts, associations, agencies, and residents located in the work site. Contractor shall conduct the meeting and provide summary minutes.

B. Contractor shall determine the actual location of all existing utilities prior to starting any Work. Contractor shall contact utility companies for field locations prior to the start of Construction Work and shall contact all utilities at least 48 hours prior to beginning excavation and/or grading. If the exact location and depth of existing underground utilities are unknown, Contractor shall perform all necessary exploratory excavation to locate these facilities which may affect the Work prior to beginning construction. Contractor shall obtain required locates and

Contractor shall include the information on the plans. Contractor shall resolve any utility discrepancies. Contractor shall be liable for all damage done to existing utilities in the performance of the Work.

C. If Contractor requests that utility companies relocate utilities for Contractor's convenience, such relocation shall be at Contractor's expense.

D. The time of performance under the Contract shall not be extended to account for repair of utilities which are damaged by Contractor.

13. Water and Electricity. Contractor shall provide and maintain, at its own expense, an adequate supply of water and electricity required for the Work. Contractor shall install and maintain supply connections and lines satisfactory to the Project Manager, and prior to Final Completion, Contractor shall remove the supply lines at its expense.
14. Dust Control. Contractor shall use measures to prevent and control dust within the area affected by the Work. No additional compensation shall be paid to Contractor for dust control. Contractor shall clean any soil, dirt, or debris tracked onto any adjacent streets. Within 24 hours of notification by the Town that any adjacent streets require cleaning, Contractor shall clean such streets or the Town may have the streets cleaned and deduct the cost of such cleaning from the Contract Price.
15. Construction Staging Areas. All construction staging areas shall be located within the work site. The boundaries of construction staging areas shall be approved by the Town. Construction staging areas shall be used for material storage, parking for equipment, and employees' vehicles. A construction trailer shall not be required, but may be used if the location of the trailer is approved by the Town. Upon Final Completion, all staging areas shall be clean and restored to their original condition. No additional compensation shall be provided to Contractor for cleaning of construction staging areas.
16. Sanitary Facilities.
  - A. Sanitary convenience for the use of all persons employed on the work, properly screened from public observation, shall be provided in sufficient numbers and in such a manner and at such points as approved by the Town. The contents shall be removed and disposed of in a satisfactory manner.
  - B. The sanitary conveniences specified above shall be the obligation and responsibility of Contractor. The facilities shall be made available to all other contractors, subcontractors, and inspection personnel in the work site.
  - C. Contractor shall supply sufficient drinking water from approved sources to all of its employees.
  - D. Full compensation for compliance with this Section is included in the Job Order Price, and no additional compensation shall be provided.
17. Soils Investigations and Foundation Engineering. Contractor shall be responsible for all geotechnical investigations necessary to design and perform the Work.

18. Lines and Grades. Contractor shall lay out the Work and shall be responsible for all measurements in connection therewith. Contractor shall, at its own expense, furnish all stakes, templates, platforms, equipment, and labor, including surveyors, that may be required in setting and cutting or laying out any part of the Work. Contractor shall be responsible for the proper execution of the Work to such lines and grades.
19. Traffic Control.
  - A. Contractor shall furnish all necessary flag persons; erect and maintain warning lights, advance warning signs, detour signs, barricades, temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and perform any other work necessary for the protection of all work being performed, and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the current Manual on Uniform Traffic Control Devices.
  - B. At the Pre-construction Conference, Contractor shall submit a traffic control plan for review by the Town. The plan shall discuss the traffic control measures proposed for the safety of vehicular and pedestrian traffic through the work site.
  - C. Contractor shall at all times take proper precautions for the protection of and replacement or restoration of landscaping, driveway culverts, street intersection culverts or aprons, irrigation crossings and systems, mailboxes, driveway approaches, signs, existing utilities, and all other public and private installations that may be encountered during the Work.
  - D. No driveway or private alley shall be blocked without prior written permission from the resident who would be affected by such blocking, with a copy to the Town.
  - E. No road shall be closed at any time.
  - F. Contractor shall advise the Police Department, school districts, trash services, and homeowners of any lane closures, including dates and times.
  - G. It shall be Contractor's responsibility to: maintain, protect, and control traffic in the vicinity of and in the work site; restrict parking on streets near the work site; and provide necessary parking areas for all employees in suitable locations as approved by the Town.
20. Archaeological and Historical Discoveries.
  - A. Contractor shall inform the Town of any evidence which might suggest to a layperson that archaeological or historical materials may be present in the work site. Upon making such a discovery, Contractor shall do whatever is necessary to avoid disturbing the work site. This may require that Contractor's activities be redirected or stopped until the Town determines how to proceed.
  - B. As a result of Contractor's efforts to preserve the potential discovery at the work site, if Contractor's activities are delayed for longer than 8 normal work

hours, Contractor shall prepare accounting information to support an adjustment to the Job Order Price.

21. Water Control.

A. Contractor shall take such precautions as necessary to construct the Work in a dry condition, and Contractor shall provide for drainage, dewatering, and control of all surface and subsurface water and shall erect any necessary temporary structures or other facilities at its own expense.

B. Contractor, at its own expense, shall furnish all necessary equipment and materials required to control the surface and subsurface water in all the areas from the commencement of Work through Final Completion.

C. Contractor shall be responsible for furnishing, transporting, and installing all materials and equipment, well points, pumping, channelization, diversion, damming, or other means of controlling surface water and ground waters.

22. Disposal Site.

A. Contractor shall be responsible for the removal of all excess excavation, debris, deleterious material, muck, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Costs of disposal are included in the Job Order Price and shall not entitle Contractor to additional compensation. Contractor shall designate in writing a disposal site located outside the Town limits and acceptable to the Town.

B. Contractor's cost for loading, hauling, daily cleaning of streets, disposal of the earthwork (excavation) materials, together with the construction, maintaining and watering of haul roads, and dump fees and permits are included in the Job Order Price and shall not entitle Contractor to additional compensation.

23. Video Prior to Construction. Contractor shall provide the Town with a video of the entire work site prior to beginning construction, including all adjacent areas, at Contractor's own expense. One copy of the video shall be provided to the Town and become the property of the Town prior to the commencement of any Work.

24. Existing Improvements and Restoration.

A. Contractor has field inspected the work site and fully understands that existing landscaping and improvements are present within the work site. Such existing improvements shall be protected. Any damage or disruption in the public right-of-way, drainage easements, Town property, or private property related to the Work shall be restored to pre-existing or better condition.

B. Contractor shall be responsible for replacing all existing improvements, including irrigation systems and landscaping, damaged during Contractor's activities, except as otherwise provided in the Contract Documents.

25. Erosion Control. Contractor shall provide an erosion/sediment control plan for use during construction. The plan shall include site specific details showing the type,

location, and quantity of BMP's to be used. The erosion/sediment control plan shall be designed to prevent sediment from leaving the construction area. Special attention shall be given to prevent sediment from entering into any wetland area.

26. Vandalism. Contractor shall take all necessary steps to protect the work site from vandalism. Contractor shall be solely responsible to repair any damage caused by vandalism, including the removal of graffiti, at Contractor's own cost. The Contract Price or Job Order Price shall not be increased to reimburse Contractor for such costs.



## **Job Order Contract (JOC) Special Conditions**

The following clarifications and modifications apply to the General, Supplemental and Special Provisions:

- a) When the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Job Order".
- b) When the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Job Order Completion Time".
- c) When the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Job Order Price".
- d) The Job Order Price shall set forth the fixed price, lump sum amount for which Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Job Order, estimated quantities, lists of materials and bid prices shall not apply, the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.
- e) All references to "Bid Items" shall be interpreted to mean Work tasks necessary to complete the Detailed Scope of Work.
- f) All references to "change order work", "extra work", "force account work", and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Job Order.
- g) The Construction Task Catalog® shall govern the work included in the Unit Price of a Pre-Priced Task.

### **1. Definitions**

- 1.1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog®.
- 1.2. **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
- 1.3. **Base Term** - The initial period of the Contract and does not include any Option Terms.
- 1.4. **Construction Task Catalog®** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.5. **Detailed Scope of Work** - A document setting forth the work Contractor is obligated to complete for a particular Job Order.

- 1.6. **Estimated Annual Value** - An estimate of the value of Job Orders that could be issued to Contractor each year.
- 1.7. **Job Order** - A written order issued by the Town, such as a Purchase Order, requiring Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- 1.8. **Job Order Completion Time** - The time within which Contractor must complete the Detailed Scope of Work.
- 1.9. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount Contractor will be paid for completing a Job Order.
- 1.10. **Job Order Price Proposal** - A price proposal prepared by Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.11. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
- 1.12. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.13. **Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog®.
- 1.14. **Normal Working Hours** - Normal Working hours is work performed including the hours of 7:00 a.m. to 6:00 p.m., Monday-Friday, except for Town holidays.
- 1.15. **Notice to Proceed** - A written notice issued by the Town directing Contractor to proceed with construction activities to complete the Job Order.
- 1.16. **Option Term** - An additional period of time beyond the Contract Time which extends the termination date of the Contract.
- 1.17. **Other than Normal Working Hours**- Include the hours of 6:00 p.m. to 7:00 a.m., Monday-Friday and all day Saturday, Sunday and Town Holidays.
- 1.18. **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
- 1.19. **Project** - The collective improvements to be constructed by Contractor pursuant to a Job Order, or a series of related Job Orders.
- 1.20. **Request for Proposal** - A written request to Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.

- 1.21. **Secured Facilities** – Any facility deemed to be “Secured” by the Town will require, at a minimum, tool inventory and a series of check in procedures. For each facility, the Town Project Manager shall determine and communicate the access and egress requirements in each request for Job Order Proposal.
- 1.22. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- 1.23. **Unit Price** - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.

## **2. Contractor Selection**

- 2.1. Job Order Contracting: The Town may award an individual Job Order to any selected Contractor. Selection of Contractor and award of the Job Order will be in compliance with established Town procedures and based on one or more of the following criteria:
  - 2.1.1. Rotational selection among all contractors, unless otherwise determined by the Town.
  - 2.1.2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, and design management.
  - 2.1.3. Balancing Job Order volume among contractors.
  - 2.1.4. Price, as determined by the Adjustment Factors of contractors.
  - 2.1.5. Limitations posed by bonding capacity of the contractors.
  - 2.1.6. Other appropriate criteria as deemed in the best interest of the Town.

## **3. Contractor’s Personnel**

- 3.1. Contractor shall assign a full-time person as its representative for this Contract. This person shall be acceptable to the Town and shall have a cell phone at which they can be reached at all times.
- 3.2. Contractor shall have an office with the Town or within the County in which the work is being completed, or if the office is located in another location, offices will be approved at the Town’s discretion.
- 3.3. Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, Contractor shall identify the Superintendent responsible for that Job Order. The

Superintendent shall be reachable 24 hours a day, 7 days a week. If the named Superintendent is not available because of illness or vacation or the like, Contractor shall notify the Town of a substitute Superintendent. At all times, Contractor shall provide at least one Superintendent for every 4 Job Orders. Whenever, in the sole discretion of the Town, Contractor is not providing a sufficient level of supervision, the Town may direct Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the Town.

#### **4. Procedure for Ordering Work**

- 4.1. Conduct the Joint Scope Meeting
- 4.2. As the need exists, the Town will notify Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 4.3. Contractor does not have the right to refuse to perform any Project, Pre-priced Task, or Non Pre-priced Task.
- 4.4. Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 4.4.1. The work to be performed;
  - 4.4.2. Presence of hazardous materials;
  - 4.4.3. Job Order specific Insurance (if any);
  - 4.4.4. Required permits – including drawings for permits;
  - 4.4.5. Long lead time materials;
  - 4.4.6. Protocol for workers entering the site;
  - 4.4.7. Staging area and areas that are off-limits;
  - 4.4.8. Construction schedule and work hours – with critical milestones and phasing requirements;
  - 4.4.9. Controlled inspections, testing requirements;
  - 4.4.10. Value Engineering suggestions;
  - 4.4.11. Organization of Price Proposal – by location, by corner, etc.;
  - 4.4.12. Due Date for Detailed Scope of Work and for Price Proposal; and
  - 4.4.13. The Traffic Control Plan, if required
- 4.5. Upon completion of the joint scoping process, the Town will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs,

and specifications required to document accurately the work to be accomplished. Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Town will issue a Request for Proposal that will require Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both Contractor and the Town, will be the basis on which Contractor will develop its Job Order Proposal and the Town will evaluate the same. Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

- 4.6. The Town may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if Contractor and the Town cannot agree on the quantities required, or for any other reason as determined by the Town. In all such cases, the Town shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.
- 4.7. If Contractor requires additional information to clarify the Detailed Scope of Work before preparing the Job Order Proposal, Contractor shall make such request quickly so that the Job Order Proposal can be submitted on time.

## **5. Preparation of a Job Order Proposal**

- 5.1. Contractor's Job Order Proposal shall include, at a minimum:
  - 5.1.1. Job Order Price Proposal;
  - 5.1.2. Support documentation for Non Pre-priced Tasks;
  - 5.1.3. Required drawings or sketches;
  - 5.1.4. List of anticipated Subcontractors including a MBE/WBE Certification;
  - 5.1.5. Construction schedule; and
  - 5.1.6. Other requested documents.
- 5.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 5.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 5.4. Contractor shall prepare Job Order Price Proposals in accordance with the following:
  - 5.4.1. Pre-priced Task: Contractor shall select the appropriate Pre-priced Tasks, enter the accurate quantities, and select the appropriate Adjustment Factor to be used for each such Pre-priced Task. Contractor shall use the Adjustment Factors in effect on the date the

Price Proposal is due, even though the Job Order may be issued after the Adjustment Factors have been updated.

- 5.4.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with Contractor's own forces:**

**A** = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

**B** = The hourly, weekly, or monthly rate for each piece of equipment not in the Construction Task Catalog® multiplied by the quantity;

**C** = Lowest of three independent quotes for all materials.

**Total for Non Pre-priced Tasks performed with Contractor's own forces** =  $(A+B+C) \times \text{Non Pre-priced Task Adjustment Factor}$

**For Non Pre-priced Tasks Performed by subcontractors:**

If the Non Pre-priced Task will be subcontracted, Contractor must submit three independent quotes for the work.

**D** = Lowest of 3 subcontractor quotes. If 3 quotes are not attainable, Contractor may submit less than 3 with a letter of justification explaining the circumstances.

**Total for Non Pre-priced Tasks performed by subcontractors** =  $D \times \text{Non Pre-priced Task Adjustment Factor}$

- 5.4.3. Information submitted in support of Non Pre-priced Tasks shall include the following without limitation:

5.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

5.4.3.2. If Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, Contractor shall submit 3 independent quotes from subcontractors. Contractor shall not submit a quote or bid from any supplier or subcontractor that Contractor is not prepared to use. The Town may require additional quotes and bids if the suppliers or

subcontractors are not acceptable or if the prices are not reasonable. If 3 quotes or bids cannot be obtained, Contractor will provide the reason in writing for the Town's approval.

5.4.3.3. After a Non Pre-priced Task has been approved by the Town, the Unit Price for such task will be established, following approval by the Town, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

5.4.3.4. The Town's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to Contractor.

- 5.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Town may permit Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred; provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
- 5.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
- 5.7. Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- 5.8. Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between 7 and 14 days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

- 5.9. In immediate response situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, Contractor may be directed to begin work immediately with the paperwork to follow.
- 5.10. For purposes of Using the Construction Task Catalog®, the project site is defined as the exterior perimeter of a building. For work not performed in a building, the project site is defined as the limits of the work area.
- 5.11. By submitting a Job Order Proposal to the Town, Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Town.
- 5.12. If Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- 5.13. If Contractor is required to work in a secured facility or location where labor, materials, and equipment must be inspected, Contractor will be permitted to add labor hours to the Job Order Price Proposal to account for lost time as a result of such inspection.

## **6. Review of the Job Order Proposal and Issuance of the Job Order**

- 6.1. The Town will evaluate the entire Job Order Price Proposal and compare these with the Town's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. All incomplete Job Order Proposals will be rejected. The Town will review the Price Proposal to determine the accuracy of the Pre-priced Tasks, quantities, Adjustment Factors, and Non Pre-priced Tasks.
- 6.2. Contractor may choose the means and methods of construction; subject however, to the Town's right to reject any means and methods proposed by Contractor that:
  - 6.2.1. Will constitute or create a hazard to the work, or to persons or property;
  - 6.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
  - 6.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 6.3. The Town reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Town also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Town. The Town may



perform such work by other means. Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Town.

- 6.4. By submitting a Job Order Proposal, Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the Town.
- 6.5. It is Contractor's responsibility to include the necessary Pre-priced Tasks and Non-Pre-priced Tasks, accurate quantities, and correct Adjustment Factors in the Price Proposal prior to delivering it to the Town.
- 6.6. If the Job Order Proposal is found to be complete and accurate, the Town may issue a Job Order to Contractor.
- 6.7. The Job Order signed by the Town and delivered to Contractor constitutes the Town's acceptance of Contractor's Job Order Proposal.
- 6.8. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price. The Job Order Price shall be the value of the approved Price Proposal.
- 6.9. All clauses of this Contract shall apply to each Job Order.
- 6.10. Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.
- 6.11. The Town, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, changing, or deleting from the Detailed Scope of Work, by issuing a Supplemental Job Order. All Supplemental Job Orders shall be developed in accordance with these procedures for ordering work.
- 6.12. The Town may decide not to issue a Job Order under development, may decide to cancel a Job Order or any portion of a Job Order, or cancel a Project or any portion of a Project, for any reason. In such case, Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to attending the Joint Scope Meeting, preparing or reviewing the Detailed Scope of Work, preparing a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, or reviewing the Job Order Proposal with The Town. The Town may perform such work by other means.
- 6.13. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. A separate Job Order will

be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work,

- 6.14. Each Job Order provided to Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Town and delivered to Contractor constitutes the Town's acceptance of Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to Contractor.
- 6.15. In the event that immediate emergency response is necessary, Contractor shall be required to follow alternative procedures as established by the Town. Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. Contractor shall be compensated for such work as if the work had been ordered under the standard procedures. Contractor must submit to the Town's Representative, their emergency procedure/ safety plan prior to starting work. Contractor must be responsible for quality assurance and quality control.

## **7. Changes in the Work**

- 7.1. The Town, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.
- 7.2. All Supplemental Job Orders shall be developed and priced in accordance with the Procedures for Developing All Job Orders
- 7.3. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

## **8. Contract Modifications**

- 8.1. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Contract Amendment.

## **9. Payments**

- 9.1. The Town will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Town may make partial, monthly payments based on a percentage of the work completed.
- 9.2. Before submitting an Application for Payment (Final or Partial), Contractor shall reach an agreement with the Project Manager concerning the

percentage complete of the detailed Scope of work and the dollar value for which the Application for Payment may be submitted.

## **10. Job Order Contracting Software**

### **10.1. Job Order Contracting Software**

10.1.1. The Town selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for the JOC program. The Gordian JOC Solution includes Gordian's proprietary JOC System Software and JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by Contractor solely for the purpose of fulfilling its obligations under this Contract, including preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the Town. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Town is strictly prohibited unless otherwise approved in writing by Gordian. Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution. This Gordian JOC Solution is expressly excepted from Section IV of the Construction Contract.

## **11. ENR CCI Adjustment of the Adjustment Factors**

11.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the Effective Date to account for changes in construction costs, provided, Contractor requests in writing, approximately 14 to 30 days prior to such anniversary, that the Adjustment Factors be updated. The request shall be delivered to the Town and to Gordian. If Contractor fails to deliver the request timely, then the Town shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the Town. Thereafter, Contractor's Adjustment Factors will be adjusted according to the following:

11.2.A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities, published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. February bid due date, Base Year Index is February of the prior year to January of the bid due date year).

11.3.A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the 20 cities published in the Engineering News Record (ENR) for the 12 months beginning with the

month of anniversary of the bid due date (*e.g.* February bid due date, Current Year Index is February of the prior year to January of the current year).

- 11.4. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
- 11.5. Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain Contractor's new Adjustment Factors effective for the next 12 months.
- 11.6. Averages shall be obtained by summing the 12-month indices and dividing by 12.
- 11.7. All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
  - 11.7.1. The fourth decimal place shall be rounded up when the fifth decimal place is 5 or greater.
  - 11.7.2. The fourth decimal place shall remain unchanged when the fifth decimal place is less than 5.
- 11.8. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 11.9. If Contractor submits a Price Proposal with outdated Adjustment Factors, then Contractor waives its right to resubmit the Price Proposal using updated Adjustment Factors.
- 11.10. Contractor cannot delay submitting a Job Order Proposal to take advantage of a scheduled update of the Adjustment Factors. In that event, Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 11.11. The Non Pre-priced Adjustment Factor shall remain fixed for the duration of the Contract.

## **12. As-Built Drawings**

- 12.1. If Contractor is provided, or prepares, drawings as part of the Detailed Scope of Work, then, as the Detailed Scope of Work progresses, Contractor shall keep a complete and accurate record of changes to, and deviations from, such drawings. The As-Built Drawings will be created in the same medium (paper, electronic) in which they were originally prepared.

**Town of Erie  
Resolution No. 25-059**

**A Resolution of the Town Council of the Town of Erie Approving a  
Construction Contract with JOC Construction LLC for the Arapahoe  
Ridge Sidewalk Removal and Replacement Project**

**Whereas**, the Town Council finds it in the best interest of the public health, safety and welfare to approve the Construction Contract with JOC Construction LLC for the Arapahoe Ridge Sidewalk Removal and Replacement project.

**Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:**

**Section 1.** The Town Council hereby approves the Construction Contract with JOC Construction LLC in substantially the form attached hereto, subject to approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Construction Contract on behalf of the Town.

**Adopted this 22<sup>nd</sup> day of April, 2025.**

\_\_\_\_\_  
Andrew J. Moore, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Stamp, Town Clerk



## Town Council

Board Meeting Date: 4/22/2025

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File #: 25-224, Version: 1

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**SUBJECT: Consent Agenda**

**A Resolution of the Town Council of the Town of Erie Approving a Development Agreement and Accepting Dedications as Shown on the Final Plat for the Regency at Northskye Active Adult Amenity Minor Subdivision**

**DEPARTMENT:** Planning and Development

**PRESENTER:** Aly Burkhalter, Senior Planner

**POLICY ISSUES:**

Staff's analysis indicates the proposed Development Agreement and proposed dedications are consistent with Town Charter, Municipal Code, and the Council's priorities. Approving the Resolution will confirm Council's agreement with staff's analysis and conclusions.

**STAFF RECOMMENDATION:**

Approve the Development Agreement and accept the dedications shown on The Regency at Northskye Active Adult Minor Subdivision.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Regency at Northskye Active Adult Minor Subdivision is located at the center of the Summerfield development along Meadow Boulevard. The amenity center will serve as a private amenity for Summerfield Filing No. 1, which is actively under construction. This Minor Subdivision is consistent with Summerfield PD, approved by Board of Trustees on Jan. 8, 2013, and Summerfield Filing No. 1, approved by Board of Trustees on Aug. 1, 2023, which identifies Tract AH as Future Amenity Area.

The Development Agreement (DA) for The Regency at Northskye Active Adult Minor Subdivision includes standard Town of Erie requirements to develop the site, as well as exhibits outlining cost estimates for the public improvements the developer will install. These include public roadway improvements, public and right-of-way landscaping and irrigation, utility mains, and a spine trail. The Development Agreement reflects provisions negotiated by Town staff with the Town Attorney's counsel and the property owner, TL Summerfield, LLC. The DA includes, among other typical Town language, reimbursements to the Town for the North Water Reclamation Facility.

**Site History and Prior Approvals**

1. Annexation

The overall Summerfield area was annexed by the Town in 2013.

## 2. Zoning

In 2013 Summerfield was zoned Planned Development concurrently with Annexation. Among other items, the PD established planning areas, densities, dimensional standards, and land use regulations.

## 3. Plats

- 2013: A Sketch Plan was reviewed for the overall property. A Sketch Plan is an optional, informal evaluation before detailed planning and engineering work is undertaken and does not result in any approval or denial.
- 2022: The first Preliminary Plat was approved by the Town Council and consisted of 508 single-family detached lots, 138 duplex lots, and 198 townhome (single-family attached) lots, for a total of 844 lots, with 43 tracts for various landscaping, trail, park, open space, alleys/private streets, and utility purposes and future development areas. The area for Preliminary Plat No. 2 was contained within designated future development tracts on the original Preliminary Plat.
- 2023: Summerfield Filing No. 1 Final Plat and Development Agreement (DA) was approved by Town Council. Filing No. 1 created 479 lots and 36 tracts consisting of 158 active adult single-family detached, 100 active adult attached homes, 196 traditional detached homes, and 25 traditional townhomes. Some of these areas are currently under construction. Infrastructure is anticipated to be completed in the fall of this year with sales possibly beginning the end of 2025 or beginning of 2026.

## **Regency At Northskye Active Adult Minor Subdivision**

Development Information:

- Plat Size: 5.5188 acres
- Number of Lots: 1 non-residential lot
- Number of Tracts: 1 spine trail tract

The plat creates a non-residential lot for the purpose of a private amenity center for the Northskye Active Adult residents and a tract for the continuation of the Spine Trail through the development.

## **Development Agreement**

Staff negotiated a Development Agreement (DA) in concert with the Minor Subdivision. The agreement includes cost estimates and reimbursement provisions for public infrastructure associated with the development. These provisions address public improvements identified as part of the development review process.

## **Action Items**

The Town Council is the approval body for both the DA and the acceptance of dedications as shown on the Minor Subdivision.

**Fiscal Impact**

The development will pay building permit fees and will generate property and sales taxes and other fees and taxes to the Town, County, School, and Fire Districts. The resulting revenue will support municipal, school and fire services for the new development.

**COUNCIL PRIORITY(S) ADRESSED:**

- ✓ Prosperous Economy
- ✓ Fiscally Responsible
- ✓ Attractive Community Amenities
- ✓ Engaged and Diverse Community
- ✓ Well-Maintained Transportation Infrastructure
- ✓ Safe and Healthy Community

**ATTACHMENTS:**

1. Resolution No. 25-064
2. Development Agreement
3. Regency At Northskye Active Adult Minor Subdivision



**Town of Erie  
Town Council  
Resolution 25-065**

**A Resolution of the Town Council of the Town of Erie Approving a  
Development Agreement and Accepting Dedications as Shown on  
the Final Plat for the Regency at Northskye Active Adult Amenity  
Minor Subdivision**

**Whereas**, on July 1, 2024, TL Summerfield, LLC filed an application for approval of the Final Plat for the Regency at Northskye Active Adult Amenity Minor Subdivision (the "Final Plat");

**Whereas**, the Planning and Development Director has conditionally approved the Final Plat, on the condition that the Town Council approve an associated development agreement and accept certain dedications as shown on the Final Plat;

**Whereas**, on April 22, 2025, the Town Council considered the Development Agreement and the acceptance of the dedications as shown on the Final Plat; and

**Whereas**, the Town Council desires to approve the Development Agreement and accept the dedications as shown on the Final Plat.

**Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:**

Section 1. The Town Council hereby approves the Development Agreement for the Regency at Northskye Active Adult Amenity Minor Subdivision, in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Development Agreement on behalf of the Town.

Section 2. The Town Council hereby accepts the dedications shown on the Final Plat.

**Adopted this 22<sup>nd</sup> day of April, 2025.**

\_\_\_\_\_  
Andrew J. Moore, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**Development Agreement**  
**(Regency at Northskye Active Adult Amenity Minor Subdivision)**

This Development Agreement (the "Agreement") is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2025 (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 TL SUMMERFIELD, LLC, a Delaware limited liability company with an address of 7100 East Bellevue Avenue, Suite 200, Greenwood Village, CO 80111 ("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 the final plat for the Regency at Northskye Active Adult Amenity Minor Subdivision (the "Final Plat"); and

Whereas, the Parties 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.

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 and conditions under which the Development may proceed. All provisions of this Agreement are in addition to, and not in lieu of, any requirements of the Erie Municipal Code (the "Code") and other applicable law.

2. District. The Town acknowledges that Developer has formed or may form one or more metropolitan districts (collectively the "District") for the purpose of providing facilities and services for the Development, either independently or as Developer's designee under this Agreement. Notwithstanding anything contained in this Agreement to the contrary, any obligation of Developer under this Agreement may be performed by or on behalf of the District, provided that the District will be bound by this Agreement for any obligations that it undertakes on behalf of Developer.

3. 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.

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 in 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. Developer shall reimburse the Town for any expenses incurred by the Town for review of the application or associated documents. Unless otherwise approved by Town, overlot grading shall not be initiated until the Town approves drainage 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.
- 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 all federal, state and local statutes, regulations, ordinances, decrees 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 and safety, including without limitation the following, as amended: the Comprehensive Environmental Response, Compensation and Liability Act; the Hazardous Materials Transportation Act; the Resource Conservation and Recovery Act; the Toxic Substances Control Act; the Clean Water Act; the Clean Air Act; the Occupational Safety and Health Act; the Solid Waste Disposal Act; the Davis Bacon Act; the Copeland Act; the Contract Work Hours and Safety Standards Act; the Byrd Anti-Lobbying Amendment; the Housing and Community Development Act; and the Energy Policy and Conservation Act.

4. 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 December 31, 2029.

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 work required to receive Final Acceptance. After Developer completes such work, Developer shall request a re-inspection, and the Town shall provide written notice to Developer of the acceptability or unacceptability of such work. If Developer does not complete the required work in an acceptable manner 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.

## 5. 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.

## 6. 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"), a form approved by the Town.

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 the Improvement Guarantee.

c. *Draw.* If the Improvements are not satisfactorily completed within the periods of time specified herein, the Town may draw on the 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 Improvements, the Improvement Guarantee shall be reduced to the amount of 25% of the total actual cost of construction and installation of such Improvements. The reduced Improvement Guarantee shall be held by the Town during the Warranty Period.

7. Reimbursements. Developer shall reimburse the Town for a proportional cost of improvements previously constructed by the Town that benefit the Property, in the amounts and during the times set forth in **Exhibit C**, attached hereto and incorporated herein by this reference.

8. Indemnification. Developer agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, attorneys heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage is caused in whole or in part by the omission, error, professional error, mistake, negligence, or other fault of Developer, or any officer, employee, representative, agent or subcontractor of Developer. In addition, Developer shall pay all property taxes on property underlying 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.

9. 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 draw on the Improvement Guarantee; and
- 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.



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

**Town of Erie, Colorado**

\_\_\_\_\_  
Andrew J. Moore, Mayor

Attest:

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**Developer**

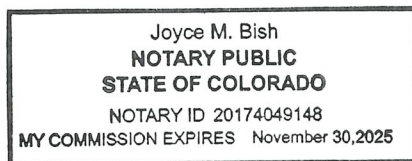
By: 

State of Colorado       )  
                                  ) ss.  
County of Arapahoe

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 26 day of March, 2025, by Tim Westbrook as the Vice President of TOLL SOUTHWEST LLC, an administrative member of TL SUMMERFIELD, LLC, a Delaware limited liability company.

My commission expires: Nov 30, 2025

(Seal)



  
Notary Public

## **Exhibits List**

**Exhibit A** – Legal Description

**Exhibit B** – Improvements

**Exhibit C** – Reimbursements and Fees

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

Lot 1, Regency at Northskye Active Adult Amenity Minor Subdivision

## **Exhibit B Improvements**



**Opinion of Probable Construction Cost**

**Northskye Clubhouse**

Erie, CO  
Prepared By: Inga Almgren  
Checked By: Willie Konishi  
Date: January 13, 2025

1.0 PUBLIC TRACT IMPROVEMENTS		Quantity	Units	Price	Cost
1.01	10' Wide Spine Trail	627	LF	\$ 7.50	\$ 4,705
Sub-Total:				\$	4,705

2.0 PUBLIC ROADWAY IMPROVEMENTS		Quantity	Units	Price	Cost
2.01	Asphalt Pavement and Base Course	42	SY	\$ 42.00	\$ 1,748
2.02	Concrete Cross Pan	32	SY	\$ 140.00	\$ 4,518
2.03	Vertical Curb & Gutter	69	LF	\$ 22.00	\$ 1,512
2.04	Concrete Sidewalk	122	SY	\$ 6.50	\$ 793
2.05	Curb Ramp	2	EA	\$ 5,500.00	\$ 11,000
Sub-Total:				\$	19,571

3.0 WATER IMPROVEMENTS		Quantity	Units	Price	Cost
3.01	8-inch Watermain (PVC)	302	LF	\$ 60.00	\$ 18,102
3.02	6-inch Watermain (DI)	64	LF	\$ 55.00	\$ 3,493
3.03	6-inch Gate Valve	2	EA	\$ 2,200.00	\$ 4,400
3.04	8-inch Gate Valve	3	EA	\$ 2,500.00	\$ 7,500
3.05	12-inch Gate Valve	2	EA	\$ 5,000.00	\$ 10,000
3.05	Fire Hydrant Assembly	2	EA	\$ 9,500.00	\$ 19,000
3.06	Fitting (Bend, Tee, Cross)	11	EA	\$ 1,200.00	\$ 13,200
Sub-Total:				\$	75,695

Total:				\$	95,266
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**Basis for Cost Projection:**

- ☐ No Design Completed
- ☐ Conceptual Design
- ☒ Final Design

This OPC is not intended for basing financial decisions, or securing funding. Since Kimley-Horn and Associates, Inc. has no control over the cost of labor, materials, equipment, or services furnished by others, or over methods of determining price, or over competitive bidding or market conditions, any and all opinions as to the cost herein, including but not limited to opinions as to the costs of construction materials, shall be made on the basis of experience and best available data. Kimley-Horn and Associates, Inc. cannot and does not guarantee that proposals, bids, or actual costs will not vary from the opinions on costs shown herein. Contractor shall be responsible for their own take off and bid numbers. The quantities shown herein shall not be used for bidding purposes and may not be all inclusive.



# **Opinion of Probable Construction Cost**

## **NorthSkye Active Adult Amenity Public Improvements**

Erie, Colorado

Prepared by: Geoffrey Van de Riet

Checked by: Geoffrey Van de Riet

Date: January 24, 2025

1.0 PUBLIC TRACT LANDSCAPE IMPROVEMENTS		Quantity	Units	Price	Cost
1.01	Mixed Grass Native Prairie Seed Mix	21,783	SF	\$ 3.00	\$ 65,349
1.02	Soil Amendment, 5 yds/1,000 sf, 6" depth till	21,783	SF	\$ 0.35	\$ 7,624
1.03	Fertilizer, Biosol Forte, 800 plbs/acre	21,783	SF	\$ 1.00	\$ 21,783
1.04	Landscape Irrigation, seed area, spray	21,783	SF	\$ 5.00	\$ 108,915
1.05	Dog Waste Station	2	EA	\$ 595.00	\$ 1,190
1.06	Trail signs	2	EA	\$ 350.00	\$ 700
Sub-Total:					\$ 205,561

2.0 PUBLIC ROADWAY LANDSCAPE IMPROVEMENTS		Quantity	Units	Price	Cost
2.01	Concrete Band, 6" w x 18" ht.	65	LF	\$ 90.00	\$ 5,850
2.02	Steel Edger, 20 ga., 4" ht.	219	LF	\$ 9.00	\$ 1,971
2.03	Rock Mulch, 1-1/2" size, 3" depth	4,022	SF	\$ 2.50	\$ 10,055
2.04	Decomposed Granite, 3/4" minus, 3" depth	427	SF	\$ 3.00	\$ 1,281
2.05	Deciduous Tree, 2-1/2" cal.	12	EA	\$ 795.00	\$ 9,540
2.06	Deciduous Ornamental Tree, 10 gal., multi-stem	1	EA	\$ 695.00	\$ 695
2.07	Evergreen Tree, 10' ht.	1	EA	\$ 900.00	\$ 900
2.08	Tree Staking/Guying	14	EA	\$ 40.00	\$ 560
2.09	Deciduous Shrub, 5 gal.	27	EA	\$ 60.00	\$ 1,620
2.10	Evergreen Shrub, 5 gal.	33	EA	\$ 70.00	\$ 2,310
2.11	Ornamental Grass, 1 gal.	247	EA	\$ 28.00	\$ 6,916
2.12	Perennial, 1 gal.	356	EA	\$ 25.00	\$ 8,900
2.13	Bulb	51	EA	\$ 2.00	\$ 102
2.14	Soil Amendment, 5 yds/1,000 sf, 12" depth	4,022	SF	\$ 0.50	\$ 2,011
2.15	Turf Grass, sod	127	SF	\$ 0.35	\$ 44
2.16	Topsoil	127	SF	\$ 1.15	\$ 146
2.17	Booster Fertilizer, 18-46-0, 1lb/1,000 sf	127	SF	\$ 1.00	\$ 127
2.18	Landscape Irrigation, turf area, spray	127	SF	\$ 5.00	\$ 635
2.19	Landscape Irrigation, planting area, drip	4,022	SF	\$ 5.00	\$ 20,110
Sub-Total:					\$ 73,774

Total:					\$ 279,335
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### **Basis for Cost Projection:**

- ☐ No Design Completed  
☐ Conceptual Design  
☒ Final Design

This OPC is not intended for basing financial decisions, or securing funding. Since DTJ Design, Inc. has no control over the cost of labor, materials, equipment, or services furnished by others, or over methods of determining price, or over competitive bidding or market conditions, any and all opinions as to the cost herein, including but not limited to opinions as to the costs of construction materials, shall be made on the basis of experience and best available data. DTJ Design, Inc. cannot and does not guarantee that proposals, bids, or actual costs will not vary from the opinions on costs shown herein. Contractor shall be responsible for their own take off and bid numbers. The quantities shown herein shall not be used for bidding purposes and may not be all inclusive.

**Exhibit C  
Reimbursements**

**Reimbursements**

<b>Improvement</b>	<b>Amount (\$)</b>	<b>Payment Timing</b>
Connection to North Water Reclamation Facility	4,661.26	Within 30 days of the Effective Date

REGENCY AT NORTHSKYE ACTIVE  
ADULT AMENITY MINOR SUBDIVISION  
BEING A REPLAT OF TRACT AH, SUMMERFIELD FILING NO. 1  
LOCATED IN THE NORTH HALF OF SECTION 4, TOWNSHIP 1 NORTH,  
RANGE 68 WEST OF THE 6TH P.M.  
TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO  
5.5188 ACRES - 1 LOT  
SUB2024-00001

DEDICATION AND OWNERSHIP STATEMENT

THE UNDERSIGNED, BEING ALL THE OWNERS, MORTGAGEES, OR LIEN HOLDERS OF CERTAIN LANDS IN THE TOWN OF ERIE, COUNTY OF WELD, COLORADO, DESCRIBED AS FOLLOWS:

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

TRACT AH, SUMMERFIELD FILING NO. 1  
RECORDED AT RECEPTION NO. 4912631

CONTAINING 240,400 SQUARE FEET OR 5.5188 ACRES, MORE OR LESS.

SUBORDINATELY DESCRIBED AS

A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERLY MOST CORNER OF SAID TRACT AH;  
THENCE AROUND THE PERIMETER OF SAID TRACT AH THE FOLLOWING TEN (10) COURSES:

1. SOUTH 69°08'44" WEST, A DISTANCE OF 596.96 FEET;
2. NORTH 30°51'16" WEST, A DISTANCE OF 342.90 FEET;
3. NORTH 45°01'01" EAST, A DISTANCE OF 310.96 FEET;
4. NORTH 65°45'58" EAST, A DISTANCE OF 101.12 FEET;
5. NORTH 70°05'11" EAST, A DISTANCE OF 158.74 FEET;
6. NORTH 19°54'49" WEST, A DISTANCE OF 120.00 FEET;
7. NORTH 70°05'11" EAST, A DISTANCE OF 10.76 FEET TO A TANGENT CURVE;
8. ON SAID TANGENT CURVE TO THE RIGHT WITH A RADIUS OF 20.00 FEET, A CENTRAL ANGLE OF 87°17'47" AND ARC LENGTH OF 30.47 FEET, AND A CHORD BEARING DISTANCE OF SOUTH 66°15'56" EAST, 27.61 FEET, TO A REVERSE CURVE;
9. ON SAID REVERSE CURVE TO THE LEFT WITH A RADIUS OF 1040.00 FEET, A CENTRAL ANGLE OF 08°14'14" AND AN ARC LENGTH OF 149.52 FEET, AND A CHORD BEARING AND DISTANCE OF SOUTH 26°44'09" EAST, 149.39 FEET;
10. SOUTH 30°51'16" EAST A DISTANCE OF 338.91 FEET TO THE POINT OF BEGINNING.

CONTAINING 240,400 SQUARE FEET OR 5.5188 ACRES, MORE OR LESS.

HAVE BY THESE PRESENTS LAID OUT, PLATTED AND SUBDIVIDED THE SAME INTO A LOT, A TRACT, AND EASEMENTS AS SHOWN HEREON UNDER THE NAME AND SUBDIVISION OF **REGENCY AT NORTHSKYE ACTIVE ADULT AMENITY MINOR SUBDIVISION**. THE EASEMENTS SHOWN HEREON ARE DEDICATED TO THE TOWN AND THE PUBLIC, FOR PUBLIC USES AND PURPOSES AS SHOWN HEREON.

TL SUMMERFIELD LLC, A DELAWARE LIMITED LIABILITY COMPANY

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_ DATE: \_\_\_\_\_  
SECRETARY/TREASURER

STATE OF COLORADO )

COUNTY OF \_\_\_\_\_ ) ss.

ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

BY \_\_\_\_\_ AS \_\_\_\_\_.

WITNESS MY HAND AND OFFICIAL SEAL

NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

TITLE VERIFICATION CERTIFICATE

WE, LAND TITLE GUARANTEE COMPANY, DO HEREBY CERTIFY THAT WE HAVE EXAMINED THE TITLE OF ALL LAND PLATTED HEREON AND THAT TITLE TO SUCH LAND IS IN THE DEDICATOR(S) FREE AND CLEAR OF ALL LIENS, TAXES AND ENCUMBRANCES, EXCEPT AS FOLLOWS:

BY: \_\_\_\_\_ DATE: \_\_\_\_\_

PRINTED NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

ATTEST: \_\_\_\_\_ DATE: \_\_\_\_\_  
SECRETARY/TREASURER

STATE OF COLORADO )

COUNTY OF \_\_\_\_\_ ) ss.

ACKNOWLEDGED BEFORE ME THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_

BY \_\_\_\_\_ AS \_\_\_\_\_.

WITNESS MY HAND AND OFFICIAL SEAL

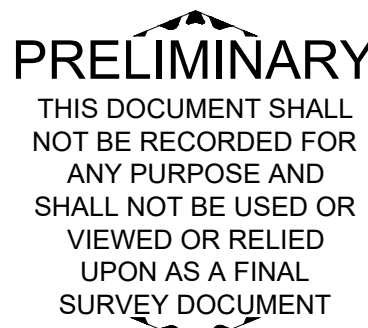
NOTARY PUBLIC

MY COMMISSION EXPIRES: \_\_\_\_\_

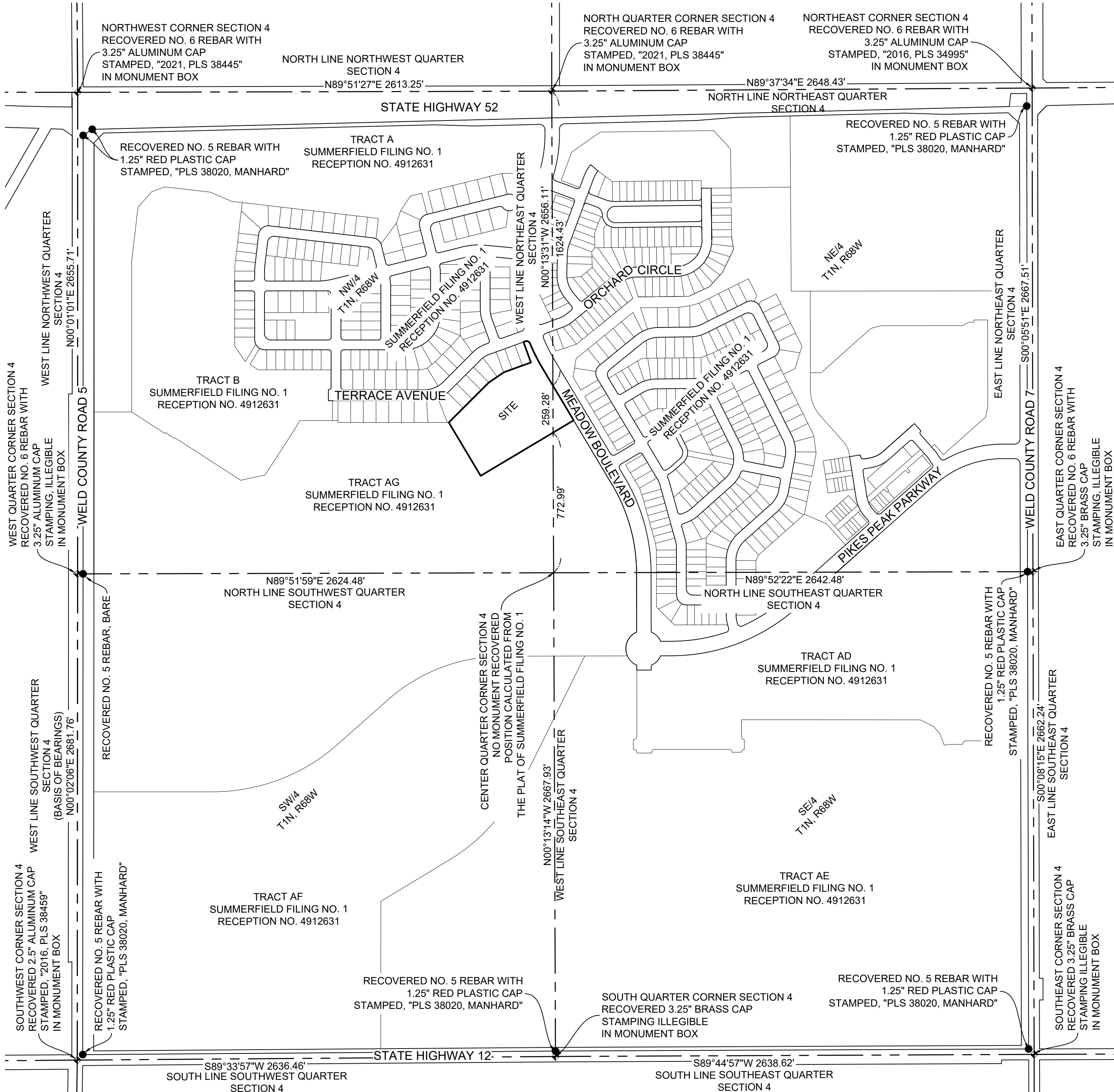
SURVEYOR'S CERTIFICATION

I, DARREN R. WOLTERSTORFF, A DULY LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO, DO HEREBY CERTIFY THAT THIS PLAT TRULY AND CORRECTLY REPRESENTS THE RESULTS OF A SURVEY MADE ON MARCH 22, 2024, BY ME OR UNDER MY DIRECT SUPERVISION AND THAT ALL MONUMENTS EXIST AS SHOWN HEREON; THAT MATHEMATICAL CLOSURE ERRORS ARE LESS THAN 1:50,000 (SECOND ORDER); AND THAT SAID PLAT HAS BEEN PREPARED IN FULL COMPLIANCE WITH ALL APPLICABLE LAWS OF THE STATE OF COLORADO DEALING WITH MONUMENTS, SUBDIVISIONS OR SURVEYING OF LAND AND ALL APPLICABLE PROVISIONS OF THE TOWN OF ERIE UNIFIED DEVELOPMENT CODE.

I ATTEST THE ABOVE ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

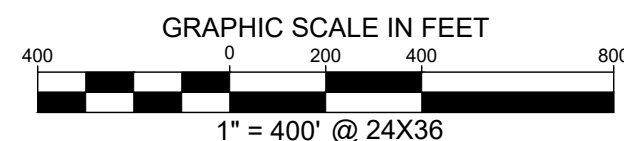
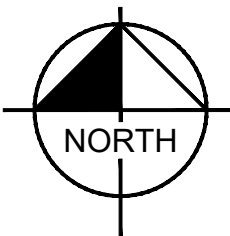


DARREN R. WOLTERSTORFF, PLS 38281  
FOR AND ON BEHALF OF KIMLEY-HORN AND ASSOCIATES, INC.  
DARREN.WOLTERSTORFF@KIMLEY-HORN.COM



LEGEND

- Recovered Section Corner as Noted
- Recovered Property Monument as Noted
- Boundary Line
- Section Line
- Lot Line



TRACT SUMMARY CHART			
TRACT	ACRES	SQ. FT.	USE
TRACT A	0.735	32,003	PRIVATE OPEN SPACE, TRAIL, & UTILITIES

DEVELOPER/APPLICANT:  
TOLL BROTHERS  
7100 E. BELLEVUE AVE., SUITE 200  
GREENWOOD VILLAGE, CO 80111  
720-357-5634  
CONTACT: JOHRI LITMAN  
EMAIL: jlitman@tollbrothers.com>

CIVIL ENGINEER:  
KIMLEY-HORN AND ASSOCIATES, INC.  
6200 SOUTH SYRACUSE WAY, SUITE 300  
GREENWOOD VILLAGE, CO 80111  
PHONE: 720-647-6219  
CONTACT: WILLIE KONISHI

SURVEYOR:  
KIMLEY-HORN AND ASSOCIATES, INC.  
6200 SOUTH SYRACUSE WAY, SUITE 300  
GREENWOOD VILLAGE, CO 80111  
PHONE: 303-228-2300  
CONTACT: DARREN R. WOLTERSTORFF, PLS

NOTES:

1. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.
2. ANY PERSON WHO KNOWINGLY REMOVES, ALTERS OR DEFACES ANY PUBLIC LAND SURVEY MONUMENT OR LAND BOUNDARY MONUMENT OR ACCESSORY COMMITS A CLASS TWO (2) MISDEMEANOR PURSUANT TO STATE STATUTE 18-4-508, C.R.S.
3. TITLE NOTE: THIS PLAT DOES NOT CONSTITUTE A TITLE SEARCH BY KIMLEY-HORN AND ASSOCIATES, INC. TO DETERMINE OWNERSHIP OF THIS TRACT. FOR ALL INFORMATION REGARDING EASEMENTS, RIGHTS-OF-WAY OR TITLE OF RECORD, KIMLEY-HORN AND ASSOCIATES, INC. RELIED UPON TITLE COMMITMENT ORDER NO. RND25211850, EFFECTIVE DATE 06/07/2024 AT 5:00 P.M., PREPARED BY LAND TITLE GUARANTEE COMPANY.
4. THIS PROPERTY IS LOCATED WITHIN ZONE X, OTHER AREAS - DETERMINED TO BE OUTSIDE THE 0.2% ANNUAL CHANCE FLOODPLAIN, AS SHOWN ON THE FLOOD INSURANCE RATE MAP, MAP NO. 08013C0435J, MAP EFFECTIVE DATE DECEMBER 12, 2012. THE ACCURACY OF ANY FLOOD HAZARD DATA SHOWN ON THIS SURVEY IS SUBJECT TO MAP SCALE UNCERTAINTY AND TO ANY OTHER UNCERTAINTY IN LOCATION OR ELEVATION ON THE REFERENCED FLOOD INSURANCE RATE MAPS.
5. BASIS OF BEARINGS: BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHWEST QUARTER OF SECTION 4, AS BEARING NORTH 00°02'06" EAST, A DISTANCE OF 2,681.76 FEET PER THE PLAT OF SUMMERFIELD FILING NO. 1 RECORDED AT RECEPTION NO. 4912631, AS MONUMENTED ON THE SOUTH BY A 2.5" ALUMINUM CAP STAMPED, "2016, PLS 38459", IN MONUMENT BOX, AND ON THE NORTH BY A 3.25" BRASS CAP, STAMPING ILLEGIBLE, IN MONUMENT BOX.
6. ALL DISTANCES SHOWN HEREON ARE GROUND DISTANCES IN U.S. SURVEY FEET.
7. THE ADJACENT SUBDIVISION OF SUMMERFIELD FILING NO. 1, RECORDED AT RECEPTION NO. 4912631, SETS FORTH IN NOTE 13 "BLOCKS 1 THROUGH 13 SHALL BE DEVELOPED AS AGE-TARGETED OR AGE-RESTRICTED HOUSING CONSISTENT WITH SECTION XI SPECIAL PROVISIONS OF THE ANNEXATION AGREEMENT RECORDED AT RECEPTION NO. 3908281".
8. THE PURPOSE OF THIS REPLAT IS TO REPLAT TRACT AH TO ONE (1) LOT, ONE (1) TRACT, AND TO PLAT AN EASEMENT. NO RIGHTS-OF-WAY ARE DEDICATED BY THIS PLAT.
9. A BLANKET PUBLIC ACCESS AND UTILITY EASEMENT IS HEREBY DEDICATED OVER TRACT A.
10. UTILITY EASEMENTS ARE HEREBY DEDICATED FOR PUBLIC UTILITIES AS SHOWN HEREON.
11. THIS PLAT ALONG WITH THE DEVELOPMENT AGREEMENT FOR REGENCY AT NORTHSKYE ACTIVE ADULT AMENITY CENTER MINOR SUBDIVISION APPROVED BY RESOLUTION NO. \_\_\_\_\_ CONSTITUTE 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 THREE YEARS FOLLOWING APPROVAL OF THIS PLAT AND DEVELOPMENT AGREEMENT.

PLANNING & DEVELOPMENT APPROVAL CERTIFICATE

THIS PLAT IS HEREBY APPROVED BY THE TOWN OF ERIE PLANNING & DEVELOPMENT DIRECTOR ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

PLANNING & DEVELOPMENT DIRECTOR

TOWN COUNCIL CERTIFICATE

THIS PLAT IS TO BE KNOWN AS **REGENCY AT NORTHSKYE ACTIVE ADULT AMENITY MINOR SUBDIVISION** IS APPROVED AND ACCEPTED BY RESOLUTION NO. \_\_\_\_\_, PASSED AND ADOPTED AT A MEETING OF THE BOARD OF TRUSTEES OF ERIE, COLORADO, HELD ON THE \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_.

MAYOR

ATTEST: \_\_\_\_\_

TOWN CLERK

CLERK & RECORDER CERTIFICATE

STATE OF COLORADO )

COUNTY OF WELD ) ss.

I HEREBY CERTIFY THAT THIS PLAT WAS FILED IN MY OFFICE ON THIS \_\_\_\_ DAY OF \_\_\_\_\_, 20\_\_ A.D. AND WAS RECORDED AT RECEPTION NUMBER \_\_\_\_\_.

(SIGNATURE)

COUNTY CLERK AND RECORDER

No.	DATE	REVISION DESCRIPTION
3	3/4/25	REV EASEMENT
2	1/14/25	UPDATE TRACT USAGE
1	11/4/24	1ST SUBMITTAL COMMENTS

Kimley»Horn					
6200 S. SYRACUSE WAY, # 300 GREENWOOD VILLAGE, CO 80111			Tel. No. (303) 228-2300 www.kimley-horn.com		
Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 400'	JAF	DRW	06/21/24	096761001	1 OF 2



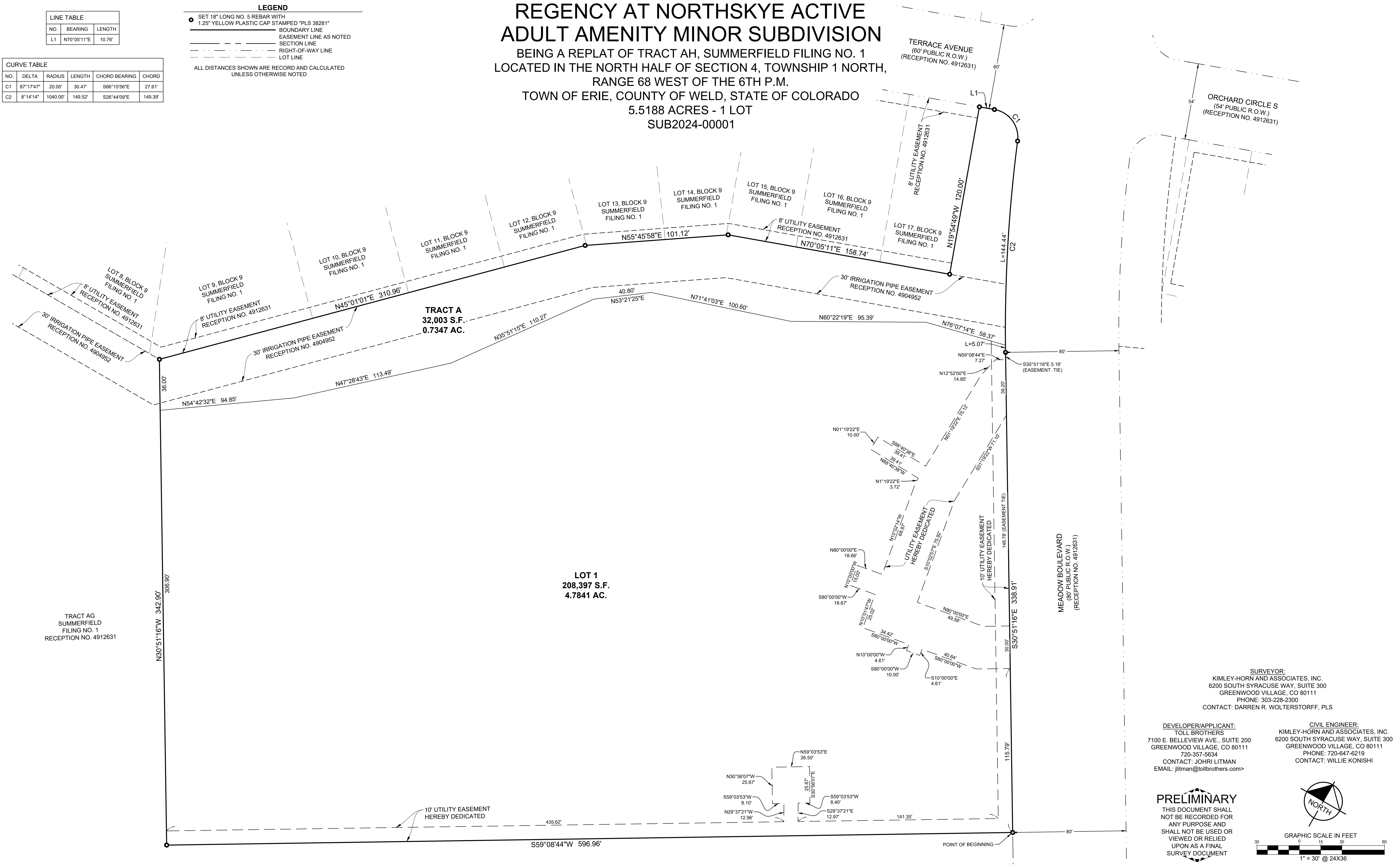
LINE TABLE		
NO.	BEARING	LENGTH
L1	N70°05'11"E	10.76'

CURVE TABLE					
NO.	DELTA	RADIUS	LENGTH	CHORD BEARING	CHORD
C1	87°17'47"	20.00'	30.47'	S66°15'56"E	27.61'
C2	8°14'14"	1040.00'	149.52'	S26°44'09"E	149.39'

LEGEND

- SET 18" LONG NO. 5 REBAR WITH 1.25" YELLOW PLASTIC CAP STAMPED "PLS 38281"
  - BOUNDARY LINE
  - EASEMENT LINE AS NOTED
  - SECTION LINE
  - RIGHT-OF-WAY LINE
  - LOT LINE
- ALL DISTANCES SHOWN ARE RECORD AND CALCULATED UNLESS OTHERWISE NOTED

REGENCY AT NORTHSKYE ACTIVE  
ADULT AMENITY MINOR SUBDIVISION  
BEING A REPLAT OF TRACT AH, SUMMERFIELD FILING NO. 1  
LOCATED IN THE NORTH HALF OF SECTION 4, TOWNSHIP 1 NORTH,  
RANGE 68 WEST OF THE 6TH P.M.  
TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO  
5.5188 ACRES - 1 LOT  
SUB2024-00001



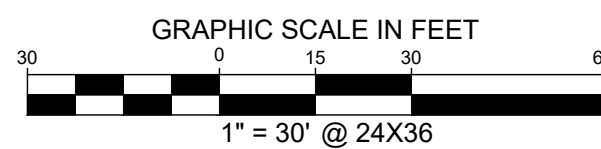
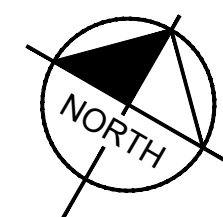
SURVEYOR:  
KIMLEY-HORN AND ASSOCIATES, INC.  
6200 SOUTH SYRACUSE WAY, SUITE 300  
GREENWOOD VILLAGE, CO 80111  
PHONE: 303-228-2300  
CONTACT: DARREN R. WOLTERSTORFF, PLS

DEVELOPER/APPLICANT:  
TOLL BROTHERS  
7100 E. BELLEVUE AVE., SUITE 200  
GREENWOOD VILLAGE, CO 80111  
720-357-5634  
CONTACT: JOHRI LITMAN  
EMAIL: jlitman@tollbrothers.com>

CIVIL ENGINEER:  
KIMLEY-HORN AND ASSOCIATES, INC.  
6200 SOUTH SYRACUSE WAY, SUITE 300  
GREENWOOD VILLAGE, CO 80111  
PHONE: 720-647-6219  
CONTACT: WILLIE KONISHI

PRELIMINARY

THIS DOCUMENT SHALL NOT BE RECORDED FOR ANY PURPOSE AND SHALL NOT BE USED OR VIEWED OR RELIED UPON AS A FINAL SURVEY DOCUMENT



No.	DATE	REVISION DESCRIPTION
3	3/4/25	REV EASEMENT
2	1/14/25	UPDATE TRACT USAGE
1	11/4/24	1ST SUBMITTAL COMMENTS

# Kimley»Horn

6200 S. SYRACUSE WAY, # 300  
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Tel. No. (303) 228-2300  
www.kimley-horn.com

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
1" = 30'	JAF	DRW	06/21/24	096761001	2 OF 2

DWG NAME: \KORN\_024\096761001\_SUMMERFIELD ADULT AMENITY PLAT.DWG PLOTTED BY: FELDER, JEREMY 3/4/2025 8:42 AM LAST SAVED: 1/14/2025 3:58 PM



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-225, **Version:** 1

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**SUBJECT:**

A Resolution of the Town Council of the Town of Erie Adopting an Update to the 2025 Fee Schedule

**DEPARTMENT:** Finance  
Utilities

**PRESENTER(S):** Sara Hancock, Finance Director  
Scott Brown, Operations & Maintenance Manager

**POLICY ISSUES:**

Adjusting the deposit for hydrant (temporary) meters to reflect the Town's cost of acquiring and maintaining those meters.

**STAFF RECOMMENDATION:**

Approve the resolution

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

Departments analyze their various fees annually to determine if the fees are still meeting the goals of each department. Departmental staff members recommend changing the following fees for 2025:

1. Increase Hydrant Meter Deposit from \$3,000 to \$4,000.

Generally, Hydrant Meters are rented from the Town of Erie by contractors for the use of water-related construction activities. As part of the rental, the Town of Erie requires a deposit, which is forfeited if the meter is not returned or returned damaged.

These fees reflect the Town's cost of providing, maintaining and replacing the Hydrant meters. There has been a cost increase for repairing and replacement. Also, as part of the replacement program, these meters will have SMART technology to read usage via 5G cellular signal, rather than calling contractors every month. This change in the deposit will cover those costs. They do not generate significant revenue.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Prosperous Economy
- ✓ Safe and Healthy Community

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**File #:** 25-225, **Version:** 1

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- ✓ Effective Governance
- ✓ Fiscally Responsible

**ATTACHMENT(S):**

1. Resolution 25-
2. Fee Schedule

**Town of Erie  
Resolution No. 25-066**

**A Resolution of the Town Council of the Town of Erie Adopting an  
Update to the 2025 Fee Schedule**

**Whereas,** the Town Council wishes to approve an update to the 2025 Fee Schedule to modify the hydrant fee in the Utilities Department Fees from \$3,000 to \$4,000; and

**Whereas,** the Town Council finds that it is in the best interest of the Town and the public health, safety and welfare to approve an update to the 2025 Fee Schedule.

**Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:**

**Section 1.** The Town Council hereby approves the update to the 2025 Fee Schedule, effective immediately.

**Adopted this 22<sup>nd</sup> day of April, 2025.**

\_\_\_\_\_  
Andrew J. Moore, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**Town of Erie Fee Schedule**  
(all fees are in U.S. Dollars)

**Administrative Fees**

Fee Type	Fee Amount
Amusement devices, pinball games, music boxes, etc.:	
Dealer license	\$25
Operator license, first device	\$10
For each additional device	\$10
Annexation elections	Actual costs, as determined by Town Clerk
Backyard chicken license	\$25
Billiard halls, game rooms, and restaurants; license	\$25
Plus, for each room over 1	\$25
Billiard tables, shuffleboard tables, other games and shooting galleries; license for first table, shooting gallery, etc.	\$25
Block parties	\$25/day
Open Container/Private Event	\$25/each event
Commercial business license	\$50/year
Door-to-door solicitation license (no group rates):	
Per individual	\$35/month
	\$100/year
Handbill distributor license	\$5/day
	\$25/month
	\$50/year
Home occupation license	\$25/year
Junk dealers	\$25/3 months
	\$50/year
Liquor licenses	Fees set forth in the State Liquor Code. List available in Town Clerk's Office.
Manufacturing or assembly license	\$100/year
Medical marijuana patient registration:	
Application fee	\$50
Late application fee	\$25

Fee Type	Fee Amount
Medical marijuana primary caregiver license:	
Application fee	\$100
Late application fee	\$200
Recreational Marijuana Retail License:	
License Fee (due upon application submission)	\$2,000
Operating Fee (due upon issuance of license)	\$2,000
Transfer of Ownership	\$2,000
Modification of Premises	\$750
Change of Location	\$1,000
Change/ Registration of Manager	\$100
Late Fee	\$500
Mobile Vendor Permit	\$50/year

Fee Type	Fee Amount
Promotional Associations:	
Application for Promotional Association	\$500/year
Application for attachment to a common consumption area	\$100/year
Application for recertification of a Promotional Association	\$100/year
Community events:	
Application processing fee	\$200

Permit fee	\$50
Public Records:	
Copies, printouts, or photographs	\$0.25 per standard page or actual cost of providing copy of document that is not a standard page
Research and retrieval time	First hour free \$41.37 per hour for any additional time 50% deposit required prior to commencement of research or retrieval
Postage/ courier	Actual cost
Electronic transmission via email	Free
Electronic transmission via thumb drive or other device	Actual cost of device

### Police Department Fees

Fee Type	Fee Amount
Crime/Incident Reports	\$7.00 for the first 10 pages \$0.25 for each additional page
Crash Reports	No charge
Research Fee	\$41.37/hr First Hour free of charge
Video Recording	\$20.00/hr
Photos	\$5.00 per 25 photos
Thumb Drive	\$20.00 in addition to the video/photo fee
VIN Inspection (Noncertified)	\$10.00
Fingerprints	\$10 per card
Local Background Check	No Charge
Sex Offender Registration	No Charge
Notary	No Charge
Bond Filing Fee	No Charge

## Municipal Court Fees

Fee Type	Fee Amount
Collection fee upon referral of delinquent monetary amounts due to a collection agency	18% of total due, assessed by collection agency
Court costs upon entry of a plea of guilty, nolo contendere, or finding of guilt or liability	\$30
Surcharge	\$30
Default judgment fee	\$30
Traffic accident fee	\$50
Warrant fee	\$55
Deferred judgement fee	\$50
Deferred prosecution fee	\$50
Community Service fee	\$25
Returned Check fee	\$25
Sealed records filing fee	\$65
Jury fee (forfeited if jury summonsed; refunded if found not guilty)	\$25
Certified copy of any court record	\$15
Discovery fee for USB Drive	\$5
Criminal justice records (excludes law enforcement reports, criminal history and driver's license information). Includes search, retrieval, redaction, and copy of up to 10 pages, 0.10/page thereafter	\$10
Criminal justice records requests requiring more than 15 minutes to search retrieve, redact, and copy/download. Deposit for estimated amount to be paid prior to search.	\$45/hour



## Airport Fees

Fee Type	Fee Amount
Airport land rental:	
Improved land	\$0.28/square foot annually
Unimproved land	\$0.14/square foot annually
T-hangar space rental	\$50/month
Airport through-the-fence fee:	
Residential	\$600/year
Commercial	\$0.25/square foot (minimum \$600 annually)
Tie down rental:	
North ramp	\$35
South ramp	\$50

## Public Works Department Fees

Fee Type	Fee Amount
Access Permit	Temporary and Residential - 150 Industrial and Commercial \$300
Right-of-way permit	\$150
Floodplain development permit	\$50, plus third-party review costs and FEMA application and review fees
Stormwater Quality Permit	\$100 review fee plus \$25/disturbed acre; \$100 annual renewal fee
Meter pit covered (no read)	\$50
Meter reinstallation	\$47
Public improvement permit:	
Sewer main	\$0.15/linear foot
Manholes	\$20
Service lateral inspection	\$20
Storm drainage:	
Main installation	\$0.15/linear foot
Storm drainage inlets	\$20
Storm sewer manholes	\$20
Sediment and erosion control	\$50/acre
Trickle channels	\$0.15/linear foot
ponds/dirt	\$0.05/cubic yard
Drainageways, major (concrete)	\$6/cubic yard
Surface improvements:	
Curb, gutter, or curb walk	\$0.15/linear foot
Detached sidewalk/trails	\$0.15/linear foot
Handicap ramps	\$15
Pavement	\$0.15/square yard
Cross pan	\$25
Drive approach for streets with detached walks or vertical curbs	\$15
Proof roll (based on road centerline)	\$0.10/linear foot
Major structures (concrete)	\$6/cubic yard
Water improvements:	
Main installation	\$0.15/linear foot
Hydrant	\$20
Service line, including meter pit	\$30
Valves	\$2
Manholes or vaults	\$20

Landscape improvements:	
Site preparation	\$0.02/square yard
Improved surfaces	\$0.15/ square yard
Trees and shrubs	\$2 per tree/ shrub
Fences	\$0.10/linear foot
Total lot including all structures and equipment	\$500
Sod	\$0.10/square yard
Facilities	50% of construction costs
Plan review and inspection	65% of PIP fee
Standard GIS maps:	
8.5 inches x 11 inches	\$10
11 inches x 17 inches	\$13
18 inches x 24 inches	\$16
24 inches x 36 inches	\$20
36 inches x 58 inches	\$25
Design and construction standards book	\$50
Easement of right-of-way review	\$50

## Utilities Department Fees

Fee Type	Fee Amount
Storm drainage fee:	
Rate per single-family residential equivalent (SFRE) <sup>1</sup>	\$11.98
<b>Notes</b> <sup>1</sup> Irrigation customers are not assessed a storm drainage fee. Storm drainage fees are assessed based on the impervious area of the property. The average impervious square footage of a single-family residence in the Town is 5,300 square feet, defined as a single-family residential equivalent (SFRE). All residential customers will be charged on the assumption that their property is equal to 1 SFRE. Commercial customers will be charged based on the impervious square footage divided by 5,300 square feet. For example, for a commercial property with 25,000 impervious square feet, the monthly storm drainage fee would be 56.55 in 2025(25,000 impervious square feet divided by 5,300 square feet equals 4.72 SFREs; 4.72 SFREs multiplied by 11.98 = 56.55).	

Wastewater rates:		
	<b>2024</b>	<b>2025</b>
Service charge, amount per monthly bill:		
Residential: Single-Family, Multi-Family, & Townhomes <sup>2</sup>	\$10.30	\$10.30
Commercial	\$10.30	\$10.30
Volume charge, amount per 1,000 gallons (based on Winter average usage December—February) <sup>3</sup> :	<b>2024</b>	<b>2025</b>
Residential:		
Single-Family	\$9.45	\$9.45
Townhomes <sup>2</sup> & Multi-Family	\$8.20	\$8.20
Commercial:	\$8.20	\$8.20
<b>Notes</b> <sup>1</sup> All gallon usage is based on water usage and is calculated by rounding to the nearest 1,000 gallons. For commercial accounts, if internal water usage patterns for the months of December—February are not representative of internal usage throughout the year, the monthly wastewater volume charge will be based on each month's water usage. The appropriate basis for commercial wastewater charges for each account will be established by the Town at the inception of each account, and is subject to adjustment if usage patterns change. The effective date for the rate increase shall be the first day of the calendar year. <sup>2</sup> If individually metered. <sup>3</sup> Average winter wastewater usage will be used during the following 12 months to calculate the volume charge. For example, average usage for December 2024, January 2025 and February 2025 will be used as the basis for the volume charge for the period March 2025.		

Fee Type	Fee Amount
Water hydrant meter:	
Deposit	\$4,000
Fee:	
Per 1,000 gallons	\$6.57
Water meter:	
Shutoff fee	\$20
Turn on fee	\$20
Reread fee	\$50

Fee Type	Fee Amount	
Water rates, potable:		
Service charge, amount per monthly bill:		
	<b>2024</b>	<b>2025</b>
Residential: Single-Family, Townhomes <sup>1</sup> , & Multi-Family		
¾ inch	\$19.36	\$19.36
1 inch	\$26.83	\$26.83
1½ inches	\$45.53	\$45.53
2 inches	\$67.96	\$67.96
3 inches	\$127.78	\$127.78
4 inches	\$195.08	\$195.08
6 inches	\$382.01	\$382.01
Commercial and irrigation:		
¾ inch	\$19.36	\$19.36
1 inch	\$26.83	\$26.83
1½ inches	\$45.53	\$45.53
2 inches	\$67.96	\$67.96
3 inches	\$127.78	\$127.78
4 inches	\$195.08	\$195.08
6 inches	\$382.01	\$382.01
Volume charge, amount per 1,000 gallons:		
Residential: Single-Family & Townhomes <sup>1</sup>	<b>2024</b>	<b>2025</b>
First 5,000 gallons	\$5.53	\$5.53
Next 10,000 gallons	\$6.92	\$6.92
Next 10,000 gallons	\$10.35	\$10.35
Over 25,000 gallons	\$15.49	\$15.49
Residential: Multi-Family		
First 5,000 gallons	\$5.53	\$5.53
Next 10,000 gallons	\$5.53	\$5.53
Next 10,000 gallons	\$5.53	\$5.53
Over 25,000 gallons	\$5.53	\$5.53
Commercial:		
Per 1,000 gallons	\$6.57	\$6.57
Irrigation:		
Per 1,000 gallons	\$8.39	\$8.39
<b>Notes</b> <sup>1</sup> Usage is based on water usage and is calculated by rounding to the nearest 1,000 gallons. The effective date for the rate increase is the first day of the calendar year. <sup>2</sup> If individually metered.		

Fee Type	Fee Amount
Water rates, nonpotable:	
Volume charge, amount per 1,000 gallons:	
Vista Ridge development	\$1.33
Town owned facilities	\$1.33
Customers with on-site nonpotable storage	\$2.66
Customers with direct connection to Town's nonpotable system	\$4.32
Fee Type	Fee Amount
Oil and gas well development water rate	\$11.46/1,000 gallons
Reuse water rate	\$200/acre-foot
Meter pit rejection	\$100

### Planning & Development Department Fees

Fee Type	Fee Amount
Annexation:	
Minor annexation - up to 20 acres	\$500
Minor Annexation - 20 acres to 40 acres	\$1,000
Major Annexation – Over 40 acres	\$2,000
Comprehensive Plan Amendment:	
Minor – Less than 40 acres	\$200
Major – More than 40 acres	\$1,000
Site Improvement Plan:	
Residential	\$200 plus \$10/unit
Non-residential Major ( $\geq 10,000$ s.f. GFA )	\$1,000
Non-residential Minor ( $< 10,000$ s.f. GFA)	\$500
Site Plan Amendment:	
Residential	\$200 plus \$10/unit
Non-residential Major	\$500
Non-residential Minor	\$100
Special Use Permit	
Oil and Gas well	\$1,200
All other types	\$500
Subdivision:	
Sketch Plan	\$500 plus \$5/lot
Preliminary Plan	\$1,000 plus \$20/lot
Final Plat	\$1,000 plus \$10/lot
Minor Subdivision	\$1,000
Annexation Plat	\$200
Minor Amendment	\$200

Fee Type	Fee Amount
Zoning	
Planned Development (PD)	\$5,000 plus \$10 per acre
PD or PUD Amendment	\$1,500 plus \$10 per acre
Any other zoning	\$500 plus \$10 per acre
Any other zoning amendment	\$250 plus \$10 per acre
Easement and land dedications (not part of subdivision)	\$50
Architectural review w/o subdivision or site plan	\$300/model
Temporary use permit	\$50
Third party review of any application (incl. legal)	Cost to the Town
Wireless communication facility – administrative review	\$250
Wireless communication facility – Planning Commission	\$500
Variance	\$300
Special District Service Plan:	
Letter of Intent Submittal Fee:	\$2,500
Application Fee:	\$7,500 plus \$7,500 deposit
Annual Fee:	\$500 for single project or \$500 plus \$250 for additional district beyond the first
Non-Model Service Plan Fee:	\$5,000
Service Plan Amendment Fee:	\$2,500 plus \$2,500 deposit

Fee Type	Fee Amount
Other Expenses:	If deposit is not sufficient, applicant shall pay all reasonable consultant, legal and other fees and expenses incurred by the Town within 30 days
Fee in Lieu of Open Space land dedication	\$48,500/acre
Neighborhood park land and construction cost fee	\$236,564/acre
Miscellaneous Fees	
Recordation of mylars	Actual Cost
Recordation of paper	Actual Cost
Public notice	Actual cost

Vacation of right-of-way or easement	\$200
Copies of maps/plans	
18 inches x 24 inches	\$2/sheet
24 inches x 36 inches	\$3.50/sheet
Over 24 inches x 36 inches	\$0.60/square foot
Copies of any other document	\$0.25/page

### Building Permit Fees

Fee Type	Fee Amount
Building permit fees, based on total valuation:	
\$1 to \$500	\$23.50
\$501 to \$2,000	\$23.50 for first 500 plus \$3.05 for each additional 100 or fraction thereof
\$2,001 to \$25,000	\$69.25 for first 2,000 plus \$14 for each additional 1,000 or fraction thereof
\$25,001 to \$50,000	\$391.25 for first 25,000 plus \$10.10 for each additional 1,000 or fraction thereof
\$50,001 to \$100,000	\$643.75 for first 50,000 plus \$7 for each additional 1,000 or fraction thereof
\$100,001 to \$500,000	\$993.75 for first 100,000 plus \$5.60 for each additional 1,000 or fraction thereof



Fee Type	Fee Amount
\$500,001 to \$1,000,000	\$3,233.75 for first 500,000 plus \$4.75 for each additional 1,000 or fraction thereof
\$1,000,001 and up	\$5,608.75 for first 1,000,000 plus \$3.15 for each additional \$1,000 or fraction thereof
Electrical permit fees, residential, based on total finished square feet:	
Total finished square feet:	
0 to 1,000	\$35
1,001 to 1,500	\$55
1,501 to 2,000	\$70
1,501 to 2,000	\$70 for the first 2,000 plus \$3 per 100 square feet or fraction thereof for more than 2,000 square feet
Electrical permit fees, all other permit types, based on total valuation:	
Total valuation:	
\$0 to \$300	\$30
\$301 to \$2,000	\$35
\$2,001 to \$50,000	\$15 per 1,000 or fraction thereof
\$50,00 to \$500,000	\$50 plus 14 per 1,000 or fraction thereof
\$500,001 and up	\$550 plus 13 per 1,000 or fraction thereof
Mechanical permit fees, residential, based on total finished square feet:	
Total finished square feet:	
0 to 1,000	\$60
1,001 to 1,500	\$70
1,501 to 2,000	\$80
1,501 to 2,000	\$80 for first 2,000 square feet plus \$3 per 100 square feet or fraction thereof for more than 2,000 square feet
Mechanical permit fees, all other permit types, based on total valuation:	
Total valuation:	
\$0 to \$300	\$35
\$301 to \$2,000	\$45
\$2,001 to \$50,000	\$17 per 1,000 or fraction thereof
\$50,001 to \$500,000	\$50 plus \$16 per 1,000 or fraction thereof
\$500,001 and up	\$550 plus \$15 per 1,000 or fraction thereof

Fee Type	Fee Amount
Plumbing permit fees, residential, based on total finished square feet:	
Total finished square feet:	
0 to 1,000	\$75
1,001 to 1,500	\$110
1,501 to 2,000	\$150
1,501 to 2,000	\$150 for the first 2,000 square feet plus \$5 per 100 square feet or fraction thereof for more than 2,000 square feet
Plumbing permit fees, all other permit types, based on total valuation:	
Total valuation:	
\$0.00 to \$300	\$45
\$301 to \$2,000	\$50
\$2,001 to \$50,000	\$18 per 1,000 or fraction thereof
\$50,001 to \$500,000	\$50 plus \$17 per 1,000 or fraction thereof
\$500,001 and up	\$550 plus \$16 per 1,000 or fraction thereof
Miscellaneous permit fees: Fees are charged as listed above with the following exceptions:	
Additional plan review required by changes, additions or revisions to plans	\$75 per hour, 1 hour minimum
Construction trailer	\$100
Demolition	\$75
Fence:	
Residential	Based on fees in valuation table, not to exceed \$47
Commercial	Based on fees in valuation table, not to exceed \$47
For use of outside consultants for plan checking and inspections	Actual costs
Inspections, not otherwise listed	\$75/hour, 1 hour minimum
Inspections outside normal business hours	\$75/hour, 2 hours minimum
Fee Type	Fee Amount

Irrigation system:	
Residential	Based on fees in valuation table
Commercial	Based on fees in valuation table
Mobile home and travel parks per space	\$30
Mobile home setup	\$125
Mobile sales office	\$100
Reinspection fees	\$75/hour, 1 hour minimum
Reroof:	
Residential	Based on fees in valuation table, not to exceed \$47
Commercial	Based on fees in valuation table, not to exceed \$47
Solar energy device or system:	
Residential	\$164.50
Commercial	Based on fees in valuation table, not to exceed 1,000
Temporary electrical construction meter	\$25
Building codes, filing fees for appeals	\$250
Contractor licensing	1 Year
General contractor:	
Class A	\$175
Class B	\$125
Class C	\$100
Class D - Specialty	\$75
Mechanical	\$100
Plumbing	\$100
Plan check fee	65% of building permit fee
Use Tax:	
Boulder County	Current Boulder County use tax rate multiplied by material costs (or 50% of job valuation as determined by Chief Building Official <sup>1</sup> )
Town	Current Town use tax rate multiplied by material costs (or 50% of job valuation as determined by Chief Building Official <sup>1</sup> )

Fee Type	Fee Amount
Wastewater tap fee:	
¾ inch	\$8,860
1 inch	\$14,767
1½ inches	\$29,533
2 inches	\$47,253
3 inches	\$88,600
4 inches	\$147,667
6 inches	\$295,333
Potable water tap fee <sup>2</sup> :	
¾ inch <sup>6</sup>	\$12,050
1 inch	\$20,080
1½ inches	\$40,170
2 inches	\$64,270
3 inches	\$120,500
4 inches	\$200,830
6 inches	\$401,670
Fee in lieu of dedication <sup>2</sup> (potable water rights fee):	
¾ inch	\$16,243 (See also note 4)
1 inch	See note 4
1½ inches	See note 4
2 inches	See note 4
3 inches	See note 4
4 inches	See note 4
6 inches	See note 4
Non-potable water tap fee <sup>4</sup> :	
Per acre-foot	\$17,410

**Notes**

<sup>1</sup> Building Valuation is established by using the first Building Valuation Data Table published by the International Code Council (ICC) of the preceding year.

<sup>2</sup> The fee in lieu of water dedication (potable water rights fee) and potable water tap fee are separate and distinct. The fee in lieu of water dedication is required by Section 8-1-9 of the Erie Municipal Code. Potable water tap fees are required by Sections 8-1-8 and 8-1-18 of the Erie Municipal Code.

<sup>3</sup> A small home is defined in Section 8-1-3 of the Erie Municipal Code. An additional \$1,205 may be added to this tap fee for each additional 1,000 square feet of lot size. Townhomes and condominiums are dwelling units described in Section 8-1-3. This tap fee shall apply to condominiums with individual water taps.

<sup>4</sup> Section 8-1-9 of the Municipal Code defines the manner in which the Town determines the amount of fees in lieu of water dedication.

<sup>5</sup> The non-potable water tap fee does not apply to Town-owned property. For all other property, the non-potable tap fee includes the water rights fee, so no separate fee in lieu of dedication is required.

<sup>6</sup> For residential units that require a ¾ inch potable water tap but also require an automatic sprinkler system, the ¾ inch water tap fee shall be charged, but a Fireflow Surcharge of \$170 shall be added to said tap fee.

**Miscellaneous Fees**

Fee Type	Fee Amount
Copies:	
Audiotapes	\$15
Information provided on thumb drive	\$20
Photographs	\$15 plus actual copy cost
Videotapes	\$15
Faxing services	\$1/page
Meeting room rental fee (excluding Erie Community Center):	
Resident	\$35/hour
Nonresident	\$40/hour
Nonprofit	\$15/hour
Municipal Code book	\$125, plus postage
Photocopying services	\$0.25/page
Returned check fee	\$25
Standard computer printouts	\$1.25/page

## Cemetery Fees

Fee Type	Fee Amount	
Cemetery grave	\$2,000/space	
Grave opening and closing	\$1,275	7:00 A.M. to 3:00 P.M. weekdays
Cremains open and closing	\$650	7:00 A.M. to 3:00 P.M. weekdays
Open and close after 3:00 P.M. or on Saturday	\$550 additional	
Grave marking for monument placement	First time no charge, \$40 for all additional requests	



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-219, **Version:** 1

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**SUBJECT:**

An Ordinance of the Town Council of the Town of Erie amending Chapter 7 of Title 3 of the Erie Municipal Code, Expanding the Duties of the Board of Adjustment

**DEPARTMENT:** Planning & Development

**PRESENTER(S):** Sarah Nurmela, Director of Planning and Development  
Ed Kotlinski, Chief Building Official  
Joel Champagne, Deputy Chief Building Official

**TIME ESTIMATE:** 15 minutes

**FISCAL SUMMARY:** N/A

**POLICY ISSUES:**

No Policy Issues. However, the adopted building codes state that an applicant for a building permit has the right to appeal a decision of the Building Official to a Board of Appeals. This amendment would provide for that.

**STAFF RECOMMENDATION:**

Staff recommend adopting the ordinance amending Chapter 7 of Title 3 of the Town of Erie Municipal Code, expanding the duties of the Board of Adjustment to include the duties of a Board of Appeals.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

In accordance with the adopted 2021 International Codes (the Code) an applicant for a building permit has the right to appeal a decision of the Building Official to the Board of Appeals. However, the Town does not currently have a Board of Appeals. The ordinance would expand the duties of the Board of Adjustment to include duties of the Board of Appeals, to be known as the BOA.

The initial ordinance (No. 043-2024) before Town Council on Dec. 10, 2024, was tabled by the Council. Council requested that staff confirm the qualifications of current members (4) in accordance with 3-7-3(A)(1) - members shall be an architect, engineer, master electrician, or licensed building contractor.

A Board of Adjustment meeting was held Feb. 27, 2025, to inform members of the proposed ordinance, gather qualifications, and encourage completion of their terms. Each member offered qualifications and the desire to remain on the Board to include the duties of a Board of Appeals, suggesting the language regarding qualifications of board members in 3-7-3(A)(1) be revised to use language directly from the building codes requiring Board members to be residents of the Town who are qualified by experience and training to consider matters pertaining to building construction.

Town staff will begin active recruitment of perspective BOA members after ordinance adoption that includes possible interest from an architect, an active and retired building official.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Safe and Healthy Community
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Ordinance No. 010-2025



**Town of Erie  
Ordinance No. 010-2025**

**An Ordinance of the Town Council of the Town of Erie Amending  
Chapter 7 of Title 3 of the Erie Municipal Code, Expanding the  
Duties of the Board of Adjustment**

**Whereas,** the Town Council desires to expand the duties of the Board of Adjustment, to include duties exercised by the Board of Appeals.

**Now Therefore be it Ordained by the Town Council of the Town of Erie, Colorado, as follows:**

**Section 1.** Section 3-7-2 of the Erie Municipal Code is repealed in its entirety and reenacted as follows:

**3-7-2 – Purpose and duties.**

The purpose of the BOA is to fulfill the responsibilities set forth in C.R.S. § 31-23-307 as well as Titles 9 and 10 of this Code. The BOA shall have the review and decision-making responsibilities as set forth in Titles 9 and 10 of this Code.

**Section 2.** Section 3-7-3.A.1. of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

**3-7-3 – Appointment, compensation, terms and renewal.**

**A. *Appointment:***

1. The BOA shall consist of five (5) members. Each member shall be a resident of the Town who is qualified by experience and training to pass on matters pertaining to building construction and is not an employee of the Town.

\* \* \*

**Section 3.** Section 3-7-6.E. of the Erie Municipal Code is hereby repealed in its entirety and reenacted as follows:

**3-7-6 – Meetings.**

\* \* \*

**E. *Voting:*** The concurring vote of four (4) members of the BOA shall be required to approve variances and to decide appeals of decisions made by any Town official. Action by the BOA on any other matters shall require a favorable majority vote of the members present at the time of the vote.

\* \* \*

**Section 4.** Severability. If any article, section, paragraph, sentence, clause, or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and each part or parts hereof irrespective of the fact that any one, or part, or parts be declared unconstitutional or invalid.

**Section 5.** Safety. The Town Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

**Section 6.** Effective Date. This Ordinance shall take effect 10 days after publication following adoption.

**Introduced, Read, Passed and Ordered Published this \_\_\_\_ day of \_\_\_\_\_, 2025.**

\_\_\_\_\_  
Andrew J. Moore, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Stamp, Town Clerk



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-163, **Version:** 1

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**SUBJECT:**

A Resolution of the Town Council of the Town of Erie Approving the Eleventh Amendment to the Disposition and Development Agreement with the Town of Erie and Evergreen-287 & Arapahoe, LLC

**DEPARTMENT:** Economic Development/TOEURA

**PRESENTER(S):** Julian Jacquin, Director of Economic Development & TOEURA

**TIME ESTIMATE:** N/A

**FISCAL SUMMARY:**

Approving the 11th Amendment increases the maximum Tax Increment Cap established in the Disposition and Development Agreement (DDA) from \$12.8 million to \$13.2 million, an increase of \$400,000, to reflect Evergreen's unexpected cost overages for public stormwater improvements, above and beyond those available from the Nine Mile Metropolitan District (NMMD). The Amendment also includes a new 1% administrative fee to be collected by the Town of Erie Urban Renewal Authority (TOEURA) to cover TOEURA's administrative costs in collecting and remitting funds to NMMD, and to repay TOEURA's existing negative balance.

**POLICY ISSUES:**

This item has minimal policy implications.

**STAFF RECOMMENDATION:**

Approve the 11th Amendment to the Disposition and Development Agreement.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Town of Erie Urban Renewal Authority, the Town of Erie and Evergreen 287 & Arapahoe LLC entered into a Disposition and Development Agreement for the Nine Mile Corner development dated March 22, 2016. Since the inception there have been ten amendments, most recently on March 26, 2024. With the 8<sup>th</sup> amendment, the Tax Increment Cap defined in the 6<sup>th</sup> amendment was increased from \$10.8 million to \$12.8 million. The proposed 11<sup>th</sup> amendment would increase the cap, once again, from \$12.8 million to \$13.2 million, and include a new 1% administrative fee on the incremental property tax revenues received by TOEURA to pay administrative costs incurred with TOEURA's obligations in the agreement and repay TOEURA's existing negative fund balance against the Town's general fund.

The increase in Tax Increment Cap was requested by Evergreen to offset their costs for an unexpected \$1 million overage in costs for new storm water improvements, above and beyond those budgeted by the NMMD, or included in their District bonds. Town staff met with Evergreen to review the request. Noting the development is exceeding financial forecasts and will satisfy its debt payments ahead of schedule, staff proposed asking Council to approve half of Evergreen's request. Evergreen agreed and thus this proposed amendment to the Tax Increment Cap would increase the Cap by \$400,000 (to \$13.2 million), half of Evergreen's initial request for \$800,000.

Town staff reviewed the financial information from Evergreen and verified the request is valid and supports the proposed 11<sup>th</sup> Amendment to the DDA.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Prosperous Economy
- ✓ Effective Governance
- ✓ Fiscally Responsible

**ATTACHMENT(S):**

1. Resolution 25-051
2. 11<sup>th</sup> Amendment to Agreement
3. Financial Information from Evergreen
4. Existing DDA

**Town of Erie  
Resolution No. 25-051**

**A Resolution of the Town Council of the Town of Erie Approving  
the Eleventh Amendment to the Disposition and Development  
Agreement with the Town of Erie Urban Renewal Authority and  
Evergreen-287 & Arapahoe, LLC**

**Whereas**, on March 22, 2016, the Town and Evergreen-287 & Arapahoe, LLC entered into a Disposition and Development Agreement; and

**Whereas**, the Town and Evergreen-287 & Arapahoe, LLC amended the Agreement on December 13, 2016, May 1, 2017, December 12, 2017, May 8, 2018, August 13, 2019, October 22, 2019, May 13, 2020, September 23, 2020, and September 16, 2021, and March 26, 2024 and wish to amend the Agreement again.

**Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:**

**Section 1.** The Town Council hereby approves the Eleventh Amendment to the Disposition and Development Agreement with the Town of Erie Urban Renewal Authority and Evergreen-287 & Arapahoe, LLC in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Eleventh Amendment on behalf of the Town.

**Adopted this 22<sup>nd</sup> day of April, 2025.**

\_\_\_\_\_  
Andrew J. Moore, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Stamp, Town Clerk

## **Eleventh Amendment to the Disposition and Development Agreement (Nine Mile)**

This Eleventh Amendment to the Disposition and Development Agreement (this "Eleventh Amendment") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and among the Town of Erie, a Colorado home rule municipality (the "Town"), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority ("TOEURA"), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company ("Developer") (each a "Party" and collectively the "Parties").

Whereas, the Parties entered into a Disposition and Development Agreement dated March 22, 2016 (the "Original Agreement"), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement;

Whereas, the Parties entered into a First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the "First Amendment");

Whereas, the Parties entered a Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the "Second Amendment");

Whereas, the Parties entered into a Third Amendment to the Disposition and Development Agreement dated December 12, 2017 (the "Third Amendment");

Whereas, the Parties entered into a Fourth Amendment to the Disposition and Development Agreement dated May 8, 2018 (the "Fourth Amendment");

Whereas, the Parties entered into a Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the "Fifth Amendment");

Whereas, the Parties entered into a Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the "Sixth Amendment");

Whereas, the Parties entered into a Seventh Amendment to the Disposition and Development Agreement dated May 13, 2020 (the "Seventh Amendment");

Whereas, the Parties entered into an Eighth Amendment to the Disposition and Development Agreement dated September 23, 2020 (the "Eighth Amendment");

Whereas, the Parties entered into that Ninth Amendment to the Disposition and Development Agreement dated September 16, 2021 (the "Ninth Amendment") ;

Whereas, the Parties entered into a Tenth Amendment to the Disposition and Development Agreement dated March 26, 2024 (the "Tenth Amendment") (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh

Amendment, the Eighth Amendment, the Ninth Amendment, and the Tenth Amendment, are hereinafter collectively referred to as the "Agreement"); and

Whereas, the Parties desire to further amend the Agreement pursuant to the terms of this Eleventh Amendment.

Now, Therefore, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Definitions.

A. The Parties hereby agree that the Tax Increment Cap as defined in the Eighth Amendment shall be increased to \$13,200,000.

B. The Parties further agree that the definition of "Pledged Property Tax Increment Revenue" as defined in the Sixth Amendment is amended to read as follows:

"Pledged Property Tax Increment Revenue" means all incremental property tax revenues received by TOEURA generated within the Urban Renewal Plan boundary, net of any offsets retained by the County Treasurer for return of overpayments or as reserve funds as permitted by C.R.S. § 31-25-107(9)(a)(III) and (b), and less that Authority Administrative Fee equal to one percent (1%) of the incremental property tax revenues received by TOEURA generated within the Urban Renewal Plan boundary, which Administrative Fee shall be retained by TOEURA to pay the reasonable and customary administrative costs of TOEURA incurred in connection with TOEURA's obligations under this Agreement, including without limitation the collection, enforcement, disbursement, and administrative fees and costs related to administration of this Agreement. The Administrative Fee shall be deducted annually from the incremental property tax revenues received by the TOEURA."

3. Miscellaneous.

a. *Full Force and Effect.* Except as amended by this Eleventh Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment, the Tenth Amendment, and this Eleventh Amendment, the terms and conditions of this Eleventh Amendment shall control.

b. *Successors and Assigns.* This Eleventh Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. *Entire Agreement.* This Eleventh Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.

d. *Power and Authority.* The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Eleventh Amendment.

e. *Counterparts.* This Eleventh Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f. *Governing Law and Venue.* This Eleventh Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

In Witness Whereof, the Parties have caused this Eleventh Amendment to be duly executed as of the Effective Date.

**Town of Erie, Colorado**

\_\_\_\_\_  
Andrew J. Moore, Mayor

Attest:

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**Town of Erie Urban Renewal  
Authority**

\_\_\_\_\_  
Andrew J. Moore, Chair

Attest:

\_\_\_\_\_  
Debbie Stamp, Town Clerk



## Developer

Evergreen-287 & Arapahoe, L.L.C.,  
an Arizona limited liability company

By: Evergreen Development Company-2019, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: Evergreen Devco, Inc., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: CEO & Managing Principal

**From:** [Erica Vester](#)  
**To:** [Tyler Carlson](#); [Julian Jacquin](#)  
**Cc:** [Erika Shorter](#); [Brian P. Jumps](#); [Malcolm Fleming](#); [Lockie Woods](#)  
**Subject:** RE: 287 & Arapahoe - 9 mile - Metro District Reimbursement Certification Request  
**Date:** Wednesday, February 26, 2025 3:48:06 PM  
**Attachments:** [Nine Mile EOC #19.pdf](#)  
[Nine Mile EOC #20.pdf](#)  
[Nine Mile EOC #22.pdf](#)  
[Nine Mile EOC #21.pdf](#)

**External Email:** Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Julian,

Please see the cost certifications attached (and summary below). There are costs still being wrapped up that pertain to our final acceptance and once those are complete, I will provide to Ranger to certify and will provide to the District and the City. Thank you.

**INITIAL CONTRACT HARD COSTS - AFTER WE HIT CAP**

	<b><u>Amount</u></b>	<b><u>Status/Notes</u></b>
Requisition 19	\$ 280,455.99	Certified but not paid because above cap
Requisition 20	\$ 25,328.32	Certified but not paid because above cap
Requisition 22	\$ 379,048.55	Certified but not paid because above cap; Please note this amount is higher than the estimated amount previously communicated as the retention was not included in my calculation. This is now accurate.

**Subtotal**                **\$ 684,832.86**

**OTHER COSTS**

Requisition 21	\$ 147,799.67	Certified; approved at metro district board meeting but not yet sent payment as above cap
TBD; Future to be certified	\$ 290,288.61	Bills not yet paid but to be paid and then certified; This amount has been updated based on latest estimates from our GC coordinating this punchlist work.

**Subtotal**                **\$ 438,088.97**

**TOTAL COST**            **\$ 1,122,921.83**  
**OVERAGE**

Erica Vester **Sr. Vice President**  
Main: 602.808.8600 | Direct: 602.567.7161



## **ENGINEER'S REPORT AND CERTIFICATION #19**

### **NINE MILE METROPOLITAN DISTRICT**

#### **PREPARED FOR:**

Nine Mile Metropolitan District  
c/o McGeady Becher P.C.  
450 E. 17<sup>th</sup> Ave., Ste. 400  
Denver, CO 80203

#### **PREPARED BY:**

Ranger Engineering, LLC  
2590 Cody Ct.  
Lakewood, CO 80215

#### **DATE PREPARED:**

June 17, 2022

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## ENGINEER'S REPORT

### Introduction

Ranger Engineering, LLC ("Ranger") was retained by Nine Mile Metropolitan District ("District") as an Independent Consulting Engineer to certify costs associated with constructed Public Improvements related to the District.

The District is located within the Town of Erie, Colorado ("Town"). The development area is approximately 39 acres. This certification considers construction costs related to irrigation ditch realignment and public improvements within and without the District boundaries.

The attached Engineer's Certification states that the Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in this Engineer's Report, for hard and soft & indirect costs from approximately April 2022 to June 2022, are valued at **\$280,455.99**. Table I summarizes costs of public improvements to date.

Table I – Cost Certified to Date					
Cert No.	Date	Costs Paid This Period	Eligible Hard Costs This Period	Eligible Soft Costs This Period	Eligible Costs This Period
01	9/25/2020	\$1,520,719.00	\$1,520,719.00	\$0.00	\$1,520,719.00
02	11/23/2020	\$1,677,200.31	\$572,569.91	\$561,132.86	\$1,133,702.77
03	12/21/2020	\$1,555,720.39	\$775,898.33	\$174,307.12	\$950,205.45
04	1/28/2021	\$1,462,051.65	\$922,642.36	\$77,956.05	\$1,000,598.42
05	2/15/2021	\$659,601.62	\$444,291.71	\$0.00	\$444,291.71
06	3/22/2021	\$826,204.96	\$608,710.43	\$0.00	\$608,710.43
07	4/6/2021	\$647,647.97	\$488,650.62	\$0.00	\$488,650.62
08	5/14/2021	\$349,330.54	\$251,195.62	\$0.00	\$251,195.62
09	6/7/2021	\$382,601.29	\$288,166.59	\$0.00	\$288,166.59
10	7/14/2021	\$696,131.72	\$617,328.26	\$0.00	\$617,328.26
11	8/17/2021	\$1,026,451.80	\$929,166.35	\$0.00	\$929,166.35
12	9/20/2021	\$1,277,043.17	\$1,179,349.07	\$0.00	\$1,179,349.07
13	11/5/2021	\$1,381,170.60	\$808,035.99	\$335,972.06	\$1,144,008.05
14	11/23/2021	\$561,016.19	\$543,095.43	\$0.00	\$543,095.43
15	12/14/2021	\$533,546.92	\$453,810.56	\$0.00	\$453,810.56
16	1/11/2022	\$174,630.15	\$148,833.03	\$0.00	\$148,833.03
17	2/8/2022	\$824,489.09	\$718,100.23	\$0.00	\$718,100.23
18	3/15/2022	\$507,192.48	\$351,867.10	\$0.00	\$351,867.10
19	6/17/2022	\$302,429.72	\$280,455.99	\$0.00	\$280,455.99
Totals		\$16,365,179.55	\$11,902,886.58	\$1,149,368.10	\$13,052,254.68

Table II summarizes the cost breakdown of the construction and soft & indirect costs. Tables III and IV provide category breakdowns of construction and soft & indirect costs reviewed for this certification. Tables V and VI provide a detailed breakdown of the eligible hard and soft & indirect costs per the Service Plan categories. Note that dates of invoices reviewed in Certifications 2-4 overlap due to timing of proof of payment being provided from various vendors.

## **Public Improvements as Authorized by the Service Plan**

Ranger reviewed the Service Plan for the Nine Mile Metropolitan District (“Service Plan”); prepared by McGeady Becher, P.C.

Section I.A of the Service Plan states:

*It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated constituents and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.*

Section I. B of the Service Plan States:

*There are currently no other governmental entities, including the Town, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.*

Section V. A of the Service Plan states:

*The District shall have the power and authority to provide the Public Improvements and, if provided herein, related operation and maintenance services, within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.*

Section V.7. states the debt issuance limit of the district is Twenty Million Dollars (\$20,000,000). Exhibit D of the Service Plan provides a description of the Public Improvements. Ranger has determined that the constructed improvements and associated soft and indirect construction costs (Public Improvements) under consideration in this report and certification for reimbursement by the District are indeed authorized by the Service Plan.

## **Scope of Certification**

The Service Plan states that the District shall have the power to construct Public Improvements in accordance with the Special District Act. Based on Ranger’s experience with metropolitan districts, the Public Improvements were broken into the cost categories of Water Improvements, Sanitation Improvements, Storm Water Improvements, Streets Improvements, and Parks and Recreation Improvements. Only Capital improvements have been considered for reimbursement. For a detailed breakdown of district eligible costs, refer to Tables III - VI.

## **General Methodology**

Ranger employed a phased approach toward the preparation of this Engineer's Report and Certification of Public Costs (Engineer's Certification).

### **Phase I – Authorization to Proceed and Document Gathering**

Ranger engaged with the District to provide the Engineer's Certification in August 2020. The construction documentation was provided by the District on an ongoing basis.

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Ranger performed site visits to document completion of the Public Improvements. The intent of a site visit was to verify general completion of pay application quantities in accordance with the approved construction drawings and does not guarantee quality or acceptance of Public Improvements. It is assumed that the Town or another third party provided QA/QC and acceptance of the improvements. Galloway is the Engineer of Record. CTL Thompson have been contracted to provide materials testing related to compaction testing, concrete, and asphalt.

### **Phase III – Review of Documentation**

Documentation was requested at the beginning of work. Requested documentation include the following:

- Executed Contracts and Bid Tabs
- Approved Construction Drawings
- Acceptable Proof of Payment (Cancelled checks and bank statements or lien waivers)
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- Jurisdictional acceptances of the Public Improvements
- Approved changes or amendments to contract documents
- Copies of any agreements that will impact District funding

See Appendix A for a complete listing of documents reviewed, as deemed necessary, by Ranger.

### **Phase IV – Verification of Construction Quantities**

Construction quantity take-offs were performed from applicable construction drawings. These quantity take-offs were used in conjunction with Phase V below to certify reasonableness of construction costs, as well as to identify an overall District eligible percentage of costs related to the entire site, based on public versus private areas. Public areas included public Tracts and Right of Way. A public percentage for work within the Nine Mile Corner plat was identified as 21.0%.

For costs related to the Irrigation Realignment, only the final pay application was provided. However, unconditional lien waivers were provided for all pay applications and the totals were verified to match the final requested pay application amount.

### **Phase V – Verification of Construction Unit Costs and Indirect Costs**

Construction Unit Costs and Indirect Costs were reviewed for market reasonableness. Ranger took into consideration the type of construction and the timeframe during which the construction occurred. Ranger determined that the costs incurred were within a reasonable range.

**Phase VI – Verification of Payment for Public Costs**

Evergreen – 287 & Arapahoe, L.L.C. (“Developer”) provided lien waivers for all pay application costs reviewed and paid for relating to the public improvements. Only costs with an approved form of proof of payment have been certified in this report. Costs associated with the private construction were determined not to be eligible as they did not relate to any Public Improvements.

**Phase VII – Determination of Costs Eligible for Reimbursement**

Ranger concluded the Engineer’s Certification by determining which improvements were eligible for District reimbursement, the categorization of the costs, and what percent of the costs for those improvements were reimbursable. Public Improvements that were deemed eligible for this report were associated with water, sanitation, streets, and parks and recreation.

**Project Notes**

McGeady Becher’s costs included line items that were associated with and reimbursed via bond proceeds. These costs were included in the total amount of reviewed costs, but the costs were not certified in this report so that reimbursable costs are not duplicated.

On Cost Certification #08, \$23,114.00 were applied to Brinkman Constructors Change Order #02 instead of Change Order #01. These costs were reallocated on Cost Certification #09, and an eligible amount of \$6,953.08 was applied in this certification to properly update eligible costs to date.

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## ENGINEER'S CERTIFICATION

Collin Koranda, P.E. / Ranger Engineering, LLC (the "Independent Consulting Engineer"), states as follows:

1. The Independent Consulting Engineer is an engineer duly qualified and licensed in the State of Colorado with experience in the design, construction and certification of Public Improvements of similar type and function as those described in the above Engineer's Report.

2. The Independent Consulting Engineer has performed a site visit and reviewed applicable construction and legal documents related to the Public Improvements under consideration to state the conclusions set forth in this Engineer's Certification.

3. The Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in the attached Engineer's Report dated June 17, 2022, including soft and indirect, District funded, and hard costs, are valued at an estimated **\$280,455.99**. In the opinion of the Independent Consulting Engineer, the above stated estimated value for the Public Improvements is reasonable and consistent with costs of similar improvements constructed for similar purposes during the same timeframe in similar locales.

Sincerely,

**Ranger Engineering, LLC**

A handwritten signature in blue ink, appearing to read "Collin Koranda".

Collin Koranda, PE

## **APPENDIX A**

### **Documents Reviewed**

#### Construction Plans and Contracts

- Erie Nine Mile Corner – Irrigation Realignment Construction Documents. Prepared by Galloway & Company. Dated 12/10/2019.
- Nine Mile Corner Plat. Prepared by Galloway & Company. Recorded 05/04/2020.

#### Contractor Pay Applications

- Brinkman Constructors Nine Mile Erie Corner – Pay Applications 18 and 19. Dated 4/4/22 – 6/6/22.
  - Both invoices include retainage payments.

#### Service Plan & Agreements

- Service Plan for Nine Mile Metropolitan District. Prepared by McGeady Becher P.C. Approved August 13, 2019.
- Facilities Funding and Acquisition Agreement between Nine Mile Metropolitan District and Evergreen – 287 & Arapahoe, L.L.C. Dated February 18, 2020.

**Nine Mile Metropolitan District**  
**Summary of Costs**  
**Table II**

Type of Costs	Total Costs Paid	Costs This Period	Total District Eligible Costs	Eligible Costs This Period	Percent District This
Direct Construction Costs	\$ 14,528,775.60	\$ 302,429.72	\$ 11,902,886.58	\$ 280,455.99	92.7%
Soft & Indirect Costs	\$ 1,836,403.95	\$ -	\$ 1,149,368.10	\$ -	#DIV/0!
<b>Totals</b>	<b>\$ 16,365,179.55</b>	<b>\$ 302,429.72</b>	<b>\$ 13,052,254.68</b>	<b>\$ 280,455.99</b>	<b>92.7%</b>

**Nine Mile Metropolitan District  
Construction Costs Summary By Category  
Table III**

Category	Total Eligible Cost by Category		Category Percentage
Water	\$	1,446,410.07	12.2%
Sanitation	\$	1,940,725.60	16.3%
Storm Water	\$	3,780,568.83	31.8%
Streets	\$	3,255,518.49	27.4%
Parks and Recreation	\$	1,479,663.59	12.4%
	\$	<b>11,902,886.58</b>	<b>100.0%</b>

Category	Eligible Cost by Category This Period		Category Percentage
Water	\$	9,011.56	3.2%
Sanitation	\$	9,011.56	3.2%
Storm Water	\$	14,717.56	5.2%
Streets	\$	238,703.76	85.1%
Parks and Recreation	\$	9,011.56	3.2%
	\$	<b>280,455.99</b>	<b>100.0%</b>



Nine Mile Metropolitan District  
Construction Costs Detail  
Table V

Contract Values					Payments Made				Eligibility					Submitted Invoices				
Work Description	Quantity	Unit	Cost	Value	Amount Invoiced	Percent Invoiced	Retainage	Amount Less Retainage	District Type	Percent Eligible	Total Eligible	Eligible This Period	Costs This Period	Draw 19				
Brinkman Constructors - Nine Mile Erie C	Quantity	Unit	Cost	Value	Amount Invoiced	Percent Invoiced	Retainage	Amount Less Retainage	District Type	Percent Eligible	Total Eligible	Eligible This Period	Costs This Period	Pay App Date	18 18 RET		19 19 RET	
															4/4/2022	4/4/2022	6/6/2022	6/6/2022
Gen & Spec Conditions	1	LS	\$ 411,506.00	\$ 411,506.00	\$ 411,506.00	100%	\$ 20,575.60	\$ 390,930.40	Multiple	81%	\$ 316,286.71	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
2 Year warranty Bond	1	LS	\$ 108,700.00	\$ 108,700.00	\$ -	0%	\$ -	\$ -	Multiple	81%	\$ -	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Site Demolition	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100%	\$ -	\$ 30,000.00	Multiple	81%	\$ 24,271.84	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Survey	1	LS	\$ 100,225.00	\$ 100,225.00	\$ 89,869.00	90%	\$ 8,986.90	\$ 80,882.10	Multiple	81%	\$ 65,438.59	\$ 9,327.67	\$ 11,529.00	\$	12,810.00	\$ -	\$ -	\$ -
SWPPP, Traffic Control, misc.	1	LS	\$ 211,983.00	\$ 211,983.00	\$ 211,983.00	100%	\$ -	\$ 211,983.00	Multiple	81%	\$ 171,507.27	\$ 8,574.68	\$ 10,598.30	\$	-	\$ 10,598.30	\$ -	\$ -
Earthwork - LVI Only	1	LS	\$ 3,019,325.00	\$ 3,019,325.00	\$ 3,019,325.00	100%	\$ -	\$ 3,019,325.00	Multiple	54%	\$ 1,642,385.00	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Asphalt Paving	1	LS	\$ 862,398.00	\$ 862,398.00	\$ 862,398.00	100%	\$ 86,239.80	\$ 776,158.20	Streets	100%	\$ 776,158.20	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Roadway Improvements (Traffic Signals)	1	LS	\$ 1,080,667.00	\$ 1,080,667.00	\$ 1,080,667.00	100%	\$ -	\$ 1,080,667.00	Streets	100%	\$ 1,080,667.00	\$ 27,016.70	\$ 27,016.70	\$	-	\$ 27,016.70	\$ -	\$ -
Concrete Paving & Curbs	1	LS	\$ 464,445.00	\$ 464,445.00	\$ 464,445.00	100%	\$ -	\$ 464,445.00	Streets	100%	\$ 464,445.00	\$ 46,444.50	\$ 46,444.50	\$	-	\$ -	\$ -	\$ 46,444.50
Sanitary Sewer	1	LS	\$ 1,212,502.00	\$ 1,212,502.00	\$ 1,212,502.00	100%	\$ 30,313.20	\$ 1,182,188.80	Sanitation	98%	\$ 1,162,708.31	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Water Line	1	LS	\$ 1,151,332.00	\$ 1,151,332.00	\$ 1,151,332.00	100%	\$ 28,783.20	\$ 1,122,548.80	Water	60%	\$ 668,392.78	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Storm Sewer	1	LS	\$ 1,557,132.00	\$ 1,557,132.00	\$ 1,557,132.00	100%	\$ 38,928.20	\$ 1,518,203.80	Storm Water	92%	\$ 1,397,352.54	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Storm Pond/Outfall Structure	1	LS	\$ 84,480.00	\$ 84,480.00	\$ 84,480.00	100%	\$ -	\$ 84,480.00	Storm Water	100%	\$ 84,480.00	\$ 5,706.00	\$ 5,706.00	\$	-	\$ 5,706.00	\$ -	\$ -
Site Improvements	1	LS	\$ 164,746.00	\$ 164,746.00	\$ 164,746.00	100%	\$ -	\$ 164,746.00	Multiple	100%	\$ 164,746.00	\$ 16,474.60	\$ 16,474.60	\$	-	\$ 16,474.60	\$ -	\$ -
Irrigation & Landscaping	1	LS	\$ 807,739.00	\$ 807,739.00	\$ 779,607.00	97%	\$ 77,960.70	\$ 701,646.30	Parks and Recreation	100%	\$ 701,646.30	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Pre Con	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100%	\$ -	\$ 30,000.00	Multiple	81%	\$ 24,271.84	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
Gen Liab Insur	1	LS	\$ 97,597.00	\$ 97,597.00	\$ 97,597.00	100%	\$ 4,879.70	\$ 92,717.30	Multiple	81%	\$ 75,013.99	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
OHP	1	LS	\$ 537,349.00	\$ 537,349.00	\$ 531,223.22	99%	\$ 26,588.32	\$ 504,634.90	Multiple	81%	\$ 408,280.64	\$ 391.27	\$ 483.62	\$	537.35	\$ -	\$ -	\$ -
CO#01 - Lowes Pad/Trees/Tax/Railing/Over E	1	LS	\$ 289,573.00	\$ 289,573.00	\$ 289,573.00	100%	\$ 14,478.30	\$ 275,094.70	Multiple	33%	\$ 91,947.92	\$ 4,839.48	\$ 14,479.00	\$	-	\$ 14,479.00	\$ -	\$ -
CO#02 - Lot 10 Underdrain / Dry Utility Sleeve	1	LS	\$ 88,999.00	\$ 88,999.00	\$ 88,999.00	100%	\$ 4,449.90	\$ 84,549.10	Non-District	0%	\$ -	\$ -	\$ 4,450.00	\$	-	\$ 4,450.00	\$ -	\$ -
CO#03	1	LS	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	Non-District	0%	\$ -	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
CO#04 - CDOT Vault, Traffic Signals, Utiliy Ext	1	LS	\$ 180,337.00	\$ 180,337.00	\$ 180,337.00	100%	\$ 9,016.70	\$ 171,320.30	Multiple	60%	\$ 103,550.09	\$ 5,450.09	\$ 9,017.00	\$	-	\$ 9,017.00	\$ -	\$ -
CO#05 - Pipeline, Mill, Traffic Control	1	LS	\$ 580,886.00	\$ 580,886.00	\$ 580,886.00	100%	\$ 16,754.60	\$ 564,131.40	Multiple	95%	\$ 536,967.94	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
CO#06 - 111th Work, Private earthwork	1	LS	\$ 321,685.00	\$ 321,685.00	\$ 321,685.00	100%	\$ 20,511.50	\$ 301,173.50	Multiple	88%	\$ 265,418.60	\$ -	\$ -	\$	-	\$ -	\$ -	\$ -
CO#07 - 111th T&M/Traffic Control	1	LS	\$ 189,468.00	\$ 189,468.00	\$ 173,590.00	92%	\$ 17,359.00	\$ 156,231.00	Streets	100%	\$ 156,231.00	\$ 156,231.00	\$ 156,231.00	\$	-	\$ -	\$ 173,590.00	\$ -
\$ 13,583,074.00					\$ 13,413,882.22		\$ 405,825.62	\$ 13,008,056.60	\$ 10,382,167.58 \$ 280,455.99 \$ 302,429.72					Subtotal	\$ 13,347.35	\$ 87,741.60	\$ 173,590.00	\$ 46,444.50
														Less Ret POP	\$ 12,012.62	\$ 87,741.60	\$ 156,231.00	\$ 46,444.50
														Date	CLW 4/7/2022		CLW 6/6/2022	
														Amount	\$99,754.21		\$202,675.50	
Total Construction Costs					\$ 15,103,793.00	\$ 14,934,601.22	99%	\$ 405,825.62	\$ 14,528,775.60	\$ 11,902,886.58 \$ 280,455.99 \$ 302,429.72					\$ 12,012.62	\$ 87,741.60	\$ 156,231.00	\$ 46,444.50



## **EXHIBIT A**

### **Nine Mile Site Overlay**

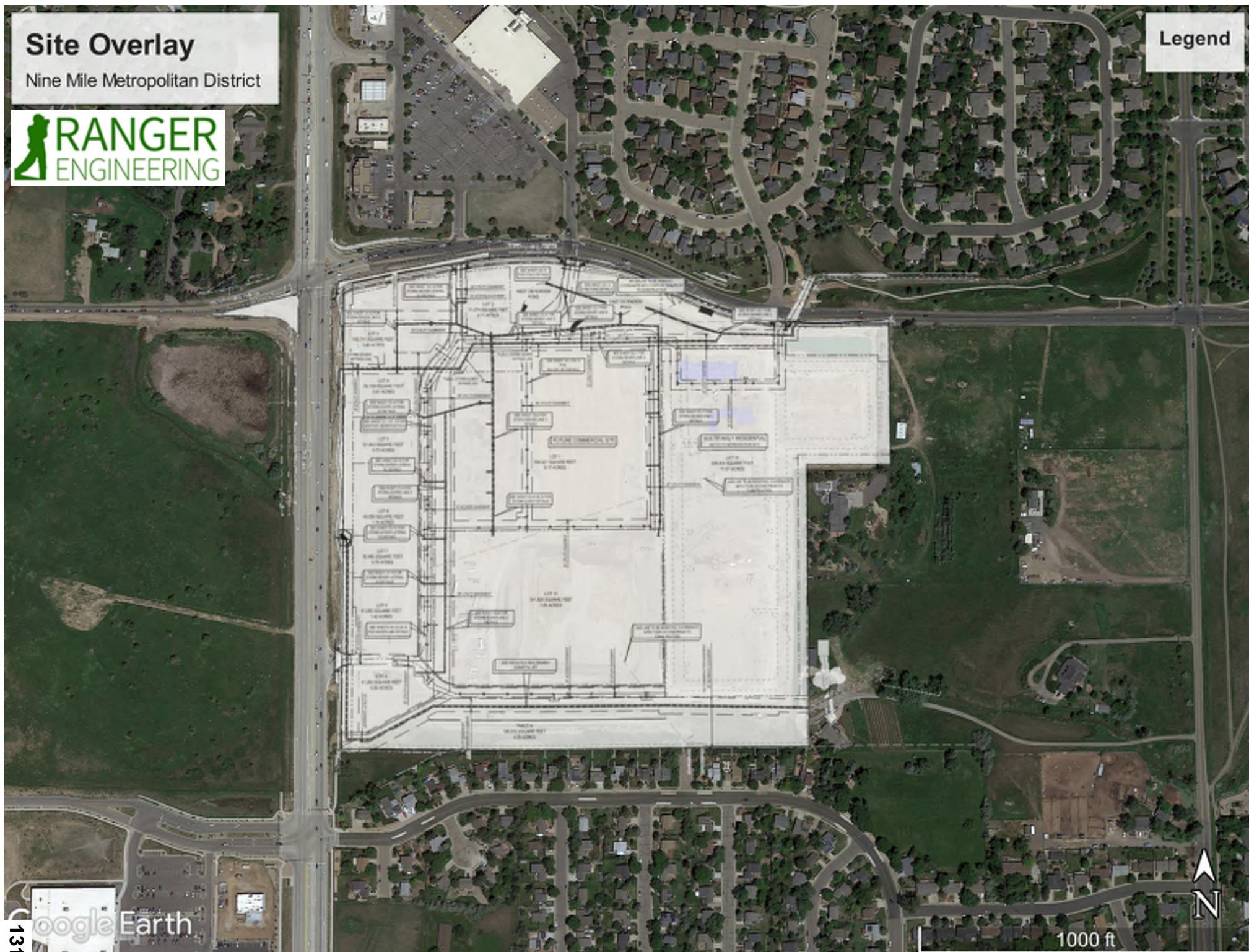


# Site Overlay

Nine Mile Metropolitan District



Legend





## **ENGINEER'S REPORT AND CERTIFICATION #19**

### **NINE MILE METROPOLITAN DISTRICT**

#### **PREPARED FOR:**

Nine Mile Metropolitan District  
c/o McGeady Becher P.C.  
450 E. 17<sup>th</sup> Ave., Ste. 400  
Denver, CO 80203

#### **PREPARED BY:**

Ranger Engineering, LLC  
2590 Cody Ct.  
Lakewood, CO 80215

#### **DATE PREPARED:**

July 15, 2022



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## ENGINEER'S REPORT

### Introduction

Ranger Engineering, LLC ("Ranger") was retained by Nine Mile Metropolitan District ("District") as an Independent Consulting Engineer to certify costs associated with constructed Public Improvements related to the District.

The District is located within the Town of Erie, Colorado ("Town"). The development area is approximately 39 acres. This certification considers construction costs related to irrigation ditch realignment and public improvements within and without the District boundaries.

The attached Engineer's Certification states that the Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in this Engineer's Report, for hard and soft & indirect costs from approximately May 2022 to June 2022, are valued at **\$25,328.31**. Table I summarizes costs of public improvements to date.

Table I – Cost Certified to Date					
Cert No.	Date	Costs Paid This Period	Eligible Hard Costs This Period	Eligible Soft Costs This Period	Eligible Costs This Period
01	9/25/2020	\$1,520,719.00	\$1,520,719.00	\$0.00	\$1,520,719.00
02	11/23/2020	\$1,677,200.31	\$572,569.91	\$561,132.86	\$1,133,702.77
03	12/21/2020	\$1,555,720.39	\$775,898.33	\$174,307.12	\$950,205.45
04	1/28/2021	\$1,462,051.65	\$922,642.36	\$77,956.05	\$1,000,598.42
05	2/15/2021	\$659,601.62	\$444,291.71	\$0.00	\$444,291.71
06	3/22/2021	\$826,204.96	\$608,710.43	\$0.00	\$608,710.43
07	4/6/2021	\$647,647.97	\$488,650.62	\$0.00	\$488,650.62
08	5/14/2021	\$349,330.54	\$251,195.62	\$0.00	\$251,195.62
09	6/7/2021	\$382,601.29	\$288,166.59	\$0.00	\$288,166.59
10	7/14/2021	\$696,131.72	\$617,328.26	\$0.00	\$617,328.26
11	8/17/2021	\$1,026,451.80	\$929,166.35	\$0.00	\$929,166.35
12	9/20/2021	\$1,277,043.17	\$1,179,349.07	\$0.00	\$1,179,349.07
13	11/5/2021	\$1,381,170.60	\$808,035.99	\$335,972.06	\$1,144,008.05
14	11/23/2021	\$561,016.19	\$543,095.43	\$0.00	\$543,095.43
15	12/14/2021	\$533,546.92	\$453,810.56	\$0.00	\$453,810.56
16	1/11/2022	\$174,630.15	\$148,833.03	\$0.00	\$148,833.03
17	2/8/2022	\$824,489.09	\$718,100.23	\$0.00	\$718,100.23
18	3/15/2022	\$507,192.48	\$351,867.10	\$0.00	\$351,867.10
19	6/17/2022	\$302,429.72	\$280,455.99	\$0.00	\$280,455.99
20	7/15/2022	\$26,234.10	\$25,328.31	\$0.00	\$25,328.31
Totals		\$16,391,413.65	\$11,928,214.89	\$1,149,368.10	\$13,077,582.99

Table II summarizes the cost breakdown of the construction and soft & indirect costs. Tables III and IV provide category breakdowns of construction and soft & indirect costs reviewed for this certification. Tables V and VI provide a detailed breakdown of the eligible hard and soft & indirect costs per the Service Plan categories. Note that dates of invoices reviewed in Certifications 2-4 overlap due to timing of proof of payment being provided from various vendors.

## Public Improvements as Authorized by the Service Plan

Ranger reviewed the Service Plan for the Nine Mile Metropolitan District (“Service Plan”); prepared by McGeady Becher, P.C.

Section I.A of the Service Plan states:

*It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated constituents and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.*

Section I. B of the Service Plan States:

*There are currently no other governmental entities, including the Town, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.*

Section V. A of the Service Plan states:

*The District shall have the power and authority to provide the Public Improvements and, if provided herein, related operation and maintenance services, within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.*

Section V.7. states the debt issuance limit of the district is Twenty Million Dollars (\$20,000,000). Exhibit D of the Service Plan provides a description of the Public Improvements. Ranger has determined that the constructed improvements and associated soft and indirect construction costs (Public Improvements) under consideration in this report and certification for reimbursement by the District are indeed authorized by the Service Plan.

## Scope of Certification

The Service Plan states that the District shall have the power to construct Public Improvements in accordance with the Special District Act. Based on Ranger’s experience with metropolitan districts, the Public Improvements were broken into the cost categories of Water Improvements, Sanitation Improvements, Storm Water Improvements, Streets Improvements, and Parks and Recreation Improvements. Only Capital improvements have been considered for reimbursement. For a detailed breakdown of district eligible costs, refer to Tables III - VI.

## **General Methodology**

Ranger employed a phased approach toward the preparation of this Engineer's Report and Certification of Public Costs (Engineer's Certification).

### **Phase I – Authorization to Proceed and Document Gathering**

Ranger engaged with the District to provide the Engineer's Certification in August 2020. The construction documentation was provided by the District on an ongoing basis.

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Ranger performed site visits to document completion of the Public Improvements. The intent of a site visit was to verify general completion of pay application quantities in accordance with the approved construction drawings and does not guarantee quality or acceptance of Public Improvements. It is assumed that the Town or another third party provided QA/QC and acceptance of the improvements. Galloway is the Engineer of Record. CTL Thompson have been contracted to provide materials testing related to compaction testing, concrete, and asphalt.

### **Phase III – Review of Documentation**

Documentation was requested at the beginning of work. Requested documentation include the following:

- Executed Contracts and Bid Tabs
- Approved Construction Drawings
- Acceptable Proof of Payment (Cancelled checks and bank statements or lien waivers)
- Invoices and/or Pay Applications
- Jurisdictional acceptances of the Public Improvements
- Approved changes or amendments to contract documents
- Copies of any agreements that will impact District funding

See Appendix A for a complete listing of documents reviewed, as deemed necessary, by Ranger.

### **Phase IV – Verification of Construction Quantities**

Construction quantity take-offs were performed from applicable construction drawings. These quantity take-offs were used in conjunction with Phase V below to certify reasonableness of construction costs, as well as to identify an overall District eligible percentage of costs related to the entire site, based on public versus private areas. Public areas included public Tracts and Right of Way. A public percentage for work within the Nine Mile Corner plat was identified as 21.0%.

For costs related to the Irrigation Realignment, only the final pay application was provided. However, unconditional lien waivers were provided for all pay applications and the totals were verified to match the final requested pay application amount.

### **Phase V – Verification of Construction Unit Costs and Indirect Costs**

Construction Unit Costs and Indirect Costs were reviewed for market reasonableness. Ranger took into consideration the type of construction and the timeframe during which the construction occurred. Ranger determined that the costs incurred were within a reasonable range.

**Phase VI – Verification of Payment for Public Costs**

Evergreen – 287 & Arapahoe, L.L.C. (“Developer”) provided lien waivers for all pay application costs reviewed and paid for relating to the public improvements. Only costs with an approved form of proof of payment have been certified in this report. Costs associated with the private construction were determined not to be eligible as they did not relate to any Public Improvements.

**Phase VII – Determination of Costs Eligible for Reimbursement**

Ranger concluded the Engineer’s Certification by determining which improvements were eligible for District reimbursement, the categorization of the costs, and what percent of the costs for those improvements were reimbursable. Public Improvements that were deemed eligible for this report were associated with water, sanitation, streets, and parks and recreation.

**Project Notes**

McGeady Becher’s costs included line items that were associated with and reimbursed via bond proceeds. These costs were included in the total amount of reviewed costs, but the costs were not certified in this report so that reimbursable costs are not duplicated.

On Cost Certification #08, \$23,114.00 were applied to Brinkman Constructors Change Order #02 instead of Change Order #01. These costs were reallocated on Cost Certification #09, and an eligible amount of \$6,953.08 was applied in this certification to properly update eligible costs to date.

**The Remainder of Page Intentionally Left Blank**

## ENGINEER'S CERTIFICATION

Collin Koranda, P.E. / Ranger Engineering, LLC (the "Independent Consulting Engineer"), states as follows:

1. The Independent Consulting Engineer is an engineer duly qualified and licensed in the State of Colorado with experience in the design, construction and certification of Public Improvements of similar type and function as those described in the above Engineer's Report.

2. The Independent Consulting Engineer has performed a site visit and reviewed applicable construction and legal documents related to the Public Improvements under consideration to state the conclusions set forth in this Engineer's Certification.

3. The Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in the attached Engineer's Report dated July 15, 2022, including soft and indirect, District funded, and hard costs, are valued at an estimated **\$25,381.31**. In the opinion of the Independent Consulting Engineer, the above stated estimated value for the Public Improvements is reasonable and consistent with costs of similar improvements constructed for similar purposes during the same timeframe in similar locales.

Sincerely,

**Ranger Engineering, LLC**

A handwritten signature in blue ink, appearing to read "Collin Koranda".

Collin Koranda, PE

## **APPENDIX A**

### **Documents Reviewed**

#### Construction Plans and Contracts

- Erie Nine Mile Corner – Irrigation Realignment Construction Documents. Prepared by Galloway & Company. Dated 12/10/2019.
- Nine Mile Corner Plat. Prepared by Galloway & Company. Recorded 05/04/2020.

#### Contractor Pay Applications

- Brinkman Constructors Nine Mile Erie Corner – Pay Application 20. Dated 6/10/22.
  - Both invoices include retainage payments.

#### Service Plan & Agreements

- Service Plan for Nine Mile Metropolitan District. Prepared by McGeady Becher P.C. Approved August 13, 2019.
- Facilities Funding and Acquisition Agreement between Nine Mile Metropolitan District and Evergreen – 287 & Arapahoe, L.L.C. Dated February 18, 2020.

**Nine Mile Metropolitan District**  
**Summary of Costs**  
**Table II**

Type of Costs	Total Costs Paid	Costs This Period	Total District Eligible Costs	Eligible Costs This Period	Percent District This
Direct Construction Costs	\$ 14,555,009.70	\$ 26,234.10	\$ 11,928,214.89	\$ 25,328.31	96.5%
Soft & Indirect Costs	\$ 1,836,403.95	\$ -	\$ 1,149,368.10	\$ -	#DIV/0!
<b>Totals</b>	<b>\$ 16,391,413.65</b>	<b>\$ 26,234.10</b>	<b>\$ 13,077,582.99</b>	<b>\$ 25,328.31</b>	<b>96.5%</b>



**Nine Mile Metropolitan District  
Construction Costs Summary By Category  
Table III**

Category	Total Eligible Cost by Category		Category Percentage
Water	\$	1,447,177.70	12.1%
Sanitation	\$	1,941,493.22	16.3%
Storm Water	\$	3,781,336.45	31.7%
Streets	\$	3,270,576.31	27.4%
Parks and Recreation	\$	1,487,631.21	12.5%
	\$	<b>11,928,214.89</b>	<b>100.0%</b>

Category	Eligible Cost by Category This Period		Category Percentage
Water	\$	767.62	3.0%
Sanitation	\$	767.62	3.0%
Storm Water	\$	767.62	3.0%
Streets	\$	15,057.82	59.5%
Parks and Recreation	\$	7,967.62	31.5%
	\$	<b>25,328.31</b>	<b>100.0%</b>



Nine Mile Metropolitan District  
Construction Costs Detail  
Table V

Contract Values					Payments Made				Eligibility					Submitted Invoices	
Work Description	Quantity	Unit	Cost	Value	Amount Invoiced	Percent Invoiced	Retainage	Amount Less Retainage	District Type	Percent Eligible	Total Eligible	Eligible This Period	Costs This Period		
Brinkman Constructors - Nine Mile Erie C	Quantity	Unit	Cost	Value	Amount Invoiced	Percent Invoiced	Retainage	Amount Less Retainage	District Type	Percent Eligible	Total Eligible	Eligible This Period	Costs This Period	Pay App Date	20
														6/10/2022	
Gen & Spec Conditions	1	LS	\$ 411,506.00	\$ 411,506.00	\$ 411,506.00	100%	\$ 20,575.60	\$ 390,930.40	Multiple	81%	\$ 316,286.71	\$ -	\$ -	\$ -	
2 Year warranty Bond	1	LS	\$ 108,700.00	\$ 108,700.00	\$ -	0%	\$ -	\$ -	Multiple	81%	\$ -	\$ -	\$ -	\$ -	
Site Demolition	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100%	\$ -	\$ 30,000.00	Multiple	81%	\$ 24,271.84	\$ -	\$ -	\$ -	
Survey	1	LS	\$ 100,225.00	\$ 100,225.00	\$ 94,549.00	94%	\$ 9,454.90	\$ 85,094.10	Multiple	81%	\$ 68,846.36	\$ 3,407.77	\$ 4,212.00	\$ 4,680.00	
SWPPP, Traffic Control, misc.	1	LS	\$ 211,983.00	\$ 211,983.00	\$ 211,983.00	100%	\$ -	\$ 211,983.00	Multiple	81%	\$ 171,507.27	\$ -	\$ -	\$ -	
Earthwork - LVI Only	1	LS	\$ 3,019,325.00	\$ 3,019,325.00	\$ 3,019,325.00	100%	\$ -	\$ 3,019,325.00	Multiple	54%	\$ 1,642,385.00	\$ -	\$ -	\$ -	
Asphalt Paving	1	LS	\$ 862,398.00	\$ 862,398.00	\$ 862,398.00	100%	\$ 86,239.80	\$ 776,158.20	Streets	100%	\$ 776,158.20	\$ -	\$ -	\$ -	
Roadway Improvements (Traffic Signals)	1	LS	\$ 1,080,667.00	\$ 1,080,667.00	\$ 1,080,667.00	100%	\$ -	\$ 1,080,667.00	Streets	100%	\$ 1,080,667.00	\$ -	\$ -	\$ -	
Concrete Paving & Curbs	1	LS	\$ 464,445.00	\$ 464,445.00	\$ 464,445.00	100%	\$ -	\$ 464,445.00	Streets	100%	\$ 464,445.00	\$ -	\$ -	\$ -	
Sanitary Sewer	1	LS	\$ 1,212,502.00	\$ 1,212,502.00	\$ 1,212,502.00	100%	\$ 30,313.20	\$ 1,182,188.80	Sanitation	98%	\$ 1,162,708.31	\$ -	\$ -	\$ -	
Water Line	1	LS	\$ 1,151,332.00	\$ 1,151,332.00	\$ 1,151,332.00	100%	\$ 28,783.20	\$ 1,122,548.80	Water	60%	\$ 668,392.78	\$ -	\$ -	\$ -	
Storm Sewer	1	LS	\$ 1,557,132.00	\$ 1,557,132.00	\$ 1,557,132.00	100%	\$ 38,928.20	\$ 1,518,203.80	Storm Water	92%	\$ 1,397,352.54	\$ -	\$ -	\$ -	
Storm Pond/Outfall Structure	1	LS	\$ 84,480.00	\$ 84,480.00	\$ 84,480.00	100%	\$ -	\$ 84,480.00	Storm Water	100%	\$ 84,480.00	\$ -	\$ -	\$ -	
Site Improvements	1	LS	\$ 164,746.00	\$ 164,746.00	\$ 164,746.00	100%	\$ -	\$ 164,746.00	Multiple	100%	\$ 164,746.00	\$ -	\$ -	\$ -	
Irrigation & Landscaping	1	LS	\$ 807,739.00	\$ 807,739.00	\$ 787,607.00	98%	\$ 78,760.70	\$ 708,846.30	Parks and Recreation	100%	\$ 708,846.30	\$ 7,200.00	\$ 7,200.00	\$ 8,000.00	
Pre Con	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100%	\$ -	\$ 30,000.00	Multiple	81%	\$ 24,271.84	\$ -	\$ -	\$ -	
Gen Liab Insur	1	LS	\$ 97,597.00	\$ 97,597.00	\$ 97,597.00	100%	\$ 4,879.70	\$ 92,717.30	Multiple	81%	\$ 75,013.99	\$ -	\$ -	\$ -	
OHP	1	LS	\$ 537,349.00	\$ 537,349.00	\$ 531,814.22	99%	\$ 26,647.42	\$ 505,166.80	Multiple	81%	\$ 408,710.98	\$ 430.34	\$ 531.90	\$ 591.00	
CO#01 - Lowes Pad/Trees/Tax/Railing/Over E	1	LS	\$ 289,573.00	\$ 289,573.00	\$ 289,573.00	100%	\$ 14,478.30	\$ 275,094.70	Multiple	33%	\$ 91,947.92	\$ -	\$ -	\$ -	
CO#02 - Lot 10 Underdrain / Dry Utility Sleeve	1	LS	\$ 88,999.00	\$ 88,999.00	\$ 88,999.00	100%	\$ 4,449.90	\$ 84,549.10	Non-District	0%	\$ -	\$ -	\$ -	\$ -	
CO#03	1	LS	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	Non-District	0%	\$ -	\$ -	\$ -	\$ -	
CO#04 - CDOT Vault, Traffic Signals, Utiliy Ext	1	LS	\$ 180,337.00	\$ 180,337.00	\$ 180,337.00	100%	\$ 9,016.70	\$ 171,320.30	Multiple	60%	\$ 103,550.09	\$ -	\$ -	\$ -	
CO#05 - Pipeline, Mill, Traffic Control	1	LS	\$ 580,886.00	\$ 580,886.00	\$ 580,886.00	100%	\$ 16,754.60	\$ 564,131.40	Multiple	95%	\$ 536,967.94	\$ -	\$ -	\$ -	
CO#06 - 111th Work, Private earthwork	1	LS	\$ 321,685.00	\$ 321,685.00	\$ 321,685.00	100%	\$ 20,511.50	\$ 301,173.50	Multiple	88%	\$ 265,418.60	\$ -	\$ -	\$ -	
CO#07 - 111th T&M/Traffic Control	1	LS	\$ 189,468.00	\$ 189,468.00	\$ 189,468.00	100%	\$ 18,946.80	\$ 170,521.20	Streets	100%	\$ 170,521.20	\$ 14,290.20	\$ 14,290.20	\$ 15,878.00	
			\$ 13,583,074.00	\$ 13,583,074.00	\$ 13,443,031.22		\$ 408,740.52	\$ 13,034,290.70			\$ 10,407,495.89	\$ 25,328.31	\$ 26,234.10	Subtotal	\$ 29,149.00
														Less Ret POP	\$ 26,234.10
														Date	CLW 6/10/2022
														Amount	\$26,234.10
Total Construction Costs			\$ 15,103,793.00	\$ 15,103,793.00	\$ 14,963,750.22	99%	\$ 408,740.52	\$ 14,555,009.70			\$ 11,928,214.89	\$ 25,328.31	\$ 26,234.10	\$	26,234.10



## **EXHIBIT A**

### **Nine Mile Site Overlay**

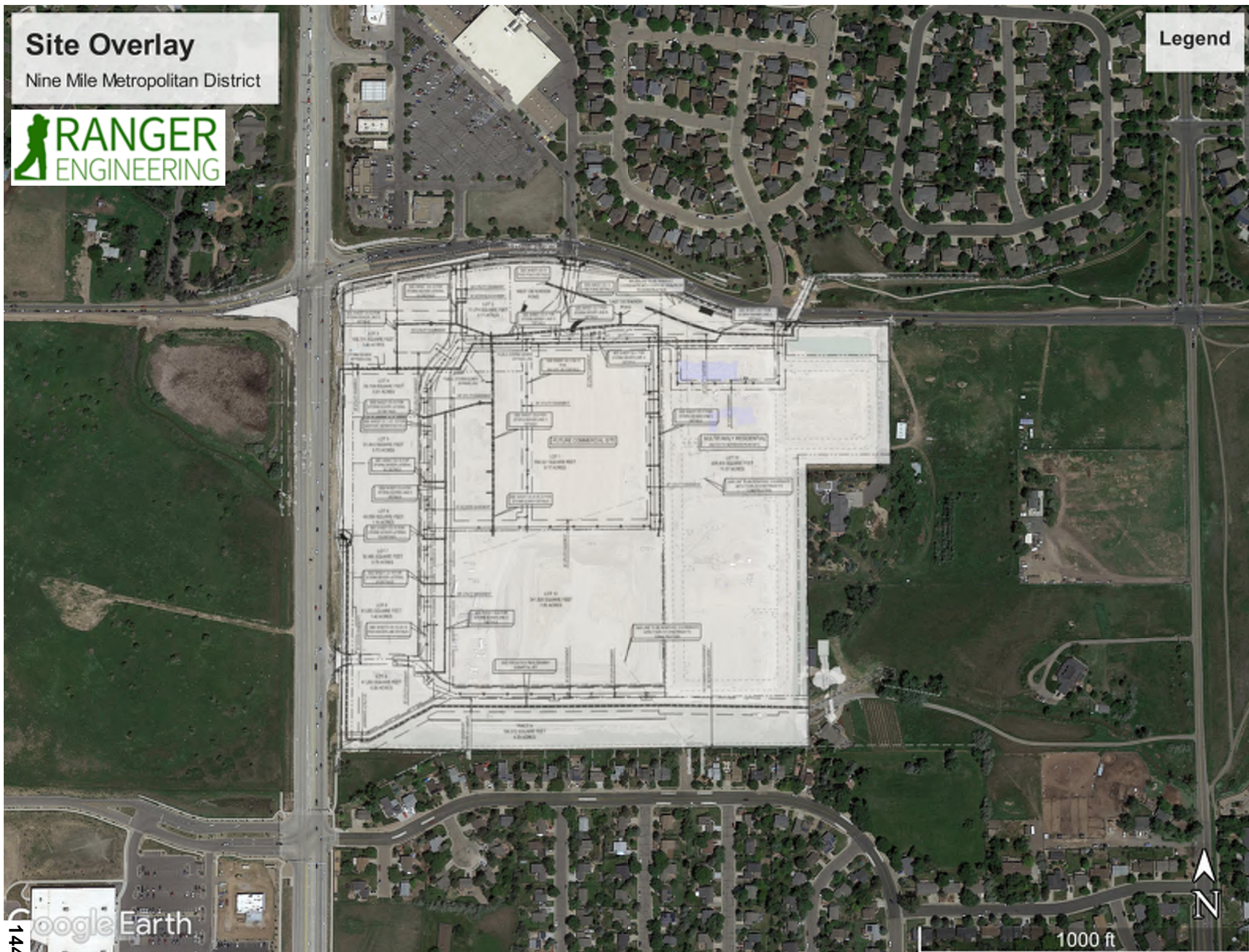


# Site Overlay

Nine Mile Metropolitan District



Legend





## **ENGINEER'S REPORT AND CERTIFICATION #21**

### **NINE MILE METROPOLITAN DISTRICT**

#### **PREPARED FOR:**

Nine Mile Metropolitan District  
c/o McGeady Becher P.C.  
450 E. 17<sup>th</sup> Ave., Ste. 400  
Denver, CO 80203

#### **PREPARED BY:**

Ranger Engineering, LLC  
3370 Simms St.  
Wheat Ridge, CO 80033

#### **DATE PREPARED:**

October 21, 2024



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## ENGINEER'S REPORT

### Introduction

Ranger Engineering, LLC ("Ranger") was retained by Nine Mile Metropolitan District ("District") as an Independent Consulting Engineer to certify costs associated with constructed Public Improvements related to the District.

The District is located within the Town of Erie, Colorado ("Town"). The development area is approximately 39 acres. This certification considers construction costs related to irrigation ditch realignment and public improvements within and without the District boundaries.

The attached Engineer's Certification states that the Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in this Engineer's Report, for hard and soft & indirect costs from approximately February 2022 to September 2024, are valued at **\$147,799.67**. Table I summarizes costs of public improvements to date.

Table I – Cost Certified to Date					
Cert No.	Date	Costs Paid This Period	Eligible Hard Costs This Period	Eligible Soft Costs This Period	Eligible Costs This Period
01	9/25/2020	\$1,520,719.00	\$1,520,719.00	\$0.00	\$1,520,719.00
02	11/23/2020	\$1,677,200.31	\$572,569.91	\$561,132.86	\$1,133,702.77
03	12/21/2020	\$1,555,720.39	\$775,898.33	\$174,307.12	\$950,205.45
04	1/28/2021	\$1,462,051.65	\$922,642.36	\$77,956.05	\$1,000,598.42
05	2/15/2021	\$659,601.62	\$444,291.71	\$0.00	\$444,291.71
06	3/22/2021	\$826,204.96	\$608,710.43	\$0.00	\$608,710.43
07	4/6/2021	\$647,647.97	\$488,650.62	\$0.00	\$488,650.62
08	5/14/2021	\$349,330.54	\$251,195.62	\$0.00	\$251,195.62
09	6/7/2021	\$382,601.29	\$288,166.59	\$0.00	\$288,166.59
10	7/14/2021	\$696,131.72	\$617,328.26	\$0.00	\$617,328.26
11	8/17/2021	\$1,026,451.80	\$929,166.35	\$0.00	\$929,166.35
12	9/20/2021	\$1,277,043.17	\$1,179,349.07	\$0.00	\$1,179,349.07
13	11/5/2021	\$1,381,170.60	\$808,035.99	\$335,972.06	\$1,144,008.05
14	11/23/2021	\$561,016.19	\$543,095.43	\$0.00	\$543,095.43
15	12/14/2021	\$533,546.92	\$453,810.56	\$0.00	\$453,810.56
16	1/11/2022	\$174,630.15	\$148,833.03	\$0.00	\$148,833.03
17	2/8/2022	\$824,489.09	\$718,100.23	\$0.00	\$718,100.23
18	3/15/2022	\$507,192.48	\$351,867.10	\$0.00	\$351,867.10
19	6/17/2022	\$302,429.72	\$280,455.99	\$0.00	\$280,455.99
20	7/15/2022	\$26,234.10	\$25,328.31	\$0.00	\$25,328.31
21	10/21/2024	\$237,923.96	\$0.00	\$147,799.67	\$147,799.67
Totals		\$16,629,337.61	\$11,928,214.89	\$1,297,167.76	\$13,225,382.65

Table II summarizes the cost breakdown of the construction and soft & indirect costs. Tables III and IV provide category breakdowns of construction and soft & indirect costs reviewed for this certification. Tables V and VI provide a detailed breakdown of the eligible hard and soft & indirect costs per the Service Plan categories. Construction costs were not reviewed as part of Cost Certification #21.

## Public Improvements as Authorized by the Service Plan

Ranger reviewed the Service Plan for the Nine Mile Metropolitan District (“Service Plan”); prepared by McGeady Becher, P.C.

Section I.A of the Service Plan states:

*It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated constituents and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.*

Section I. B of the Service Plan States:

*There are currently no other governmental entities, including the Town, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.*

Section V. A of the Service Plan states:

*The District shall have the power and authority to provide the Public Improvements and, if provided herein, related operation and maintenance services, within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.*

Section V.7. states the debt issuance limit of the district is Twenty Million Dollars (\$20,000,000). Exhibit D of the Service Plan provides a description of the Public Improvements. Ranger has determined that the constructed improvements and associated soft and indirect construction costs (Public Improvements) under consideration in this report and certification for reimbursement by the District are indeed authorized by the Service Plan.

## Scope of Certification

The Service Plan states that the District shall have the power to construct Public Improvements in accordance with the Special District Act. Based on Ranger’s experience with metropolitan districts, the Public Improvements were broken into the cost categories of Water Improvements, Sanitation Improvements, Storm Water Improvements, Streets Improvements, and Parks and Recreation Improvements. Only Capital improvements have been considered for reimbursement. For a detailed breakdown of district eligible costs, refer to Tables III - VI.



## **General Methodology**

Ranger employed a phased approach toward the preparation of this Engineer's Report and Certification of Public Costs (Engineer's Certification).

### **Phase I – Authorization to Proceed and Document Gathering**

Ranger engaged with the District to provide the Engineer's Certification in August 2020. The construction documentation was provided by the District on an ongoing basis.

### **Phase II – Site Visit and Meetings**

Ranger performed site visits to document completion of the Public Improvements. The intent of a site visit was to verify general completion of pay application quantities in accordance with the approved construction drawings and does not guarantee quality or acceptance of Public Improvements. It is assumed that the Town or another third party provided QA/QC and acceptance of the improvements. Galloway is the Engineer of Record. CTL Thompson have been contracted to provide materials testing related to compaction testing, concrete, and asphalt.

### **Phase III – Review of Documentation**

Documentation was requested at the beginning of work. Requested documentation include the following:

- Executed Contracts and Bid Tabs
- Approved Construction Drawings
- Acceptable Proof of Payment (Cancelled checks and bank statements or lien waivers)
- Invoices and/or Pay Applications
- Jurisdictional acceptances of the Public Improvements
- Approved changes or amendments to contract documents
- Copies of any agreements that will impact District funding

See Appendix A for a complete listing of documents reviewed, as deemed necessary, by Ranger.

### **Phase IV – Verification of Construction Quantities**

Construction quantity take-offs were performed from applicable construction drawings. These quantity take-offs were used in conjunction with Phase V below to certify reasonableness of construction costs, as well as to identify an overall District eligible percentage of costs related to the entire site, based on public versus private areas. Public areas included public Tracts and Right of Way. A public percentage for work within the Nine Mile Corner plat was identified as 21.0%.

For costs related to the Irrigation Realignment, only the final pay application was provided. However, unconditional lien waivers were provided for all pay applications and the totals were verified to match the final requested pay application amount.

### **Phase V – Verification of Construction Unit Costs and Indirect Costs**

Construction Unit Costs and Indirect Costs were reviewed for market reasonableness. Ranger took into consideration the type of construction and the timeframe during which the construction occurred. Ranger determined that the costs incurred were within a reasonable range.

**Phase VI – Verification of Payment for Public Costs**

Evergreen – 287 & Arapahoe, L.L.C. (“Developer”) provided lien waivers for all pay application costs reviewed and paid for relating to the public improvements. Only costs with an approved form of proof of payment have been certified in this report. Costs associated with the private construction were determined not to be eligible as they did not relate to any Public Improvements.

**Phase VII – Determination of Costs Eligible for Reimbursement**

Ranger concluded the Engineer’s Certification by determining which improvements were eligible for District reimbursement, the categorization of the costs, and what percent of the costs for those improvements were reimbursable. Public Improvements that were deemed eligible for this report were associated with water, sanitation, streets, and parks and recreation.

**Project Notes**

McGeady Becher’s costs included line items that were associated with and reimbursed via bond proceeds. These costs were included in the total amount of reviewed costs, but the costs were not certified in this report so that reimbursable costs are not duplicated.

On Cost Certification #08, \$23,114.00 were applied to Brinkman Constructors Change Order #02 instead of Change Order #01. These costs were reallocated on Cost Certification #09, and an eligible amount of \$6,953.08 was applied in this certification to properly update eligible costs to date.

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## ENGINEER'S CERTIFICATION

Collin Koranda, P.E. / Ranger Engineering, LLC (the "Independent Consulting Engineer"), states as follows:

1. The Independent Consulting Engineer is an engineer duly qualified and licensed in the State of Colorado with experience in the design, construction and certification of Public Improvements of similar type and function as those described in the above Engineer's Report.

2. The Independent Consulting Engineer has performed a site visit and reviewed applicable construction and legal documents related to the Public Improvements under consideration to state the conclusions set forth in this Engineer's Certification.

3. The Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in the attached Engineer's Report dated October 21, 2024, including soft and indirect, District funded, and hard costs, are valued at an estimated **\$147,799.67**. In the opinion of the Independent Consulting Engineer, the above stated estimated value for the Public Improvements is reasonable and consistent with costs of similar improvements constructed for similar purposes during the same timeframe in similar locales.

Sincerely,

**Ranger Engineering, LLC**

A handwritten signature in blue ink, appearing to read "Collin Koranda".

Collin Koranda, PE

## **APPENDIX A**

### **Documents Reviewed**

#### Construction Plans and Contracts

- Erie Nine Mile Corner – Irrigation Realignment Construction Documents. Prepared by Galloway & Company. Dated 12/10/2019.
- Nine Mile Corner Plat. Prepared by Galloway & Company. Recorded 05/04/2020.

#### Contractor Pay Applications

- No construction costs this period.

#### Service Plan & Agreements

- Service Plan for Nine Mile Metropolitan District. Prepared by McGeady Becher P.C. Approved August 13, 2019.
- Facilities Funding and Acquisition Agreement between Nine Mile Metropolitan District and Evergreen – 287 & Arapahoe, L.L.C. Dated February 18, 2020.

**Nine Mile Metropolitan District**  
**Summary of Costs**  
**Table II**

Type of Costs	Total Costs Paid	Costs This Period	Total District Eligible Costs	Eligible Costs This Period	Percent District This
Direct Construction Costs	\$ 14,555,009.70	\$ -	\$ 11,928,214.89	\$ -	#DIV/0!
Soft & Indirect Costs	\$ 2,074,327.91	\$ 237,923.96	\$ 1,297,167.76	\$ 147,799.67	62.1%
<b>Totals</b>	<b>\$ 16,629,337.61</b>	<b>\$ 237,923.96</b>	<b>\$ 13,225,382.65</b>	<b>\$ 147,799.67</b>	<b>62.1%</b>

**Nine Mile Metropolitan District  
Construction Costs Summary By Category  
Table III**

Category	Total Eligible Cost by Category		Category Percentage
Water	\$	1,447,177.70	12.1%
Sanitation	\$	1,941,493.22	16.3%
Storm Water	\$	3,781,336.45	31.7%
Streets	\$	3,270,576.31	27.4%
Parks and Recreation	\$	1,487,631.21	12.5%
	\$	<b>11,928,214.89</b>	<b>100.0%</b>

Category	Eligible Cost by Category This Period		Category Percentage
Water	\$	-	#DIV/0!
Sanitation	\$	-	#DIV/0!
Storm Water	\$	-	#DIV/0!
Streets	\$	-	#DIV/0!
Parks and Recreation	\$	-	#DIV/0!
	\$	-	<b>#DIV/0!</b>

**Nine Mile Metropolitan District**  
**Soft & Indirect Costs Summary By Category**  
**Table IV**

Category	Total Eligible Soft Costs		Category Percentage
Water	\$	196,475.11	15.1%
Sanitation	\$	201,177.61	15.5%
Storm Water	\$	203,506.61	15.7%
Streets	\$	300,380.83	23.2%
Parks and Recreation	\$	395,627.59	30.5%
	\$	<b>1,297,167.76</b>	<b>100.0%</b>

Category	Eligible Soft Costs This Period		Category Percentage
Water	\$	242.85	0.2%
Sanitation	\$	242.85	0.2%
Storm Water	\$	242.85	0.2%
Streets	\$	3,825.35	2.6%
Parks and Recreation	\$	143,245.76	96.9%
	\$	<b>147,799.67</b>	<b>100.0%</b>



Nine Mile Metropolitan District  
Soft & Indirect Costs Detail  
Table VI

Vendor	Work Description	Invoice Number	Invoice Date	Amount	Amount Paid	Check Number	Check Amount	Check Date	Clear Date	Certification	Category	Percent Eligible	Eligible This Period	Total Eligible
BOULDER COUNTY TREASURER	R0612906 FULL YR 2021 TRACT A	R0612906	03/10/22	\$ 750.22	\$ 750.22	1109	\$ 750.22	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612907 FULL YR 2021 TRACT B	R0612907	03/10/22	\$ 60.02	\$ 60.02	1110	\$ 60.02	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612908 FULL YR 2021 TRACT C1	R0612908	03/10/22	\$ 60.02	\$ 60.02	1111	\$ 60.02	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612909 FULL YR 2021 TRACT C1	R0612909	03/10/22	\$ 61.76	\$ 61.76	1112	\$ 61.76	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612910 FULL YR 2021 TRACT C2	R0612910	03/10/22	\$ 27.52	\$ 27.52	1113	\$ 27.52	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612911 FULL YR 2021 TRACT D	R0612911	03/10/22	\$ 99.64	\$ 99.64	1114	\$ 99.64	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612912 FULL YR 2021 TRACT E	R0612912	03/10/22	\$ 164.82	\$ 164.82	1115	\$ 164.82	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612913 FULL YR 2021 TRACT F	R0612913	03/10/22	\$ 61.88	\$ 61.88	1116	\$ 61.88	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
BOULDER COUNTY TREASURER	R0612914 FULL YR 2021 TRACT F	R0612914	03/10/22	\$ 600.18	\$ 600.18	1117	\$ 600.18	03/10/22	03/17/22	21	Non-District	0%	\$ -	\$ -
Haven Community Management	N ARAP NEIGHBOR R. DREW FENCE REPAIR	Proposal	12/28/22	\$ 450.00	\$ 450.00	1243	\$ 450.00	01/12/23	01/19/23	21	Parks and Recreation	100%	\$ 450.00	\$ 450.00
Haven Community Management	HOA TEMP WATER OUTLOT C	#01	09/07/23	\$ 7,827.00	\$ 7,827.00	1387	\$ 7,827.00	09/13/23	09/20/23	21	Parks and Recreation	100%	\$ 7,827.00	\$ 7,827.00
LANDTECH CONTRACTORS	TREE REPLACEMENT NOT UNDER WARRANTY	1633	10/26/22	\$ 14,769.00	\$ 14,769.00	1210	\$ 14,769.00	11/02/22	11/08/22	21	Parks and Recreation	100%	\$ 14,769.00	\$ 14,769.00
LANDTECH CONTRACTORS	OUTLOT C STORM CHANNEL REPAIR	3428	02/21/23	\$ 18,536.62	\$ 18,536.62	1292	\$ 18,536.62	03/22/23	03/27/23	21	Parks and Recreation	100%	\$ 18,536.62	\$ 18,536.62
LANDTECH CONTRACTORS	OUTLOT C RESEEDING	4149	05/30/23	\$ 8,100.00	\$ 8,100.00	1337	\$ 17,003.95	06/07/23	06/14/23	21	Parks and Recreation	100%	\$ 8,100.00	\$ 8,100.00
LANDTECH CONTRACTORS	DISTRICT-TRACT A - RESEEDING	4148	05/30/23	\$ 8,903.95	\$ 8,903.95	1337	\$ 17,003.95	06/07/23	06/14/23	21	Parks and Recreation	100%	\$ 8,903.95	\$ 8,903.95
LANDTECH CONTRACTORS	TREE REPLACEMENT 2023 TRACT A	4573	06/27/23	\$ 8,330.45	\$ 8,330.45	1349	\$ 8,330.45	06/28/23	07/06/23	21	Parks and Recreation	100%	\$ 8,330.45	\$ 8,330.45
LANDTECH CONTRACTORS	IRRIGATION REPAIR DISTRICTS	4808	07/05/23	\$ 3,349.76	\$ 3,349.76	1379	\$ 3,349.76	08/23/23	09/01/23	21	Parks and Recreation	100%	\$ 3,349.76	\$ 3,349.76
LANDTECH CONTRACTORS	OUTLOT C WORK	5829	09/12/23	\$ 5,309.49	\$ 5,309.49	1394	\$ 5,309.49	09/27/23	10/05/23	21	Parks and Recreation	100%	\$ 5,309.49	\$ 5,309.49
LANDTECH CONTRACTORS	OUTLOT C - TREE REPLACEMENTS	8740	04/12/24	\$ 10,268.00	\$ 10,268.00	1511	\$ 10,268.00	04/23/24	05/07/24	21	Parks and Recreation	100%	\$ 10,268.00	\$ 10,268.00
LANDTECH CONTRACTORS	TRACT A - TREE REPLACEMENTS		09/06/24	\$ 35,415.00	\$ 35,415.00	1615	\$ 35,825.85	10/11/24	10/18/24	21	Parks and Recreation	100%	\$ 35,415.00	\$ 35,415.00
LANDTECH CONTRACTORS	DISTRICT TRACTS - LANDSCAPE MAINT. APRIL 20	4364	04/01/22	\$ 2,799.00	\$ 2,799.00	1142	\$ 6,578.00	06/01/22	06/07/22	21	Parks and Recreation	100%	\$ 2,799.00	\$ 2,799.00
LANDTECH CONTRACTORS	LANDSCAPE MAINTENANCE - DISTRICT TRACTS	4508	04/01/22	\$ 2,799.00	\$ 2,799.00	1142	\$ 6,578.00	06/01/22	06/07/22	21	Parks and Recreation	100%	\$ 2,799.00	\$ 2,799.00
LANDTECH CONTRACTORS	TREE SURVEY	Statement	05/24/22	\$ 1,590.00	\$ 1,590.00	1148	\$ 1,590.00	06/15/22	06/27/22	21	Parks and Recreation	100%	\$ 1,590.00	\$ 1,590.00
LANDTECH CONTRACTORS	IRRIG REPAIR DISTRICT TRACTS	11325	09/13/24	\$ 216.58	\$ 216.58	1604	\$ 13,340.58	09/25/24	10/01/24	21	Parks and Recreation	100%	\$ 216.58	\$ 216.58
LANDTECH CONTRACTORS	TREE REPLACEMENTS - TRACT H ALONG ARAP	11376	09/20/24	\$ 12,164.00	\$ 12,164.00	1604	\$ 13,340.58	09/25/24	10/01/24	21	Parks and Recreation	100%	\$ 12,164.00	\$ 12,164.00
LANDTECH CONTRACTORS	Outlot C - SILT & MUD CLEANING	10957	08/30/24	\$ 945.00	\$ 945.00	1599	\$ 945.00	09/12/24	09/20/24	21	Parks and Recreation	100%	\$ 945.00	\$ 945.00
MARTINSON SERVICES	SNOW REMOVAL DISTRICT SIDEWALKS	151874	02/09/22	\$ 270.00	\$ 270.00	1121	\$ 967.50	03/16/22	03/22/22	21	Operations	0%	\$ -	\$ -
MARTINSON SERVICES	SNOW REMOVAL 1/27/22 DISTRICT SIDEWALKS	152528	02/11/22	\$ 202.50	\$ 202.50	1121	\$ 967.50	03/16/22	03/22/22	21	Operations	0%	\$ -	\$ -
MARTINSON SERVICES	SNOW REMOVAL DISTRICT SIDEWALKS	153199	02/17/22	\$ 495.00	\$ 495.00	1121	\$ 967.50	03/16/22	03/22/22	21	Operations	0%	\$ -	\$ -
MARTINSON SERVICES	SNOW REMOVAL 2/12/22 DISTRICT SIDEWALKS	154108	02/23/22	\$ 180.00	\$ 180.00	1128	\$ 480.00	03/31/22	04/06/22	21	Operations	0%	\$ -	\$ -
MARTINSON SERVICES	SNOW REMOVAL 2/23/22 DISTRICT SIDEWALKS	155995	03/08/22	\$ 150.00	\$ 150.00	1128	\$ 480.00	03/31/22	04/06/22	21	Operations	0%	\$ -	\$ -
MARTINSON SERVICES	SNOW REMOVAL 2/24/22 DISTRICT SIDEWALKS	156626	03/10/22	\$ 150.00	\$ 150.00	1128	\$ 480.00	03/31/22	04/06/22	21	Operations	0%	\$ -	\$ -
Nine Mile MD	District Funding Request	Letter	04/11/22	\$ 80,000.00	\$ 80,000.00	1135	\$ 80,000.00	04/21/22	04/25/22	21	Operations	0%	\$ -	\$ -
Norris Design, Inc.	Landscape Plans	76249	09/30/22	\$ 870.00	\$ 870.00	1204	\$ 870.00	10/26/22	11/01/22	21	Parks and Recreation	100%	\$ 870.00	\$ 870.00
Omerta	NORTH ARAP RESTOR: INSTALL NEW WATTLE	165788	08/31/22	\$ 2,026.50	\$ 2,026.50	1217	\$ 2,026.50	11/16/22	11/29/22	21	Multiple	21%	\$ 425.38	\$ 425.38
R&R ENGINEERS-SURVEYORS	N ARAPAHOE	BC2011-24	10/17/22	\$ 2,232.50	\$ 2,232.50	1211	\$ 2,232.50	11/02/22	11/08/22	21	Streets	100%	\$ 2,232.50	\$ 2,232.50
R&R ENGINEERS-SURVEYORS	NORTH ARAPAHOE SURVEYING	BC20144-25	11/14/22	\$ 1,350.00	\$ 1,350.00	1225	\$ 1,350.00	11/23/22	11/29/22	21	Streets	100%	\$ 1,350.00	\$ 1,350.00
Terrain Natural Landscape	Clean Up Residential yard	20427	09/02/22	\$ 865.00	\$ 865.00	1190	\$ 865.00	09/21/22	10/05/22	21	Operations	0%	\$ -	\$ -
Town of Erie	NINE MILE - OUTLOT C - PAYMENT TO TOWN	Check Request		\$ 3,758.23	\$ 3,758.23	1528	\$ 3,758.23	05/31/24	06/10/24	21	Multiple	21%	\$ 788.88	\$ 788.88
Town of Erie	IRRIGATION DISTRICT TRACTS 5/18	595-00107-00	06/18/22	\$ 1,715.32	\$ 1,715.32	1154	\$ 1,715.32	06/29/22	07/08/22	21	Parks and Recreation	21%	\$ 360.06	\$ 360.06
				\$ 2,078,660.54	\$2,074,327.91								\$ 147,799.67	\$ 1,297,167.76





## **EXHIBIT A**

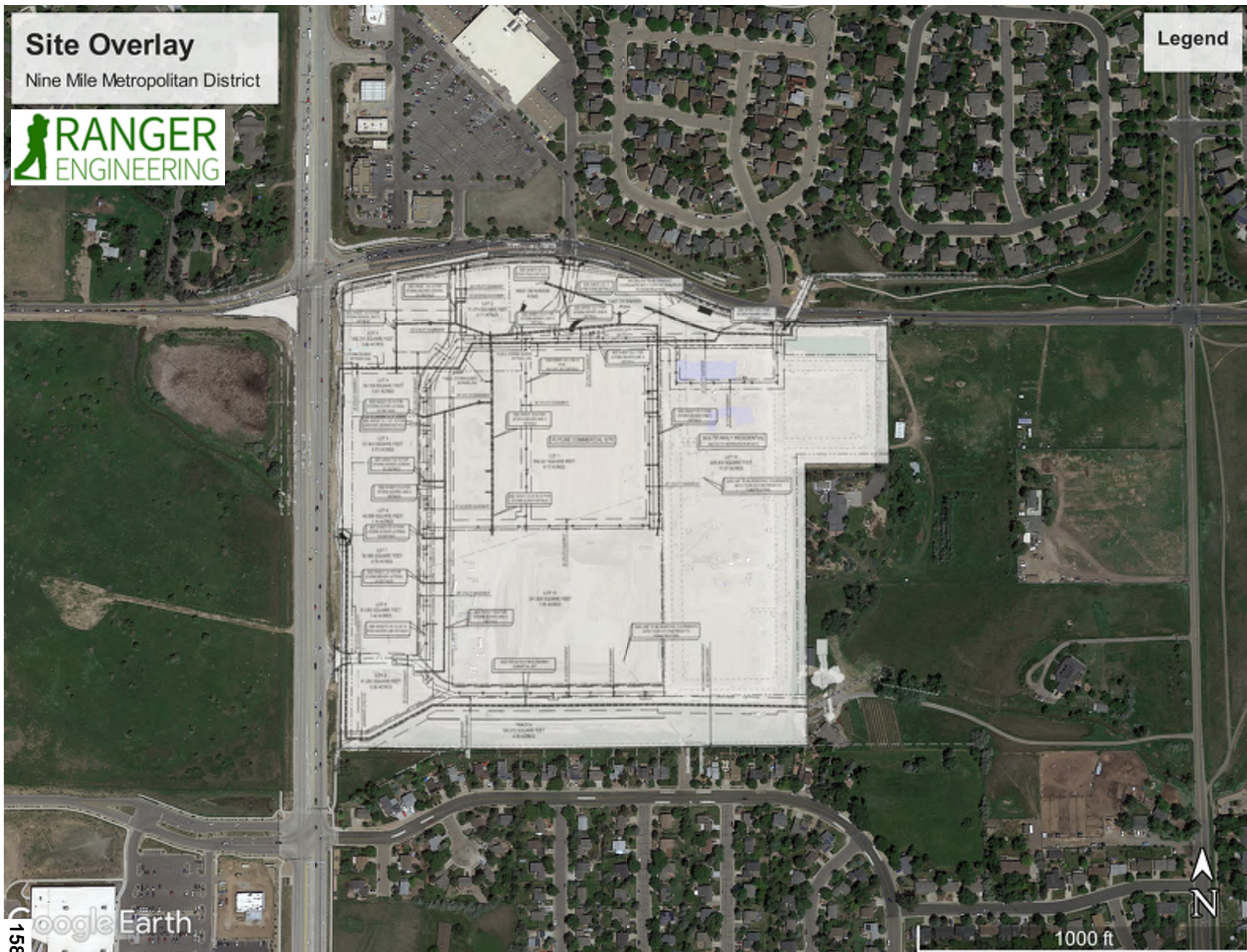
### **Nine Mile Site Overlay**

# Site Overlay

Nine Mile Metropolitan District



Legend





## **ENGINEER'S REPORT AND CERTIFICATION #22**

### **NINE MILE METROPOLITAN DISTRICT**

#### **PREPARED FOR:**

Nine Mile Metropolitan District  
c/o McGeady Becher P.C.  
450 E. 17<sup>th</sup> Ave., Ste. 400  
Denver, CO 80203

#### **PREPARED BY:**

Ranger Engineering, LLC  
3370 Simms St.  
Wheat Ridge, CO 80033

#### **DATE PREPARED:**

January 28, 2025



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## ENGINEER'S REPORT

### Introduction

Ranger Engineering, LLC ("Ranger") was retained by Nine Mile Metropolitan District ("District") as an Independent Consulting Engineer to certify costs associated with constructed Public Improvements related to the District.

The District is located within the Town of Erie, Colorado ("Town"). The development area is approximately 39 acres. This certification considers construction costs related to irrigation ditch realignment and public improvements within and without the District boundaries.

The attached Engineer's Certification states that the Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in this Engineer's Report, for hard and soft & indirect costs from approximately September 2022, are valued at **\$379,048.55**.

Table I summarizes costs of public improvements to date.

Table I – Cost Certified to Date					
Cert No.	Date	Costs Paid This Period	Eligible Hard Costs This Period	Eligible Soft Costs This Period	Eligible Costs This Period
01	9/25/2020	\$1,520,719.00	\$1,520,719.00	\$0.00	\$1,520,719.00
02	11/23/2020	\$1,677,200.31	\$572,569.91	\$561,132.86	\$1,133,702.77
03	12/21/2020	\$1,555,720.39	\$775,898.33	\$174,307.12	\$950,205.45
04	1/28/2021	\$1,462,051.65	\$922,642.36	\$77,956.05	\$1,000,598.42
05	2/15/2021	\$659,601.62	\$444,291.71	\$0.00	\$444,291.71
06	3/22/2021	\$826,204.96	\$608,710.43	\$0.00	\$608,710.43
07	4/6/2021	\$647,647.97	\$488,650.62	\$0.00	\$488,650.62
08	5/14/2021	\$349,330.54	\$251,195.62	\$0.00	\$251,195.62
09	6/7/2021	\$382,601.29	\$288,166.59	\$0.00	\$288,166.59
10	7/14/2021	\$696,131.72	\$617,328.26	\$0.00	\$617,328.26
11	8/17/2021	\$1,026,451.80	\$929,166.35	\$0.00	\$929,166.35
12	9/20/2021	\$1,277,043.17	\$1,179,349.07	\$0.00	\$1,179,349.07
13	11/5/2021	\$1,381,170.60	\$808,035.99	\$335,972.06	\$1,144,008.05
14	11/23/2021	\$561,016.19	\$543,095.43	\$0.00	\$543,095.43
15	12/14/2021	\$533,546.92	\$453,810.56	\$0.00	\$453,810.56
16	1/11/2022	\$174,630.15	\$148,833.03	\$0.00	\$148,833.03
17	2/8/222	\$824,489.09	\$718,100.23	\$0.00	\$718,100.23
18	3/15/2022	\$507,192.48	\$351,867.10	\$0.00	\$351,867.10
19	6/17/2022	\$302,429.72	\$280,455.99	\$0.00	\$280,455.99
20	7/15/2022	\$26,234.10	\$25,328.31	\$0.00	\$25,328.31
21	10/21/2024	\$237,923.96	\$0.00	\$147,799.67	\$147,799.67
22	1/28/2025	\$449,838.70	\$379,048.55	\$0.00	\$379,048.55
Totals		\$17,079,176.31	\$12,307,263.44	\$1,297,167.76	\$13,604,431.21

Table II summarizes the cost breakdown of the construction and soft & indirect costs. Tables III and IV provide category breakdowns of construction and soft & indirect costs reviewed for this certification.

Tables V and VI provide a detailed breakdown of the eligible hard and soft & indirect costs per the Service Plan categories. Construction costs were not reviewed as part of Cost Certification #21.

### **Public Improvements as Authorized by the Service Plan**

Ranger reviewed the Service Plan for the Nine Mile Metropolitan District ("Service Plan"); prepared by McGeady Becher, P.C.

Section I.A of the Service Plan states:

*It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated constituents and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements.*

Section I. B of the Service Plan States:

*There are currently no other governmental entities, including the Town, located in the immediate vicinity of the District that consider it desirable, feasible or practical to undertake the planning, design, acquisition, construction installation, relocation, redevelopment, and financing of the Public Improvements needed for the Project. Formation of the District is therefore necessary in order for the Public Improvements required for the Project to be provided in the most economic manner possible.*

Section V. A of the Service Plan states:

*The District shall have the power and authority to provide the Public Improvements and, if provided herein, related operation and maintenance services, within and without the boundaries of the District as such power and authority is described in the Special District Act, and other applicable statutes, common law and the Constitution, subject to the limitations set forth herein.*

Section V.7. states the debt issuance limit of the district is Twenty Million Dollars (\$20,000,000). Exhibit D of the Service Plan provides a description of the Public Improvements. Ranger has determined that the constructed improvements and associated soft and indirect construction costs (Public Improvements) under consideration in this report and certification for reimbursement by the District are indeed authorized by the Service Plan.

### **Scope of Certification**

The Service Plan states that the District shall have the power to construct Public Improvements in accordance with the Special District Act. Based on Ranger's experience with metropolitan districts, the Public Improvements were broken into the cost categories of Water Improvements, Sanitation Improvements, Storm Water Improvements, Streets Improvements, and Parks and Recreation Improvements. Only Capital improvements have been considered for reimbursement. For a detailed breakdown of district eligible costs, refer to Tables III - VI.

## **General Methodology**

Ranger employed a phased approach toward the preparation of this Engineer's Report and Certification of Public Costs (Engineer's Certification).

### **Phase I – Authorization to Proceed and Document Gathering**

Ranger engaged with the District to provide the Engineer's Certification in August 2020. The construction documentation was provided by the District on an ongoing basis.

### **Phase II – Site Visit and Meetings**

Ranger performed site visits to document completion of the Public Improvements. The intent of a site visit was to verify general completion of pay application quantities in accordance with the approved construction drawings and does not guarantee quality or acceptance of Public Improvements. It is assumed that the Town or another third party provided QA/QC and acceptance of the improvements. Galloway is the Engineer of Record. CTL Thompson have been contracted to provide materials testing related to compaction testing, concrete, and asphalt.

### **Phase III – Review of Documentation**

Documentation was requested at the beginning of work. Requested documentation include the following:

- Executed Contracts and Bid Tabs
- Approved Construction Drawings
- Acceptable Proof of Payment (Cancelled checks and bank statements or lien waivers)
- Invoices and/or Pay Applications
- Jurisdictional acceptances of the Public Improvements
- Approved changes or amendments to contract documents
- Copies of any agreements that will impact District funding

See Appendix A for a complete listing of documents reviewed, as deemed necessary, by Ranger.

### **Phase IV – Verification of Construction Quantities**

Construction quantity take-offs were performed from applicable construction drawings. These quantity take-offs were used in conjunction with Phase V below to certify reasonableness of construction costs, as well as to identify an overall District eligible percentage of costs related to the entire site, based on public versus private areas. Public areas included public Tracts and Right of Way. A public percentage for work within the Nine Mile Corner plat was identified as 21.0%.

For costs related to the Irrigation Realignment, only the final pay application was provided. However, unconditional lien waivers were provided for all pay applications and the totals were verified to match the final requested pay application amount.

### **Phase V – Verification of Construction Unit Costs and Indirect Costs**

Construction Unit Costs and Indirect Costs were reviewed for market reasonableness. Ranger took into consideration the type of construction and the timeframe during which the construction occurred. Ranger determined that the costs incurred were within a reasonable range.

**Phase VI – Verification of Payment for Public Costs**

Evergreen – 287 & Arapahoe, L.L.C. (“Developer”) provided lien waivers for all pay application costs reviewed and paid for relating to the public improvements. Only costs with an approved form of proof of payment have been certified in this report. Costs associated with the private construction were determined not to be eligible as they did not relate to any Public Improvements.

**Phase VII – Determination of Costs Eligible for Reimbursement**

Ranger concluded the Engineer’s Certification by determining which improvements were eligible for District reimbursement, the categorization of the costs, and what percent of the costs for those improvements were reimbursable. Public Improvements that were deemed eligible for this report were associated with water, sanitation, streets, and parks and recreation.

**Project Notes**

McGeady Becher’s costs included line items that were associated with and reimbursed via bond proceeds. These costs were included in the total amount of reviewed costs, but the costs were not certified in this report so that reimbursable costs are not duplicated.

On Cost Certification #08, \$23,114.00 were applied to Brinkman Constructors Change Order #02 instead of Change Order #01. These costs were reallocated on Cost Certification #09, and an eligible amount of \$6,953.08 was applied in this certification to properly update eligible costs to date.

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## ENGINEER'S CERTIFICATION

Collin Koranda, P.E. / Ranger Engineering, LLC (the "Independent Consulting Engineer"), states as follows:

1. The Independent Consulting Engineer is an engineer duly qualified and licensed in the State of Colorado with experience in the design, construction and certification of Public Improvements of similar type and function as those described in the above Engineer's Report.

2. The Independent Consulting Engineer has performed a site visit and reviewed applicable construction and legal documents related to the Public Improvements under consideration to state the conclusions set forth in this Engineer's Certification.

3. The Independent Consulting Engineer finds and determines that the constructed value of the Public Improvements considered in the attached Engineer's Report dated January 28, 2025, including soft and indirect, District funded, and hard costs, are valued at an estimated **\$379,048.55**. In the opinion of the Independent Consulting Engineer, the above stated estimated value for the Public Improvements is reasonable and consistent with costs of similar improvements constructed for similar purposes during the same timeframe in similar locales.

Sincerely,

**Ranger Engineering, LLC**

A handwritten signature in blue ink, appearing to read "Collin Koranda".

Collin Koranda, PE

## **APPENDIX A**

### **Documents Reviewed**

#### Construction Plans and Contracts

- Erie Nine Mile Corner – Irrigation Realignment Construction Documents. Prepared by Galloway & Company. Dated 12/10/2019.
- Nine Mile Corner Plat. Prepared by Galloway & Company. Recorded 05/04/2020.

#### Contractor Pay Applications

- Brinkman Constructors – Nine Mile Erie Corner – Pay App 21/21 Ret – 9/22/22.

#### Service Plan & Agreements

- Service Plan for Nine Mile Metropolitan District. Prepared by McGeady Becher P.C. Approved August 13, 2019.
- Facilities Funding and Acquisition Agreement between Nine Mile Metropolitan District and Evergreen – 287 & Arapahoe, L.L.C. Dated February 18, 2020.

**Nine Mile Metropolitan District**  
**Summary of Costs**  
**Table II**

Type of Costs	Total Costs Paid	Costs This Period	Total District Eligible Costs	Eligible Costs This Period	Percent District This
Direct Construction Costs	\$ 15,004,848.40	\$ 449,838.70	\$ 12,307,263.44	\$ 379,048.55	84.3%
Soft & Indirect Costs	\$ 2,074,327.91	\$ -	\$ 1,297,167.76	\$ -	#DIV/0!
<b>Totals</b>	<b>\$ 17,079,176.31</b>	<b>\$ 449,838.70</b>	<b>\$ 13,604,431.21</b>	<b>\$ 379,048.55</b>	<b>84.3%</b>

**Nine Mile Metropolitan District  
Construction Costs Summary By Category  
Table III**

Category	Total Eligible Cost by Category		Category Percentage
Water	\$	1,502,542.41	12.2%
Sanitation	\$	2,009,533.41	16.3%
Storm Water	\$	3,855,392.41	31.3%
Streets	\$	3,315,044.81	26.9%
Parks and Recreation	\$	1,624,750.41	13.2%
	\$	<b>12,307,263.44</b>	<b>100.0%</b>

Category	Eligible Cost by Category This Period		Category Percentage
Water	\$	55,364.71	14.6%
Sanitation	\$	68,040.19	18.0%
Storm Water	\$	74,055.96	19.5%
Streets	\$	44,468.50	11.7%
Parks and Recreation	\$	137,119.20	36.2%
	\$	<b>379,048.55</b>	<b>100.0%</b>

**Nine Mile Metropolitan District**  
**Soft & Indirect Costs Summary By Category**  
**Table IV**

Category	Total Eligible Soft Costs		Category Percentage
Water	\$	196,475.11	15.1%
Sanitation	\$	201,177.61	15.5%
Storm Water	\$	203,506.61	15.7%
Streets	\$	300,380.83	23.2%
Parks and Recreation	\$	395,627.59	30.5%
	\$	<b>1,297,167.76</b>	<b>100.0%</b>

Category	Eligible Soft Costs This Period		Category Percentage
Water	\$	-	#DIV/0!
Sanitation	\$	-	#DIV/0!
Storm Water	\$	-	#DIV/0!
Streets	\$	-	#DIV/0!
Parks and Recreation	\$	-	#DIV/0!
	\$	-	<b>#DIV/0!</b>



Nine Mile Metropolitan District  
Construction Costs Detail  
Table V

Contract Values					Payments Made				Eligibility					Submitted Invoices		
Work Description	Quantity	Unit	Cost	Value	Amount Invoiced	Percent Invoiced	Retainage	Amount Less Retainage	District Type	Percent Eligible	Total Eligible	Eligible This Period	Costs This Period			
Brinkman Constructors - Nine Mile Erie C	Quantity	Unit	Cost	Value	Amount Invoiced	Percent Invoiced	Retainage	Amount Less Retainage	District Type	Percent Eligible	Total Eligible	Eligible This Period	Costs This Period	Pay App Date	21 9/22/2022	21 RET 9/22/2022
Gen & Spec Conditions	1	LS	\$ 411,506.00	\$ 411,506.00	\$ 411,506.00	100%	\$ -	\$ 411,506.00	Multiple	81%	\$ 332,933.64	\$ 16,646.92	\$ 20,575.60	\$	-	\$ 20,575.60
2 Year warranty Bond	1	LS	\$ 108,700.00	\$ 108,700.00	\$ 108,700.00	100%	\$ -	\$ 108,700.00	Multiple	81%	\$ 87,944.98	\$ 87,944.98	\$ 108,700.00	\$	108,700.00	\$ 10,870.00
Site Demolition	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100%	\$ -	\$ 30,000.00	Multiple	81%	\$ 24,271.84	\$ -	\$ -	\$	-	\$ -
Survey	1	LS	\$ 100,225.00	\$ 100,225.00	\$ 100,225.00	100%	\$ -	\$ 100,225.00	Multiple	81%	\$ 81,088.18	\$ 12,241.83	\$ 15,130.90	\$	5,676.00	\$ 10,022.50
SWPPP, Traffic Control, misc.	1	LS	\$ 211,983.00	\$ 211,983.00	\$ 211,983.00	100%	\$ -	\$ 211,983.00	Multiple	81%	\$ 171,507.27	\$ -	\$ -	\$	-	\$ -
Earthwork - LVI Only	1	LS	\$ 3,019,325.00	\$ 3,019,325.00	\$ 3,019,325.00	100%	\$ -	\$ 3,019,325.00	Multiple	54%	\$ 1,642,385.00	\$ -	\$ -	\$	-	\$ -
Asphalt Paving	1	LS	\$ 862,398.00	\$ 862,398.00	\$ 862,398.00	100%	\$ 52,186.60	\$ 810,211.40	Streets	100%	\$ 810,211.40	\$ 34,053.20	\$ 34,053.20	\$	-	\$ 34,053.20
Roadway Improvements (Traffic Signals)	1	LS	\$ 1,080,667.00	\$ 1,080,667.00	\$ 1,080,667.00	100%	\$ -	\$ 1,080,667.00	Streets	100%	\$ 1,080,667.00	\$ -	\$ -	\$	-	\$ -
Concrete Paving & Curbs	1	LS	\$ 464,445.00	\$ 464,445.00	\$ 464,445.00	100%	\$ -	\$ 464,445.00	Streets	100%	\$ 464,445.00	\$ -	\$ -	\$	-	\$ -
Sanitary Sewer	1	LS	\$ 1,212,502.00	\$ 1,212,502.00	\$ 1,212,502.00	100%	\$ -	\$ 1,212,502.00	Sanitation	98%	\$ 1,192,522.00	\$ 29,813.69	\$ 30,313.20	\$	-	\$ 30,313.20
Water Line	1	LS	\$ 1,151,332.00	\$ 1,151,332.00	\$ 1,151,332.00	100%	\$ -	\$ 1,151,332.00	Water	60%	\$ 685,531.00	\$ 17,138.22	\$ 28,783.20	\$	-	\$ 28,783.20
Storm Sewer	1	LS	\$ 1,557,132.00	\$ 1,557,132.00	\$ 1,557,132.00	100%	\$ -	\$ 1,557,132.00	Storm Water	92%	\$ 1,433,182.00	\$ 35,829.46	\$ 38,928.20	\$	-	\$ 38,928.20
Storm Pond/Outfall Structure	1	LS	\$ 84,480.00	\$ 84,480.00	\$ 84,480.00	100%	\$ -	\$ 84,480.00	Storm Water	100%	\$ 84,480.00	\$ -	\$ -	\$	-	\$ -
Site Improvements	1	LS	\$ 164,746.00	\$ 164,746.00	\$ 164,746.00	100%	\$ -	\$ 164,746.00	Multiple	100%	\$ 164,746.00	\$ -	\$ -	\$	-	\$ -
Irrigation & Landscaping	1	LS	\$ 807,739.00	\$ 807,739.00	\$ 807,739.00	100%	\$ -	\$ 807,739.00	Parks and Recreation	100%	\$ 807,739.00	\$ 98,892.70	\$ 98,892.70	\$	20,132.00	\$ 80,773.90
Pre Con	1	LS	\$ 30,000.00	\$ 30,000.00	\$ 30,000.00	100%	\$ -	\$ 30,000.00	Multiple	81%	\$ 24,271.84	\$ -	\$ -	\$	-	\$ -
Gen Liab Insur	1	LS	\$ 97,597.00	\$ 97,597.00	\$ 97,597.00	100%	\$ -	\$ 97,597.00	Multiple	81%	\$ 78,961.97	\$ 3,947.98	\$ 4,879.70	\$	-	\$ 4,879.70
OHP	1	LS	\$ 537,349.00	\$ 537,349.00	\$ 537,349.00	100%	\$ -	\$ 537,349.00	Multiple	81%	\$ 434,748.36	\$ 26,037.38	\$ 32,182.20	\$	5,534.78	\$ 27,200.90
CO#01 - Lowes Pad/Trees/Tax/Railing/Over Ex	1	LS	\$ 289,573.00	\$ 289,573.00	\$ 289,573.00	100%	\$ -	\$ 289,573.00	Multiple	33%	\$ 96,787.16	\$ 4,839.24	\$ 14,478.30	\$	-	\$ 14,478.30
CO#02 - Lot 10 Underdrain / Dry Utility Sleeve	1	LS	\$ 88,999.00	\$ 88,999.00	\$ 88,999.00	100%	\$ -	\$ 88,999.00	Non-District	0%	\$ -	\$ -	\$ 4,449.90	\$	-	\$ 4,449.90
CO#03	1	LS	\$ -	\$ -	\$ -	#DIV/0!	\$ -	\$ -	Non-District	0%	\$ -	\$ -	\$ -	\$	-	\$ -
CO#04 - CDOT Vault, Traffic Signals, Utility Ext	1	LS	\$ 180,337.00	\$ 180,337.00	\$ 180,337.00	100%	\$ -	\$ 180,337.00	Multiple	60%	\$ 109,000.00	\$ 5,449.91	\$ 9,016.70	\$	-	\$ 9,016.70
CO#05 - Pipeline, Mill, Traffic Control	1	LS	\$ 580,886.00	\$ 580,886.00	\$ 580,886.00	100%	\$ -	\$ 580,886.00	Multiple	95%	\$ 552,915.79	\$ 15,947.85	\$ 16,754.60	\$	-	\$ 16,754.60
CO#06 - 111th Work, Private earthwork	1	LS	\$ 321,685.00	\$ 321,685.00	\$ 321,685.00	100%	\$ -	\$ 321,685.00	Multiple	88%	\$ 283,495.00	\$ 18,076.40	\$ 20,511.50	\$	-	\$ 20,511.50
CO#07 - 111th T&M/Traffic Control	1	LS	\$ 189,468.00	\$ 189,468.00	\$ 189,468.00	100%	\$ -	\$ 189,468.00	Streets	100%	\$ 189,468.00	\$ 18,946.80	\$ 18,946.80	\$	-	\$ 18,946.80
CO#08	1	LS	\$ (96,126.00)	\$ (96,126.00)	\$ (96,126.00)	100%	\$ -	\$ (96,126.00)	Streets	100%	\$ (96,126.00)	\$ (96,126.00)	\$ (96,126.00)	\$	(96,126.00)	\$ (9,612.60)
CO#09	1	LS	\$ 49,368.00	\$ 49,368.00	\$ 49,368.00	100%	\$ -	\$ 49,368.00	Streets	100%	\$ 49,368.00	\$ 49,368.00	\$ 49,368.00	\$	49,368.00	\$ 4,936.80
			\$ 13,536,316.00	\$ 13,536,316.00	\$ 13,536,316.00		\$ 52,186.60	\$ 13,484,129.40			\$ 10,786,544.44	\$ 379,048.55	\$ 449,838.70	Subtotal	\$ 93,284.78	\$ 365,882.40
														Less Ret POP	\$ 83,956.30	\$ 365,882.40
														Date	FCLW 9/20/2022	FCLW 9/20/2022
														Amount	\$502,025.31	\$502,025.31
Total Construction Costs			\$ 15,057,035.00	\$ 15,057,035.00	\$ 15,057,035.00	100%	\$ 52,186.60	\$ 15,004,848.40			\$ 12,307,263.44	\$ 379,048.55	\$ 449,838.70			



## **EXHIBIT A**

### **Nine Mile Site Overlay**

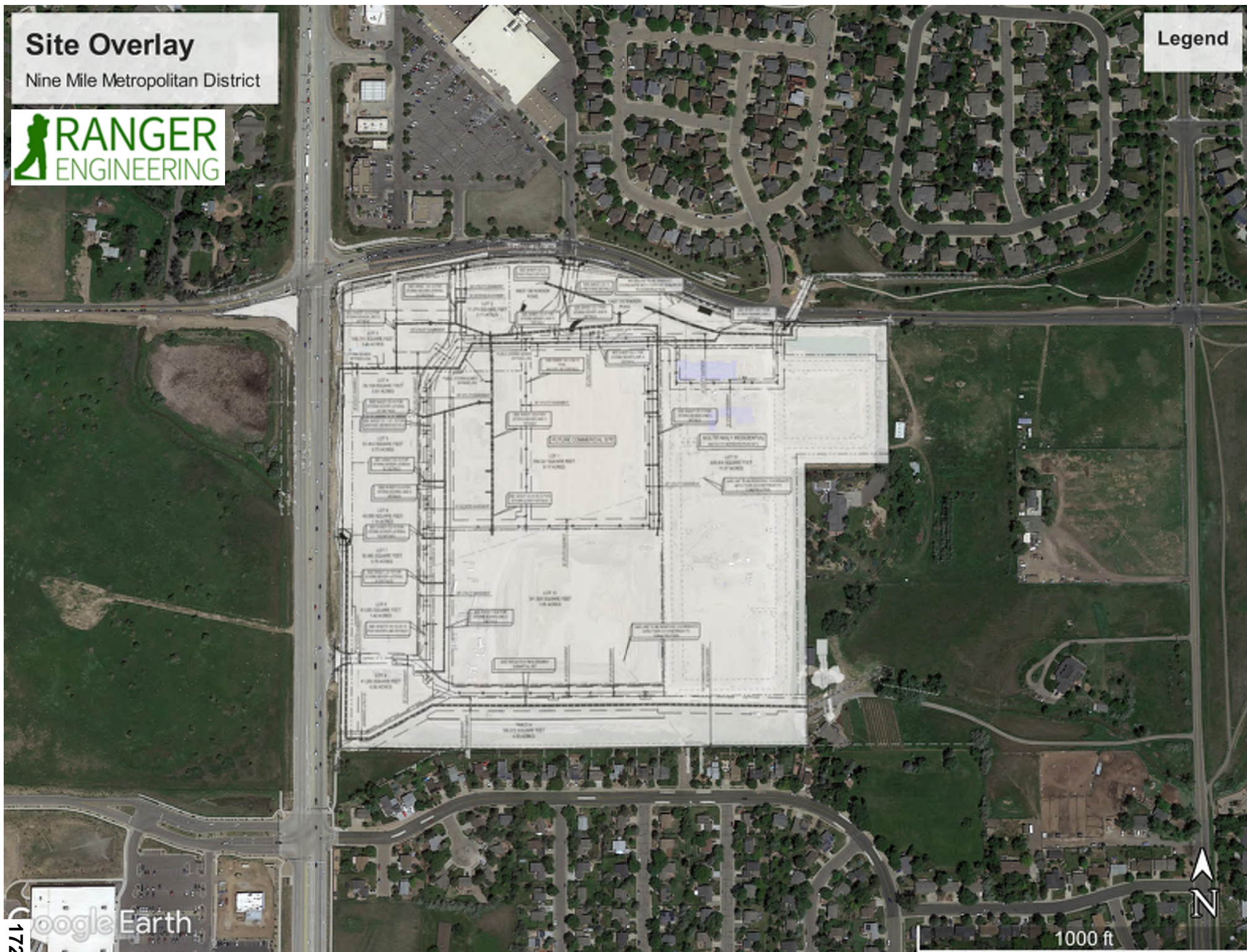


# Site Overlay

Nine Mile Metropolitan District



Legend





THE TOWN OF ERIE  
AND  
THE TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
collectively, Erie

AND

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
the Developer

DISPOSITION AND DEVELOPMENT AGREEMENT

Dated as of March 22<sup>nd</sup>, 2016

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## DISPOSITION AND DEVELOPMENT AGREEMENT

THIS DISPOSITION AND DEVELOPMENT AGREEMENT (this "Agreement") is made and entered into as of March 22<sup>nd</sup>, 2016, by and between the TOWN OF ERIE, a Colorado statutory town (the "Town"), Erie of Erie Urban Renewal Authority, a Colorado urban renewal authority ("TOEURA", and together with the Town, "Erie"), and EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company (the "Developer").

### RECITALS

WHEREAS, Erie owns the Property and desires that the Property be developed in order to remediate blight as consistent with and in furtherance of the purposes of the Town and the Urban Renewal Plan;

WHEREAS, Erie desires that the Property be divided and developed in two distinct components of retail and residential (each, a "Component");

WHEREAS, Erie and the Developer agree that Erie shall not have any financial obligations related to the development of the Property; and

WHEREAS, to the extent portions of the Property are owned by TOEURA, such acquisition was made by TOEURA in furtherance of the goals of the Urban Renewal Law, C.R.S. §31-25-101 et seq., and TOEURA has found that disposition of the portion of the Property owned by it as set forth in this Agreement is in furtherance of that certain Highway 287 Urban Renewal Plan adopted by the Town on September 22, 2015, by means of Resolution 15-09, and will remedy and prevent blighted conditions within the Property; and

WHEREAS, Erie and the Developer wish to proceed with the development of the Property in accordance with the aforementioned goals and the terms hereof.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

### SECTION 1. DEFINITIONS AND PURPOSE

#### 1.1 Definitions.

"Abandonment" means, during the Term, no visible signs of construction have occurred on the Property or no building permits have been issued or extended for the Property for a period of one (1) year or longer, subject to delays of Force Majeure, dating from the last documented visible sign of construction or building permit.

"Affiliate" means any person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the Developer. For purposes of this definition, the term "control" means the power to direct or cause the direction of management and policies, through the ownership of voting rights, by contract or otherwise.

“Anchor Tenant” means a retailer in excess of 50,000 square feet in building area.

“Approvals Period” means the approvals period described in Section 4.1.

“Approvals Period Contingencies” means the contingencies described in Section 4.2.

“CDOT” means the Colorado Department of Transportation.

“CDOT Approvals” means the approvals described in Section 5.2(a).

“Certificate of Occupancy” means the certificate issued by the Town, certifying a building’s compliance with applicable laws and indicating condition suitable for occupancy.

“Closing” or “Closings” means a closing or closings described in Section 5.2.

“Commencement of Construction” means the visible commencement by the Developer of actual physical operations on the Property for the erection of the Public Improvements or Private Improvements on the retail Component, including, without limitation, clearing, demolition, grading, obtaining a foundation permit for the Public Improvements or Private Improvements or commencement of excavation of the Property for the retail Component for footings, foundations or caissons.

“Commitment” means the title commitment described in Section 3.2.

“Completion of Construction” means the issuance by Erie of a Certificate of Occupancy for all of the Public Improvements that the Developer is required to construct hereunder.

“Contingencies” means (i) the Approvals Period Contingencies; and (ii) the Inspection Period Contingencies.

“Deed” means the special warranty deed in the form attached as Exhibit C.

“Default” and “Event of Default” mean those events specified in Sections 15.1 and 15.2.

“Developer” means Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company, and its successors and assigns, that conform with the requirements of SECTION 12.

“Developer’s Broker” means David Hicks & Lampert.

“Developer’s Financing” means the financing described in Section 7.1.

“Development Plan” means the Developer’s concept for the development of the Property, which shall be allocated between retail/commercial uses and residential uses.

“Ditch Reconstruction Agreement” means the ditch reconstruction agreement described in Section 3.5(e).

“Effective Date” means the date first set forth in this Agreement.

“Environmental Laws” mean any international, federal, state or local statute, law, regulation, order, consent, decree, judgment, permit, license, code, covenant, deed restriction, common law, treaty, convention, ordinance or other requirement relating to public health, safety or the environment, including, without limitation, those relating to releases, discharges or emissions to air, water, land or groundwater, to the withdrawal or use of groundwater, to the use and handling of polychlorinated biphenyls or asbestos, to the disposal, treatment, storage or management of hazardous or solid waste, or Hazardous Substances or crude oil, or any fraction thereof, or to exposure to toxic or hazardous materials, to the handling, transportation, discharge or release of gaseous or liquid Hazardous Substances and any regulation, order, notice or demand issued pursuant to such law, statute or ordinance, if any, applicable to the Property, including without limitation the following: the Comprehensive Environmental Response, Compensation and Liability Act, the Superfund Amendments and Reauthorization Act, the Solid Waste Disposal Act, the Resource Conservation and Recovery Act, the Hazardous and Solid Waste Act, the Hazardous Substances Transportation Act, the Federal Water Pollution Control Act, the Clean Water Act, the Safe Drinking Water Act, the Clean Air Act, the Toxic Substances Control Act, the Occupational Safety and Health Act, the Emergency Planning and Community Right-to-Know Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Rivers and Harbors Appropriation Act, the Endangered Species Act, the National Environmental Policy Act, the Oil Pollution Act, and any state or local law, and any state statute or local ordinance implementing the same, and any further amendments thereto and all rules and regulations promulgated thereunder.

“Force Majeure” delays, as used herein, means delays resulting from causes beyond the reasonable control of a Party, including, without limitation, any delay caused by any action, inaction, order, ruling, moratorium, regulation, statute, condition or other decision of any private party or governmental agency having jurisdiction over any portion of the Property, over the construction of the Improvements or over any uses thereof, or by delays caused by any action, inaction, condition or other decision by any utility company responsible for utilities, or by delays in inspections or in issuing approvals by private parties or permits by governmental agencies, or by fire, flood, inclement weather, strikes, lockouts or other labor or industrial disturbance (whether or not on the part of agents or employees of either party hereto engaged in the construction of the Improvements), civil disturbance, order of any government, court or regulatory body claiming jurisdiction or otherwise, act of public enemy, war, riot, sabotage, blockage, embargo, failure or inability to secure materials, earthquake, or other natural disaster, delays caused by any dispute resolution process, or any cause whatsoever beyond the reasonable control (excluding financial inability) of the party whose performance is required, or any of its contractors or other representatives, whether or not similar to any of the causes hereinabove stated.

“Government Approvals” means the government approvals described in Section 4.1.

“Hard Costs” mean costs and expenses actually paid by the Developer for labor, materials and equipment used for site preparation, demolition, excavating, grading, landscaping, constructing, providing tenant finish, reports, testing, inspections or otherwise constructing the Improvements; provided that any costs or expenses contributed, incurred or paid by Erie or included in the computation of Soft Costs shall not be included in Hard Costs.

“Hazardous Substance” means any hazardous or toxic material, substance or waste, pollutant or contaminant which is defined, prohibited, limited or regulated under any statute, law, ordinance, rule or regulation of any local, state, regional or Federal authority having jurisdiction over the Property, or its use, including but not limited to any material, substance or waste that is (a) defined, listed or otherwise classified as a hazardous substance, hazardous material, hazardous waste or other words of similar meaning under any Environmental Laws; (b) petroleum, petroleum hydrocarbons, and all petroleum products; (c) polychlorinated biphenyls; (d) lead; (e) urea formaldehyde; (f) asbestos and asbestos containing materials; (g) flammables and explosives; (h) infectious materials; (i) atmospheric radon at levels over 4 picocuries per cubic liter, (j) radioactive materials; or (k) defined, prohibited, limited or regulated as a hazardous substance or hazardous waste under any rules or regulations promulgated under any Environmental Laws.

“Holder” means the beneficiary under a Mortgage.

“Improvements” mean the Private Improvements or the Public Improvements.

“Inspection Period” means the inspection period described in Section 3.4.

“Inspection Period Contingencies” means the contingencies described in Section 3.5.

“Mortgage” means and includes a deed of trust, leasehold deed of trust or other instrument creating an encumbrance or lien upon the Property or any portion thereof as part of the Developer’s Financing.

“Party” or “Parties” means a party or the parties to this Agreement.

“Permitted Exceptions” mean those exceptions to the title to the Property that are permitted pursuant to Section 5.4.

“Private Improvements” mean those private improvements that are necessary for the issuance of a Certificate of Occupancy for the Anchor Tenant that the Developer is required to construct or arrange for the construction of pursuant to this Agreement.

“Property” means the real property described in Exhibit A and which shall be allocated into the Retail Property and the Residential Property.

“Public Improvement” means the construction of all infrastructure and related extensions and improvements for the Property, including, without limitation, sanitary sewer and water, roads, electric, cable, phone and internet, as required pursuant to the Development Plan, at the Developer’s sole expense and responsibility.

“Residential Property” means that certain portion of the Property allocated for residential use in accordance with Section 3.5.

“Residential Property Purchase Price” means that purchase price described in Section 5.1(b).



“Retail Property” means that certain portion of the Property allocated for retail and commercial use in accordance with Section 3.5.

“Retail Property Purchase Price” means that purchase price described in Section 5.1(a).

“Schedule of Performance” means Exhibit B, the schedule that governs the times for performance by the Parties.

“Soft Costs” mean reasonable fees and expenses of architects, surveyors, engineers, accountants, attorneys, construction managers and other professional consultants; real property taxes and assessments; direct salary and overhead expenses; development fees, reasonable administration and overhead charges that do not exceed what is normally charged for such services in the Denver Metropolitan Area; permit charges; costs of operating the Improvements prior to issuance of a Certificate of Occupancy; marketing costs, commissions (including both those paid to employees and those paid to third parties), allowances to tenants, and other costs of initial project lease-up; all interest, loan fees and other costs of obtaining and maintaining Developer’s Financing; and other commercially recognized costs that are incurred by the Developer in connection with the acquisition, ownership, development, operation and marketing of the Property and the Improvements; provided that any costs or expenses contributed, incurred or paid by Erie or included in the computation of Hard Costs shall not be included in Soft Costs.

“Standstill Agreement” means the Standstill Agreement described in Section 13.1.

“Surface Use Agreement” means the surface use agreement described in Section 3.5(f).

“Survey” means the survey described in Section 3.3.

“Tax Increment Proposal” means the proposal described in Section 5.2(c).

“Title Company” means First American Title Insurance Company unless otherwise agreed in writing by the Parties.

“Title Policy” means the owner’s title policy described in Section 3.2.

“TOEURA” means the Town of Erie Urban Renewal Authority.

“Town” means the Town of Erie, Colorado.

“Town Approvals” means the approvals described in Section 5.2(a).

“Town Board” means the Board of Trustees of the Town of Erie, Colorado.

“Urban Renewal Plan” means the Highway 287 Urban Renewal Plan dated September 10, 2015, adopted by TOEURA.

“Zoning Ordinance” means the Town zoning ordinance described in Section 6.1.

1.2 Purpose. The purpose of this Agreement is to remediate blight as consistent with and in furtherance of the purposes of the Town and the Urban Renewal Plan.

## SECTION 2. DESCRIPTION OF DEVELOPMENT AND IMPROVEMENTS

The Developer agrees to acquire and develop the Property described in Exhibit A in accordance with this Agreement and the Development Plan by constructing the Improvements as described herein. All construction required of the Parties by this Agreement shall be undertaken and completed in accordance with the Schedule of Performance (Exhibit B), the Development Plan and all applicable laws and regulations, including Town codes and ordinances, and shall be performed in accordance with and subject to the terms and conditions of this Agreement.

## SECTION 3. INSPECTION PERIOD

3.1 Due Diligence Materials. Within thirty (30) days after the Effective Date, Erie shall provide to the Developer copies of any plans, specifications, drawings, surveys, reports, appraisals, environmental reports and assessments, including, without limitation, Phase I and Phase II Environmental Site Assessments, Asbestos and Lead Based Paint Surveys, if any, or other information for the Property in Erie's possession ("Property Information").

3.2 Title. After the Effective Date, the Developer shall obtain a title insurance commitment, together with legible copies of all instruments referred to in such commitment as conditions or exceptions (collectively, the "Commitment"), for 2006 ALTA form issued by Title Company for an owner's title insurance policy on the Title Company's standard form (the "Title Policy") for the Property. The costs of the Title Policy shall be determined in accordance with Sections 5.4.

3.3 Survey. Developer, at Developer's expense, shall obtain an ALTA boundary survey prepared by a certified Colorado surveyor showing all Property lines, improvements, if any, encroachments, setback lines, easements, adjoining roadways, proposed roads and/or proposed existing road extensions, and utility installments located therein and all other matters which are revealed by the Commitment (the "Survey").

3.4 Inspection Period. Developer shall have one hundred eighty (180) days from the Effective Date (the "Inspection Period") to conduct due diligence and approve, at Developer's sole and absolute discretion, the Property, the Property Information, the Commitment, the Survey and the environmental condition of the Property. During the Inspection Period, at its expense, the Developer may make any tests, surveys, inspections or obtain any audits, tests or studies of soils and subsurface conditions, including environmental tests on or about the Property to determine its suitability for construction of the Improvements and to determine if Hazardous Substances exist or have been stored on the Property. If this Agreement is terminated pursuant to an express right to terminate hereunder, the Developer shall deliver copies (without representation or warranty of any kind) of all of such non-proprietary audits, tests, studies or reports to Erie. Erie shall permit the Developer and its representatives access to the Property at reasonable times for the purpose of conducting such tests, inspections and surveys. No charge shall be made for the access provided in this Section. A party entering upon the Property pursuant to this section shall reasonably restore the Property to the same condition, with the exception of any monitoring wells constructed during the Inspection Period, prior to any such entry as is commercially reasonable possible, ordinary wear and tear excepted. If the results of any of the matters referred to in this Section appear unsatisfactory to the Developer for any reason, then the Developer, at

Developer's sole and absolute discretion, shall have the right to terminate this Agreement by giving written notice to that effect to Erie on or before the expiration of the Inspection Period.

3.5 Inspection Period Contingencies. In addition to the conditions set forth in Section 3.4, prior to the expiration of the Inspection Period, or earlier if specifically set forth below, each Party, as applicable, shall satisfy the following contingencies (collectively, the "Inspection Period Contingencies"):

(a) Master Plan. The Parties shall agree on a master plan for and the respective sizes and configurations of the Retail Property and the Residential Property (the "Master Plan"). The Parties covenant and agree to use reasonable, good faith efforts to agree upon the Master Plan, the Retail Property and the Residential Property as early as possible during the Inspection Period in order to assist the Developer in the timely satisfaction of the Contingencies, while acknowledging, however, that the responsibility for proposing the desired configuration lies with the Developer, and that Erie cannot approve, deny or comment until such proposal has been delivered to it by Developer.

(b) Anchor Tenant. The Developer shall secure a commitment for an Anchor Tenant for the Retail Property as evidenced by an executed letter of intent with the Anchor Tenant and shall provide such executed letter of intent to the Town Administrator and the Town's outside legal counsel prior to the expiration of the Inspection Period as confidential and proprietary work product under C.R.S § 24-72-201. If the Town Administrator and the Town's outside legal counsel have any objections to the Anchor Tenant, the Town Administrator shall notify the Developer of such objections in writing within thirty (30) days after receipt thereof, and the Parties shall have until the expiration of said thirty (30) days period to resolve such objections. The Parties covenant and agree to use reasonable, good faith efforts to agree upon an Anchor Tenant as early as possible during the Inspection Period in order to assist the Developer in the timely satisfaction of the Contingencies. For the avoidance of doubt, no agreement between the Developer and a proposed Anchor Tenant shall be binding without the written approval of the Town Administrator. Notwithstanding the foregoing, the Town shall not have any approval rights over any non-Anchor Tenants; provided, however, that the Developer shall take into consideration any input from the Town with respect to leasing or sales to any non-Anchor Tenant.

(c) Financing. The Developer shall provide to the Town Administrator and the Town's outside legal counsel evidence of Developer Financing as further set forth in SECTION 7 as confidential and proprietary work product under C.R.S § 24-72-201. If the Town Administrator and the Town's outside legal counsel have any objections to the Developer's Financing, the Town Administrator shall notify the Developer of such objections in writing within thirty (30) days after receipt thereof, and the Parties shall have until expiration of the Inspection Period to resolve such objections. The Parties covenant and agree to use reasonable, good faith efforts to agree upon Developer's Financing as early as possible during the Inspection Period in order to assist the Developer in the timely satisfaction of the Contingencies.

(d) Tree Removal. On or before April 15, 2016, Erie, at its sole cost and expense, shall remove all trees on the Property protected under the Migratory Bird Treaty Act.

(e) Ditch Reconstruction Agreement. Erie, in coordination with the Developer, shall negotiate in good faith and execute a Ditch Reconstruction Agreement with the South Boulder Canyon Ditch Company for the relocation and piping of the ditch facilities within the Property to facilitate the development of the Property. Erie will deliver copies of the Ditch Reconstruction Agreement to the Developer and the Developer, within ten (10) days after receipt of any such Ditch Reconstruction Agreement shall either approve the Ditch Reconstruction Agreement or disapprove the same and advise Erie in writing of the specific changes required by the Developer to the Ditch Reconstruction Agreement ("Disapproval Notice"). If the Developer fails to timely deliver a Disapproval Notice within such ten (10) day period, then the Developer shall be deemed to have approved the Ditch Reconstruction Agreement.

(f) Surface Use Agreement. Erie, at its sole cost and expense, in coordination with the Developer, shall execute a Surface Use Agreement with Kerr-McGee Oil & Gas Onshore LP, to eliminate any surface use of the Property for mineral extraction. Erie will deliver copies of the Surface Use Agreement to the Developer and the Developer, within ten (10) days after receipt of any such Surface Use Agreement shall either approve the Surface Use Agreement or disapprove the same and advise Erie in writing of the specific changes required by the Developer to the Surface Use Agreement. If the Developer fails to timely deliver a Disapproval Notice within such ten (10) day period, then the Developer shall be deemed to have approved the Surface Use Agreement.

(g) Retail Marketing. The Developer, as assisted by Developer's Broker, covenants and agrees to use good faith efforts to market the Property to attract quality retail and commercial tenants for the Retail Property, which marketing shall include, Developer's standard marketing efforts and soliciting the Retail Property at the International Council of Shopping Centers' Rocky Mountain Idea Exchange and RECon conventions.

Prior to expiration of the Inspection Period, the Developer shall deliver written notice to Erie indicating that each of the Inspection Period Contingencies has been waived or satisfied. In the event that the Developer notifies Erie that it is unable to proceed with this transaction due to a valid failure of any of the Inspection Period Contingencies, this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement). In the event Developer fails to provide a notice as required herein in this Section, Erie shall provide Developer with a written reminder notice and, if Developer fails to provide a notice as required herein within five (5) days, then this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement).

#### SECTION 4. APPROVALS PERIOD

4.1 Approvals Period. The Developer shall have two hundred seventy (270) days from the expiration of the Inspection Period (the "Approvals Period") to obtain all necessary approvals from Erie and CDOT, except as specifically set forth in Section 5.2, with conditions reasonably acceptable to the Developer, necessary to permit the use of the Property by Developer's tenants ("Government Approvals"). In the event that the Government Approvals

have not been obtained during such 270-day period, the Approvals Period shall automatically extend for an additional sixty (60) days.

4.2 Approvals Period Contingencies. In addition to the conditions set forth in Section 4.1, prior to the expiration of the Approvals Period, or sooner if specifically set forth below, each Party, as applicable, shall satisfy the following contingencies (collectively, the “Approval Period Contingencies”):

(a) Anchor Tenant. Subject to the Town’s approval of an Anchor Tenant pursuant to Section 3.5(b)), the Developer shall secure a binding commitment with the Anchor Tenant, which such binding commitment shall include a commercially reasonable construction schedule indicating when the Anchor Tenant will open for business, and shall provide reasonable evidence thereof to the Town Administrator and the Town’s outside legal counsel as confidential and proprietary work product under C.R.S § 24-72-201.

(b) Entitlements. The Developer shall create and process all site plans, subdivision plats and construction/building permits with the Town; provided, that the Town, without waiving any of its legislative, regulatory and decision-making authority agrees and covenants to reasonably cooperate in good faith with the Developer in such a manner as to not circumvent the terms of this Agreement.

(c) Retail Marketing. The Developer, as assisted by Developer’s Broker, covenants and agrees to use good faith efforts to market the Property to attract quality retail and commercial tenants for the Retail Property, which marketing shall include, Developer’s standard marketing efforts and soliciting the Retail Property at the International Council of Shopping Centers’ Rocky Mountain Idea Exchange and RECon conventions.

Prior to expiration of the Approvals Period, the Developer shall deliver written notice to Erie indicating that each of the Approvals Period Contingencies has been waived or satisfied. In the event that Developer notifies Erie that it is unable to proceed with this transaction due to a valid failure of any of the Approvals Period Contingencies, this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement). In the event Developer fails to provide a notice as required herein in this Section, Erie shall provide Developer with a written reminder notice and, if Developer fails to provide a notice as required herein within five (5) days, then this Agreement shall terminate, and the Parties hereto shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement).

## SECTION 5. CLOSING

5.1 Purchase Price. Upon completion of the Survey, the purchase price for the Property shall be as follows:

(a) Retail Property Purchase Price. The Retail Property Purchase Price shall be \$3.00 per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, of the Retail Property, as determined by the Parties in accordance with Section 3.5(a) and shown on the Survey.

(b) Residential Property Purchase Price. The Residential Property Purchase Price shall be \$2.00 per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, of the Residential Property, as determined by the Parties in accordance with Section 3.5(a) and shown on the Survey.

The current estimated total purchase price for the Property is approximately \$5,000,000.00; provided however, that the final purchase price will be subject to the adjustments set forth in this Section 5.1.

5.2 Closing Conditions. The Parties' obligation to close under this Agreement shall be subject to and conditioned upon the fulfillment of each and all of the following conditions precedent:

(a) Town Approvals. Within thirty (30) days of agreeing upon the Master Plan, the Developer shall submit to the Town an application to amend the Town Comprehensive Plan and the zoning for the Property to allow for the development of the Property in accordance with the Development Plan (the "Town Approvals"). The Town, pursuant to its legislative and regulatory authority, and its normal and customary practice and as required by applicable law, covenants to process in good faith and shall approve or deny the proposed amendments prior to Closing. In the event the Town denies or fails to approve the Town Approvals prior to Closing, the Developer may terminate this Agreement in accordance with SECTION 14.

(b) CDOT Approvals. As soon as reasonably practicable after the Effective Date, the Town, in coordination with the Developer, shall submit to CDOT, and diligently pursue thereafter, an application for an Access Control permit, providing either (i) a full turning movement traffic signal, or (ii) a three-quarters access, off State Highway 287 for the benefit of the Property ("CDOT Approvals"). In the event CDOT denies or fails to approve the CDOT Approvals, or if Developer determines in good faith that the Town will be unable to obtain the CDOT Approvals, then at any time prior to Closing, the Developer may terminate this Agreement in accordance with SECTION 14.

(c) TOEURA Approvals. Within one hundred eighty (180) days of the Effective Date, the Developer shall submit to TOEURA a proposal for the reimbursement of actual reimbursable project costs from tax increment financing and from a percent of incremental sales taxes as allowed by TOEURA that are generated by the development of the Property (the "Tax Increment Proposal"). The Tax Increment Proposal shall include any required feasibility studies, forecasts and projections, which shall be provided by and at the sole expense of the Developer and must be acceptable to Erie in its reasonable discretion, and shall specifically include an analysis of the likelihood and timing of any development activity anticipated to support the generation of the tax increment financing. TOEURA shall consider the Tax Increment Proposal, and the Parties shall have until Closing to agree upon, and for the TOEURA Board to approve, an agreement memorializing the terms of the Tax Increment Proposal. If the Parties are unable to agree upon the form and substance of the Tax Increment Proposal on or before Closing, then the Developer may terminate this Agreement in accordance with SECTION 14. The Parties covenant and agree to use reasonable, good faith efforts to agree upon the final form of the Tax Increment Proposal during the Inspection and Approvals Periods.

### 5.3 Conveyance; Closing.

(a) Retail Property. Within thirty (30) days of notice from the Developer or the later of (i) each Party completing all Inspection Period Contingencies and all Approvals Period Contingencies applicable to the Retail Property, and (ii) expiration of the Approvals Period, the Retail Property or portion thereof shall be conveyed to the Developer by the Deed in consideration for the Retail Property Purchase Price, or allocable portion thereof in furtherance of Section 5.3(c) below.

(b) Residential Property. Within thirty (30) days of notice from the Developer or the later of (i) each Party completing all Inspection Period Contingencies and all Approvals Period Contingencies applicable to the Residential Property, and (ii) expiration of the Approvals Period, the Residential Property shall be conveyed to the Developer by the Deed in consideration for the Residential Property Purchase Price.

(c) Separate Closings; Partial Closings. Based upon the timing of the satisfaction of the Contingencies and/or the timing of the Development Plan, the Retail Property, or portions thereof, and the Residential Property may be conveyed to the Developer simultaneously or separately, it being the intent of the Parties, for instance, to allow for the closing of the portion of the Retail Property for the Anchor Tenant separate from outparcels or pads of the Retail Property. At the time of the closing of the conveyance of each of the Retail Property, or portions thereof, and the Residential Property (each, a "Closing" and collectively the "Closings"), and subject to the terms, covenants and conditions of this Agreement, Erie shall convey to the Developer title by a Deed to each of the Retail Property, or portions thereof, and the Residential Property. The Closings shall take place at the office of the Title Company, unless the Parties agree otherwise in writing. If and to the extent Developer desires to phase the Closing of the Retail Property as herein provided, Developer shall provide notice to the Town of the applicable parcel of the Retail Property subject to an applicable Closing. Notwithstanding anything contained in this Agreement to the contrary, in order to accommodate the separate or partial closings as contemplated above and, if and to the extent necessary to satisfy Developer's obligations set forth in Section 9 and/or the construction scheduling necessary for the Anchor Tenant, Erie hereby agrees to grant to Developer reasonable license agreements to enter the Retail Property, or portions thereof, and the Residential Property, for purposes of site work construction and other Improvements. The parties hereby agree to negotiate such license agreements in good faith.

5.4 Condition of Title. Any Title Policy issued by the Title Company insuring title to the Property shall not include the standard preprinted exceptions and Erie agrees to provide the Title Company, at its cost, with all documents requested by Title Company necessary to remove the standard preprinted exceptions; provided, however, Erie shall not be responsible for any additional costs associated with the deletion of such exceptions or an updated survey. For the avoidance of doubt, Erie shall pay the costs of ALTA standard coverage title insurance, and the Developer shall pay the costs of extended coverage and endorsements, if any. Title to the Property shall be free and clear of all liens, defects and encumbrances, except the following Permitted Exceptions: (a) this Agreement, including those terms included in the Deed or any other document of record; (b) those matters, including easements and rights of way that are part of the Development Plan, or are approved, accepted, or waived by the Developer; (c) easements

for utilities that will continue in use under, and do not unreasonably interfere with, the Development Plan; (d) taxes and assessments not yet due and payable; and (e) the Ditch Reconstruction Agreement and the Surface Use Agreement.

5.5 Title Insurance Policies. Promptly after recordation of the Deed(s), and upon satisfaction of each requirement set forth in the Commitment, the Title Company shall issue the Title Policy in accordance with the Commitment described in Section 3.2 and the provisions of Section 5.4. In no event shall Erie be responsible for a failure by the Title Company to issue the Title Policy, unless such failure is the direct result of a failure by Erie to convey title in accordance with the terms hereof and/or satisfy the terms and conditions of this Agreement. The Developer shall be responsible for all costs of the Title Policy, except as provided in Section 5.4 above, and any title insurance commitments, policies or endorsements required by the Developer or its mortgagees.

5.6 Form of Deed; Recording. At the Closings, the conveyance of each of the applicable parcels and the remaining Property will be accomplished by Deed(s). The Deed(s) shall be subject to the Permitted Exceptions described in Section 5.4. Such Deed(s) shall be subject to all the terms, conditions and requirements of this Agreement and title to the Property shall be in the condition required by Section 5.4. After execution of the Deed(s), the Title Company shall promptly record the Deed(s) with the Clerk and Recorder for Boulder County, Colorado. The Developer shall pay all recording costs, including the state documentary fee, if any.

5.7 Closing Extensions. Notwithstanding anything contained herein to the contrary, Developer may, at its option, extend the Closings for the Retail Property, or portions thereof, for two (2) periods of up to one hundred eighty (180) days each; provided, that such extensions are necessary to accommodate the construction schedule of an Anchor Tenant. To elect to exercise an applicable extension, Developer shall deliver written notice to the Town and evidence of such Anchor Tenant's construction schedule no less than thirty (30) days prior to the then-scheduled Closing.

## SECTION 6. PREPARATION OF PROPERTY FOR DEVELOPMENT

6.1 Zoning. The Property is zoned Planned Development and Community Commercial pursuant to Chapter 2 of the Town Unified Development Code (the "Zoning Ordinance") and limited by the use restrictions set forth in Chapter 3 of the Zoning Ordinance. Except as set forth in Section 5.2(a), the Parties covenant that they will not seek any zoning changes that interfere with accomplishment of the Development Plan or otherwise preclude compliance with this Agreement without consent of Erie.

6.2 "As Is" Nature of Transaction. Except as specifically provided herein and in the Deed(s), Erie has not made, does not make and specifically negates and disclaims any representations, warranties, covenants or guarantees of any kind, whether express or implied, (a) concerning or with respect to the presence of Hazardous Substances on the Property or compliance of the Property with any and all applicable Environmental Laws and (b) the value, nature, quality or condition of the water, soil and geology of the Property. The Developer acknowledges and agrees that to the maximum extent permitted by law, except as set forth herein



and/or in the Deed(s), the sale of the Property, as provided for herein, is made on an "As Is" condition and basis. The Developer and anyone claiming by, through or under the Developer hereby fully and irrevocably releases Erie and its successors from any and all claims that it may now have or hereafter acquire against Erie, its commissioners, employees, representatives and agents for any cost, loss, liability, damage, expense, claim, demand, action or cause of action arising from or related to any such defects and conditions, including, without limitation, compliance with Environmental Laws, affecting the Property or any portion thereof, except claims arising out of breaches of the representations and warranties contained herein.

6.3 Access to Property. Prior to issuance of a final Certificate of Occupancy for the Anchor Tenant, the Developer shall permit representatives of Erie access to the Property at reasonable times for the purpose of carrying out or determining compliance with this Agreement or any Town code or ordinance, including, without limitation, inspection of any work being conducted on the Property; provided, that any such inspection will not unreasonably interfere with Developer's construction work or any tenant's use of the Improvements. No compensation shall be payable to the Parties, nor shall any charge be made in any form by any Party for the access provided in this Section. A party, including Erie, entering upon the Property pursuant to this section shall reasonably restore the Property to its condition prior to such entry, and shall indemnify, defend and hold harmless the Developer for any loss or damage or claim for loss or damage (including reasonable legal fees) resulting from any such entrance, tests and surveys.

6.4 Dedications; Developer Not to Construct Over Utility Easements. The Developer shall dedicate, as appropriate, all easements, public streets, alleys and rights of way required by the Development Plan and applicable Town requirements. The Developer shall not construct any building or other permanent structure other than planters, landscaped areas, access drives, surface parking, loading areas and public plazas, on, over (except for roof or canopy overhangs approved by Erie) or within the boundary lines of any easement for public utilities unless such construction is provided for in such easement, is not inconsistent with the purposes of such easement or has been approved by Erie.

## SECTION 7. DEVELOPMENT FINANCING

7.1 Developer's Financing. Prior to expiration of the Inspection Period, the Developer shall submit to Erie evidence reasonably satisfactory to the Town Administrator with the advice and counsel of the Town Attorney and the Town's Director of Finance that the Developer has the ability to obtain necessary Developer's Financing for the Development Plan. Such evidence shall be sufficiently complete to enable Erie to reasonably verify that the Developer has the legal and financial ability to construct, complete and open the Improvements. The Parties covenant and agree to use reasonable, good faith efforts to agree upon the final form of the Tax Increment Proposal during the Inspection and Approvals Periods. The Parties agree that Erie shall, to the extent of its legal ability to do so and in compliance with the Colorado Open Records Act, C.R.S. 24-72-201 et seq. ("CORA"), protect financial or other confidential and proprietary business documents furnished under this Section 7.1. This Section 7.1 shall protect from inspection by, or disclosure or distribution to, any third party. Erie shall send to the Developer a copy of any such request for disclosure of such information within one (1) business day of Erie's receipt.

7.2 Cooperation Regarding Financing. The Parties will cooperate and provide such reasonable assistance and information (including representations from the members and investors of the Developer regarding compliance with the Office of Foreign Assets Control and anti-money laundering laws, regulations and policies) as may be required in connection with the Developer's Financing. Each Party agrees to give favorable consideration to reasonable changes in this Agreement or in related documents that may be requested by prospective lenders, Erie or others providing financial assistance hereunder, provided that the rights of such Party are not adversely affected by such changes.

## SECTION 8. PLAN SUBMITTAL AND REVIEW PROCEDURE

The Developer shall work closely with Town staff to establish and comply with design guidelines that guarantee consistency and thematic elements throughout the Development Plan, and shall obtain all approvals required by the Code to enable construction of the Project. No further approval of the Development Plan by Erie shall be required pursuant to this Agreement, except with respect to any material change in the Development Plan (or any component thereof), and the normal and customary entitlements, site plan approvals and building permits required of any proposed project within Erie. If the Developer desires to make any material change to the Development Plan, the Developer shall submit the proposed change to Erie for its approval, with an explanation of the justification for the proposed change. Erie shall endeavor to provide an approval or rejection of the proposed changes within thirty (30) days of such submittal and approval shall not be unreasonably withheld or delayed. All work with respect to the construction of the Improvements shall conform with the approved Development Plan and all applicable laws, codes and ordinances.

## SECTION 9. DEVELOPER'S CONSTRUCTION OBLIGATIONS

9.1 Developer Obligations. Subject to Force Majeure, in accordance with and subject to this Agreement, the Developer shall commence, diligently pursue and complete the construction of the Improvements within the time periods specified in the Schedule of Performance. The Developer shall, at its sole cost and expense, obtain all necessary entitlements and approvals, including, without limitation, zoning, subdivision, site plan, building permits and utility, to construct, complete and open the Improvements. The covenants regarding such construction and completion shall run with the land until Completion of Construction and are binding for the benefit of Erie and enforceable by Erie against the Developer and its successors and assigns. Erie and the Developer acknowledge and agree that a summary of all fees and assessments assessed, imposed and/or collected by the Town concerning the development of the Retail Property that are in effect as of the Effective Date, including, without limitation, fees for taps and permits, impact fees and other development fees, is attached hereto as Exhibit E ("Controlled Fee Schedule"). Notwithstanding anything contained in this Agreement to the contrary, with respect to the Retail Property, Developer shall not be obligated for any fees other than as set forth on the Controlled Fee Schedule and/or any increases in any such fees beyond that enumerated on the Controlled Fee Schedule.

(a) Pre-Construction. Subject to Force Majeure, in accordance with the Schedule of Performance, the Developer shall complete all steps necessary to undertake Commencement of Construction and Completion of Construction, including, without limitation,

planning, design and engineering for the Property and the Improvements. The Developer shall cooperate with Town staff to establish and comply with design guidelines that guarantee consistency and thematic elements throughout the Development Plan, and the Developer shall not have the right to materially alter the Development Plan without the consent of Erie, which may be withheld in its reasonable discretion.

(b) Retail Property. Subject to Force Majeure, in accordance with the Schedule of Performance, the Developer shall perform, or cause to be performed, Commencement of Construction and Completion of Construction of the Improvements required for the Retail Property.

(c) Residential Property. Subject to Force Majeure, in accordance with the Schedule of Performance, the Developer shall perform, or cause to be performed, Commencement of Construction and Completion of Construction of the Improvements required for the Residential Property.

9.2 Progress Reports. Until Completion of Construction, the Developer shall make quarterly reports in such commercially reasonable detail as may reasonably be requested by Erie, as to actual progress of the Developer with respect to the Commencement of Construction, the progress of construction and the Completion of Construction for the Property.

## SECTION 10. SAFETY; INDEMNIFICATION; INSURANCE

10.1 Protection of Persons and Property. At all times while this Agreement is in effect, the Developer shall take reasonable precautions to prevent damage, injury or loss (to persons and property as a direct result of Developer's design, inspection and construction activities on the Property). The Developer shall comply with all applicable safety laws, regulations and building codes, and shall post appropriate signs and other warnings notifying employees and members of the public of all construction hazards. The Developer shall promptly remedy physical damage to the Property caused in whole or in part by the Developer, its contractors and subcontractors or anyone employed directly or indirectly by any of them, except for damage or loss attributable to acts or omissions of Erie or their contractors or subcontractors or anyone directly or indirectly employed by Erie or their contractors or subcontractors.

10.2 Indemnification; Insurance. Except for pre-existing conditions and/or the mere discovery of exiting conditions, the Developer shall defend, indemnify, and hold Erie, its commissioners, officers and employees, harmless from, all claims or suits for, and damages to, property and injuries to persons, including accidental death (including attorneys' fees and costs), which may be caused by any of the Developer's design, inspection and construction activities under this Agreement, whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the Developer and whether such damage shall accrue or be discovered before or after termination of this Agreement, except for damage or loss attributable to acts or omissions of Erie or its contractors or subcontractors or anyone directly or indirectly employed by Erie or its contractors or subcontractors. At all times while the Developer is engaged in preliminary work on the Property or adjacent streets and during the period from the Commencement of Construction until Completion of Construction,

the Developer shall carry and, upon request, will provide Erie with valid certificates of insurance as follows:

(a) Builder's risk insurance (with a deductible reasonably acceptable to Erie) in an amount equal to 100% of the replacement cost of the Improvements at the date of Completion of Construction;

(b) comprehensive general liability insurance (including operations, contingent liability, operations of subcontractors, completed operations, and contractual liability insurance), automobile and umbrella liability insurance with a combined single limit for both bodily injury and property damage reasonably acceptable to Erie, but in no event in excess of \$2,000,000.00;

(c) worker's compensation insurance, with statutory coverage, including the amount of deductible permitted by applicable law.

The policies of insurance required under subparagraphs a through c above shall be reasonably satisfactory to Erie, placed with financially sound and reputable insurers, require the insurer to endeavor to give at least thirty (30) days advance written notice to Erie in the event of cancellation or change in coverage and shall name Erie as an additional insured.

In the event any portion of the Property is developed by any party other than the Developer (in each case, the "Replacement Developer"), the Developer shall remain liable for the obligations of this Section 10.2; provided, however, that the Developer may be released from the obligations of this Section 10.2, if the Replacement Developer carries, and provides to Erie valid certificates of insurance for, all insurance policies as required by this Section 10.2 and executes a substitute indemnification agreement, subject to Erie's reasonable approval.

### 10.3 Repair or Reconstruction. [Intentionally Deleted].

## SECTION 11. REPRESENTATIONS AND WARRANTIES

11.1 Representations and Warranties by the Town. The Town represents and warrants as follows:

(a) The Town is a statutory town duly organized and existing under applicable law and has the right, power, legal capacity and the authority to enter into this Agreement and has authorized the execution, delivery and performance of this Agreement by proper action of its Board of Trustees.

(b) The Town knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of Erie or its officials with respect to the Property, this Agreement or the Improvements that has not been disclosed to the Developer.

(c) The filing or service of any such suit affecting the Property prior to the delivery of a Certificate of Occupancy shall be disclosed immediately to the Developer by the Town. To the fullest extent of the law, the Town shall indemnify, defend and hold the Developer and its officers, partners, directors, shareholders, managers, members and successors and assigns

harmless from and against all claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal. In addition, the Town covenants and agrees, at its sole cost and expense, to defend the validity and enforcement of this Agreement and/or the Tax Increment Proposal. Without limiting the generality of the foregoing, the Developer shall be responsible for its own costs and expenses, including, without limitation, Developer's attorneys' fees, in the event the Developer elects to engage its own legal representation with respect to any claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal.

(d) To the best of the Town's actual knowledge, the Town knows of no leases, options, rights of first refusal or other encumbrances affecting title to or use of the Property except as set forth in the Commitment.

(e) To the best of the Town's actual knowledge, the Town knows of no Hazardous Substances, including underground storage tanks, which have been released or discharged on the Property or adjacent property that caused contamination of the soil and/or ground water on or under the Property that has not been disclosed to Developer.

11.2 Representations and Warranties by TOEURA. TOEURA represents and warrants as follows:

(a) TOEURA is an urban renewal authority, a body corporate and politic duly organized and existing under applicable law and has the right, power, legal capacity and the authority to enter into this Agreement and has authorized the execution, delivery and performance of this Agreement by proper action of its Board of Trustees.

(b) TOEURA knows of no litigation or threatened litigation, proceeding or investigation contesting the powers of TOEURA or its officials with respect to the Property, this Agreement or the Improvements that has not been disclosed to the Developer.

(c) The filing or service of any such suit affecting the Property prior to the delivery of a Certificate of Occupancy shall be disclosed immediately to the Developer by TOEURA. To the fullest extent of the law, TOEURA shall indemnify, defend and hold the Developer and its officers, partners, directors, shareholders, managers, members and successors and assigns harmless from and against all claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal. In addition, TOEURA covenants and agrees, at its sole cost and expense, to defend the validity and enforcement of this Agreement and/or the Tax Increment Proposal. Without limiting the generality of the foregoing, the Developer shall be responsible for its own costs and expenses, including, without limitation, Developer's attorneys' fees, in the event the Developer elects to engage its own legal representation with respect to any claims, appeals and/or lawsuits challenging and/or concerning the validity and enforcement of this Agreement and/or the Tax Increment Proposal.

(d) To the best of TOEURA's actual knowledge, TOEURA knows of no leases, options, rights of first refusal or other encumbrances affecting title to or use of the Property except as set forth in the Commitment.

(e) To the best of TOEURA's actual knowledge, TOEURA knows of no Hazardous Substances, including underground storage tanks, which have been released or discharged on the Property or adjacent property that caused contamination of the soil and/or ground water on or under the Property that has not been disclosed to Developer.

11.3 Representations and Warranties by the Developer. The Developer represents and warrants as follows:

(a) The Developer is a limited liability company duly organized, validly existing and is in good standing under the laws of the State of California. The Developer has the right, power, legal capacity and authority and has duly authorized the execution, delivery and performance of this Agreement by proper action of its board.

(b) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) violate any law, rule, order or regulation applicable to the Developer or to the Developer's governing documents; (ii) result in the breach or default under any agreement or other instrument to which the Developer is a party or by which it may be bound or affected; or (iii) permit any party to terminate any such agreement or instrument or to accelerate the maturity of any indebtedness or other obligation of the Developer.

(c) To Developer's actual knowledge, the Developer knows of no action, suit, proceeding or investigation that is threatened or pending against the Developer or its principals that has not been disclosed to Erie that materially impairs the ability of the Developer to perform its obligations under this Agreement. The filing or service of any such suit affecting the Property prior to the delivery of a Certificate of Occupancy shall be disclosed immediately to Erie by the Developer.

(d) Subject to obtaining the Developer's Financing, the Developer has the necessary financial and legal ability to construct the Improvements, perform its obligations under this Agreement and the other agreements incidental to such performance as contemplated by this Agreement.

## SECTION 12. PROHIBITIONS AGAINST ASSIGNMENT AND TRANSFER

12.1 Prohibition Against Assignment of Agreement. The Developer agrees that it shall not make, create, or suffer to be made or created, any total or partial sale or transfer in any form of this Agreement or any part thereof or any interest therein, or any agreement to do the same, without the prior written approval of Erie. However, the following types of conveyances do not require Erie's consent:

(a) a Mortgage, collateral assignment or other encumbrance of the Developer's rights under this Agreement, including, without limitation, its right to receive any payment or reimbursement, to any Holder or other party that provides acquisition, construction, working capital, tenant improvement or other financing to the Developer in connection with the development of the Property; provided, that the Developer provide Erie with written notice of the name and address of such Holder or other party;

- (b) the leasing or rental to tenants or sale of portions of the Retail Property to retail users or the Anchor Tenant;
- (c) sales of portions of Residential Property to builders and/or residential developers;
- (d) the establishment of easements to effectuate the Development Plan;
- (e) the creation of an association and/or other covenants, conditions and restrictions and recordation of documents in furtherance thereof;
- (f) assignment of its rights to an Affiliate or an entity established by Developer for the closing, construction or financing of the Improvements; or
- (g) agreements to sell, lease or transfer all or part of the Property or the Private Improvements (except for leasing or rental or rental to tenants of the Private Improvements) after completion of the Improvements.

12.2 Information as to Interest Holders. Exhibit D contains information regarding the Developer, its members and the Developer's consultants and advisors. During the period between execution of this Agreement and the issuance of a final Certificate of Occupancy for construction of all of the Improvements, the Developer will promptly notify Erie of any material changes in the ownership of interests, legal or beneficial, in the Developer or of any material change in the direct or indirect control of such interests and in all changes and additions to Exhibit D, which changes shall be subject to Erie's prior written approval, to the extent required pursuant to Section 12.1 hereof.

## SECTION 13. MORTGAGE FINANCING; RIGHTS OF MORTGAGEES

13.1 Limitation Upon Encumbrance of Property. Prior to Closing, the Developer shall not mortgage or encumber any part of the Property, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to any part of the Property, except for (a) a Mortgage limited to the Developer's interest in this Agreement and obtained as part of Developer's Financing to the extent necessary for development and construction of the Property (including Hard Costs and Soft Costs), in which event the Holder of the Mortgage shall have entered into a standstill or intercreditor agreement with Erie (a "Standstill Agreement") which Borrower agrees will permit each of Erie and the Holder to send any notices of Developer's default to each other or (b) those encumbrances permitted in Section 12.1 above. Additionally, prior to issuance of a Certificate of Occupancy for the Anchor Tenant, the Developer shall, upon its knowledge thereof, promptly notify Erie of any encumbrance or lien that has been created on or attached to the Property (or any part thereof) or the Improvements (or any part thereof), whether by voluntary act of the Developer or otherwise. Erie agrees that, to the extent it legally may do so, and in compliance with CORA, it shall keep such information confidential and shall protect the same from disclosure. The Developer shall defend, indemnify, and hold Erie, its commissioners, officers and employees, harmless from, all mechanic's liens or lis pendens actions, which may be caused by any of the Developer's design, inspection and construction activities under this Agreement and whether such activities or performance thereof be by the Developer or anyone directly or indirectly employed or contracted with by the

Developer, or the Developer shall carry and shall provide Erie with valid certificates of insurance for mechanic's liens.

13.2 Holder Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, prior to Completion of Construction, the Holder of any Mortgage authorized by this Agreement shall not be obligated to construct or complete the Improvements (or any part thereof) or to guarantee such construction or completion; provided, that nothing in this Agreement shall be construed to authorize any such Holder to devote the Improvements to any other use or to construct any improvements thereon other than the Improvements.

13.3 Copy of Notice of Default to Mortgagee. Erie shall deliver a copy of any notice or demand to the Developer with respect to any claimed Default by the Developer. Provided that the Holder has provided a notice address to Erie, Erie shall simultaneously forward a copy of each notice or demand sent to the Developer to the Holder at the such address.

13.4 Holder's Option to Cure Defaults. Prior to Completion of Construction, after any Default by the Developer, the Holder shall have the right to cure or remedy such Default and to add the cost thereof to the debt and lien of its Mortgage.

#### SECTION 14. CONTINGENCIES; TERMINATION

14.1 Termination by Developer. The Developer shall have the right to terminate this Agreement if:

(a) prior to the expiration of the Inspection Period, either Party, after good faith efforts, fails to satisfy its Inspection Period Contingencies; or

(b) prior to the expiration of the Approvals Period, either Party, after good faith efforts, fails to satisfy its Approvals Period Contingencies; or

(c) unless waived by the Developer, the failure of any of the closing conditions set forth in Section 5.2 or elsewhere in this Agreement; or

(d) the Developer reasonably and in good faith determines, based upon the results of soils or environmental tests and within the time periods set forth in the Schedule of Performance, that the soils or environmental conditions or utilities are not satisfactory to carry out development of the Property or construction of the Improvements; or

(e) unless waived by the Developer, title to the Property does not conform with the requirements of Section 5.4 at the time specified in the Schedule of Performance.

14.2 Termination by Erie. Erie shall have the right to terminate this Agreement if:

(a) prior to the expiration of the Inspection Period, the Developer, after good faith efforts, fails to satisfy its Inspection Period Contingencies; or

(b) prior to the expiration of the Approvals Period, the Developer, after good faith efforts, fails to satisfy its Approvals Period Contingencies.



14.3 Action to Terminate. Termination must be upon the dates specified in this Agreement, inclusive of the Schedule of Performance, and must be accomplished by written notification to the other Party. Except as otherwise provided in this Agreement, failure to terminate this Agreement for any failure identified in this SECTION 14 constitutes a waiver of the right to terminate this Agreement for that particular failure only and shall not constitute a waiver of the right to terminate this Agreement for any other failure under such sections. No action to terminate shall occur until the notice and Grace Period provisions set forth in Section 15.3 have been fulfilled.

14.4 Effect of Termination. If this Agreement is terminated pursuant to this SECTION 14, each Party shall pay its own costs and expenses related to this Agreement. In addition, the Parties agree to execute a mutual release, lease termination(s), quit claim deed and other instruments reasonably required to effectuate and give notice of such termination.

## SECTION 15. DEFAULT; REMEDIES

15.1 Default by Developer. Default by Developer under this Agreement shall mean one or more of the following events:

(a) The Developer, in violation of this Agreement, assigns or attempts to assign this Agreement, the Improvements or any part of its interest in Property, or any rights in the same, except as allowed in Section 12.1; or

(b) the Developer fails to commence, diligently pursue and complete the Contingencies as required by this Agreement and this Agreement has not been terminated under the provisions of SECTION 14; or

(c) prior to issuance of a Certificate of Occupancy for the Anchor Tenant, the Developer suffers or permits any lien, uncured default or encumbrance on the Property or the Improvements in violation of this Agreement, but a lien shall not constitute a Default if Developer deposits in escrow with Erie or the Title Company sufficient funds or undertakes other measures reasonably satisfactory to Erie to discharge the lien, which may include bonding over in accordance with Colorado statutes;

(d) the Developer fails to observe or perform any other covenant or obligation required of it under this Agreement or to make good faith efforts to obtain Developer's Financing or any representation or warranty made by the Developer under this Agreement is materially false when made;

(e) a Holder exercises any remedy provided by loan documents, law or equity that creates a materially adverse effect on the Property or the Improvements, but such default by the Developer shall not defeat the rights of any Holder hereunder; or

(f) prior to issuance of a Certificate of Occupancy for the Anchor Tenant, the Developer fails to perform its obligations to a Holder resulting in an uncured event of default under a Mortgage.

If any of the foregoing Defaults is not cured within the time provided in Section 15.3, then Erie may exercise any remedy available under Sections 15.4, 15.5 and 15.6.

15.2 Default by Erie. Default by Erie under this Agreement shall mean one or more of the following events:

(a) failure of Erie to comply with the provisions of SECTION 13 relating to the rights of the Holder of a Mortgage under the circumstances set forth therein; or

(b) Erie fails to observe or perform any other covenant or obligation required of it under this Agreement or any representation or warranty made by Erie under this Agreement is materially false when made.

If any of the foregoing defaults is not cured within the time provided in Section 15.3, then the Developer may exercise any remedy available under Section 15.4 and 15.6.

15.3 Grace Periods. Upon a Default by either Party, such Party shall, upon written notice from the other, proceed immediately to cure or remedy such Default. Any Default shall be cured within thirty (30) days after receipt of such notice, or such cure shall be commenced and diligently pursued to completion within a reasonable time, but in any event no longer than ninety (90) days, if curing cannot be reasonably accomplished within thirty (30) days and the Party has commenced curing within such thirty (30) day period and diligently pursues such cure to completion.

15.4 Remedies on Default. Whenever any Default occurs and is not cured under Section 15.3 of this Agreement, the non-defaulting Party may take any one or more of the following actions:

(a) Suspend performance under this Agreement until it receives assurances from the defaulting Party, deemed adequate by the non-defaulting Party, that the defaulting Party will cure its Default and continue its performance under this Agreement within a reasonable time; or

(b) subject to the rights of a Holder, cancel and rescind this Agreement; or

(c) take whatever legal or administrative action or institute such proceedings as may be necessary or desirable in its opinion to enforce observance or performance of this Agreement, including, without limitation, specific performance or to seek any other right or remedy at law or in equity, including damages.

15.5 Other Rights and Remedies. Erie and the Developer shall have the right to institute such actions or proceedings as either may deem desirable for effectuating the purposes of this SECTION 15. If a Party must commence legal action to enforce its rights and remedies under this Agreement, the prevailing Party shall be entitled to receive, in addition to any other relief, its costs and expenses, including reasonable attorneys' fees, of such action or enforcement.

15.6 Delays; Waivers. Any delay by either Party in pursuing any right or remedy under this Agreement shall not operate as a waiver of such right or remedy in any way; nor shall any

waiver made by such Party be considered or treated as a waiver of any right or remedy with respect to any other Default by the other Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of the right or remedy by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

15.7 Enforced Delay in Performance for Causes Beyond Control of Party. Anything in this Agreement to the contrary notwithstanding, neither Party shall be considered in Default in the event of enforced delay in the performance of obligations under this Agreement due to Force Majeure, discovery of Hazardous Substances on the Property, acts of the other Party, acts of third parties (including the effect of any petitions for initiative or referendum), the effect of any condition precedent to any obligation of either Party over which such Party has no control, the effect of litigation, acts of courts, it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Party claiming such delay, shall be extended for the period of the enforced delay.

15.8 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any such remedy shall not preclude the exercise by it, at the same or different times, of any other remedy for any other Default by any other Party.

## SECTION 16. MISCELLANEOUS

16.1 Conflicts of Interest. None of the following shall have any personal interest, direct or indirect, in this Agreement: a member of Erie Council; an employee of Erie who exercises responsibility concerning the Development Plan; or an individual or firm retained by Erie who has performed consulting services in connection with the Development Plan. None of the above persons or entities shall participate in any decision relating to this Agreement that effects his or her personal interests or the interests of any entity in which he or she is directly or indirectly interested.

16.2 Antidiscrimination. The Developer, for itself and its successors and assigns, agrees that in the construction of and in the use and occupancy of the Property and the Improvements, the Developer will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, disability, marital status, ancestry or national origin.

16.3 No Merger. None of the provisions of this Agreement shall be merged by reason of the Deed transferring title to the Property from Erie to the Developer, and such Deed shall not be deemed to affect or impair the provisions of this Agreement.

16.4 Title of Sections. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions.

16.5 No Third-Party Beneficiaries. Except for specific rights in favor of Mortgagees or Affiliates, no third-party beneficiary rights are created in favor of any person not a party to this Agreement.

16.6 Venue and Applicable Law. Any action arising out of this Agreement shall be brought in the Boulder County District Court and the laws of the State of Colorado shall govern the interpretation and enforcement of this Agreement.

16.7 Nonliability of Town Officials, Agents and Employees. No council member, board member, commissioner, official, employee, consultant, attorney or agent of Erie shall be personally liable to the Developer under this Agreement or in the event of any Default by Erie or for any amount that may become due to the Developer.

16.8 Erie Not a Partner; Developer Not Erie's Agent. Notwithstanding any language in this Agreement or any other agreement, representation or warranty to the contrary, Erie shall not be deemed or constituted a partner or joint venture of the Developer. The Developer shall not be the agent of Erie and Erie shall not be responsible for any debt or liability of the Developer or any operator or manager of the Improvements.

16.9 Integrated Contract. This Agreement is an integrated contract and invalidation of any of its provisions by judgment or court order shall in no way affect any of the other provisions, which shall remain in full force and effect unless the Parties otherwise agree in writing to an amendment.

16.10 Counterparts. The Agreement is executed in counterparts, each of which shall constitute one and the same instrument.

16.11 Notices. A notice, demand or other communication under this Agreement by any Party to the other shall be in writing and sufficiently given if delivered in person or if it is delivered by overnight courier service with guaranteed next-day delivery or by certified mail, return receipt requested, postage prepaid or by electronic mail, return receipt requested, and

(a) in the case of the Developer, is addressed to or delivered to the Developer as follows:

Evergreen Devco, Inc.  
Attention: Tyler Carlson  
1873 South Bellaire Street, Suite 1106  
Denver, Colorado 80222  
Email: tcarlson@evgre.com

with a copy to:

Evergreen Devco, Inc.  
Attention: Russell Perkins  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Email: rperkins@evgre.com

and

Lathrop & Gage, LLP  
Attention: Brian P. Jumps  
950 Seventeenth Street, Suite 2400  
Denver, Colorado 80202  
Email: bjumps@lathropgage.com

(b) in the case of Erie, is addressed to or delivered to Erie as follows:

Town of Erie  
Attention: A.J. Krieger, Town Administrator  
645 Holbrook Street  
P.O. Box 750  
Erie, Colorado 80516  
Email: townadministrator@erieco.gov

with a copy to:

Town of Erie  
Attention: Mark Shapiro, Town Attorney  
645 Holbrook Street  
P.O. Box 750  
Erie, Colorado 80516  
Email: mark@mshapirolaw.com

and

Brownstein Hyatt Farber Schreck LLP  
Attention: Carolynne White  
410 17th Street, Suite 2200  
Denver, Colorado 80202  
Email: cwhite@bhfs.com

or at such other address with respect to any such Party as that Party may, from time to time, designate in writing and forward to the other as provided in this section.

16.12 Good Faith of Parties. In performance of this Agreement or in considering any requested extension of time or in the giving of any approval, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously or unreasonably withhold, delay or condition any approval required by this Agreement.

16.13 Exhibits Merged. All Exhibits annexed to this Agreement shall be deemed to be expressly integrated herein.

16.14 Days. If the day for any performance or event provided for herein is a Saturday, Sunday or other day on which either national banks or the office of the Clerk and Recorder of Boulder County, Colorado, is not open for the regular transaction of business, such day therefor shall be extended until the next day on which said banks or said office are open for the transaction of business.

16.15 Further Assurances. Each Party agrees to execute such documents and take such action as shall be reasonably requested by the other Party to confirm, clarify or effectuate the provisions of this Agreement. The Parties agree to cooperate with each other during the term of this Agreement by granting to each other such reciprocal easements, cross easements and rights of way for pedestrian and vehicular ingress and egress, walkways, parking and such other matters as may be reasonably required for the proper development and use of the Property in accordance with this Agreement. Prior to the Commencement of Construction, the Parties will use their reasonable best efforts to agree upon and place of record with the Clerk and Recorder of Boulder County, Colorado, a memorandum of this Agreement or other mutually acceptable form of the covenants contained in this Agreement; provided, however, notwithstanding the foregoing, if the Parties fail to agree on the form and contents of such memorandum or covenants, Erie, in its sole discretion, may elect to record this entire Agreement, including any amendments.

16.16 Certifications. Each Party agrees to execute such documents as the other Party may reasonably request to verify or confirm the status of this Agreement and of the performance of the obligations hereunder and such other matters as the requesting Party may reasonably request.

16.17 Amendments. This Agreement shall not be amended except by written instrument signed and delivered by the Parties.

16.18 Representations and Warranties. No representations or warranties whatever are made by any Party except as specifically set forth in this Agreement.

16.19 Minor Changes. This Agreement has been approved in substantially the form submitted to the governing bodies of the Parties. The Town Administrator is authorized to make, and may have made, minor changes in this Agreement and the attached Exhibits as they have considered necessary, provided however that such changes have been previously approved in writing by Developer. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of this Agreement shall constitute conclusive evidence of the approval of such changes by the respective Parties.

16.20 Due Diligence Materials. Upon any termination of this Agreement, Developer shall promptly provide Erie (without representation or warranty of any kind) with copies of all non-proprietary, non-confidential due diligence materials produced in connection with the Property.

*[Signature page follows.]*


IN WITNESS WHEREOF, Erie and the Developer have caused this Agreement to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
an Arizona limited liability company


By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: ~~Vice President~~  
Principal


**ERIE:**

TOWN OF ERIE,  
a Colorado municipal home rule corporation

By:   
Name: Tina Harris  
Title: Mayor



TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By:   
Name: Tina Harris  
Title: Chair



**EXHIBIT A**  
**Legal Description of Property**

[to be inserted]



**EXHIBIT B**  
**Schedule of Performance**

<b><u>Event</u></b>	<b><u>Date</u></b>
<b><u>General Provisions</u></b>	
A1. Effective Date of this Agreement.	_____, 2016
A2. Erie delivers the Property Information to the Developer.	30 days after the Effective Date
A3. Developer completes review of due diligence.	Expiration of the Inspection Period
A4. Developer completes all Governmental Approvals.	Expiration of the Approvals Period
<b><u>Development Plan and Financing</u></b>	
1-1. Developer commences planning, design and engineering for the Property.	Effective Date
1-2. Developer submits evidence of Developer's Financing to Erie.	Expiration of the Inspection Period
1-3. Date for approval or disapproval of Developer's Financing by Erie.	30 days after Item 1-2
<b><u>Property Development</u></b>	
2-1. Commencement of Construction of Improvements by the Developer.	TBD
2-2. Completion of Construction by Developer of Improvements.	TBD

## **EXHIBIT C**

### **Special Warranty Deed**

THE [TOWN OF ERIE/TOWN OF ERIE URBAN RENEWAL AUTHORITY] ("Grantor"), a Colorado [statutory town/urban renewal authority], whose address is 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, for the consideration of the sum of One Dollar (\$1.00) in hand paid, hereby sells and conveys to EVERGREEN DEVCO, INC., a California corporation ("Grantee"), whose legal address is 12460 1<sup>st</sup> Street, Eastlake, Colorado 80614, the following real property in the County of Boulder, State of Colorado, to wit:

#### **See Exhibit A**

with all of its appurtenances, and warrants the title against all persons claiming under it, subject to the following permitted exceptions:

#### **See Exhibit B**

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 201\_\_

**GRANTOR:**

[TOWN OF ERIE/TOWN OF ERIE URBAN  
RENEWAL AUTHORITY]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Town Clerk

STATE OF COLORADO     )  
  ) ss.  
COUNTY OF BOULDER    )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 201\_\_,  
by \_\_\_\_\_, as \_\_\_\_\_, of the [Town of Erie/Town of Erie  
Urban Renewal Authority], a Colorado [statutory town/urban renewal authority].

My commission expires:

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public

**Exhibit A to Special Warranty Deed  
Legal Description of Property**

[to be inserted]

**Exhibit B to Special Warranty Deed  
Permitted Exceptions**

[to be inserted]

**EXHIBIT D**  
**Developer's Information Statement**

1. Name, address, telephone and facsimile number of Developer:

c/o Evergreen Devco, Inc.  
Attention: Tyler Carlson  
1873 South Bellaire Street, Suite 1106  
Denver, Colorado 80222  
Telephone: 303-757-0462  
Facsimile: 602-567-7147  
Email: tcarlson@evgre.com

2. Federal Identification Number of Developer: \_\_\_\_\_ [TO BE INSERTED]

3. Name, address, title and telephone number of corporate officers of Developer and their percentage of ownership interest in Developer:

c/o Evergreen Devco, Inc.  
Attention: Bruce Pomeroy  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-808-8600  
Facsimile: 602-808-9100  
Email: bpomeroy@evgre.com

c/o Evergreen Devco, Inc.  
Attention: Andrew Skipper  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-808-8600  
Facsimile: 602-808-9100  
Email: askipper@evgre.com

c/o Evergreen Devco, Inc.  
Attention: Laura Ortiz  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-808-8600  
Facsimile: 602-808-9100  
Email: lortiz@evgre.com

4. Date of Organization of Developer: \_\_\_\_\_ [TO BE INSERTED]

5. Name, address and telephone number of principal members of Developer's team of consultants and advisors:

Attorney:

Lathrop & Gage, LLP  
950 Seventeenth Street, Suite 2400  
Denver, Colorado 80202  
Attention: Brian P. Jumps  
Telephone: 720-931-3132  
Facsimile: 720-931-3201  
E-Mail: [bjumps@lathropgage.com](mailto:bjumps@lathropgage.com)

Architectural/Engineering:

Galloway & Company, Inc.  
Attention: Carl T. Schmidtlein  
5300 DTC Parkway, Suite 100  
Greenwood Village, CO 80111  
Telephone: 303-770-8884  
Facsimile: 303-770-3636  
Email: [carlschmidtlein@gallowayus.com](mailto:carlschmidtlein@gallowayus.com)

Project Manager:

Evergreen Devco, Inc.  
Attention: Russell Perkins  
2390 East Camelback Road, Suite 410  
Phoenix, Arizona 85016  
Telephone: 602-567-7129  
Facsimile: 602-567-7143  
Email: [rperkins@evgre.com](mailto:rperkins@evgre.com)

Acquisition Manager:

Evergreen Devco, Inc.  
Attention: Tyler Carlson  
1873 South Bellaire Street, Suite 1106  
Denver, Colorado 80222  
Telephone: 303-757-0462  
Facsimile: 602-567-7147  
Email: [tcarlson@evgre.com](mailto:tcarlson@evgre.com)

## **EXHIBIT E**

### **Controlled Fee Schedule**

[to be inserted]



## FIRST AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This First Amendment to the Disposition and Development Agreement (“**First Amendment**”) is made as of this 13th day of December, 2016, by and among the Town of Erie, a Colorado statutory town (the “**Town**”), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the “**Developer**”).

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement, dated March 22, 2016 (the “**Agreement**”), pursuant to which the Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer desire to amend the Agreement.

NOW, THEREFORE, in consideration of the mutual obligations of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement.
2. Inspection Period. Section 3.4 of the Agreement is hereby amended to replace the phrase “Developer shall have one hundred eighty (180) days from the Effective Date (the “Inspection Period”)” with the phrase “Developer shall have until May 1, 2017 (the “Inspection Period”)”.
3. TOEURA Approvals. Section 5.2 (c) of the Agreement is hereby amended to replace the phrase “Within one hundred eighty (180) days of the Effective Date” with the phrase “No later than May 1, 2017”.
4. Exhibit A. Exhibit A to the Agreement is hereby amended and restated as provided in the attached Exhibit A.
5. Miscellaneous.
  - a) Full Force and Effect. Except as amended by this Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by Erie and the Developer. In the event of any conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control.
  - b) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

c) Entire Agreement. This Amendment contains the entire agreement of Erie and the Developer with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by Erie and the Developer.

d) Power and Authority. Erie and the Developer have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Amendment.

e) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f) Attorneys' Fees. In the event of litigation arising out of or in connection with this Amendment, the prevailing party shall be awarded reasonable attorneys' fees, costs and expenses.

g) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

*[Signature page follows.]*

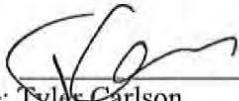
IN WITNESS WHEREOF, Erie and the Developer have caused this Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
an Arizona limited liability company

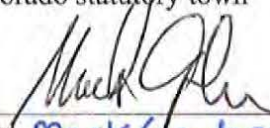
By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: ~~Tyler Carlson~~  
Its: Principal

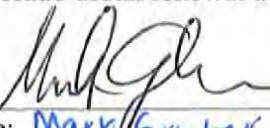
**ERIE:**

TOWN OF ERIE,  
a Colorado statutory town

By:   
Name: Mark Gruber  
Title: Mayor Pro Tem



TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By:   
Name: Mark Gruber  
Title: Chairperson Pro Tem



## EXHIBIT A

### Legal Description – Parcels A and B

#### PARCEL A:

PART OF THE NORTH HALF NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTH HALF NORTHEAST QUARTER FROM WHENCE THE NORTHWEST CORNER OF SAID NORTH HALF NORTHEAST QUARTER BEARS NORTH 00°04'00" EAST; THENCE SOUTH 89°48'30" EAST ALONG THE SOUTH LINE OF SAID NORTH HALF NORTHEAST QUARTER, A DISTANCE OF 1434.83 FEET; THENCE NORTH 00°14'20" EAST, 845.98 FEET TO THE SOUTH LINE OF THAT PROPERTY CONVEYED BY FLOYD E. HARRIS AND NEVADIA HARRIS TO LEONARD L. LANHAM AND NINA E. LANHAM, RECORDED MAY 15, 1968 ON FILM 635 AT RECEPTION NO. 879012; THENCE NORTH 89°41'50" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 366.57 FEET TO A POINT ON THE EAST LINE OF THAT PROPERTY CONVEYED BY DEED FROM FLOYD EUGENE HARRIS AND NEVADIA HARRIS TO THE TOWN OF ERIE, A MUNICIPAL CORPORATION, RECORDED APRIL 29, 1968 IN FILM 633 AT RECEPTION NO. 877395; THENCE SOUTH 00°58'00" WEST ALONG SAID EAST LINE, 31.12 FEET TO THE CENTERLINE OF THE SOUTH BOULDER CANYON IRRIGATION DITCH; THENCE TRAVERSING ALONG THE CENTERLINE OF SAID DITCH AND THE SOUTH LINE OF PROPERTY DESCRIBED ON FILM 633 AT RECEPTION NO. 877395, THE FOLLOWING COURSES AND DISTANCES: SOUTH 71°36'00" WEST 508.65 FEET; THENCE SOUTH 73°48'00" WEST, 241.52 FEET; THENCE NORTH 89°40'00" WEST, 140.82 FEET; THENCE NORTH 77°42'00" WEST, 114.23 FEET; THENCE NORTH 62°24'00" WEST, 118.52 FEET TO A POINT ON THE WEST LINE OF THE NORTH HALF NORTHEAST QUARTER OF SAID SECTION 34; SAID POINT BEING ALSO THE SOUTHWEST CORNER OF THAT PROPERTY DESCRIBED ON FILM 633 AT RECEPTION NO. 877395; THENCE SOUTH 00°04'00" WEST ALONG SAID WEST LINE OF THE NORTH HALF NORTHEAST QUARTER, A DISTANCE OF 675.12 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED RECORDED APRIL 15, 1983 AT RECEPTION NO. 543786, AND IN DEED RECORDED FEBRUARY 20, 1997 ON FILM NO. 2187 AT RECEPTION NO. 1678309, COUNTY OF BOULDER, STATE OF COLORADO.

#### PARCEL B:

A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID NORTHEAST  $\frac{1}{4}$ , 20 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4; THENCE NORTH 89°41'50" WEST ALONG SAID NORTH LINE, 230.64 FEET; THENCE SOUTH 00°58' WEST, 469.96 FEET; THENCE SOUTH 89°41'50" EAST, 618.52; THENCE NORTH 00°14'20" EAST, 469.93 FEET TO THE NORTH LINE OF SAID NORTHEAST 1/4; THENCE NORTH 89°41'50" WEST, ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF BOULDER BY THE DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127,

COUNTY OF BOULDER, STATE OF COLORADO.

## EXHIBIT A

### Legal Description – Parcels C1 and C2

PARCEL C:

PARCEL I:

A PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH 1/4 CORNER OF SAID SECTION; THENCE SOUTH 0°09' WEST 642.7 FEET; THENCE SOUTH 69° 45' EAST 211.4 FEET; THENCE NORTH 85° EAST 195 FEET; THENCE NORTH 71°53' EAST 718 FEET; THENCE NORTH 24°20' EAST 539 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION, 20 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4; THENCE WEST ALONG SAID NORTH LINE OF SAID SECTION TO THE PLACE OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF BOULDER BY THE DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127;  
AND EXCEPT THAT PORTION DESCRIBED IN DEED RECORDED APRIL 29, 1968 UNDER RECEPTION NO. 877396;  
AND EXCEPT THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, STATE OF COLORADO, BY THE DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.  
AND EXCEPT THAT PORTION CONVEYED TO THE DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO BY THE DEED RECORDED JANUARY 2, 1998 UNDER RECEPTION NO. 1759789.

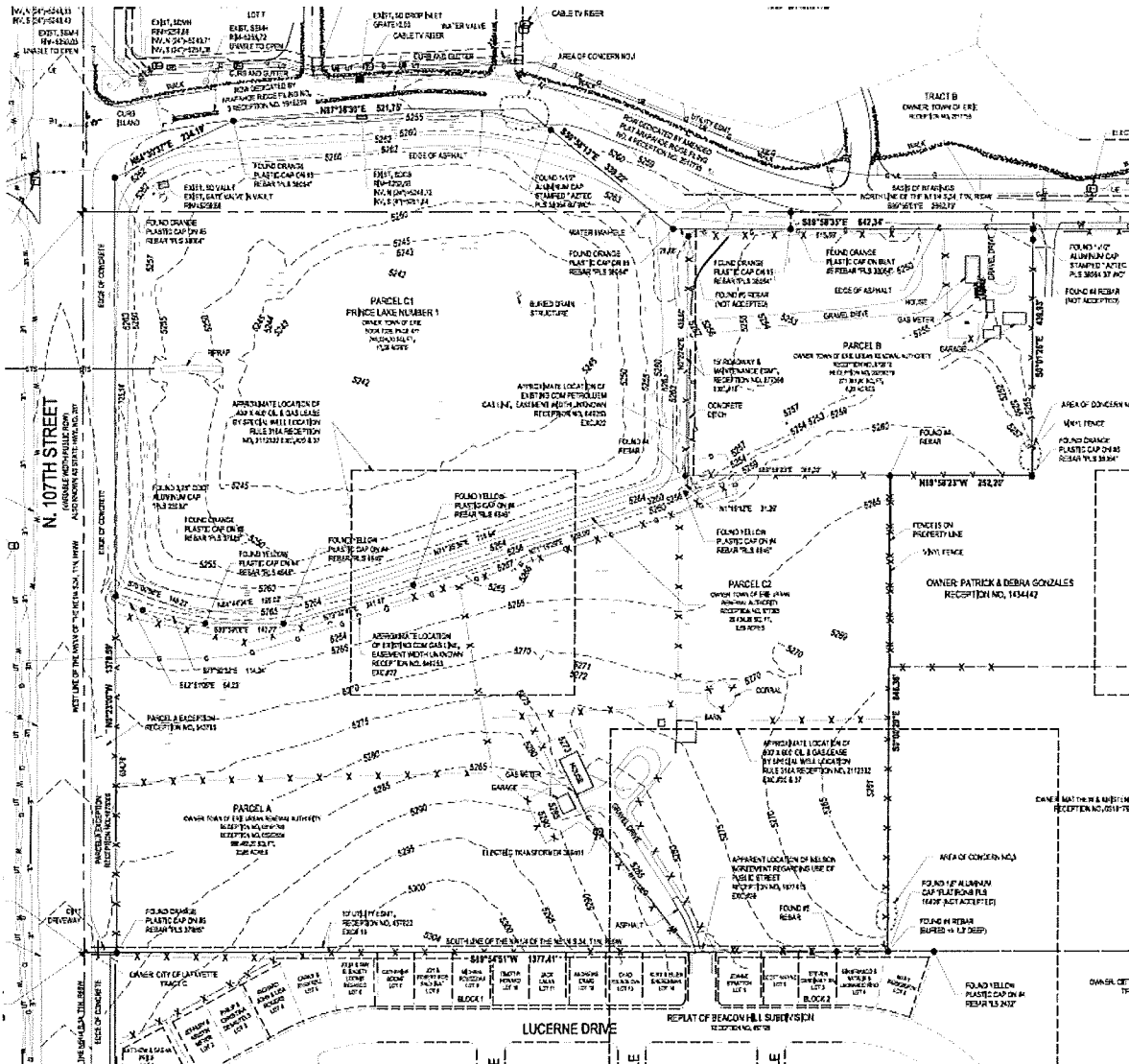
PARCEL II:

A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE SOUTH 0°09' WEST, 642.7 FEET; THENCE SOUTH 69°45' EAST, 259 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, THE TRUE POINT OF BEGINNING; THENCE SOUTH 69°45' EAST, 208.81 FEET; THENCE NORTH 85°0' EAST, 195.00 FEET; THENCE NORTH 71°53' EAST, 718.00 FEET; THENCE SOUTH 0°58' WEST, 31.12 FEET TO A POINT ON THE CENTERLINE OF THE SOUTH BOULDER CANYON DITCH; THENCE WESTERLY, ALONG THE SAID DITCH CENTERLINE AS FOLLOWS: SOUTH 71°36' WEST, 508.65 FEET; SOUTH 73°48' WEST, 241.52 FEET; NORTH 89°40' WEST, 140.82 FEET; NORTH 77°42' WEST, 114.23 FEET; NORTH 62°24' WEST, 118.52 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34; THENCE NORTH 0°04' WEST, ALONG THE SAID WEST LINE OF THE NORTHEAST QUARTER, 11.00 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS DIVISION OF HIGHWAYS, STATE OF COLORADO BY DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.

### Graphic Depiction of Parcels A, B, C1 and C2



## SECOND AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Second Amendment to the Disposition and Development Agreement (“**Second Amendment**”) is made as of this 9<sup>th</sup> day of May, 2017, by and among the Town of Erie, a Colorado statutory town (the “**Town**”), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the “**Developer**”).

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement, dated March 22, 2016, as amended by that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (collectively, the “**Agreement**”), pursuant to which the Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer desire to amend the Agreement.

NOW, THEREFORE, in consideration of the mutual obligations of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement.
2. Inspection Period. Section 3.4 of the Agreement is hereby amended to replace the phrase “Developer shall have one hundred eighty (180) days from the Effective Date (the “Inspection Period”)” with the phrase “Developer shall have until December 1, 2017 (the “Inspection Period”)”.
3. TOEURA Approvals. Section 5.2 (c) of the Agreement is hereby amended to replace the phrase “Within one hundred eighty (180) days of the Effective Date” with the phrase “No later than December 1, 2017”.
4. Miscellaneous.
  - a) Full Force and Effect. Except as amended by this Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by Erie and the Developer. In the event of any conflict between the Agreement and this Amendment, the terms and conditions of this Amendment shall control.
  - b) Successors and Assigns. This Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.



c) Entire Agreement. This Amendment contains the entire agreement of Erie and the Developer with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by Erie and the Developer.

d) Power and Authority. Erie and the Developer have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Amendment.

e) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f) Attorneys' Fees. In the event of litigation arising out of or in connection with this Amendment, the prevailing party shall be awarded reasonable attorneys' fees, costs and expenses.

g) Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

*[Signature page follows.]*




IN WITNESS WHEREOF, Erie and the Developer have caused this Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C,  
an Arizona limited liability company


By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: ~~Vice President~~  
Executive Vice President


**ERIE:**

TOWN OF ERIE,  
a Colorado statutory town

By:   
Name: Tina Harris  
Title: Mayor



TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By:   
Name: Tina Harris  
Title: Chairperson



### THIRD AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Third Amendment to the Disposition and Development Agreement (“**Third Amendment**”) is made as of this 12<sup>th</sup> day of December, 2017, by and among the Town of Erie, a Colorado statutory town (the “**Town**”), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the “**Developer**”).

#### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement, dated March 22, 2016 (the “**Agreement**”), pursuant to which the Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (“**First Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (“**Second Amendment**”);

WHEREAS, Erie and the Developer desire to further amend the Agreement pursuant to the terms of this Third Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement.
2. Inspection Period. Section 3.4 of the Agreement is hereby amended to extend the Inspection Period until June 1, 2018.
3. TOEURA Approvals. Section 5.2 (c) of the Agreement is hereby amended to extend the TOEURA Approvals deadline until June 1, 2018.
4. Miscellaneous.
  - a) Full Force and Effect. Except as amended by this Third Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by Erie and the Developer. In the event of any conflict between the Agreement, the First Amendment or Second Amendment and this Third Amendment, the terms and conditions of this Third Amendment shall control.

b) Successors and Assigns. This Third Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

c) Entire Agreement. This Third Amendment contains the entire agreement of Erie and the Developer with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by Erie and the Developer.

d) Power and Authority. Erie and the Developer have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Third Amendment.

e) Counterparts. This Third Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f) Attorneys' Fees. In the event of litigation arising out of or in connection with this Third Amendment, the prevailing party shall be awarded reasonable attorneys' fees, costs and expenses.

g) Governing Law. This Third Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

*[Signature page follows.]*

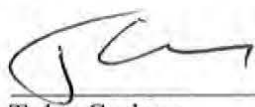
IN WITNESS WHEREOF, Erie and the Developer have caused this Third Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C,  
an Arizona limited liability company


By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: Managing Principal


**ERIE:**

TOWN OF ERIE,  
a Colorado statutory town

By:   
Name: Tina Harris  
Title: Mayor



TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By:   
Name: Tina Harris  
Title: Chairperson



## FOURTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Fourth Amendment to the Disposition and Development Agreement (“**Third Amendment**”) is made as of this 8<sup>th</sup> day of May, 2018, by and among the Town of Erie, a Colorado statutory town (the “**Town**”), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the “**Developer**”).

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement, dated March 22, 2016 (the “**Agreement**”), pursuant to which the Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (“**First Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (“**Second Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (“**Third Amendment**”);

WHEREAS, Erie and the Developer desire to further amend the Agreement pursuant to the terms of this Fourth Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement.
2. Inspection Period. Section 3.4 of the Agreement is hereby amended to extend the Inspection Period until September 1, 2018.
3. TOEURA Approvals. Section 5.2 (c) of the Agreement is hereby amended to extend the TOEURA Approvals deadline until September 1, 2018.
4. Miscellaneous.

a) Full Force and Effect. Except as amended by this Fourth Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by Erie and the Developer. In the event of any conflict between the Agreement, the First Amendment or



Second Amendment or Third Amendment and this Fourth Amendment, the terms and conditions of this Fourth Amendment shall control.

b) Successors and Assigns. This Fourth Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

c) Entire Agreement. This Fourth Amendment contains the entire agreement of Erie and the Developer with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by Erie and the Developer.

d) Power and Authority. Erie and the Developer have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Fourth Amendment.

e) Counterparts. This Fourth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f) Attorneys' Fees. In the event of litigation arising out of or in connection with this Fourth Amendment, the prevailing party shall be awarded reasonable attorneys' fees, costs and expenses.

g) Governing Law. This Fourth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

*[Signature page follows.]*

IN WITNESS WHEREOF, Erie and the Developer have caused this Fourth Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
an Arizona limited liability company

By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

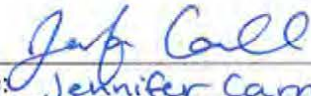
By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: Executive Vice President

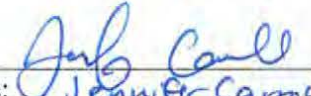
**ERIE:**

TOWN OF ERIE,  
a Colorado statutory town



By:   
Name: Jennifer Carroll  
Title: Mayor

TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

By:   
Name: Jennifer Carroll  
Title: Chairwoman Carroll



## FIFTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Fifth Amendment to the Disposition and Development Agreement (“**Fifth Amendment**”) is made as of this 13<sup>th</sup> day of August, 2019 (the “Effective Date”), by and among the Town of Erie, a Colorado statutory town (the “**Town**”), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the “**Developer**”).

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement, dated March 22, 2016 (the “**Agreement**”), pursuant to which the Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (“**First Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (“**Second Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (“**Third Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8<sup>th</sup>, 2018 (“**Fourth Amendment**”);

WHEREAS, Erie and the Developer desire to further amend the Agreement pursuant to the terms of this Fifth Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the parties hereto and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used but not defined herein shall have the same meaning as set forth in the Agreement.
2. Inspection Period Contingencies. Erie and the Developer hereby acknowledge the Inspection Period Contingencies in Sections 3.5(a), 3.5(b), 3.5(c), 3.5(d) and 3.5(g) have been waived or satisfied by the Parties and Erie waives its rights to terminate under Sections 3.5 and 14.2(a). The Inspection Period Contingencies in Sections 3.5(e) and 3.5(f) remain outstanding obligations of Erie to the Developer and Developer retains the right to terminate under Section 3.5 until Erie’s obligations under Sections 3.5(e) and 3.5(f) are satisfied.
3. Approvals Period. Section 4.1 of the Agreement is hereby amended to extend the Approvals Period until February 28<sup>th</sup>, 2020.



4. Exhibit A. Exhibit A to the Agreement, as amended by the First Amendment, is hereby further amended and restated as provided in the attached Exhibit A.

5. Miscellaneous.

a) Full Force and Effect. Except as amended by this Fifth Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by Erie and the Developer. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and this Fifth Amendment, the terms and conditions of this Fifth Amendment shall control.

b) Successors and Assigns. This Fifth Amendment shall be binding upon and inure to the benefit of the parties hereto and their heirs, personal representatives, successors and assigns.

c) Entire Agreement. This Fifth Amendment contains the entire agreement of Erie and the Developer with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by Erie and the Developer.

d) Power and Authority. Erie and the Developer have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Fifth Amendment.

e) Counterparts. This Fifth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Erie and the Developer agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f) Governing Law. This Fifth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado.

g) Notice Updates. The following shall be updated in Section 16.11(a) of the Agreement: the suite number for Developer's Colorado address is 1200 and the notice delivery for Developer's legal counsel is Jumps Law, Attention Brian Jumps, 2579 West Main Street, STE 201, Littleton, CO 80120, Email: [bjumps@jumpslaw.com](mailto:bjumps@jumpslaw.com). The following shall be updated in Section 16.11(b) of the Agreement: the Town of Erie Town Administrator notice shall be directed to Malcolm Fleming and the Town of Erie Town Attorney notice shall be directed to Kendra Carberry with an email address of [klc@hpwclaw.com](mailto:klc@hpwclaw.com).

*[Signature page follows.]*

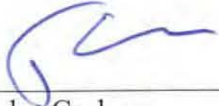
IN WITNESS WHEREOF, Erie and the Developer have caused this Fifth Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

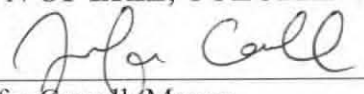
EVERGREEN-287 & ARAPAHOE, L.L.C,  
an Arizona limited liability company

By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: Executive Vice President

**TOWN OF ERIE, COLORADO**

  
Jennifer Carroll, Mayor

ATTEST:

  
Jessica Koenig, Town Clerk

TOWN OF ERIE URBAN RENEWAL AUTHORITY,  
a Colorado urban renewal authority

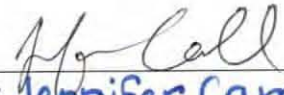
By:   
Name: Jennifer Carroll  
Title: Madam Chair



Exhibit A

- Legal Description -

PARCEL A:

PART OF THE NORTH HALF NORTHEAST QUARTER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF THE NORTH HALF NORTHEAST QUARTER FROM WHENCE THE NORTHWEST CORNER OF SAID NORTH HALF NORTHEAST QUARTER BEARS NORTH 00°04'00" EAST; THENCE SOUTH 89°48'30" EAST ALONG THE SOUTH LINE OF SAID NORTH HALF NORTHEAST QUARTER, A DISTANCE OF 1434.83 FEET; THENCE NORTH 00°14'20" EAST, 845.98 FEET TO THE SOUTH LINE OF THAT PROPERTY CONVEYED BY FLOYD E. HARRIS AND NEVADIA HARRIS TO LEONARD L. LANHAM AND NINA E. LANHAM, RECORDED MAY 15, 1968 ON FILM 635 AT RECEPTION NO. 879012; THENCE NORTH 89°41'50" WEST ALONG SAID SOUTH LINE, A DISTANCE OF 366.57 FEET TO A POINT ON THE EAST LINE OF THAT PROPERTY CONVEYED BY DEED FROM FLOYD EUGENE HARRIS AND NEVADIA HARRIS TO THE TOWN OF ERIE, A MUNICIPAL CORPORATION, RECORDED APRIL 29, 1968 IN FILM 633 AT RECEPTION NO. 877395; THENCE SOUTH 00°58'00" WEST ALONG SAID EAST LINE, 31.12 FEET TO THE CENTERLINE OF THE SOUTH BOULDER CANYON IRRIGATION DITCH; THENCE TRAVERSING ALONG THE CENTERLINE OF SAID DITCH AND THE SOUTH LINE OF PROPERTY DESCRIBED ON FILM 633 AT RECEPTION NO. 877395, THE FOLLOWING COURSES AND DISTANCES: SOUTH 71°36'00" WEST 508.65 FEET; THENCE SOUTH 73°48'00" WEST, 241.52 FEET; THENCE NORTH 89°40'00" WEST, 140.82 FEET; THENCE NORTH 77°42'00" WEST, 114.23 FEET; THENCE NORTH 62°24'00" WEST, 118.52 FEET TO A POINT ON THE WEST LINE OF THE NORTH HALF NORTHEAST QUARTER OF SAID SECTION 34; SAID POINT BEING ALSO THE SOUTHWEST CORNER OF THAT PROPERTY DESCRIBED ON FILM 633 AT RECEPTION NO. 877395; THENCE SOUTH 00°04'00" WEST ALONG SAID WEST LINE OF THE NORTH HALF NORTHEAST QUARTER, A DISTANCE OF 675.12 FEET TO THE TRUE POINT OF BEGINNING,

EXCEPTING THEREFROM THAT PORTION DESCRIBED IN DEED RECORDED APRIL 15, 1983 AT RECEPTION NO. 543786, AND IN DEED RECORDED FEBRUARY 20, 1997 ON FILM NO. 2187 AT RECEPTION NO. 1678309, COUNTY OF BOULDER, STATE OF COLORADO.

PARCEL B:

A PORTION OF THE NORTH 1/2 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTH LINE OF SAID NORTHEAST 1/4, 20 FEET WEST OF THE NORTHEAST CORNER OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4; THENCE NORTH 89°41'50" WEST ALONG SAID NORTH LINE, 230.64 FEET; THENCE SOUTH 00°58' WEST, 469.96 FEET; THENCE SOUTH 89°41'50" EAST, 618.52; THENCE NORTH 00°14'20" EAST, 469.93 FEET TO THE NORTH LINE OF SAID NORTHEAST 1/4; THENCE NORTH 89°41'50" WEST, ALONG SAID NORTH LINE TO THE TRUE POINT OF BEGINNING; EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF BOULDER BY THE DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127,

COUNTY OF BOULDER, STATE OF COLORADO.



Exhibit A

- Legal Description Continued -

PARCEL C:

PARCEL I:

A PART OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE NORTH 1/4 CORNER OF SAID SECTION; THENCE SOUTH 0°09' WEST 642.7 FEET; THENCE SOUTH 69°45' EAST 211.4 FEET; THENCE NORTH 85° EAST 195 FEET; THENCE NORTH 71°53' EAST 718 FEET; THENCE NORTH 24°20' EAST 539 FEET TO A POINT ON THE NORTH LINE OF SAID SECTION, 20 FEET WEST OF THE NORTHEAST CORNER OF SAID NORTHWEST 1/4 OF THE NORTHEAST 1/4; THENCE WEST ALONG SAID NORTH LINE OF SAID SECTION TO THE PLACE OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE COUNTY OF BOULDER BY THE DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127;  
AND EXCEPT THAT PORTION DESCRIBED IN DEED RECORDED APRIL 29, 1968 UNDER RECEPTION NO. 877396;  
AND EXCEPT THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, STATE OF COLORADO, BY THE DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.  
AND EXCEPT THAT PORTION CONVEYED TO THE DEPARTMENT OF TRANSPORTATION, STATE OF COLORADO BY THE DEED RECORDED JANUARY 2, 1998 UNDER RECEPTION NO. 1759789.

PARCEL II:

A PORTION OF THE NORTHWEST 1/4 OF THE NORTHEAST 1/4 OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SECTION 34, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, THENCE SOUTH 0°09' WEST, 642.7 FEET; THENCE SOUTH 69°45' EAST, 2.59 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34, THE TRUE POINT OF BEGINNING; THENCE SOUTH 69°45' EAST, 208.81 FEET; THENCE NORTH 85°0' EAST, 195.00 FEET; THENCE NORTH 71°53' EAST, 718.00 FEET; THENCE SOUTH 0°58' WEST, 31.12 FEET TO A POINT ON THE CENTERLINE OF THE SOUTH BOULDER CANYON DITCH; THENCE WESTERLY, ALONG THE SAID DITCH CENTERLINE AS FOLLOWS: SOUTH 71°36' WEST, 508.65 FEET; SOUTH 73°48' WEST, 241.52 FEET; NORTH 89°40' WEST, 140.82 FEET; NORTH 77°42' WEST, 114.23 FEET; NORTH 62°24' WEST, 118.52 FEET TO A POINT ON THE WEST LINE OF THE NORTHEAST QUARTER OF SAID SECTION 34; THENCE NORTH 0°04' WEST, ALONG THE SAID WEST LINE OF THE NORTHEAST QUARTER, 11.00 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS DIVISION OF HIGHWAYS, STATE OF COLORADO BY DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.

PARCEL III:

THAT PORTION OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 27, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF BOULDER, STATE OF COLORADO, LYING SOUTH OF THE COUNTY ROAD AS DESCRIBED IN DEED RECORDED NOVEMBER 29, 1913 IN BOOK 381 AT PAGE 127;

EXCEPTING THEREFROM THAT PORTION CONVEYED TO THE STATE DEPARTMENT OF HIGHWAYS, DIVISION OF HIGHWAYS, STATE OF COLORADO, BY THE DEED RECORDED FEBRUARY 8, 1983 UNDER RECEPTION NO. 532304.

- Graphic Depiction of Parcels A, B, C1, C2 and C3 -





## SIXTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Sixth Amendment to the Disposition and Development Agreement (this "**Sixth Amendment**") is made as of this ~~22nd~~ day of October, 2019 (the "Effective Date"), by and among the TOWN OF ERIE, a Colorado municipal home rule corporation (the "**Town**"), the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority ("**TOEURA**"), and together with the Town, "**Erie**"), and EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company (the "**Developer**") (each a "Party" and collectively the "Parties").

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement dated March 22, 2016 (the "**Original Agreement**"), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the "**First Amendment**");

WHEREAS, Erie and the Developer entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the "**Second Amendment**");

WHEREAS, Erie and the Developer entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (the "**Third Amendment**");

WHEREAS, Erie and the Developer entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8<sup>th</sup>, 2018 (the "**Fourth Amendment**");

WHEREAS, Erie and the Developer entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the "**Fifth Amendment**") (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment, are hereinafter collectively referred to as the "**Agreement**");

WHEREAS, Erie and the Developer desire to further amend the Agreement pursuant to the terms of this Sixth Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Definitions.

a. A new definition of “Act” is added to the Agreement as follows:

““Act” means the Special District Act, Colorado Revised Statutes §§ 32-1-101, *et seq.*”

b. A new definition of “Bonds” is added to the Agreement as follows:

““Bonds” means one or more series of bonds issued by the District in accordance with the terms of the Act (as defined below), which may be in the form of a note, loan, or other financial obligation identified as a Bond, including any bonds, notes, loans, or other financial obligations issued by the District to refund Bonds.”

c. The definition of “Contingencies” is hereby deleted in its entirety and replaced with the following:

““Contingencies” means (i) the Approvals Period Contingencies; (ii) the Inspection Period Contingencies; and (iii) the Retail Property – Phase 2 Approval Period Contingencies.”

d. A new definition of “Costs of Issuance” is added to the Agreement as follows:

““Costs of Issuance” means, collectively, the reasonable and necessary costs (as determined by the District) incurred in connection with the issuance of the Bonds, including, without limitation, compensation for all underwriters or placement agents who have provided services relative to this Agreement or the Bonds, financial consultant fees, fees and expenses of bond counsel, counsel to the underwriter, counsel and consultants to the District, and counsel to any Party or entity from which an opinion of counsel is required, fees and expenses of any provider of credit enhancement, bond insurance, or guaranty, fees and expenses of the trustee, bond registrar, paying agent, rebate agent, escrow verification provider, any fees and/or payments due in connection with the initiation or termination of an interest rate exchange agreement or interest rate cap agreement, and transfer agent and rating agency fees.”

e. A new definition of “Developer Advances” is added to the Agreement as follows:

““Developer Advances” means, collectively, amounts advanced to the District by any party to finance the District’s capital improvements and related expenditures pursuant to one or more Reimbursement Agreements. Developer Advances shall also include, without limitation, Eligible Costs and Costs of Issuance paid directly by the Developer and reasonably accepted by the District.”

f. A new definition of “District” is added to the Agreement as follows:

““District” means the Nine Mile Metropolitan District, a to-be-formed quasi-municipal corporation and political subdivision of the State of Colorado.”

g. New definitions of “Eligible Accrued Interest” and “Eligible Costs” are added to the Agreement as follows:

““Eligible Accrued Interest” means simple per annum interest accrued on Developer Advances for Eligible Costs paid directly by Developer and accepted by the District at a rate equal to Prime Rate plus 7%, compounded annually. Interest shall begin to accrue on Developer Advances on the date the Developer Advance is made or, as applicable, from the date of expenditure of the Eligible Cost as reasonably verified by the District pursuant to the terms of any applicable Reimbursement Agreement. “Prime Rate” means the prime rate as published in the Wall Street Journal on the first business day of each calendar month, which shall be adjusted on a current monthly basis as of the first business day of each calendar month.”

“Eligible Costs” means, collectively, (a) the reasonable and customary expenditures for engineering, design, installation and construction of eligible improvements, including necessary and reasonable soft costs, including, without limitation, any such costs and expenditures incurred by the District, and (b) Developer Advances and Eligible Accrued Interest. Notwithstanding anything to the contrary in this Agreement, Eligible Costs shall include all additional costs not expressly described in this Agreement that are approved administratively in writing by the Town Administrator, in the Town Administrator’s reasonable discretion,, provided such costs are consistent with the intent of Erie and the Developer.”

h. New definitions of “Pledged Property Tax Increment Revenue,” “Pledged Sales Tax Increment Revenue” and “Pledged Revenues” are added to the Agreement as follows:

““Pledged Property Tax Increment Revenue” means all incremental property tax revenues received by TOEURA generated within the Urban Renewal Plan boundary, net of any offsets retained by the County Treasurer for return of overpayments or as reserve funds as permitted by C.R.S. § 31-25-107(9)(a)(III) and (b).”

“Pledged Sales Tax Increment Revenue” means 100% of the incremental sales tax revenues generated within the Urban Renewal Plan Boundary within the property defined as Retail Property – Phase 1 that TOEURA receives from the Town, such amount being equal to 50% of the total incremental sales tax revenues generated within the Retail Property – Phase 1, as defined below.

“Pledged Revenues” means, collectively, the (i) Pledged Property Tax Increment Revenue; and (ii) Pledged Sales Tax Increment Revenue.”



i. A new definition of “Reimbursement Agreement” is added to the Agreement as follows:

““Reimbursement Agreement” means, either individually or collectively, one or more agreements between the District and any other party setting forth terms and conditions under which the Developer Advances are accepted by the District for construction or acquisition of the eligible improvements and other Eligible Costs and later reimbursed by the District.”

j. The definition of “Retail Property” is hereby deleted in its entirety and replaced with the following:

““Retail Property” means that certain portion of the Property allocated for retail and commercial use in accordance with Section 3.5 and comprised of Retail Property – Phase 1 and Retail Property – Phase 2 as defined below.”

Exhibit A-1 attached to this Sixth Amendment illustrates the boundaries of the Retail Property – Phase 1 and Retail Property – Phase 2 and the Residential Property.

k. A new definition of “Retail Property – Phase 1” is added to the Agreement as follows:

““Retail Property – Phase 1” means specifically the real property described as such on Exhibit A-1 attached to the Sixth Amendment. As of the date hereof, the Retail Property- Phase 1 is contemplated to be the first phased Closing per the terms of Section 5.3.”

l. A new definition of “Retail Property – Phase 2” is added to the Agreement as follows:

““Retail Property – Phase 2” means specifically the real property described on Exhibit A-1 attached to the Sixth Amendment. As of the date hereof, the Retail Property- Phase 2 is contemplated to be a future phased Closing per the terms of Paragraph 5.3(c).”

m. The definition of “Property” is hereby deleted in its entirety and replaced with the following:

““Property” means the real property described in Exhibit A of the Fifth Amendment and which shall be allocated into the Retail Property – Phase 1, the Retail Property – Phase 2 and the Residential Property as shown on Exhibit A-1 of the Sixth Amendment.”

n. The definition of “Retail Property Purchase Price” is hereby deleted in its entirety and replaced with the following.

““Retail Property Purchase Price” means that purchase price for the Retail Property – Phase 2 only described in Section 5.1(c).”

3. Closing.

a. Section 5.1 of the Agreement is hereby deleted in its entirety and replaced with the following:

“5.1 Purchase Price and Consideration for Conveyance. In furtherance of the Development Plan and the Urban Renewal Plan, the Parties have agreed upon various forms of incentives and financial assistance in accordance with and in furtherance of the Urban Renewal Plan, including conveyance of title to certain portions of the Property by Erie to the Developer. As such, in and for consideration of the commitment to the development of the Property conveyed to the Developer under this Agreement and the financial feasibility and success thereof, Erie and the Developer hereby agree that:

(a) Residential Property Purchase Price. The Residential Property Purchase Price shall be \$2.00 per square foot, net of all public right-of-way dedications and park/open space dedications and buffers required for the Residential Property, as determined by the Parties in accordance with Section 3.5(a) and shown on the Survey. The Town, TOEURA and the Developer agree that the Residential Property Purchase Price equals \$1,007,885, based on the estimated total area of 503,682 square feet. The Developer shall also pay Title Company costs and expenses payable at a Closing.

(b) Retail Property – Phase 1 Conveyance. Except for any Title Company costs and expenses payable at a Closing by the Developer as provided in this Agreement, no other consideration shall be due for any portion of the Retail Property – Phase 1 conveyed to the Developer under this Agreement pursuant to Section 5.3. Erie and the Developer agree that the value to the Developer of TOEURA’s conveyance of the land to the Developer to facilitate implementation of the Urban Renewal Plan is \$2,727,130, based on the agreed on price of \$3.00 per square foot, estimated net total area of 867,971 square feet, and closing costs of 4.732% to be reflected in value of contribution.”

(c) Retail Property – Phase 2 Purchase Price. The Retail Property Purchase Price for Retail Property – Phase 2 shall be, unless otherwise agreed by TOEURA, the Town and the Developer, \$3.00 per square foot, net of all public right-of-way dedications and park/open space dedications and buffers, of the Retail Property – Phase 2, as determined by the Parties in accordance with Section 3.5(a) and shown on the Survey.

b. Section 5.2(c) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(c) TOEURA and Town Approvals.

(i) The Parties’ mutual vision and concepts for how the Property should be developed are described in Exhibit A-2 to this Sixth Amendment. The Developer will submit detailed project plans consistent with Exhibit A-2 to the Town pursuant to the Town’s Unified Development Code (“Code”) and any other applicable regulations. The Town will review such plans pursuant to the Code. The Developer may not materially deviate from the vision set forth in Exhibit A-2 without the express written approval of the Town and TOEURA.

(ii) With respect to the Retail Property – Phase 1 and the Residential Property, the Developer has submitted to TOEURA and TOEURA has approved a tax increment plan for the reimbursement of Eligible Costs from the Pledged Revenues authorized to be received by TOEURA pursuant to the Urban Renewal Plan that are generated by the development of the Retail Property – Phase 1 and the Residential Property (the “Tax Increment Plan”). The Parties agree that the total reimbursement of Eligible Costs from the Tax Increment Plan shall not exceed \$10,800,000 (which represents the Developer’s proposed public finance request of \$13,527,130, less the \$2,727,130 value of the conveyance of the land as set forth in Section 5.1(b)) (the “Tax Increment Cap”), which Tax Increment Cap shall, however, not apply to any Costs of Issuance (including Developer Advances for Costs of Issuance), Eligible Accrued Interest, capitalized interest, any debt service reserve fund or any surplus fund.

(iii) TOEURA hereby pledges the Pledged Revenues to the District for operations, maintenance obligations and administration of the District and for the debt service requirements of the Bonds to be issued by the District for all Eligible Costs, Costs of Issuance, Eligible Accrued Interest, capitalized interest, and any debt service reserve fund or any surplus funds. TOEURA further hereby covenants that until the date of payment in full of the Bonds, TOEURA will not pledge or encumber the Pledged Revenues hereunder, but shall maintain the same for the use and benefit of the District and, upon receipt, shall promptly pay the same to the District operations, maintenance obligations and administration of the District and for the debt service requirements of the Bonds to be issued by the District as herein provided. With respect to the Retail Property – Phase 2, on or before the date that is two (2) years after the last Closing associated with the Retail Property – Phase 1 and the Residential Property, the Developer may submit to TOEURA a proposal for the reimbursement of actual reimbursable project costs from tax increment financing and from a percent of incremental sales taxes as allowed by TOEURA that are generated by the development of the Retail Property – Phase 2 (the “Future Tax Increment Proposal”).

(iv) The Future Tax Increment Proposal shall, if submitted, include any required feasibility studies, forecasts and projections, which shall be provided by and at the sole expense of the Developer and must be acceptable to TOEURA in TOEURA's reasonable discretion, and shall specifically include an analysis of the likelihood and timing of any development of the Retail Property – Phase 2 anticipated to support the generation of the tax increment financing. TOEURA shall consider the Future Tax Increment Proposal, and may, in its sole discretion, approve or deny the Future Tax Increment Proposal.

(v) In the event TOEURA elects to approve the Future Tax Increment Proposal, the Parties shall have until Closing of the Retail Property – Phase 2 to agree upon, and for the TOEURA Board to take action on, an agreement memorializing the terms of the Future Tax Increment Proposal.

(vi) If TOEURA and the Developer are unable to agree upon the form and substance of the Future Tax Increment Proposal on or before Closing for the Retail Property – Phase

2, then the Developer may, if the Developer is unable to develop the Retail Property – Phase 2 without such Future Tax Increment Proposal, terminate this Agreement as to the Retail Property – Phase 2 in accordance with Section 14. TOEURA and the Developer covenant and agree to use reasonable, good faith efforts to negotiate the final form of the Future Tax Increment Proposal.”

c. A new Section 5.2(d) is added to the Agreement as follows:

“(d) Pledge. In order to further the implementation of the Development Plan, and in furtherance of the Urban Renewal Plan, TOEURA hereby agrees to pay to the Developer or District the Pledged Revenues. TOEURA hereby pledges such Pledged Revenues to the Developer or District, subject to the terms and provisions of this Agreement. Such revenues shall be paid to the Developer or District as soon as practicable after receipt thereof by TOEURA, but in any event within thirty (30) days of receipt thereof, provided that the Developer may direct TOEURA in writing to pay the Pledged Revenues to the District, a trustee of the Bonds or another entity or depository. TOEURA hereby elects to apply C.R.S. §11-57-208(2) to this Agreement. In accordance with C.R.S. §11-57-208(2) the Pledged Revenues pledged pursuant to this Agreement shall immediately be subject to the lien of such pledge without any physical delivery, filing or further act. The lien of such pledge and the obligation to perform the contractual provisions made herein shall have priority over any or all other obligations and liabilities, except as may otherwise be provided herein. The lien of such pledge shall be valid, binding and enforceable as against all persons having claims of any kind in tort, contract, or otherwise against TOEURA irrespective of whether such persons have notice of such liens. Further, TOEURA agrees that it shall not issue or incur bonds, notes or other obligations payable in whole or in part from, or constituting a lien upon the Pledged Revenues. If and to the extent required in connection with the issuance of the Bonds, the TOEURA will enter into a separate cooperation agreement or finance agreement with the District containing the terms outlined in this Agreement and all parties agree to provide the legal opinions necessary to complete the Bond transaction. Notwithstanding anything contained in this Agreement to the contrary, including, without limitation, any default or termination provisions, once Bonds have been issued by the District, neither the Town nor TOEURA shall have the right to terminate the pledge of revenues made under this Agreement, and in no event shall the Town or TOEURA have the right to compel or enjoin the issuance, payment, defeasance, refinancing, or refunding of any Bonds, or take any actions that would adversely impact the Bonds, or the payment of Pledged Revenues to the Developer or the District, as applicable.”

d. A new Section 5.2(e) is added to the Agreement as follows:

(e) Ditch Relocation. In order to facilitate the orderly development of the Property, the Town and TOEURA hereby further agree that the Town will advance to TOEURA, and TOEURA will advance to the Developer, sufficient funds necessary to accomplish the relocation of the irrigation ditch located on the Property and owned by the South Boulder Canyon Ditch Company (“Ditch”), currently estimated at approximately \$1.5 million (“Ditch Relocation



Advance”). In the event that the Closing occurs, the amount of the Ditch Relocation Advance shall be repaid by the Developer or District, to TOEURA on July 1, 2020, without interest. In the event that the Closing does not occur and this Agreement is terminated, TOEURA and the Town agree that if the Developer has completed the ditch relocation and provided to the Town and TOEURA full accounting of all costs associated with that work, the Ditch Relocation Advance expenditure benefits the Property and repayment will not be owed from the Developer to TOEURA except for any unexpended portion of the Ditch Relocation Advance that was not required to complete the ditch relocation. The Town and TOEURA agree to make draws on the Ditch Relocation Advance available to the Developer within 15 business days of the Developer’s written notice, including invoiced costs, to the Town and TOEURA that the Developer is ready to commence the relocation work for the Ditch. In the event that Closing has not yet occurred at the time of Developer’s notice pursuant to this Section, TOEURA also agrees that it will provide authorization for the Developer to enter onto the Property and perform the work necessary to relocate the Ditch in the form of a License and/or Construction Easement as applicable.

e. Section 5.3 of the Agreement is hereby deleted in its entirety and replaced with the following:

“5.3 Conveyance; Closing.

(a) Retail Property – Phase 1. Within thirty (30) days of notice from the Developer or the later of (i) the Town, TOEURA and the Developer completing all Inspection Period Contingencies and all Approvals Period Contingencies applicable to the Retail Property – Phase 1, and (ii) expiration of the Approvals Period, the Retail Property – Phase 1 shall be conveyed to the Developer by the Deed.

(b) Residential Property. Within thirty (30) days of notice from the Developer or the later of (i) the Town, TOEURA and the Developer completing all Inspection Period Contingencies and all Approvals Period Contingencies applicable to the Residential Property, (ii) expiration of the Approvals Period, and (iii) payment of the Residential Property Purchase Price, the Residential Property shall be conveyed to the Developer by the Deed.

(c) Retail Property – Phase 2. Within thirty (30) days of notice from the Developer or the later of (i) the Developer completing all Retail Property – Phase 2 Approvals Period Contingencies (as defined in the Sixth Amendment) applicable to the Retail Property – Phase 2, and (ii) expiration of the Retail Property – Phase 2 Approvals Period (as defined in the Sixth Amendment), the Retail Property – Phase 2 shall be conveyed to the Developer by the Deed.

(d) Separate Closings; Partial Closings. Based upon the timing of the satisfaction of the Contingencies and/or the timing of the Development Plan, the Retail Property, or portions thereof, and the Residential Property, or portions thereof, may be conveyed to the Developer simultaneously or separately, it being the intent of Erie and the Developer, for instance, to allow for the closing of the portion of the Retail Property for the Anchor Tenant separate from outparcels or pads of the Retail Property. At the time of the closing of the conveyance of each of the Retail Property, or portions thereof, and the

Residential Property, or portions thereof (each, a “Closing” and collectively the “Closings”), and subject to the terms, covenants and conditions of this Agreement, TOEURA shall convey to the Developer title by a Deed to each of the Retail Property, or portions thereof, and the Residential Property, or portions thereof. The Closings shall take place at the office of the Title Company, unless TOEURA and the Developer agree otherwise in writing. If and to the extent the Developer desires to phase the Closing of the Retail Property or the Residential Property as herein provided, the Developer shall provide notice to TOEURA of the applicable parcel of the Retail Property or Residential Property subject to an applicable Closing.

(e) Other Approvals. In order to facilitate the Closings as described herein, TOEURA and the Town agree to sign and record, within 5 business days after receipt and prior to the first Closing, the approved subdivision plat or plats, following review and approval by the Town, in and for the Property such that the Retail Property – Phase 1 and Residential Property may be conveyed to the Developer. Further, in order to accommodate the separate or partial Closings as described herein, TOEURA, the Town and the Developer agree to use reasonable best efforts to negotiate, enter into, and execute, prior to the first Closing, such temporary construction easements, access easements, and other necessary easements and license agreements as may be necessary for site work and other Improvements in good faith, including, without limitation, construction easements allowing for the grading of the entirety of the Property and any permanent access easements for the operation of the Retail Property – Phase 1 and Residential Property. TOEURA, the Town and the Developer agree to use reasonable best efforts to finalize all such agreements required prior to the first Closing no later than November 29, 2019. Developer shall provide initial drafts of such agreements for consideration by the Town and TOEURA.

4. Retail Property – Phase 2 Approvals Period. The Developer shall have two (2) years from the last Closing associated with the Retail Property – Phase 1 or the Residential Property (the “**Retail Property – Phase 2 Approvals Period**”) to obtain all necessary Governmental Approvals from the Town for the use of the Retail Property – Phase 2. In the event that the Government Approvals have not been obtained during such two (2) year period, the Retail Property – Phase 2 Approvals Period shall automatically extend for an additional sixty (60) days. In addition to the conditions set forth above, prior to the expiration of the Retail Property – Phase 2 Approvals Period, each of the Town, TOEURA and the Developer, as applicable, shall satisfy the following contingencies (collectively, the “**Retail Property – Phase 2 Approvals Period Contingencies**”): (a) the Developer shall create and process all site plans, subdivision plats and construction/building permits with the Town; (b) the Town, without waiving any of its legislative, quasi-judicial, regulatory or decision-making authority agrees and covenants to reasonably cooperate in good faith with the Developer in such a manner as to not circumvent the terms of this Agreement; and (c) the Developer, as assisted by Developer’s Broker, covenants and agrees to use good faith efforts to market the Retail Property – Phase 2 to attract quality retail and commercial tenants for the Retail Property – Phase 2. Prior to expiration of the Retail Property – Phase 2 Approvals Period, the Developer shall deliver written notice to Erie indicating that each of the Retail Property – Phase 2 Approvals Period Contingencies has been waived or satisfied. In the event that the Developer notifies TOEURA that it is unable to proceed with this transaction as to the Retail Property – Phase 2 due to a valid failure of any of the Retail Property – Phase 2 Approvals Period Contingencies, this Agreement shall terminate as to the Retail Property – Phase 2, and the Parties shall be relieved

of all further obligations and liability hereunder as to the Retail Property – Phase 2 (other than those that are expressly stated to survive the termination of this Agreement). In the event that the Developer fails to provide a notice as required herein in this Section, TOEURA shall provide the Developer with a written reminder notice and, if the Developer fails to provide a notice as required herein within ten (10) days, then this Agreement shall terminate as to the Retail Property – Phase 2, and the Parties shall be relieved of all further obligations and liability hereunder (other than those that are expressly stated to survive the termination of this Agreement).

5. Development Financing. Erie acknowledges and agrees that the Developer has satisfied the terms of Section 7.1 with respect to the Developer's Financing for the Development Plan.

6. Impositions and Construction of the Retail Property. Erie and the Developer acknowledge and agree that, with respect to the Retail Property, the Developer shall not be obligated to pay any fees other than as set forth on the Controlled Fee Schedule. Developer shall not be obligated to pay any increases in any such fees beyond that enumerated on the Controlled Fee Schedule. Notwithstanding anything contained in the Agreement to the contrary, the Parties agree to revise the Schedule of Performance with the respect to the Retail Property – Phase 2 concurrently with the first Closing associated with the Retail Property – Phase 2. Notwithstanding anything contained in the Agreement to the contrary, the Commencement of Construction and Completion of Construction of the Improvements required for the Retail Property – Phase 2 shall not impact the Retail Property – Phase 1 or the Residential Property.

7. Developer's Construction Obligations. Notwithstanding anything contained in the Agreement to the contrary, Erie acknowledges and agrees that the District may perform all or a portion of the Developer's obligations under Section 9 of the Agreement.

8. Assignment. Section 12.1(f) of the Agreement is amended to read as follows:

(f) assignment of its rights to the District, an Affiliate or an entity established by Developer for the closing, construction or financing of the Improvements, or

9. Controlled Fee Schedule. The Parties note that the execution version of the Agreement inadvertently omitted Exhibit E. As such, the Parties hereby agree that Exhibit B attached hereto shall constitute the Controlled Fee Schedule for all purposes under the Agreement.

10. Termination by TOEURA. Section 14.2 of the Agreement is hereby deleted and replaced with the following:

“14.2 Termination by Erie. TOEURA shall have the right to terminate this Agreement with respect to the Retail Property – Phase 2 as set forth in Section 4 of the Sixth Amendment. TOEURA shall not have the right to terminate this Agreement otherwise.”

11. Miscellaneous.

a. Full Force and Effect. Except as amended by this Sixth Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second

Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and this Sixth Amendment, the terms and conditions of this Sixth Amendment shall control.

b. Successors and Assigns. This Sixth Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. Entire Agreement. This Sixth Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.

d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Sixth Amendment.

e. Counterparts. This Sixth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f. Governing Law and Venue. This Sixth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

*[Signature page follows.]*



IN WITNESS WHEREOF, the Parties have caused this Sixth Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

EVERGREEN-287 & ARAPAHOE, L.L.C.,  
an Arizona limited liability company

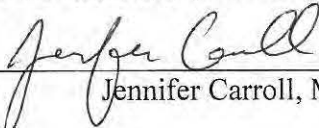
By: EVERGREEN DEVELOPMENT  
COMPANY-2016, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: Executive Vice President




**TOWN OF ERIE, COLORADO**

  
Jennifer Carroll, Mayor

ATTEST:

  
Jessica Koenig, Town Clerk

TOWN OF ERIE URBAN RENEWAL AUTHORITY  
a Colorado urban renewal authority

By:   
Name: Jennifer Carroll  
Title: Madam Chair



**Depiction of the Retail Property – Phase 1, Retail Property – Phase 2 and the Residential Property**



## EXHIBIT A-2

### Project Vision and Concept

#### Project Vision

Our vision for Nine Mile is a horizontally integrated, mixed-use **community** that combines neighborhood retail, restaurants and multifamily residential with intentional place-making and building architecture that is a modern interpretation of the Town of Erie's origins as a mining and agriculture town in the 19<sup>th</sup>-century West. Important to realizing this vision at Nine Mile are 1) securing a strong retail anchor and attracting a mix of local, regional and national restaurants and retailers, 2) integrating high-quality, yet affordable housing to create community, and 3) executing intentional planning, building and landscape architecture to create spaces that are inviting to pedestrians within and the community surrounding Nine Mile.



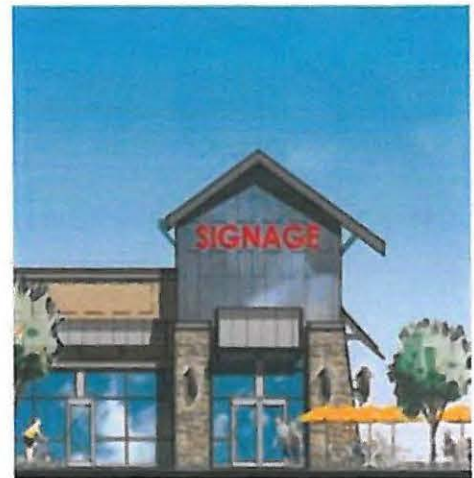
The forms and materials used in the Nine Mile building designs reflect the local materials and function of building elements found in that era. Gable and shed roof forms, structural knee bracing, and the selective use of metals, stone, masonry and board and batten siding are combined in the Nine Mile building architecture to evoke the imagery of turn-of-the-century Erie.

The complementary use of colors helps to personalize the scale of buildings. When color is used in combination with building forms, it can be used to great effect where people gather to enjoy the outdoors. The Nine Mile gathering space shall be framed by buildings, and when blended with outdoor lighting, outdoor seating, hardscape colors and materials, and landscape architecture it provides for a comfortable, engaging and vibrant entertainment and dining area for Erie neighborhoods and residents.





**Design Concepts**  
*Retail*



**Design Concepts**  
*Residential*







## EXHIBIT B

### CONTROLLED FEE SCHEDULE (Reflecting 2016 Fee Rates)

<b>BUILDING PERMIT FEES</b>	<b>Unit</b>	<b>Cost/Unit</b>
Plan Review Fee	Percent of Building Fee	65% of Building Permit Fee
Demolition Permit	Flat Fee	\$25.00
Building Permit Fee Based upon Valuation	<b>Total Valuation</b>	<b>Fee</b>
	\$1 - \$500	\$23.50
	\$501 to \$2,000	\$23.50 for the first \$500.00 plus \$3.05 for each additional \$100.00, or fraction thereof, to and including \$2,000.00
	\$2,001.00 to \$25,000.00	\$69.25 for the first \$2,000.00 plus \$14.00 for each additional \$1,000.00, or fraction thereof, to and including \$25,000.00
	\$25,001.00 to \$50,000.00	\$391.25 for the first \$25,000.00 plus \$10.10 for each additional \$1,000.00, or fraction thereof, to and including \$50,000.00
	\$50,001.00 to \$100,000.00	\$643.75 for the first \$50,000.00 plus \$7.00 for each additional \$1,000.00, or fraction thereof, to and including \$100,000.00
	\$100,001.00 to \$500,000.00	\$993.75 for the first \$100,000.00 plus \$5.60 for each additional \$1,000.00, or fraction thereof, to and including \$500,000.00
	\$500,001.00 to \$1,000,000.00	\$3,233.75 for the first \$500,000.00 plus \$4.75 for each additional \$1,000.00, or fraction thereof, to and including \$1,000,000.00
	\$1,000,001.00 and up	\$5,608.75 for the first \$1,000,000.00 plus \$3.15 for each additional \$1,000.00, or fraction thereof
Town of Erie Use Tax	Percentage	3.5 percent of material costs or 50 percent of job valuation as determined by chief building official
Boulder Co. Open Space Use Tax	Percentage	0.65 percent of material costs or 50 percent of job evaluation as determined by chief building official

Electrical Permit Fee Based upon Total Valuation of Work	Total Valuation	Fee
	\$0.00 to \$300.00	\$30.00
	\$301.00 to \$2,000.00	\$35.00
	\$2,001 to \$50,000	\$15.00 per thousand or fraction thereof of total valuation
	\$50,001 to \$500,000	\$50.00 plus \$14.00 per thousand or fraction thereof of total valuation
	\$500,001.00 and up	\$550.00 plus \$13.00 per thousand or fraction thereof of total valuation
Plumbing Permit Fee Based upon Total Value of Work	Total Valuation	Fee
	\$0.00 to \$300.00	\$45.00
	\$301.00 to \$2,000.00	\$50.00
	\$2,001.00 to \$50,000.00	\$18.00 per thousand or fraction thereof of total valuation
	\$50,001.00 to \$500,000.00	\$50.00 plus \$17.00 per thousand or fraction thereof of total valuation
	\$500,001.00 and up	\$550.00 plus \$16.00 per thousand or fraction thereof of total valuation
Mechanical Permit Fee Based upon Total Value of Work	Total Valuation	Fee
	\$0.00 to \$300.00	\$35.00
	\$301.00 to \$2,000.00	\$45.00
	\$2,001.00 to \$50,000.00	\$17.00 per thousand or fraction thereof of total valuation
	\$50,001.00 to \$500,000.00	\$50.00 plus \$16.00 per thousand or fraction thereof of total valuation
	\$500,001.00 and up	\$550.00 plus \$15.00 per thousand or fraction thereof of total valuation
IMPACT FEES	Unit	Cost/Unit
Public Facilities Fee	\$/1,000 s.f Total Building Area	\$1,728.00
Storm Drainage Fee	NA	NA
Transportation Fee	\$/1,000 s.f Total Bldg Area	\$2,712.00
PUBLIC WORKS FEES		
Grading Permit	Flat Fee	\$50.00
Permit to Work in Right-of-way	Flat Fee	\$50.00



<b>ZONING/ENTITLEMENT FEES</b>		
PD-Zoning Amendment	Flat Fee	\$500.00
Minor Subdivision Plat Fee (Planning and Engineering)	Flat Fee	\$1,000 for Planning \$1,000 for Engineering
Site Plan Fee	Based on Building Size	
	Greater than 10,000 s.f.	\$1,000 for Planning \$1,200 for Engineering
	Greater than 2,000 s.f. but Less than 10,000S.f.	\$500 for Planning \$500 for Engineering
	Less than 2,000 s.f.	\$100 for Planning \$100 for Engineering
<b>WATER &amp; SANITARY SEWER FEE/CHARGES</b>	<b>Unit</b>	<b>Cost/Unit</b>
Water Tap & Meter Fee based upon Meter Size	¾ inch	\$11,582.00
	1 inch	\$19,303.00
	1½ inches	\$38,607.00
	2 inches	\$61,771.00
	3 inches	\$115,820.00
	4 inches	\$193,033.00
	6 inches	\$386,067.00
Sanitary Sewer Tap based upon Water Tap Size	¾ inch	\$5,200.00
	1 inch	\$8,667.00
	1½ inches	\$17,333.00
	2 inches	\$27,733.00
	3 inches	\$52,000.00
	4 inches	\$86,667.00
	6 inches	\$173,333.00
Raw Water Fee (Potable and Non-potable)	Per Acre Ft Required based upon Water Demand Calculation	\$17,410.00/Ac.Ft.
Westside Sanitary Sewer Reimbursement Fee	Rate per single-family residential equivalent (SFRE)	\$1,500.00/SFRE
NWRF Sanitary Sewer Reimbursement Fee	Rate per single-family residential equivalent (SFRE)	\$410.00/SFRE
Stormwater Permit Fee	Rate per single-family residential equivalent (SFRE)	\$6.60/SFRE

## SEVENTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Seventh Amendment to the Disposition and Development Agreement (this “**Seventh Amendment**”) is made as of this 3<sup>rd</sup> day of May, 2020 (the “**Effective Date**”), by and among the TOWN OF ERIE, a Colorado statutory municipality (the “**Town**”), the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company (the “**Developer**”) (each a “**Party**” and collectively the “**Parties**”).

### RECITALS

WHEREAS, Erie and the Developer entered into that certain Disposition and Development Agreement dated March 22, 2016 (the “**Original Agreement**”), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, Erie and the Developer entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the “**First Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the “**Second Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (the “**Third Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8<sup>th</sup>, 2018 (the “**Fourth Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the “**Fifth Amendment**”);

WHEREAS, Erie and the Developer entered into that certain Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the “**Sixth Amendment**”) (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment and the Sixth Amendment, are hereinafter collectively referred to as the “**Agreement**”);

WHEREAS, Erie and the Developer desire to further amend the Agreement pursuant to the terms of this Seventh Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Legal Descriptions. Notwithstanding anything contained in the Agreement to the contrary, Erie and Developer hereby agree that the legal descriptions of the Retail Property – Phase 1, Retail Property – Phase 2 and Residential Property shall be as follows, subject to change in nomenclature and possible addition of recording information as required by Title Company:

Retail Property – Phase 1:

Lots 1-9, inclusive, and Tracts A, B, C-1, C-2, D, E and F,  
Nine Mile Corner  
County of Boulder, State of Colorado

Retail Property – Phase 2:

Lot 10,  
Nine Mile Corner  
County of Boulder, State of Colorado

Residential Property:

Lot 11 and Tracts G and H,  
Nine Mile Corner  
County of Boulder, State of Colorado

As part of the Deed for the legal descriptions above, Erie shall provide a surface waiver for any owned minerals or oil and gas rights reasonably acceptable to the Title Company.

3. Definitions. Erie and Developer hereby agree that the definition of “Force Majeure” set forth in Section 1.1 of the Agreement is hereby amended to specifically include incidence of disease or other illness that reaches epidemic or pandemic proportions, including delays by the Anchor Tenant due to the COVID-19 pandemic and delays with the contemplated issuance of Bonds due to the COVID-19 pandemic.

4. Ditch Relocation. The second sentence of Section 5.2(e) of the Agreement is hereby deleted in its entirety and replaced with the following:

“In the event that Closing occurs, the amount of the Ditch Relocation Advance shall be repaid by the Developer or District to TOEURA on or before the date that is sixty (60) days after the Closing for the Retail Property – Phase 1 and the issuance of the Bonds, without

interest, but in no event shall the Ditch Relocation Advance be repaid later than 120 days after Closing for the Retail Property – Phase 1.”.”

5. Conveyance; Closing. Section 5.3(b) of the Agreement is hereby deleted in its entirety and replaced with the following:

“(b) Residential Property. The Residential Property shall be conveyed to the Developer or its designated Affiliate by the Deed upon the payment of the Residential Property Purchase Price for Lot 11 on a date agreed upon by Developer and Erie, which date shall be on or before the date that is one hundred twenty (120) days after the Closing on the Retail Property – Phase 1, subject to Force Majeure.”

6. Other Approvals. The phrase “no later than November 29, 2019” as the date for the finalization of the agreements as referenced in Section 5.3(e) of the Agreement is hereby deleted and replaced with the phrase “no later than the Closing on the Retail Property – Phase 1” for all purposes under the Agreement.

7. Closing Extensions. Erie and Developer hereby agree that Section 5.7 of the Agreement is hereby amended such that, in order to exercise such extensions, Developer shall deliver written notice to the Town and reasonable evidence of the need for such extension no less than five (5) days prior to the then-scheduled Closing, not thirty (30) days as originally set forth in the Agreement. Erie hereby agrees that Developer may exercise such applicable extensions to additionally accommodate the issuance of the Bonds and any Anchor Tenant delays.

8. Miscellaneous.

a. Full Force and Effect. Except as amended by this Seventh Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment and this Seventh Amendment, the terms and conditions of this Seventh Amendment shall control.

b. Successors and Assigns. This Seventh Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. Entire Agreement. This Seventh Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.

d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Seventh Amendment.

e. Counterparts. This Seventh Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

f. Governing Law and Venue. This Seventh Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Seventh Amendment to be duly executed as of the Effective Date.

**DEVELOPER:**

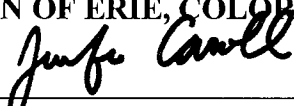
**EVERGREEN-287 & ARAPAHOE, L.L.C.,**  
an Arizona limited liability company

By: EVERGREEN DEVELOPMENT  
COMPANY-2019, L.L.C.,  
an Arizona limited liability company  
Its: Manager

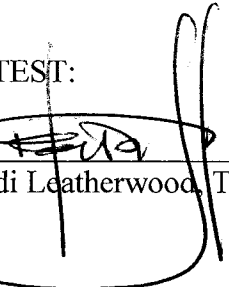
By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: Executive Vice President


**TOWN OF ERIE, COLORADO**

  
\_\_\_\_\_  
Jennifer Carroll, Mayor

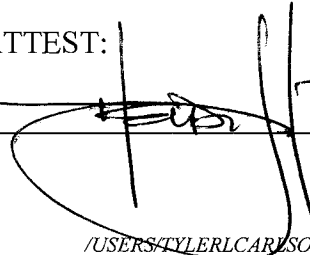
ATTEST:

  
\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**TOWN OF ERIE URBAN  
RENEWAL AUTHORITY**

  
\_\_\_\_\_  
Jennifer Carroll, Chair

ATTEST:

  
\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

Heidi Leatherwood, Secretary

## EIGHTH AMENDMENT TO THE DISPOSITION AND DEVELOPMENT AGREEMENT

This Eighth Amendment to the Disposition and Development Agreement (this “**Eighth Amendment**”) is made as of this 23<sup>rd</sup> day of Sept., 2020 (the “**Effective Date**”), by and among the TOWN OF ERIE, a Colorado statutory municipality (the “**Town**”), the TOWN OF ERIE URBAN RENEWAL AUTHORITY, a Colorado urban renewal authority (“**TOEURA**”, and together with the Town, “**Erie**”), and EVERGREEN-287 & ARAPAHOE, L.L.C., an Arizona limited liability company (the “**Developer**”) (each a “**Party**” and collectively the “**Parties**”).

### RECITALS

WHEREAS, the Parties entered into that certain Disposition and Development Agreement dated March 22, 2016 (the “**Original Agreement**”), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

WHEREAS, the Parties entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the “**First Amendment**”);

WHEREAS, the Parties entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the “**Second Amendment**”);

WHEREAS, the Parties entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (the “**Third Amendment**”);

WHEREAS, the Parties entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8<sup>th</sup>, 2018 (the “**Fourth Amendment**”);

WHEREAS, the Parties entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the “**Fifth Amendment**”);

WHEREAS, the Parties entered into that certain Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the “**Sixth Amendment**”);

WHEREAS, the Parties entered into that certain Seventh Amendment to the Disposition and Development Agreement dated May 13, 2020 (the “**Seventh Amendment**”) (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment and the Seventh Amendment, are hereinafter collectively referred to as the “**Agreement**”);

WHEREAS, the Parties desire to further amend the Agreement pursuant to the terms of this Eighth Amendment.

NOW, THEREFORE, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Definitions. The Parties hereby agree that the Tax Increment Cap as defined in the Sixth Amendment shall be increased to \$12,800,000.

3. Miscellaneous.

a. Full Force and Effect. Except as amended by this Eighth Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and this Eighth Amendment, the terms and conditions of this Eighth Amendment shall control.

b. Successors and Assigns. This Eighth Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. Entire Agreement. This Eighth Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.

d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Eighth Amendment.

e. Counterparts. This Eighth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.


f. Governing Law and Venue. This Eighth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

IN WITNESS WHEREOF, the Parties have caused this Eighth Amendment to be duly executed as of the Effective Date.

**TOWN OF ERIE, COLORADO**


  
\_\_\_\_\_  
Jennifer Carroll, Mayor

ATTEST:

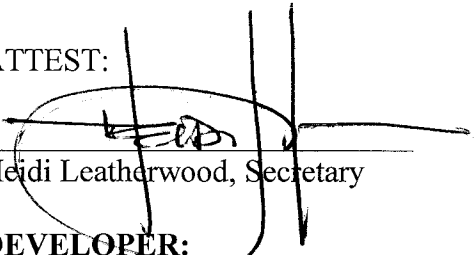
  
\_\_\_\_\_  
Heidi Leatherwood, Town Clerk



**TOWN OF ERIE URBAN RENEWAL  
AUTHORITY**

  
\_\_\_\_\_  
Jennifer Carroll, Chair

ATTEST:

  
\_\_\_\_\_  
Heidi Leatherwood, Secretary

**DEVELOPER:**

**EVERGREEN-287 & ARAPAHOE, L.L.C.,**  
an Arizona limited liability company

By: EVERGREEN DEVELOPMENT  
COMPANY-2019, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: EVERGREEN DEVCO, INC., a  
California corporation  
Its: Manager

By: \_\_\_\_\_  
Name: Tyler Carlson  
Its: Executive Vice President

## **Ninth Amendment to the Disposition and Development Agreement**

This Ninth Amendment to the Disposition and Development Agreement (this "**Ninth Amendment**") is made as of this 16<sup>th</sup> day of September, 2021 (the "**Effective Date**"), by and among the Town of Erie, a Colorado statutory municipality (the "**Town**"), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority ("**TOEURA**", and together with the Town, "**Erie**"), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the "**Developer**") (each a "**Party**" and collectively the "**Parties**").

Whereas, the Parties entered into that certain Disposition and Development Agreement dated March 22, 2016 (the "**Original Agreement**"), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement; and

Whereas, the Parties entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the "**First Amendment**");

Whereas, the Parties entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the "**Second Amendment**");

Whereas, the Parties entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12<sup>th</sup>, 2017 (the "**Third Amendment**");

Whereas, the Parties entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8<sup>th</sup>, 2018 (the "**Fourth Amendment**");

Whereas, the Parties entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the "**Fifth Amendment**");

Whereas, the Parties entered into that certain Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the "**Sixth Amendment**");

Whereas, the Parties entered into that certain Seventh Amendment to the Disposition and Development Agreement dated May 13, 2020 (the "**Seventh Amendment**");

Whereas, the Parties entered into that certain Eighth Amendment to the Disposition and Development Agreement dated September 30, 2020 (the "**Eighth Amendment**") (the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment and the Eighth Amendment, are hereinafter collectively referred to as the "**Agreement**");

Whereas, the Parties desire to further amend the Agreement pursuant to the terms of this Ninth Amendment.

Now, Therefore, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Controlled Fee Schedule. The Parties hereby acknowledge and agree that the Controlled Fee Schedule attached as Exhibit B to the Sixth Amendment contained a scrivener's error concerning the Boulder County Open Space Use Tax. The Parties hereby agree that the Boulder County Open Space Use Tax as listed on the Controlled Fee Schedule for all purposes under the Agreement shall be as follows:

Percentage: 0.985 percent of material costs or percent of job evaluation as determined by chief building official

3. Miscellaneous.

a. Full Force and Effect. Except as amended by this Ninth Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment and this Ninth Amendment, the terms and conditions of this Ninth Amendment shall control.

b. Successors and Assigns. This Ninth Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. Entire Agreement. This Ninth Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.

d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Ninth Amendment.

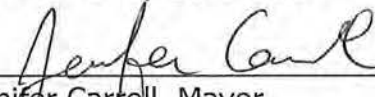
e. Counterparts. This Ninth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.



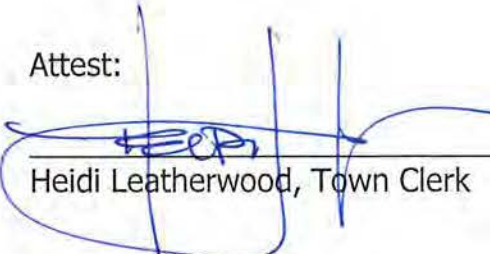
f. Governing Law and Venue. This Ninth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

In Witness Whereof, the Parties have caused this Ninth Amendment to be duly executed as of the Effective Date.

**Town of Erie, Colorado**

  
\_\_\_\_\_  
Jennifer Carroll, Mayor

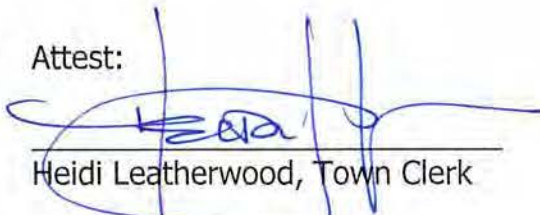
Attest:

  
\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**Town of Erie Urban Renewal Authority**

  
\_\_\_\_\_  
Jennifer Carroll, Chair

Attest:


  
\_\_\_\_\_  
Heidi Leatherwood, Town Clerk

**Developer:**

**Evergreen-287 & Arapahoe, L.L.C.,**  
an Arizona limited liability company

By: Evergreen Development  
Company-2019, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: Evergreen Devco, Inc., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: Managing Principal

## **Tenth Amendment to the Disposition and Development Agreement**

This Tenth Amendment to the Disposition and Development Agreement (this "**Tenth Amendment**") is made as of this 26<sup>th</sup> day of March, 2024 (the "**Effective Date**"), by and among the Town of Erie, a Colorado home rule municipality (the "**Town**"), the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority ("**TOEURA**", and together with the Town, "**Erie**"), and Evergreen-287 & Arapahoe, L.L.C., an Arizona limited liability company (the "**Developer**") (each a "**Party**" and collectively the "**Parties**").

### **Recitals**

Whereas, the Parties entered into that certain Disposition and Development Agreement dated March 22, 2016 (the "**Original Agreement**"), pursuant to which Developer agreed to acquire and develop certain real property located in the Town of Erie, Colorado, as more particularly described in the Agreement;

Whereas, the Parties entered into that certain First Amendment to the Disposition and Development Agreement dated December 13, 2016 (the "**First Amendment**");

Whereas, the Parties entered into that certain Second Amendment to the Disposition and Development Agreement dated May 1, 2017 (the "**Second Amendment**");

Whereas, the Parties entered into that certain Third Amendment to the Disposition and Development Agreement dated December 12, 2017 (the "**Third Amendment**");

Whereas, the Parties entered into that certain Fourth Amendment to the Disposition and Development Agreement dated May 8, 2018 (the "**Fourth Amendment**");

Whereas, the Parties entered into that certain Fifth Amendment to the Disposition and Development Agreement dated August 13, 2019 (the "**Fifth Amendment**");

Whereas, the Parties entered into that certain Sixth Amendment to the Disposition and Development Agreement dated October 22, 2019 (the "**Sixth Amendment**");

Whereas, the Parties entered into that certain Seventh Amendment to the Disposition and Development Agreement dated May 13, 2020 (the "**Seventh Amendment**");

Whereas, the Parties entered into that certain Eighth Amendment to the Disposition and Development Agreement dated September 23, 2020 (the "**Eighth Amendment**");

Whereas, the Parties entered into that certain Ninth Amendment to the Disposition and Development Agreement dated September 16, 2021 (the "**Ninth Amendment**") ((the Original Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment the Seventh Amendment, the Eighth Amendment and the Ninth Amendment are hereinafter collectively referred to as the "**Agreement**"); and

Whereas, the Parties desire to further amend the Agreement pursuant to the terms of this Tenth Amendment.

Now, Therefore, in consideration of the mutual obligations of the Parties and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, each Party covenants and agrees with the other as follows:

1. Capitalized Terms. Capitalized terms used, but not defined herein shall have the same meaning as set forth in the Agreement.

2. Controlled Fee Schedule. The Parties hereby acknowledge and agree that the Controlled Fee Schedule attached as Exhibit B to the Sixth Amendment, and further amended by the Ninth Amendment, shall be further amended as set forth herein. The Parties hereby agree that the Boulder County Open Space Use Tax as listed on the Controlled Fee Schedule for all purposes under this Agreement shall be as follows:

Percentage: ~~0.985~~ ***That*** percent of material costs or percent of job evaluation as determined by chief building official ***based on the Boulder County Open Space Use Tax, as the same may be amended from time to time.***

3. Miscellaneous.

a. Full Force and Effect. Except as amended by this Tenth Amendment, the Agreement as modified herein remains in full force and effect and is hereby ratified by the Parties. In the event of any conflict between the Agreement, the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment, the Fifth Amendment, the Sixth Amendment, the Seventh Amendment, the Eighth Amendment, the Ninth Amendment and this Tenth Amendment, the terms and conditions of this Tenth Amendment shall control.

b. Successors and Assigns. This Tenth Amendment shall be binding upon and inure to the benefit of the Parties and their heirs, personal representatives, successors and assigns.

c. Entire Agreement. This Tenth Amendment contains the entire agreement of the Parties with respect to the subject matter hereof, and may not be amended or modified except by an instrument executed in writing by all Parties.



d. Power and Authority. The Parties have not assigned or transferred any interest in the Agreement and have full power and authority to execute this Tenth Amendment.

e. Counterparts. This Tenth Amendment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signatures transmitted by facsimile or electronically shall be binding as if they were original signatures.

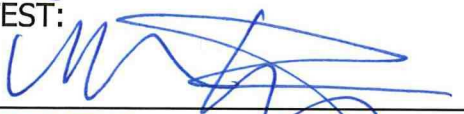
f. Governing Law and Venue. This Tenth Amendment shall be governed by and construed in accordance with the laws of the State of Colorado and venue for any legal action arising out of this Agreement shall be in Boulder County, Colorado.

In Witness Whereof, , the Parties have caused this Tenth Amendment to be duly executed as of the Effective Date.


**Town of Erie, Colorado**

  
Justin Brooks, Mayor

ATTEST:

*Deputy*  
  
Debbie Stamp, Town Clerk  
Michelle Crawford

**Town of Erie Urban Renewal Authority**

  
Justin Brooks, Chair

Attest:

  
Debbie Stamp, Secretary  
Michelle Crawford

**Developer:**

**Evergreen-287 & Arapahoe, L.L.C.,**  
an Arizona limited liability company

By: Evergreen Development Company-2019, L.L.C.,  
an Arizona limited liability company  
Its: Manager

By: Evergreen Devco, Inc., a  
California corporation  
Its: Manager

By:   
Name: Tyler Carlson  
Its: CEO





# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-109, **Version:** 1

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**SUBJECT:**

Proclamation of Older Americans Month, Sponsor Council Member Emily Baer

**DEPARTMENT:** Parks & Recreation

**PRESENTER:** Emily Baer, Council Member  
Luke Bolinger, Director of Parks & Recreation

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

This May, the Town of Erie will recognize Older Americans Month and challenge the narrative on aging. Established in 1963, Older Americans Month (OAM) is celebrated every May. Led by the Administration for Community Living (ACL), OAM is a time for us to acknowledge the contributions and achievements of older Americans, highlight important trends, and strengthen our commitment to honoring our older community members.

This year's theme, ***Flip the Script on Aging***, focuses on transforming how society perceives, talks about, and approaches aging. It encourages individuals and communities to challenge stereotypes and dispel misconceptions. This year, join us in honoring older adults' contributions, exploring the many opportunities for staying active and engaged as we age, and highlighting the opportunities for purpose, exploration, and connection that come with aging.

Here are ways we can support the theme *Flip the Script on Aging*:

- Challenge stereotypes and dispel misconceptions.
- Highlight aging trends.
- Reaffirm commitments to serving older adults.
- Embrace the positive aspects of getting older by focusing on personal growth, maintaining a healthy lifestyle, cultivating meaningful relationships, and viewing each year as an opportunity to learn and develop new skills.
- Reframe aging as a journey of continuous improvement and enrichment.
- Inspire older adults to share how they reframe aging or flip the script on aging on social media using the hashtag #OlderAmericansMonth.

Here are some specific actions we are taking at the Town of Erie to promote Older Americans Month:

- Social media posts of older adult participants showcasing various ways they are

challenging stereotypes or dispelling misconceptions, and embracing the positive aspects of getting older.

- Hosting a free social hour, lunch, and presentation on how Erie Older Adults Flip the Script on Aging, sponsored by Erie Recreation Active Adults programs and Seniors Helping Seniors.
- Promoting this year's theme *Flip the Script on Aging* with t-shirts or other promotional material to be utilized at the lunch.
- Inviting the Town Council Members to attend lunch on Thursday, May 15.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Engaged and Diverse Community
- ✓ Small Town Feel
- ✓ Safe and Healthy Community
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Older Americans Month Proclamation



## **OLDER AMERICANS MONTH PROCLAMATION**

**WHEREAS**, the Town of Erie includes a growing number of older Americans who make countless contributions to our community every day; and

**WHEREAS**, the Town of Erie is stronger when people of all ages, abilities, and backgrounds are included and encouraged to make their mark; and

**WHEREAS**, the Town of Erie recognizes the importance of the physical, mental, social, and emotional well-being of its residents; and

**WHEREAS**, the Town of Erie can support our community members by:

- promoting independence, inclusion, and participation;
- engaging older adults through education, recreation, and service; and
- connecting people with opportunities to share their time, experience, and talents.

**NOW, THEREFORE**, I, Council Member Emily Baer, on behalf of Mayor Andrew J. Moore, of The Town of Erie do hereby proclaim May, 2025 to be Older Americans Month. I urge every resident to recognize older adults and the people who support them as essential members of our community.

**DATED THIS 22 DAY OF APRIL, 2025**

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**Andrew J. Moore, Mayor**

**ATTEST:**

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**Debbie Stamp, Town Clerk**



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-008, **Version:** 1

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**SUBJECT:**

National Administrative Professionals' Day Proclamation; Sponsor Mayor Andrew J. Moore

**DEPARTMENT:** Police

**PRESENTER(S):** Lee Mathis, Chief  
Council Sponsor Mayor Andrew J. Moore

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

During World War II, there was a shortage of people with administrative professional skills. In 1942, the National Secretaries Association was formed to recognize the contributions of administrative personnel to the economy, support their development, and attract workers to the field. In 1955, Secretaries Week was moved to the last full week of April, with Wednesday marked as Administrative Professionals Day. In 1981, the name was changed to Professional Secretaries Week but in 2000, it became Administrative Professionals' Week.

While the day has undergone many title changes, the initial goal to celebrate and recognize the hard work administrative professionals do has remained.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Engaged and Diverse Community
- ✓ Small Town Feel
- ✓ Safe and Healthy Community
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Proclamation



## **Administrative Professionals' Day Proclamation**

**Whereas,** the Town of Erie employs several administrative professionals who play an essential role in coordinating the office operations of businesses, government, educational institutions, and other organizations; and

**Whereas,** the Town of Erie acknowledges administrative professionals are vital contributors in today's team-oriented work environment and are key front-line public relations ambassadors for their organizations; and

**Whereas,** the work of administrative professionals today requires advanced knowledge and expertise in communications, computer software, office technology, project management, organization, customer service and other vital office management responsibilities, and most importantly, have the willingness to learn and accept new challenges; and

**Whereas,** the Administrative Professionals' Week is observed annually in workplaces around the world to recognize the important contributions of administrative support staff and is sponsored by the International Association of Administrative Professionals.

**Now, Therefore,** I, Andrew J. Moore, Mayor of The Town of Erie, do hereby proclaim April 23, 2025 to be Administrative Professionals' Day. I urge every community member to recognize administrative professionals and the dedication and service they provide to the community.

**Dated this 22<sup>nd</sup> Day of April, 2025**

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**Andrew J. Moore, Mayor**

**Attest:**

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**Debbie Stamp, Town Clerk**



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-010, **Version:** 1

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**SUBJECT:**

Police Week and Peace Officers' Memorial Day Proclamation; Sponsor Mayor Andrew J. Moore

**DEPARTMENT:** Police

**PRESENTER(S):** Lee Mathis, Chief  
Council Sponsor Mayor Andrew J. Moore

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Congress and President of the United States have designated May 15, 2025 as Peace Officers' Memorial Day, and the week in which it falls as Police Week. The members of the Town of Erie Police Department play an essential role in safeguarding the rights and freedoms of the community members of Erie.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Engaged and Diverse Community
- ✓ Small Town Feel
- ✓ Safe and Healthy Community
- ✓ Effective Governance

**ATTACHMENT(S):**

1. Proclamation



## **Police Week and Peace Officers' Memorial Day Proclamation**

**Whereas**, the Congress and President of the United States have designated May 15, 2025 as Peace Officers' Memorial Day, and the week in which it falls as Police Week; and

**Whereas**, the Town of Erie Police Department members play an essential role in safeguarding the rights and freedoms of the community members of Erie; and

**Whereas**, it is important all community members know and understand the duties and responsibilities of their police department, and members of our police department recognize their duty to serve the people by safeguarding life and property, by protecting them against violence or disorder, and by protecting the innocent against deception, oppression or intimidation; and

**Whereas**, the women and men of the Town of Erie Police Department unceasingly provide a vital public service.

**Now, therefore**, I Andrew J. Moore, Mayor of The Town of Erie, do hereby proclaim May 11 through May 17, 2025 to be Police Week and May 15th, 2025, as Peace Officers' Memorial Day in honor of those peace officers who, through their courageous deeds, have lost their lives or have become disabled in the performance of their duties. I urge every resident to join in commemorating police officers, past and present, who by their faithful and loyal devotion to their responsibilities have rendered a dedicated service to their communities and, in doing so, have established for themselves an enviable and enduring reputation for preserving the rights and security of all community members.

**Dated this 22<sup>nd</sup> day of April, 2025**

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**Andrew J. Moore, Mayor**

**Attest:**

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**Debbie Stamp, Town Clerk**



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-239, **Version:** 1

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**SUBJECT:**

**PUBLIC HEARING:** An Ordinance of the Town Council of the Town of Erie Providing for the Supplemental Appropriation of Money to Various Funds for the 2025 Budget Year

**DEPARTMENT:** Finance

**PRESENTER:** Sara Hancock, Director of Finance  
Cassie Bethune, Finance Manager

**TIME ESTIMATE:** 30 minutes

**FISCAL SUMMARY:**

Cost as Recommended:	See Ordinance and Packet
Balance Available:	Various
Budget Line Item Number:	Various
New Appropriation Required:	Yes

**STAFF RECOMMENDATION:**

Staff recommend the Council approve the ordinance that provides for a supplemental appropriation for the 2025 budget year.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Town of Erie adopted the 2025 Budget on Nov. 12, 2024. Typically, at least twice yearly, staff review the adopted budget and year-to-date actual revenues and expenditures to determine if changes to the adopted budget are required. Based on these reviews, staff propose supplemental appropriations to update the budget to reflect actual revenues and expenditures of the prior and current year and projected revenues and expenditures for the remaining fiscal year.

The 2025 Spring Supplemental Appropriation represents staff's conservative and prudent estimates for providing on-going, high-quality services to residents, businesses, and visitors for 2025. Although some data is presented as the total of all funds, each fund is independent of the other funds. Commentary on the requested changes and supporting financial schedules are attached.

Fiscal Impact:



The fiscal impact on each fund is described in the accompanying ordinance and packet.

**Council Priorities Addressed:**

- ✓ Attractive Community Amenities
- ✓ Engaged and Diverse Community
- ✓ Prosperous Economy
- ✓ Well-Maintained Transportation Infrastructure
- ✓ Small Town Feel
- ✓ Safe and Healthy Community
- ✓ Effective Governance
- ✓ Environmentally Sustainable
- ✓ Fiscally Responsible

**ATTACHMENTS:**

1. Public Hearing Notice
2. Ordinance and Schedule A
3. Spring Supplemental 2025 Memo
4. Spring Supplemental Reports
5. Spring Supplemental 2025 Presentation

**Town of Erie  
Resolution No. 25-068**

**A Resolution of the Town Council of the Town of Erie Providing for  
Supplemental Revenues and Appropriations for the 2025 Budget  
Year**

**Whereas**, on November 12, 2024, the Town Council approved the Town's 2025 Budget;

**Whereas**, the Town has made provisions therein for revenue in the amount equal to or greater than the total proposed expenditure as set forth in said budget; and

**Whereas**, it is necessary to provide for the supplemental appropriation of expenditures in excess of the adopted budget, so as not to impair the operations of the Town.

**Now Therefore be it Resolved by the Town Council of the Town of Erie, Colorado, that:**

**Section 1.** The amendments outlined in Schedule A are hereby made to the budgeted appropriations and corresponding adjustments are hereby made to the budgeted revenues and expenses of each fund listed.

**Adopted this 22<sup>nd</sup> day of April, 2025.**

\_\_\_\_\_  
Andrew J. Moore, Mayor

**Attest:**

\_\_\_\_\_  
Debbie Stamp, Town Clerk

**SCHEDULE A**

	<b>2025 Original Budget</b>	<b>1st Supplemental Appropriation</b>	<b>2nd Supplemental Appropriation</b>	<b>2025 Revised Budget</b>
<b>Revenues:</b>				
<b>General Fund</b>				
From unappropriated surpluses	\$ 27,208,366			\$ 27,208,366
From sources other than property taxes	57,278,391		27,251	57,305,642
From general property tax	6,673,806			6,673,806
<b>Total General Fund</b>	<b>91,160,563</b>	<b>-</b>	<b>27,251</b>	<b>91,187,814</b>
<b>Water Fund</b>				
From unappropriated surpluses	145,449,019			145,449,019
From sources other than property taxes	31,285,800	8,263,510		39,549,310
From general property tax				-
<b>Total Water Fund</b>	<b>176,734,819</b>	<b>8,263,510</b>	<b>-</b>	<b>184,998,329</b>
<b>Wastewater Fund</b>				
From unappropriated surpluses	43,229,580			43,229,580
From sources other than property taxes	12,124,000			12,124,000
From general property tax				-
<b>Total Wastewater Fund</b>	<b>55,353,580</b>	<b>-</b>	<b>-</b>	<b>55,353,580</b>
<b>Storm Drainage Operating Fund</b>				
From unappropriated surpluses	7,433,432			7,433,432
From sources other than property taxes	1,959,809	108,354		2,068,163
From general property tax				-
<b>Total Storm Drainage Operating Fund</b>	<b>9,393,241</b>	<b>108,354</b>	<b>-</b>	<b>9,501,595</b>
<b>Airport Fund</b>				
From unappropriated surpluses	171,441			171,441
From sources other than property taxes	491,545		6,595	498,140
From general property tax				-
<b>Total Airport Fund</b>	<b>662,986</b>	<b>-</b>	<b>6,595</b>	<b>669,581</b>
<b>Parks Improvement Impact Fund</b>				
From unappropriated surpluses	15,055,676			15,055,676
From sources other than property taxes	1,650,940			1,650,940
From general property tax		-	-	-
<b>Total Parks Improvement Impact Fund</b>	<b>16,706,616</b>	<b>-</b>	<b>-</b>	<b>16,706,616</b>
<b>Public Facilities Impact Fund</b>				
From unappropriated surpluses	6,938,134			6,938,134
From sources other than property taxes	2,615,920			2,615,920
From general property tax				-
<b>Total Public Facilities Impact Fund</b>	<b>9,554,054</b>	<b>-</b>	<b>-</b>	<b>9,554,054</b>
<b>Police Facilities Impact Fund</b>				
From unappropriated surpluses	1,305,927			1,305,927
From sources other than property taxes	454,100			454,100
From general property tax		-	-	-
<b>Total Police Facilities Impact Fund</b>	<b>1,760,027</b>	<b>-</b>	<b>-</b>	<b>1,760,027</b>

<b>Storm Drainage Impact Fund</b>				
From unappropriated surpluses	10,082,415			10,082,415
From sources other than property taxes	1,124,180			1,124,180
From general property tax		-	-	-
<b>Total Storm Drainage Impact Fund</b>	<b>11,206,595</b>	<b>-</b>	<b>-</b>	<b>11,206,595</b>
<b>Transportation Impact Fund</b>				
From unappropriated surpluses	30,128,530			30,128,530
From sources other than property taxes	4,065,740		271,000	4,336,740
From general property tax				-
<b>Total Transportation Impact Fund</b>	<b>34,194,270</b>	<b>-</b>	<b>271,000</b>	<b>34,465,270</b>
<b>Tree Impact Fund</b>				
From unappropriated surpluses	1,620,152			1,620,152
From sources other than property taxes	201,000			201,000
From general property tax				-
<b>Total Tree Impact Fund</b>	<b>1,821,152</b>	<b>-</b>	<b>-</b>	<b>1,821,152</b>
<b>Capital Improvements Fund</b>				
From unappropriated surpluses	27,000,000			27,000,000
From sources other than property taxes	6,500,000			6,500,000
From general property tax				-
<b>Total Capital Improvements Fund</b>	<b>33,500,000</b>	<b>-</b>	<b>-</b>	<b>33,500,000</b>
<b>Fleet &amp; Equipment Acquisition Fund</b>				
From unappropriated surpluses	369,384			369,384
From sources other than property taxes	2,333,396			2,333,396
From general property tax				-
<b>Total Fleet &amp; Equipment Acquisition Fund</b>	<b>2,702,780</b>	<b>-</b>	<b>-</b>	<b>2,702,780</b>
<b>Trails &amp; Natural Areas Fund</b>				
From unappropriated surpluses	4,547,213			4,547,213
From sources other than property taxes	3,079,000			3,079,000
From general property tax				-
<b>Total Trails &amp; Natural Areas Fund</b>	<b>7,626,213</b>	<b>-</b>	<b>-</b>	<b>7,626,213</b>
<b>Conservation Trust Fund</b>				
From unappropriated surpluses	1,313,677			1,313,677
From sources other than property taxes	350,000			350,000
From general property tax				-
<b>Total Conservation Trust Fund</b>	<b>1,663,677</b>	<b>-</b>	<b>-</b>	<b>1,663,677</b>
<b>Grants Fund</b>				
From unappropriated surpluses	152,568			152,568
From sources other than property taxes	2,422,500		1,670,308	4,092,808
From general property tax				-
<b>Total Grants Fund</b>	<b>2,575,068</b>	<b>-</b>	<b>1,670,308</b>	<b>4,245,376</b>
<b>Cemetery Fund</b>				
From unappropriated surpluses	449,878			449,878
From sources other than property taxes	-			-
From general property tax				-

Total Cemetery Fund	449,878	-	-	449,878
Forfeiture & Seizure Fund				
From unappropriated surpluses				-
From sources other than property taxes				-
From general property tax			-	-
Total Forfeiture & Seizure Fund	-	-	-	-
Total Revenue and Unappropriated Surpluses	\$ 457,065,519	\$ 8,371,864	\$ 1,975,154	\$ 467,412,537
Revenues only	\$ 134,610,127	\$ 8,371,864	\$ 1,975,154	\$ 144,957,145

#### SCHEDULE A

#### Expenditures:

	2025 Original Budget	1st Supplemental Appropriation	2nd Supplemental Appropriation	2025 Revised Budget
General Fund	\$ 69,677,648		\$ 2,483,712	\$ 72,161,360
Water Fund	64,980,284		80,623,179	145,603,463
Wastewater Fund	9,048,975		15,944,763	24,993,738
Storm Drainage Operating Fund	6,752,778		5,188,277	11,941,055
Airport Fund	535,390		132,389	667,779
Parks Improvement Impact Fund	-		9,174,069	9,174,069
Public Facilities Impact Fund	4,377,512		2,970,702	7,348,214
Police Facilities Impact Fund	35,518,368		3,748,482	39,266,850
Storm Drainage Impact Fund	2,936,500		1,440,000	4,376,500
Transportation Impact Fund	5,524,582		10,001,551	15,526,133
Tree Impact Fund	144,000		75,000	219,000
Capital Improvements Fund	10,655,205		10,275,423	20,930,628
Fleet & Equipment Acquisition Fund	2,333,396		-	2,333,396
Trails & Natural Areas Fund	2,887,659		1,824,416	4,712,075
Conservation Trust Fund	300,000		58,000	358,000
Grants Fund	2,422,500		1,703,066	4,125,566
Cemetery Fund	-		-	-
Total Expenditures	218,094,797	-	145,643,029	363,737,826

**SCHEDULE A**

	<b>2025 Original Budget</b>	<b>1st Supplemental Appropriation</b>	<b>2nd Supplemental Appropriation</b>	<b>2025 Revised Budget</b>
<b><u>Revenues:</u></b>				
<b>General Fund</b>				
From unappropriated surpluses	\$ 27,208,366			\$ 27,208,366
From sources other than property taxes	57,278,391		27,251	57,305,642
From general property tax	6,673,806			6,673,806
<b>Total General Fund</b>	<b>91,160,563</b>	<b>-</b>	<b>27,251</b>	<b>91,187,814</b>
<b>Water Fund</b>				
From unappropriated surpluses	145,449,019			145,449,019
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From general property tax				-
<b>Total Water Fund</b>	<b>176,734,819</b>	<b>8,263,510</b>	<b>-</b>	<b>184,998,329</b>
<b>Wastewater Fund</b>				
From unappropriated surpluses	43,229,580			43,229,580
From sources other than property taxes	12,124,000			12,124,000
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From unappropriated surpluses	7,433,432			7,433,432
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From unappropriated surpluses	171,441			171,441
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<b>Parks Improvement Impact Fund</b>				
From unappropriated surpluses	15,055,676			15,055,676
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From general property tax		-	-	-
<b>Total Parks Improvement Impact Fund</b>	<b>16,706,616</b>	<b>-</b>	<b>-</b>	<b>16,706,616</b>
<b>Public Facilities Impact Fund</b>				
From unappropriated surpluses	6,938,134			6,938,134
From sources other than property taxes	2,615,920			2,615,920
From general property tax				-
<b>Total Public Facilities Impact Fund</b>	<b>9,554,054</b>	<b>-</b>	<b>-</b>	<b>9,554,054</b>
<b>Police Facilities Impact Fund</b>				
From unappropriated surpluses	1,305,927			1,305,927
From sources other than property taxes	454,100			454,100
From general property tax		-	-	-
<b>Total Police Facilities Impact Fund</b>	<b>1,760,027</b>	<b>-</b>	<b>-</b>	<b>1,760,027</b>

<b>Storm Drainage Impact Fund</b>				
From unappropriated surpluses	10,082,415			10,082,415
From sources other than property taxes	1,124,180			1,124,180
From general property tax		-	-	-
<b>Total Storm Drainage Impact Fund</b>	<b>11,206,595</b>	<b>-</b>	<b>-</b>	<b>11,206,595</b>
<b>Transportation Impact Fund</b>				
From unappropriated surpluses	30,128,530			30,128,530
From sources other than property taxes	4,065,740		271,000	4,336,740
From general property tax				-
<b>Total Transportation Impact Fund</b>	<b>34,194,270</b>	<b>-</b>	<b>271,000</b>	<b>34,465,270</b>
<b>Tree Impact Fund</b>				
From unappropriated surpluses	1,620,152			1,620,152
From sources other than property taxes	201,000			201,000
From general property tax				-
<b>Total Tree Impact Fund</b>	<b>1,821,152</b>	<b>-</b>	<b>-</b>	<b>1,821,152</b>
<b>Capital Improvements Fund</b>				
From unappropriated surpluses	27,000,000			27,000,000
From sources other than property taxes	6,500,000			6,500,000
From general property tax				-
<b>Total Capital Improvements Fund</b>	<b>33,500,000</b>	<b>-</b>	<b>-</b>	<b>33,500,000</b>
<b>Fleet &amp; Equipment Acquisition Fund</b>				
From unappropriated surpluses	369,384			369,384
From sources other than property taxes	2,333,396			2,333,396
From general property tax				-
<b>Total Fleet &amp; Equipment Acquisition Fund</b>	<b>2,702,780</b>	<b>-</b>	<b>-</b>	<b>2,702,780</b>
<b>Trails &amp; Natural Areas Fund</b>				
From unappropriated surpluses	4,547,213			4,547,213
From sources other than property taxes	3,079,000			3,079,000
From general property tax				-
<b>Total Trails &amp; Natural Areas Fund</b>	<b>7,626,213</b>	<b>-</b>	<b>-</b>	<b>7,626,213</b>
<b>Conservation Trust Fund</b>				
From unappropriated surpluses	1,313,677			1,313,677
From sources other than property taxes	350,000			350,000
From general property tax				-
<b>Total Conservation Trust Fund</b>	<b>1,663,677</b>	<b>-</b>	<b>-</b>	<b>1,663,677</b>
<b>Grants Fund</b>				
From unappropriated surpluses	152,568			152,568
From sources other than property taxes	2,422,500		1,670,308	4,092,808
From general property tax				-
<b>Total Grants Fund</b>	<b>2,575,068</b>	<b>-</b>	<b>1,670,308</b>	<b>4,245,376</b>
<b>Cemetery Fund</b>				
From unappropriated surpluses	449,878			449,878
From sources other than property taxes	-			-
From general property tax				-

<b>Total Cemetery Fund</b>	<u>449,878</u>	<u>-</u>	<u>-</u>	<u>449,878</u>
<b>Forfeiture &amp; Seizure Fund</b>				
From unappropriated surpluses				-
From sources other than property taxes				-
From general property tax			-	-
<b>Total Forfeiture &amp; Seizure Fund</b>	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
<b>Total Revenue and Unappropriated Surpluses</b>	<u>\$ 457,065,519</u>	<u>\$ 8,371,864</u>	<u>\$ 1,975,154</u>	<u>\$ 467,412,537</u>
<b>Revenues only</b>	<u>\$ 134,610,127</u>	<u>\$ 8,371,864</u>	<u>\$ 1,975,154</u>	<u>\$ 144,957,145</u>

#### **SCHEDULE A**

#### **Expenditures:**

	<b><u>2025 Original Budget</u></b>	<b><u>1st Supplemental Appropriation</u></b>	<b><u>2nd Supplemental Appropriation</u></b>	<b><u>2025 Revised Budget</u></b>
General Fund	\$ 69,677,648		\$ 2,483,712	\$ 72,161,360
Water Fund	64,980,284		80,623,179	145,603,463
Wastewater Fund	9,048,975		15,944,763	24,993,738
Storm Drainage Operating Fund	6,752,778		5,188,277	11,941,055
Airport Fund	535,390		132,389	667,779
Parks Improvement Impact Fund	-		9,174,069	9,174,069
Public Facilities Impact Fund	4,377,512		2,970,702	7,348,214
Police Facilities Impact Fund	35,518,368		3,748,482	39,266,850
Storm Drainage Impact Fund	2,936,500		1,440,000	4,376,500
Transportation Impact Fund	5,524,582		10,001,551	15,526,133
Tree Impact Fund	144,000		75,000	219,000
Capital Improvements Fund	10,655,205		10,275,423	20,930,628
Fleet & Equipment Acquisition Fund	2,333,396		-	2,333,396
Trails & Natural Areas Fund	2,887,659		1,824,416	4,712,075
Conservation Trust Fund	300,000		58,000	358,000
Grants Fund	2,422,500		1,703,066	4,125,566
Cemetery Fund	-		-	-
<b>Total Expenditures</b>	<b>218,094,797</b>	<b>-</b>	<b>145,643,029</b>	<b>363,737,826</b>





## TOWN OF ERIE MEMORANDUM

**TO:** Town Council  
Malcolm Fleming, Town Manager

**Copy:** Town Clerk's Office

**FROM:** Sara Hancock – Director of Finance  
Cassie Bethune – Budget & Fiscal Manager

**DATE:** April 22<sup>nd</sup>, 2025

**SUBJECT:** Spring Supplemental Appropriation – 2025

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We are pleased to present the Town Council with the Spring Supplemental Appropriation Request to amend the 2025 Town Budget.

The Town of Erie adopted the 2025 Budget on November 12, 2024. At least twice-yearly, staff reviews the Adopted Budget and year-to-date actual revenues and expenditures to determine if changes to the Adopted Budget are required. Based on these reviews, staff proposes supplemental appropriations to update the budget to reflect actual revenues and expenditures of the prior and current year, year-to-date Town Council actions, and projected revenues and expenditures for the remaining fiscal year.

The first supplemental, typically presented in the spring, primarily consists of rollover appropriations that were approved for the prior year budget and new expenditures arising since approval of the original budget. The second, usually presented in the fall, includes various adjustments that could not be anticipated when the original budget was prepared.

Accompanying this memo are various schedules, described below. This memorandum and the attached schedules provide information on all significant changes. Changes are split out by new requests, rollover requests, and transfers of existing appropriations between budget line items. Although some data is presented as the total of all funds, each fund is independent of the other funds.

The following schedules are included in this packet:

- Fund Summary
- Summary of requested changes
- Detail of requested changes
- 2025 Spring Supplemental Capital Project summary

In addition, at the end of this memorandum you will find a brief explanation of why the Town uses fund accounting and the purposes of the various funds of the Town.

## **Revenues Changes:**

At this time, staff projects 2025 total General Fund revenues will be approximately \$63.9 million, resulting in a slight increase compared to the projection in the adopted budget due to interfund transfers. Overall, the total revenue change for all Town funds is \$1.97 million.

Significant revenue changes are as follows:

- In the Grants fund, \$1.67M in new grants revenue is expected to offset grant expenses, specifically relating to Charge Ahead Grant, BoCo Climate Action Plan, E-Cargo Bike Grant Program, CDOT, DOLA and ARPA-funded projects.

## **Expenditures Requests:**

As a result of the spring supplemental requests, the total expenditures for 2025 across all funds are projected to increase by \$145.6 million compared to the Adopted Budget, \$139 million of which increase from rollovers. The General Fund total expenditures increased by \$2.48 million compared to the Adopted Budget.

Significant new expenditure requests are as follows:

## **Personnel Expenditures:**

There were no new position requests for this supplemental.

## **Operating Expenditures:**

The total spring supplemental changes in operating expenditures are approximately \$1.8 million across all funds, \$1.5 million of which is in the General Fund.

Significant operating requests are as follows:

- Environmental Services - \$10k for Consultation Services with United Power for the Street Light Acquisition project
- Planning and Development -
  - \$167k for the 2024 CDBG Grant
  - \$855k rollover from 2024 for land acquisition, due diligence and incentives for Affordable Housing
- Parks and Recreation - \$8k for the E-Cargo Bike Grant Program
- Public Works -
  - \$802k for insurance claims from the 2023 hailstorm
  - \$122k for consultation services for the transportation division to support the Vista Parkway Safety Study, Transportation Software, and the BoCo Transit project (grant funded)
  - \$108k for vehicle maintenance services on additional vehicles added to the fleet

- \$175k for Bus Stop Design services
- Police - \$15k for replacement of ballistic helmets
- Communications and Community Engagement - \$72k for town-wide resident survey

### **Capital Expenditures:**

The total changes in the spring supplemental for capital expenditures across all funds is \$142.8 million.

The total spring supplemental new requests for capital expenditures across all funds is \$4.2 million, \$411k of which is in the Capital Improvements Fund.

The total spring supplemental rollover requests for capital expenditures across all funds is \$138.6 million, \$9.1 million of which is in the Capital Improvements Fund.

Significant changes are as follows:

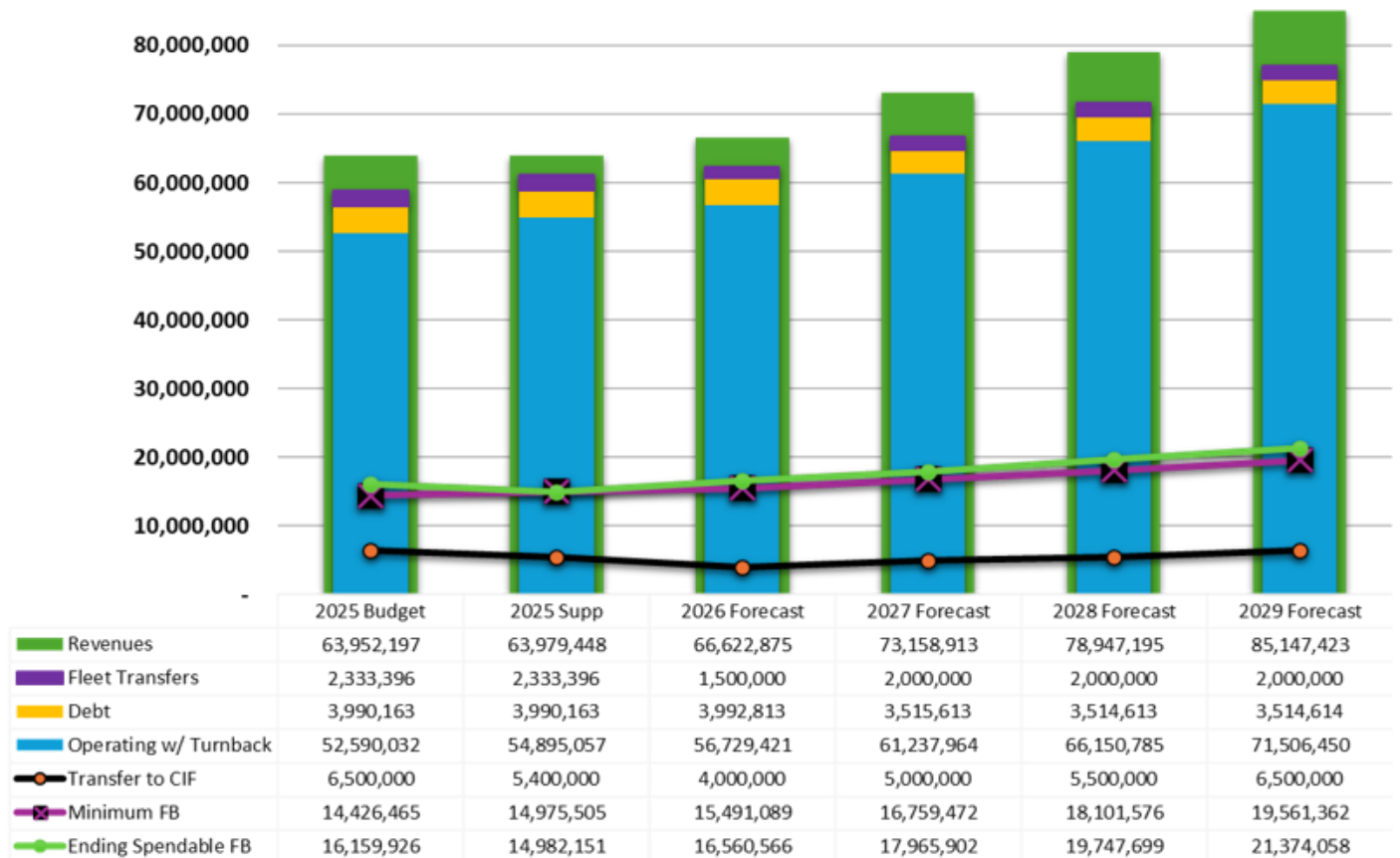
- Capital Improvement Fund –
  - \$411k for Xcel Energy Reinforcement contract
  - \$63k for the Charge Ahead 2025 Grant
  - \$2.5 million rollover for the Street Lights Acquisition project
  - \$1.1 million rollover for the Weld County Road (WCR) 3 Bridge Replacement project
  - \$2.2 million rollover for the Town Hall Expansion project
  - \$538k for LAWSC additional space and security
  - \$338k for LAWSC office remodeling
  - \$337k for Page Property final design
- Trails and Natural Areas Fund - \$1 million rollover for Construction on Schofield Farm
- Transportation Impact Fund – \$6.7 million rollover for Construction on Town Center
  - \$2.1 million for North Roundabout for finalizing design and land acquisition
  - \$4.5 million for South Roundabout, expected to go out to bid in spring 2025
- Water Fund - \$62 million rollover for Zone 2 and Zone 3 Water Tank projects
  - \$50k for the Erie Coal Creek Ditch Headgate survey
  - \$40 million for Zone 2 – acquisition of land and pipeline, design and construction of water tank
  - \$22 million for Zone 3 – for land acquisition and design of water tank and waterline
- Storm Drainage Fund - \$2.1 million for Drainage Facility Maintenance and Repairs
- Parks Improvement Fund - \$9.1 million for Redevelopment of Schofield Farm

- Police Facilities Impact Fund – \$3.7 million for design and construction of the PD/ Courts Expansion

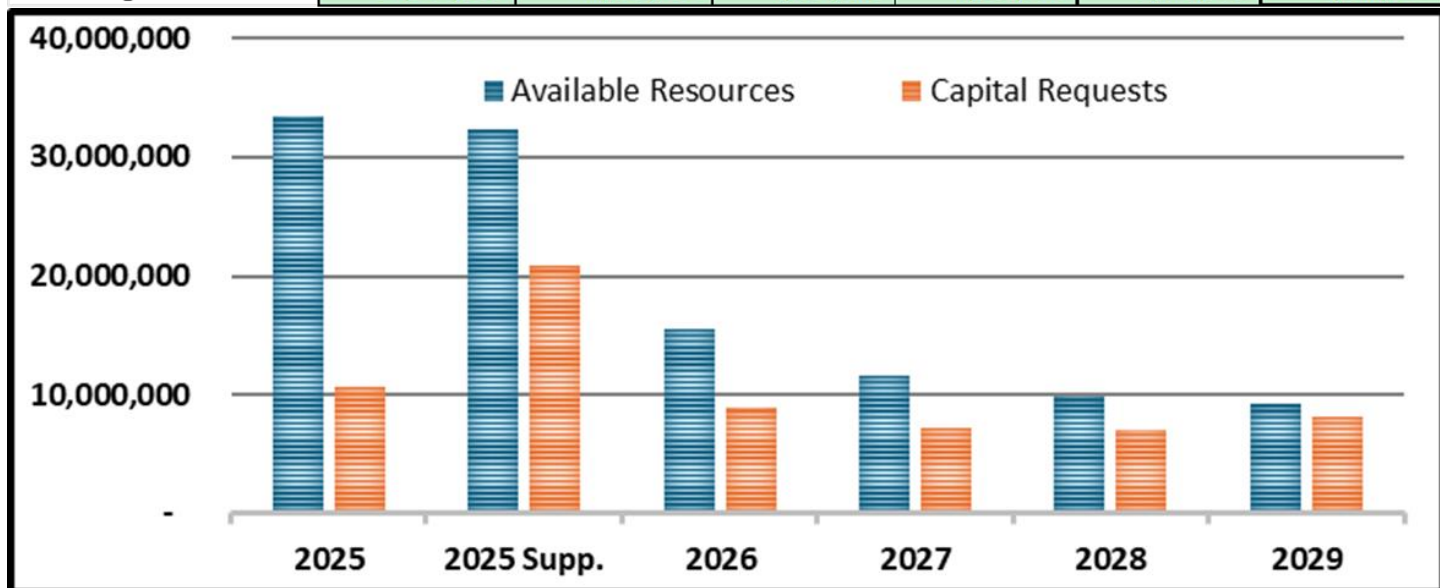
## **Conclusion**

As a result of the foregoing, the spring supplemental forecast reflects a \$2.63 million use of fund balance in the General Fund and a decrease of \$1.1 million in the projected transfer to the new Capital Improvement Fund (CIF), primarily due to new operating requests. The graph & table below shows the General Fund forecast followed by the General Capital Improvement Fund forecast.

<b>General Fund</b>	<b>2025 Budget</b>	<b>2025 Supp</b>	<b>2026 Forecast</b>	<b>2027 Forecast</b>	<b>2028 Forecast</b>	<b>2029 Forecast</b>
Beginning FB (B)	20,949,866	20,949,866	19,488,472	19,889,112	21,294,448	23,076,245
Revenues	63,952,197	63,979,448	66,622,875	73,158,913	78,947,195	85,147,423
Debt	3,990,163	3,990,163	3,992,813	3,515,613	3,514,613	3,514,614
Operating Expenditures	56,854,089	59,346,008	61,329,104	66,203,204	71,514,363	77,304,270
7.5% Operating Turnback	(4,264,057)	(4,450,951)	(4,599,683)	(4,965,240)	(5,363,577)	(5,797,820)
Fleet Transfers	2,333,396	2,333,396	1,500,000	2,000,000	2,000,000	2,000,000
Transfer to CIF	6,500,000	5,400,000	4,000,000	5,000,000	5,500,000	6,500,000
Total Expenditures	58,913,591	66,618,616	62,222,234	66,753,577	71,665,398	77,021,064
Change in Fund Balance (A)	5,038,606	(2,639,168)	4,400,641	6,405,336	7,281,797	8,126,359
Ending FB (A)+(B)=(C)	25,988,472	18,310,697	23,889,112	26,294,448	28,576,245	31,202,604
Restricted (D)	3,328,546	3,328,546	3,328,546	3,328,546	3,328,546	3,328,546
Ending Spendable FB (C)-(D)=(E)	16,159,926	14,982,151	16,560,566	17,965,902	19,747,699	21,374,058
Minimum FB	14,426,465	14,975,505	15,491,089	16,759,472	18,101,576	19,561,362
Unassigned Fund Balance	1,733,460	6,646	1,069,477	1,206,430	1,646,123	1,812,696



	2025 Adopted	2025 1st Supp.	2026 Forecast	2027 Forecast	2028 Forecast	2029 Forecast
CIF Beginning FB	27,000,000	27,000,000	11,469,372	6,581,014	4,393,176	2,765,196
General Fund Transfer	6,500,000	5,400,000	4,000,000	5,000,000	5,500,000	6,500,000
Rollovers		9,079,005				
New Requests		411,418				
Interfund Transfers		785,000				
Original Capital Budget	10,655,205	10,655,205	8,888,358	7,187,838	7,127,980	8,110,463
Total Capital Budget	10,655,205	20,930,628	8,888,358	7,187,838	7,127,980	8,110,463
CIF Ending FB	22,844,795	11,469,372	6,581,014	4,393,176	2,765,196	1,154,733



### **Fund Accounting:**

A key requirement of governmental accounting is to determine and demonstrate compliance with finance-related legal and contractual provisions. To accomplish these goals, governments use fund accounting. A fund is a self-balancing set of accounts, segregated for specific purposes in accordance with laws and regulations or special restrictions and limitations.

For example, the Town has established the Trails and Natural Areas Fund to record receipts of dedicated property taxes for trails and natural areas, open space fees-in-lieu received from developers and investment earnings on unspent funds, among other revenue sources. Expenditures by this fund are for approved purposes such as the purchase of open space, construction of trails, and maintenance of trails and natural areas.

The Town has the following funds, grouped by type of fund:

The **General Fund** is the Town's primary operating fund. It accounts for all financial resources of the general government, except those required to be accounted for in one of the following funds.

The **Capital Improvement Fund** is the Town's primary capital improvement project fund. It accounts for most major capital projects, both ongoing maintenance and one-time, that operate in alignment with General Fund projects or do not align with other dedicated or enterprise funds.

**Special Revenue Funds** - Special revenue funds are used to account for specific revenues that are legally restricted to expenditure for particular purposes.

**Trails and Natural Areas Fund:** Accounts for property tax revenues and other restricted revenues used to acquire and construct trails; to acquire and develop natural areas for public use; and for maintenance of trails and natural areas.

**Conservation Trust Fund:** Accounts for revenues received from the Colorado State Lottery proceeds through the State's Conservation Trust Fund. It is used to acquire, develop, and maintain new conservation sites; and for capital improvements or maintenance for recreational purposes on any public site.

**Cemetery Fund:** Accounts for revenues received from plot purchases at the municipal cemetery. Money is used for perpetual care expenditures at the cemetery.

**Impact Fee Funds** – Impact fee funds (more accurately referred to as “capital project funds” from a formal accounting standpoint) are primarily used to account for the acquisition and construction of major capital facilities other than those paid for by the general fund, or the enterprise funds (see below).

**Parks Improvement Impact Fund:** Accounts for impact fee revenues, fees-in-lieu and reimbursements from developers and grants used to construct and acquire parks and related improvements.

**Public Facilities Impact Fund:** Accounts for impact fee revenues and grants used to construct and acquire public facilities.

**Storm Drainage Impact Fund:** Accounts for impact fee revenues used to acquire and construct the storm drainage system. See also “Storm Drainage Operating Fund” below.

**Transportation Impact Fund:** Accounts for impact fee revenues, fees-in-lieu and reimbursements from developers and grants used to construct and acquire transportation system enhancements.

**Tree Impact Fund:** Accounts for impact fee revenues used to acquire and plant trees in public locations, and to issue certificates for tree purchases to homeowners of newly constructed homes.

**Enterprise Funds** - Enterprise funds are used for the Town's ongoing activities which are similar to those found in the private sector. These funds are generally expected to be self-supporting. Among other restrictions, no more than 10% of their revenues can come from state or local governments (including the Town) to support their activities.

**Water Fund:** Accounts for the acquisition, treatment, and distribution of the Town's water supply. Includes all water-related revenues (tap fees, water resource fees and user fees), along with associated personnel, operating, capital and debt service expenditures.



**Wastewater Fund:** Accounts for the collection and treatment of wastewater in the Town's wastewater system. Includes all wastewater-related revenues (tap fees and user fees), along with associated personnel, operating, capital and debt service expenditures.

**Storm Drainage Operating Fund:** Accounts for charges received from system users, used to construct and maintain the storm drainage system. Includes all storm drainage-related revenues (user fees), along with associated personnel, operating, capital and debt service expenditures. Also includes transfers of impact fees from the Storm Drainage Impact Fund to help construct growth-related capital projects.

**Airport Fund:** Accounts for airport fees received from the airport management company and airport users, as well as proceeds from federal and state aviation grants (the primary source of revenues for this fund). These revenues are used primarily for airport capital projects.

**Internal Service Funds** – In 2019 the Town created its first internal service fund – the Fleet and Equipment Acquisition Fund ("Fleet Fund"). Internal service funds are funds that primarily provide services to other parts of the government. The Fleet Fund will be used for the purchase of new and replacement vehicles and heavy equipment, along with an ongoing funding plan to provide for future acquisitions as needed.

**Fund Balance/Working Capital** – Two other key terms to understand are *fund balance* and *working capital* (in the case of proprietary funds). You will see these terms throughout budget reports (and the monthly board report). These amounts represent the accumulated revenues in excess of expenditures in each fund that are available for appropriation. (Note: Different terms and definitions are used in the audited financial statements, which in some cases will result in different amounts being reported in the audited financial statements from those presented in budget reports.)

**Non-spendable components** – are the portion of the fund balance that cannot be spent because of their form. This includes all but not limited to the following: Advance to the Urban Renewal Authority, TABOR Emergency Reserve as required by State statutes, Open Purchase orders, prepaid expenses, etc...

**Available Fund Balance** – is calculated by subtracting various non-spendable components from the Fund Balance.

Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
<b>000000 Project</b>	\$ (972,251)		\$ 614,996	\$ 80,000	\$ 668,547	\$ (287,091)	\$ 104,201
General Fund	\$ (27,251)		\$ 528,596	\$ 80,000	\$ 486,671	\$ (87,626)	\$ 980,390
Grants Fund	\$ (945,000)				\$ 21,330		\$ (923,670)
Storm Drainage Operating Fund			\$ 23,200			\$ (275,000)	\$ (251,800)
Wastewater Fund			\$ 17,100		\$ 149,835	\$ (39,994)	\$ 126,941
Water Fund			\$ 46,100		\$ 10,711	\$ 115,529	\$ 172,340
<b>111th and Araphoe Road Intersection</b>				\$ 507,070			\$ 507,070
Transportation Impact Fund				\$ 507,070			\$ 507,070
<b>2024 CDBG Grant</b>	\$ (167,000)		\$ 167,000				\$ -
Grants Fund	\$ (167,000)		\$ 167,000				\$ -
<b>765 Cheesman St</b>					\$ 105,660		\$ 105,660
General Fund					\$ 105,660		\$ 105,660
<b>AC Line Replacement in Air Park - Nassar</b>				\$ 2,040,000			\$ 2,040,000
Water Fund				\$ 2,040,000			\$ 2,040,000
<b>Affordable Housing Fund Projects</b>						\$ 855,000	\$ 855,000
General CIP Fund						\$ 855,000	\$ 855,000
<b>Affordable Housing Old Town Future</b>				\$ 855,000		\$ (855,000)	\$ -
General Fund				\$ 855,000		\$ (855,000)	\$ -
<b>Airport Dr San Sewer Reimbursement (Nassar)</b>				\$ 979,500			\$ 979,500
Wastewater Fund				\$ 979,500			\$ 979,500
<b>BoCo Climate Action Plan Grant</b>	\$ (30,506)		\$ 30,506			\$ 7,626	\$ 7,626
General Fund						\$ 7,626	\$ 7,626
Grants Fund	\$ (30,506)		\$ 30,506				\$ -
<b>Boulder Creek Diversion Structure and Conveyance Pipeline</b>						\$ 1,187,795	\$ 1,187,795
Water Fund						\$ 1,187,795	\$ 1,187,795
<b>Boulder Creek Sampling Location</b>				\$ 250,000			\$ 250,000
Wastewater Fund				\$ 250,000			\$ 250,000
<b>Boulder Creek Stabilization</b>				\$ 158,358			\$ 158,358
Water Fund				\$ 158,358			\$ 158,358
<b>Bridge Maintenance</b>				\$ 1,165,404			\$ 1,165,404
General CIP Fund				\$ 1,165,404			\$ 1,165,404
<b>Briggs Alleyway Storm Water Improvements</b>				\$ 1,440,000			\$ 1,440,000
Storm Drainage Impact Fund				\$ 1,440,000			\$ 1,440,000
<b>Bus Stop Design</b>			\$ 175,000				\$ 175,000



Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
General Fund			\$ 175,000				\$ 175,000
<b>Charge Ahead 2025 Grant</b>	<b>\$ (63,000)</b>	<b>\$ 63,000</b>				<b>\$ 9,500</b>	<b>\$ 9,500</b>
General CIP Fund						\$ 9,500	\$ 9,500
Grants Fund	\$ (63,000)	\$ 63,000					\$ -
<b>CLR - Erie Parkway to Telleen</b>				<b>\$ 458,929</b>			<b>\$ 458,929</b>
Transportation Impact Fund				\$ 458,929			\$ 458,929
<b>CLR - Telleen to Cheesman</b>				<b>\$ 1,202,309</b>			<b>\$ 1,202,309</b>
Transportation Impact Fund				\$ 1,202,309			\$ 1,202,309
<b>Coal Creek From Levee to RR Tracks</b>				<b>\$ 5,556</b>			<b>\$ 5,556</b>
Storm Drainage Operating Fund				\$ 5,556			\$ 5,556
<b>Coal Creek Improvements</b>				<b>\$ 200,000</b>			<b>\$ 200,000</b>
Storm Drainage Operating Fund				\$ 200,000			\$ 200,000
<b>Coal Creek Park Redevelopment</b>		<b>\$ 58,000</b>					<b>\$ 58,000</b>
Conservation Traust Fund		\$ 58,000					\$ 58,000
<b>Coal Creek Reach 2 and 4</b>				<b>\$ 880,909</b>			<b>\$ 880,909</b>
Storm Drainage Operating Fund				\$ 880,909			\$ 880,909
<b>ColliersHill/Historic Erie Connection</b>	<b>\$ (271,000)</b>	<b>\$ 29,714</b>		<b>\$ 7,139</b>			<b>\$ (234,147)</b>
Transportation Impact Fund	\$ (271,000)	\$ 29,714		\$ 7,139			\$ (234,147)
<b>County Line Rd Waterline to Airport</b>				<b>\$ 350,000</b>			<b>\$ 350,000</b>
Water Fund				\$ 350,000			\$ 350,000
<b>COVID related &amp; potential ARPA Operating cost</b>				<b>\$ 2,399</b>	<b>\$ 213,299</b>		<b>\$ 215,698</b>
General CIP Fund				\$ 2,399			\$ 2,399
General Fund					\$ 201,871		\$ 201,871
Grants Fund					\$ 11,428		\$ 11,428
<b>Drainage Facility Maintenance and Repair</b>		<b>\$ 2,100,000</b>		<b>\$ 22,982</b>			<b>\$ 2,122,982</b>
Storm Drainage Operating Fund		\$ 2,100,000		\$ 22,982			\$ 2,122,982
<b>EC Irrigation Pond Improvements</b>						<b>\$ (500,000)</b>	<b>\$ (500,000)</b>
Water Fund						\$ (500,000)	\$ (500,000)
<b>EC2 Pond - Bank Repairs</b>				<b>\$ 32,562</b>			<b>\$ 32,562</b>
Storm Drainage Operating Fund				\$ 32,562			\$ 32,562
<b>E-Cargo Bike Grant Program</b>	<b>\$ (8,207)</b>		<b>\$ 8,207</b>				<b>\$ -</b>
Grants Fund	\$ (8,207)		\$ 8,207				\$ -
<b>ECC Replacement RTU(s)</b>				<b>\$ 700,000</b>			<b>\$ 700,000</b>
General CIP Fund				\$ 700,000			\$ 700,000

Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
<b>Electric Vehicle Charging Stations</b>				\$ 149,544		\$ (9,500)	\$ 140,044
General CIP Fund				\$ 149,544		\$ (9,500)	\$ 140,044
<b>Equipment - New</b>		\$ 9,530					\$ 9,530
Water Fund		\$ 9,530					\$ 9,530
<b>Erie Coal Creek Ditch Headgate</b>		\$ 50,000					\$ 50,000
Water Fund		\$ 50,000					\$ 50,000
<b>Erie Lake Repairs</b>				\$ 257,270			\$ 257,270
Water Fund				\$ 257,270			\$ 257,270
<b>Erie Parkway and WCR 7 Intersection</b>				\$ 50,000			\$ 50,000
Transportation Impact Fund				\$ 50,000			\$ 50,000
<b>Facilities Energy Performance</b>				\$ 358,467			\$ 358,467
General CIP Fund				\$ 253,290			\$ 253,290
Wastewater Fund				\$ 75,662			\$ 75,662
Water Fund				\$ 29,515			\$ 29,515
<b>Facilities Exterior</b>				\$ 36,570			\$ 36,570
General CIP Fund				\$ 36,570			\$ 36,570
<b>Facility Safety &amp; Life Cycle Projects</b>				\$ 19,645			\$ 19,645
General CIP Fund				\$ 19,645			\$ 19,645
<b>Fiber from WTF To Tank Site</b>				\$ 60,000			\$ 60,000
Water Fund				\$ 60,000			\$ 60,000
<b>Filly Lake Well System Pipeline Improvements</b>				\$ 286,300		\$ 3,886,300	\$ 4,172,600
Water Fund				\$ 286,300		\$ 3,886,300	\$ 4,172,600
<b>Flume/Drop Structure</b>				\$ 366,220		\$ 700,000	\$ 1,066,220
Water Fund				\$ 366,220		\$ 700,000	\$ 1,066,220
<b>Hail Event 2023</b>			\$ 802,874				\$ 802,874
General Fund			\$ 802,874				\$ 802,874
<b>Highway 52 Drainage Crossing</b>						\$ 275,000	\$ 275,000
Storm Drainage Operating Fund						\$ 275,000	\$ 275,000
<b>HOA Pocket Park Program</b>						\$ -	\$ -
General CIP Fund						\$ (150,000)	\$ (150,000)
General Fund						\$ 150,000	\$ 150,000
<b>Lagoon to Wetlands Conversion</b>				\$ 1,442,185			\$ 1,442,185
Storm Drainage Operating Fund				\$ 1,391,773			\$ 1,391,773
Trails & Natural Areas				\$ 50,412			\$ 50,412
							<b>294</b>

Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
<b>LAWSC Additional space and security measures</b>				\$ 538,900		\$ 250,000	\$ 788,900
General CIP Fund				\$ 538,900		\$ 250,000	\$ 788,900
<b>Mechanical Replacement</b>				\$ 45,000			\$ 45,000
General CIP Fund				\$ 45,000			\$ 45,000
<b>Mobile Bypass System</b>				\$ 405,688			\$ 405,688
Water Fund				\$ 405,688			\$ 405,688
<b>Nassar - CO7 and Airport Road Signal and Intersection Improvements</b>				\$ 352,411			\$ 352,411
Transportation Impact Fund				\$ 352,411			\$ 352,411
<b>North Side Int to WCR 7 (reimb)</b>				\$ 900,000			\$ 900,000
Wastewater Fund				\$ 900,000			\$ 900,000
<b>NWRF Expansion</b>				\$ 27,102			\$ 27,102
Wastewater Fund				\$ 27,102			\$ 27,102
<b>NWRF Improvements</b>				\$ 3,462,678		\$ 149,835	\$ 3,612,513
Wastewater Fund				\$ 3,462,678		\$ 149,835	\$ 3,612,513
<b>Office Remodeling</b>				\$ 338,486		\$ (200,000)	\$ 138,486
General CIP Fund				\$ 338,486		\$ (200,000)	\$ 138,486
<b>Old SWWTP Demolition</b>				\$ 250,000		\$ (250,000)	\$ -
Wastewater Fund				\$ 250,000		\$ (250,000)	\$ -
<b>Open Space Restoration Projects</b>				\$ 112,196			\$ 112,196
Trails & Natural Areas				\$ 112,196			\$ 112,196
<b>Page Property</b>				\$ 377,356		\$ 100,000	\$ 477,356
General CIP Fund				\$ 377,356		\$ 100,000	\$ 477,356
<b>PD/Courts Expansion</b>				\$ 3,748,482		\$ -	\$ 3,748,482
Police Facilities Impact Fund				\$ 3,748,482		\$ -	\$ 3,748,482
<b>Pierce Street House Upgrades</b>				\$ 7,401			\$ 7,401
General CIP Fund				\$ 7,401			\$ 7,401
<b>POST Infrastructure Replacements</b>				\$ 180,367			\$ 180,367
General CIP Fund				\$ 180,367			\$ 180,367
<b>PRV Vault Communication</b>				\$ 1,325,000			\$ 1,325,000
Water Fund				\$ 1,325,000			\$ 1,325,000
<b>Public Art and Placemaking Program</b>			\$ 5,000	\$ 85,851	\$ 11,040		\$ 101,891
General CIP Fund				\$ 85,851			\$ 85,851
General Fund			\$ 5,000		\$ 11,040		\$ 16,040
<b>Pump Station Upgrades</b>				\$ 10,433			\$ 10,433

Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
Water Fund				\$ 10,433			\$ 10,433
Recycling Center Relocation Or Site Development			\$ 17,000				\$ 17,000
General Fund			\$ 17,000				\$ 17,000
Reimburse Parkdale for Sanitary Sewer				\$ 88,600			\$ 88,600
Wastewater Fund				\$ 88,600			\$ 88,600
Replace carpet at LAWSC				\$ 70,000		\$ (70,000)	\$ -
General CIP Fund				\$ 70,000		\$ (70,000)	\$ -
SCADA System Upgrade				\$ 200,000			\$ 200,000
Wastewater Fund				\$ 200,000			\$ 200,000
Schofield Farm/Strieby Open Space/Erie Lake Exp. M		\$ 75,000		\$ 10,284,177			\$ 10,359,177
General CIP Fund				\$ 18,001			\$ 18,001
Parks Improvement Impact Fund				\$ 9,174,069			\$ 9,174,069
Trails & Natural Areas				\$ 1,092,107			\$ 1,092,107
Tree Impact Fund		\$ 75,000					\$ 75,000
Signal Communication Project				\$ 228,017			\$ 228,017
General CIP Fund				\$ 228,017			\$ 228,017
Signals on Sheridan at Ridgeview and KS Access - Main				\$ 675,229			\$ 675,229
Transportation Impact Fund				\$ 675,229			\$ 675,229
Solar at NWRP		\$ 900,000		\$ 4,000,000			\$ 4,900,000
Grants Fund		\$ 900,000					\$ 900,000
Wastewater Fund				\$ 4,000,000			\$ 4,000,000
Street Lights				\$ 2,597,719			\$ 2,597,719
General CIP Fund				\$ 2,597,719			\$ 2,597,719
Summerfield Filing 1 - Pond Upsizing Reimbursement				\$ 210,000			\$ 210,000
Storm Drainage Operating Fund				\$ 210,000			\$ 210,000
Summerfield Sewer Reimbursement				\$ 1,200,000			\$ 1,200,000
Wastewater Fund				\$ 1,200,000			\$ 1,200,000
Summerfield Sewer Reimbursement WCR7				\$ 175,000			\$ 175,000
Wastewater Fund				\$ 175,000			\$ 175,000
Sunset Area Plan		\$ 45,000					\$ 45,000
Grants Fund		\$ 45,000					\$ 45,000
SWRF Demolition				\$ 1,222,256		\$ 250,000	\$ 1,472,256
Wastewater Fund				\$ 1,222,256		\$ 250,000	\$ 1,472,256
Town Center - North Roundabout				\$ 2,141,154			\$ 2,141,154

Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
Transportation Impact Fund				\$ 2,141,154			\$ 2,141,154
<b>Town Center -South Roundabout</b>				<b>\$ 4,577,596</b>			<b>\$ 4,577,596</b>
Transportation Impact Fund				\$ 4,577,596			\$ 4,577,596
<b>Town Hall Expansion</b>				<b>\$ 7,508,594</b>			<b>\$ 7,508,594</b>
General CIP Fund				\$ 2,223,055			\$ 2,223,055
Public Facilities Impact Fund				\$ 2,970,702			\$ 2,970,702
Storm Drainage Operating Fund				\$ 321,295			\$ 321,295
Wastewater Fund				\$ 587,189			\$ 587,189
Water Fund				\$ 1,406,353			\$ 1,406,353
<b>Traffic Mitigation</b>				<b>\$ 42,000</b>			<b>\$ 42,000</b>
General CIP Fund				\$ 42,000			\$ 42,000
<b>Trail Connector</b>				<b>\$ 519,701</b>			<b>\$ 519,701</b>
Trails & Natural Areas				\$ 519,701			\$ 519,701
<b>Turf Replacement Program - CWCB Grant</b>				<b>\$ 50,000</b>			<b>\$ 50,000</b>
Water Fund				\$ 50,000			\$ 50,000
<b>Upgrade and Relocate Vault Building</b>	<b>\$ (450,000)</b>	<b>\$ 450,000</b>					<b>\$ -</b>
Grants Fund	\$ (450,000)	\$ 450,000					\$ -
<b>Upsizing San Sewer from NWRf to WCR7/WCR12 Reimb</b>				<b>\$ 2,250,000</b>			<b>\$ 2,250,000</b>
Wastewater Fund				\$ 2,250,000			\$ 2,250,000
<b>Valve Replacements</b>				<b>\$ 75,000</b>			<b>\$ 75,000</b>
Water Fund				\$ 75,000			\$ 75,000
<b>Water Treatment Facility - New</b>				<b>\$ 6,475,404</b>		<b>\$ (187,795)</b>	<b>\$ 6,287,609</b>
Water Fund				\$ 6,475,404		\$ (187,795)	\$ 6,287,609
<b>Well Project</b>				<b>\$ 5,104,667</b>		<b>\$ (1,000,000)</b>	<b>\$ 4,104,667</b>
Water Fund				\$ 5,104,667		\$ (1,000,000)	\$ 4,104,667
<b>West Ramp &amp; TWY Construction</b>	<b>\$ (13,190)</b>	<b>\$ 6,942</b>	<b>\$ 6,595</b>	<b>\$ 125,447</b>			<b>\$ 125,794</b>
Airport Fund	\$ (6,595)	\$ 6,942		\$ 125,447			\$ 125,794
Grants Fund	\$ (6,595)		\$ 6,595				\$ -
<b>Windy Gap Firing Project</b>						<b>\$ (225,370)</b>	<b>\$ (225,370)</b>
Water Fund						\$ (225,370)	\$ (225,370)
<b>Wise Farm Open Space &amp; Park Site</b>		<b>\$ 50,000</b>					<b>\$ 50,000</b>
Trails & Natural Areas		\$ 50,000					\$ 50,000
<b>Xcel Energy Reinforcement Contribution</b>		<b>\$ 411,418</b>					<b>\$ 411,418</b>
General CIP Fund		\$ 411,418					\$ 411,418
							<b>297</b>

Change Summary by Project & Fund	Revenue Change	New Capital	New Operating	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
Zone 2 Storage Tank				\$ 27,007,126			\$ 27,007,126
Water Fund				\$ 27,007,126			\$ 27,007,126
Zone 2 Transmission Main 1st Phase				\$ 13,036,900			\$ 13,036,900
Water Fund				\$ 13,036,900			\$ 13,036,900
Zone 3 Water Tank at WTF				\$ 13,314,770		\$ -	\$ 13,314,770
Water Fund				\$ 13,314,770		\$ -	\$ 13,314,770
Zone 3 Waterline Extension Phase 2				\$ 200,000			\$ 200,000
Water Fund				\$ 200,000			\$ 200,000
Zone 3 WCR7 Waterline Improvements				\$ 8,657,675		\$ (4,086,300)	\$ 4,571,375
Water Fund				\$ 8,657,675		\$ (4,086,300)	\$ 4,571,375
Grand Total	\$ (1,975,154)	\$ 4,248,604	\$ 1,827,178	\$ 138,568,701	\$ 998,546	\$ -	\$ 143,667,875

# 2025 Spring Supplemental

April 22, 2025

# Agenda

- ❖ What are Supplemental Budgets?
- ❖ Evaluation Criteria for the Spring Supplemental Requests
- ❖ Capital Improvement Plan (CIP) Resources
- ❖ New Operating Requests, New Capital Requests and Rollover Requests
- ❖ Rollover Historical Data
- ❖ Grant Funding (?)
- ❖ Change Request Summary
- ❖ Fund Balance Summary
- ❖ General Fund Summary
- ❖ Major Changes



# What are Supplemental Budgets?

- Previous year appropriations cannot be spent in the current year, so multi-year projects must be “rolled” to the current year
- Appropriation of unanticipated costs since budget adoption
- Grant appropriations for grants received since budget adoption
- Council must approve appropriations and Town staff will report the changes to the budget to the Colorado Department of Local Affairs

# Request Evaluation Criteria

- Why was this request not included in the 2025 budget process?
- Has the department traditionally spent all the funds in the account? If not, can the department monitor until next supplemental?
- Was the documentation and justification for the request sufficient and explain the need for additional funds in the beginning of the year?
- Have rollover funds been rolling for more than 2-3 years? What is the status of the project, and can it be re-prioritized/timing updated?

# Capital Improvement Plan (CIP) Resources

- The best way to review the current CIP projects is through the CIP Book found on our website ([www.erieco.gov/Budget](http://www.erieco.gov/Budget)) or linked [here](#).
- The digital Budget Book also contains the current CIP projects and is available on the website above or linked [here](#).
  - The Budget Book groups the projects by department while the CIP Book groups the projects by type, but both documents contain the same information.
- Additional project details can be found on our project transparency page linked [here](#) and available on the website above.
- Each of these resources were created utilizing our internal budgeting software, ClearGov.

# Supplemental Requests

# Snapshot: New Operating Requests

## General Fund

- **\$122,729\*** - Consultation Services for Transportation Division
  - Vista Parkway Safety Study, Transportation Software, BoCo Transit project (grant funded)
- **\$175,000\*** - Agreement on Bus Stop Design services (Council approved resolution 25-009)
- **\$108,580** - Vehicle maintenance services on additional vehicles added to the fleet
- **\$72,000** - Council requested Town-wide household community questionnaire
- **\$15,000** - Replacement of ballistic helmets – expiring this year
- **\$10,000\*** - Consultation Services with United Power – Street Light Acquisition

# Snapshot: New Capital Requests

## Capital Improvement Fund

- **\$411,418\*** - Xcel Energy Reinforcement contract
- **\$63,000** - Charge Ahead 2025 Grant

## Water Fund

- **\$50,000** - Erie Coal Creek Ditch Headgate survey, geotechnical services and structural design for Coal Creek Drainage Improvements

## Storm Drainage

- **\$2,100,000** - Drainage Facility Maintenance and Repair Project increase to cost estimate and Construction Management services for Vista Ridge Pond

## Other Funds

- **\$75,000** - Trees at Schofield Site Improvement Project (Tree Impact Fund)
- **\$58,000** - Coal Creek Park dumpster enclosure (Conservation Trust Fund)
- **\$50,000** - Agricultural Irrigation Pipes at the Wise Farm site (TNACC)
- **\$29,714** - Construction on Colliers Hill/ Historic Erie Connect Project (Transportation Impact)

# Snapshot: Rollovers

## General Fund

- **\$855,000** - Land acquisition, due diligence & incentives for Affordable Housing

## Capital Improvement Fund

- **\$538,900** - LAWSC Additional Space and Security Measures
- **\$338,486** - LAWSC Office Remodeling
- **\$377,356** - Page Property P&R Final Design
- **\$2,597,719\*** - Streetlight Acquisition for purchase of streetlights through Xcel Energy

## Water Fund

- **\$40,044,026\*** - Zone 2 Project
- **\$13,314,770** - Zone 3 Water Tank
- **\$8,857,675** – Zone 3 Waterline

# Rollovers Continued...

## Other Funds/ Multiple Funds

- **\$10,284,177** - Schofield Farm Project
  - \$1,092,107 in the Trails and Natural Areas Fund (210)
  - \$9,174,069\* in the Parks Improvement Impact Fund (320)
  - \$18,001 in the Capital Improvement Fund (110)
- **\$3,748,482\*** - Design/ construction for the PD/ Courts Expansion (Police Facilities Impact Fund)
- **\$2,141,154** - Town Center North Roundabout for finalizing design and land acquisition (Transportation Impact Fund)
- **\$4,577,596** – Town Center South Roundabout, expected to be bid in spring 2025(Transportation Impact Fund)
- **\$7,508,594\*** -Town Hall Expansion
  - \$2,223,056 in the Capital Improvement Fund (110)
  - \$2,970,702 in the Public Facilities Impact Fund (310)
  - \$1,406,353 in the Water Fund (500)
  - \$587,190 in the Wastewater Fund (510)
  - \$321,296 in the Storm Drainage Operating Fund (520)



# Grant Funding: Offsetting Revenue

Description	New Capital	New Operating	Revenue Change	Rollover - Ops	Grand Total
Misc. Grant Revenue - Charge Ahead 2025 Grant			\$ 63,000		\$ 63,000
Revenue Misc. Grants – Non-Capital			\$ 30,506		\$ 30,506
BoCo Climate Action Plan Grant		\$ 30,506			\$ 30,506
Solar at NWRF - DOLA Sponsored Funding Amount	\$ 900,000				\$ 900,000
Charge Ahead 2025 Grant	\$ 63,000				\$ 63,000
Revenue Misc. Grants – Non-Capital			\$ 167,000		\$ 167,000
Consultation Services - ARPA Rollover				\$ 11,428	\$ 11,428
2024 CDBG Grant		\$ 167,000			\$ 167,000
Grants Revenue - Parks & Rec - Sunset Area Planning Grant			\$ 45,000		\$ 45,000
E-Cargo Bike Grant Program Revenue			\$ 8,207		\$ 8,207
Tools & Equipment - E-Cargo Bike Grant Program		\$ 8,207			\$ 8,207
Construction - Sunset Area Plan Grant Funding	\$ 45,000				\$ 45,000
FAA Airport Grant - West Ramp & TWY Cons			\$ 6,595		\$ 6,595
Grants Revenue - Utilities - DOLA Grant for Solar at NWRF			\$ 900,000		\$ 900,000
CDOT Grant revenue - electrical vault replacement			\$ 450,000		\$ 450,000
CDOT electrical vault replacement grant	\$ 450,000				\$ 450,000
	<b>\$ 1,458,000</b>	<b>\$ 205,713</b>	<b>\$ 1,670,308</b>	<b>\$ 11,428</b>	<b>\$ 3,345,449</b>

# Spring Supplemental Change Request Summary

Fund Name	New Capital	New Operating	Revenue Change	Rollover - Cap	Rollover - Ops	Transfer	Grand Total
Airport Fund	\$ 6,942		\$ 6,595	\$ 125,447			\$ 138,984
Conservation Traust Fund	\$ 58,000						\$ 58,000
General CIP Fund	\$ 411,418			\$ 9,079,005		\$ 785,000	\$ 10,275,423
General Fund		\$ 1,528,470	\$ 27,251	\$ 935,000	\$ 805,242	\$(785,000)	\$ 2,510,963
Grants Fund	\$ 1,458,000	\$ 212,308	\$ 1,670,308		\$ 32,758		\$ 3,373,374
Parks Improvement Impact Fund				\$ 9,174,069			\$ 9,174,069
Police Facilities Impact Fund				\$ 3,748,482		\$ -	\$ 3,748,482
Public Facilities Impact Fund				\$ 2,970,702			\$ 2,970,702
Storm Drainage Impact Fund				\$ 1,440,000			\$ 1,440,000
Storm Drainage Operating Fund	\$ 2,100,000	\$ 23,200		\$ 3,065,077		\$ -	\$ 5,188,277
Trails & Natural Areas	\$ 50,000			\$ 1,774,416			\$ 1,824,416
Transportation Impact Fund	\$ 29,714		\$ 271,000	\$ 9,971,837			\$ 10,272,551
Tree Impact Fund	\$ 75,000						\$ 75,000
Wastewater Fund		\$ 17,100		\$ 15,667,987	\$ 149,835	\$ 109,841	\$ 15,944,763
Water Fund	\$ 59,530	\$ 46,100		\$ 80,616,679	\$ 10,711	\$(109,841)	\$ 80,623,179
<b>Grand Total</b>	<b>\$ 4,248,604</b>	<b>\$ 1,827,178</b>	<b>\$ 1,975,154</b>	<b>\$ 138,568,701</b>	<b>\$ 998,546</b>	<b>\$ 0</b>	<b>\$ 147,618,183</b>

# Spring Supplemental Fund Balance Summary

## Changes in Fund Balances/Working Capital - 2025 Budget

2025 Budget	Beginning Balance	Revenues - Adopted	Expenditures - Adopted	Spring Supp. Requests	Net Increase/ Decrease	Restricted	Ending Balance
<b>General Fund - 100</b>	27,208,366	63,952,197	69,677,648	2,456,461	<b>(8,181,912)</b>	(3,328,546)	<b>15,697,908</b>
<b>Capital Improvement Fund - 110</b>	27,000,000	6,500,000	10,655,205	10,275,423	<b>(14,430,628)</b>	-	<b>12,569,372</b>
Grants Fund	152,568	2,422,500	2,422,500	32,758	<b>(32,758)</b>	-	<b>119,810</b>
Trails & Natural Areas Fund	4,547,213	3,079,000	2,887,659	1,824,416	<b>(1,633,075)</b>	-	<b>2,914,138</b>
Conservation Trust Fund	1,313,677	350,000	300,000	58,000	<b>(8,000)</b>	-	<b>1,305,677</b>
Cemetery Fund	449,878	-	-	-	-	-	<b>449,878</b>
<b>Total Special Revenue Funds</b>	<b>6,463,337</b>	<b>5,851,500</b>	<b>5,610,159</b>	<b>1,915,174</b>	<b>(1,673,833)</b>	-	<b>4,789,504</b>
Transportation Impact Fund	30,128,530	4,065,740	5,524,582	9,730,551	<b>(11,189,393)</b>	-	<b>18,939,137</b>
Public Facilities Impact Fund	6,938,134	2,615,920	4,377,512	2,970,702	<b>(4,732,294)</b>	-	<b>2,205,840</b>
Parks Improvement Impact Fund	15,055,676	1,650,940	-	9,174,069	<b>(7,523,129)</b>	-	<b>7,532,547</b>
Police Facilities Impact Fund	1,305,927	454,100	35,518,368	3,748,482	<b>(38,812,750)</b>	-	<b>(37,506,823)</b>
Tree Impact Fund	1,620,152	201,000	144,000	75,000	<b>(18,000)</b>	-	<b>1,602,152</b>
Storm Drainage Impact Fund	10,082,415	1,124,180	2,936,500	1,440,000	<b>(3,252,320)</b>	-	<b>6,830,095</b>
Fleet & Equipment Acquisition Fund	369,384	2,333,396	2,333,396	-	-	-	<b>369,384</b>
<b>Total Capital Funds</b>	<b>65,500,218</b>	<b>12,445,276</b>	<b>50,834,358</b>	<b>27,138,804</b>	<b>(65,527,886)</b>	-	<b>(27,668)</b>
Water Fund	145,449,019	39,549,310	64,980,284	80,623,179	<b>(106,054,154)</b>	-	<b>39,394,865</b>
Wastewater Fund	43,229,580	12,124,000	9,048,975	15,944,763	<b>(12,869,738)</b>	-	<b>30,359,842</b>
Storm Drainage Operating Fund	7,433,432	2,068,163	6,752,778	5,188,277	<b>(9,872,892)</b>	-	<b>(2,439,460)</b>
Airport Fund	171,441	491,545	535,390	125,794	<b>(169,639)</b>	-	<b>1,802</b>
<b>Total Enterprise Funds</b>	<b>196,283,472</b>	<b>54,233,018</b>	<b>81,317,428</b>	<b>101,882,013</b>	<b>(128,966,423)</b>	-	<b>67,317,049</b>
<b>Totals</b>	<b>349,455,393</b>	<b>142,981,991</b>	<b>218,094,798</b>	<b>143,667,875</b>	<b>(218,780,682)</b>	<b>(3,328,546)</b>	<b>127,346,165</b>

# General Fund Summary – 2025 Spring Supplemental

General Fund Revenues	\$ 63,979,448
General Fund Operating & Debt Expenditures	\$ (58,574,523)
<u>Net Change before Airport, CIF, &amp; Fleet Transfers</u>	<u>\$ 5,404,925</u>
CIF Transfer	\$ (5,400,000)
Fleet Transfer	\$ (2,333,396)
Airport Fund Transfer	\$ (310,697)
<b>Change in Fund Balance (A)</b>	<b>\$ (2,639,168)</b>
Beginning Fund Balance (B)	\$ 20,949,866
Ending Fund Balance (A)+(B)=(C)	\$ 18,310,698
Non-spendable Fund Balance (D)	\$ 3,328,546
<b>Spendable Fund Balance (C)-(D)=(E)</b>	<b>\$ 14,982,152</b>
Minimum Required Fund Balance	\$ 14,975,505

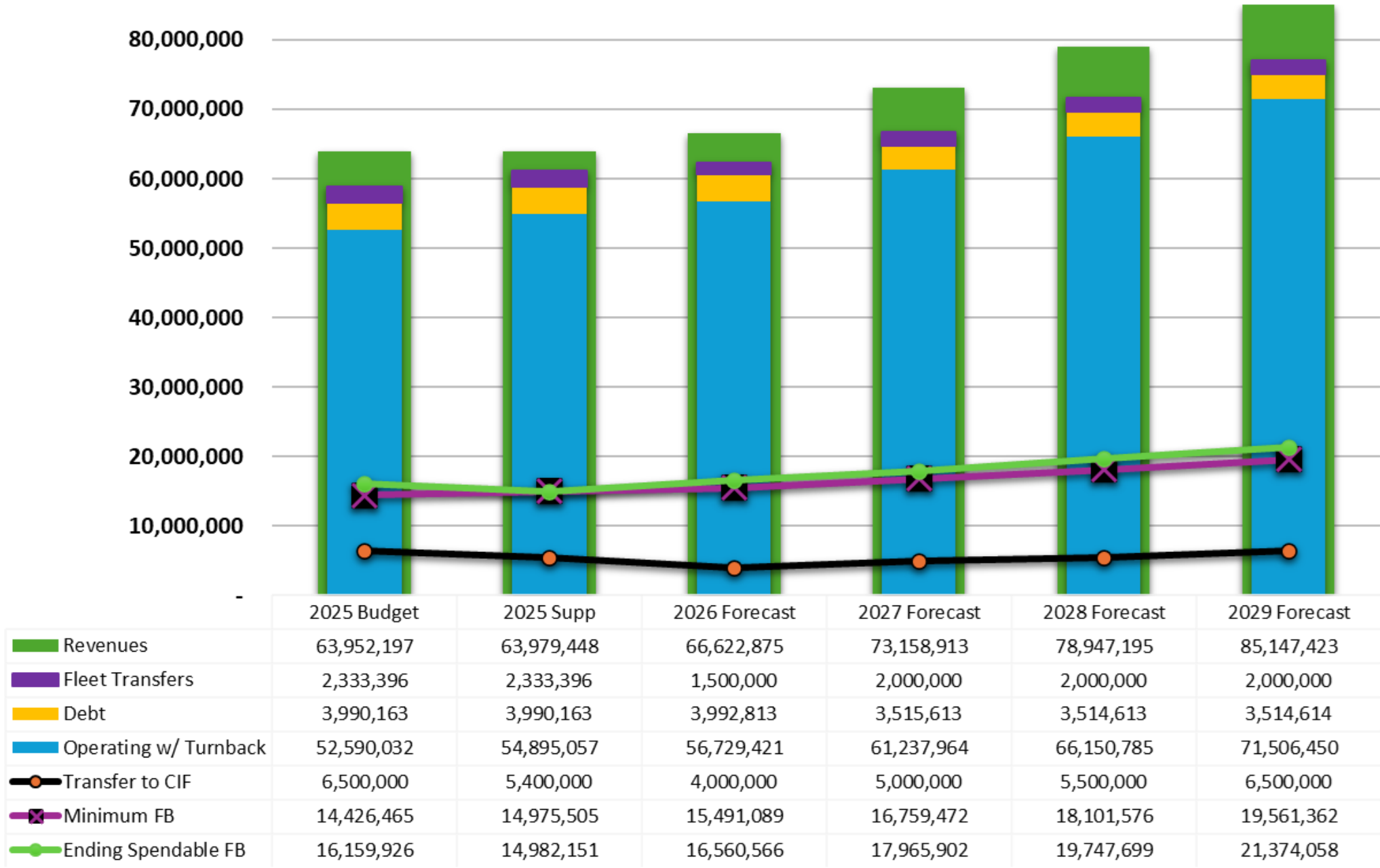
# General Fund Fund Balance (FB) Forecast

<b>General Fund</b>	<b>2025 Budget</b>	<b>2025 Supp</b>	<b>2026 Forecast</b>	<b>2027 Forecast</b>	<b>2028 Forecast</b>	<b>2029 Forecast</b>
Beginning FB (B)	20,949,866	20,949,866	19,488,472	19,889,112	21,294,448	23,076,245
Revenues	63,952,197	63,979,448	66,622,875	73,158,913	78,947,195	85,147,423
Debt	3,990,163	3,990,163	3,992,813	3,515,613	3,514,613	3,514,614
Operating Expenditures	56,854,089	59,346,008	61,329,104	66,203,204	71,514,363	77,304,270
7.5% Operating Turnback	(4,264,057)	(4,450,951)	(4,599,683)	(4,965,240)	(5,363,577)	(5,797,820)
Fleet Transfers	2,333,396	2,333,396	1,500,000	2,000,000	2,000,000	2,000,000
Transfer to CIF	6,500,000	5,400,000	4,000,000	5,000,000	5,500,000	6,500,000
Total Expenditures	58,913,591	66,618,616	62,222,234	66,753,577	71,665,398	77,021,064
Change in Fund Balance (A)	5,038,606	(2,639,168)	4,400,641	6,405,336	7,281,797	8,126,359
Ending FB (A)+(B)=(C)	25,988,472	18,310,697	23,889,112	26,294,448	28,576,245	31,202,604
Restricted (D)	3,328,546	3,328,546	3,328,546	3,328,546	3,328,546	3,328,546
Ending Spendable FB (C)-(D)=(E)	16,159,926	14,982,151	16,560,566	17,965,902	19,747,699	21,374,058
Minimum FB	14,426,465	14,975,505	15,491,089	16,759,472	18,101,576	19,561,362
Unassigned Fund Balance	1,733,460	6,646	1,069,477	1,206,430	1,646,123	1,812,696



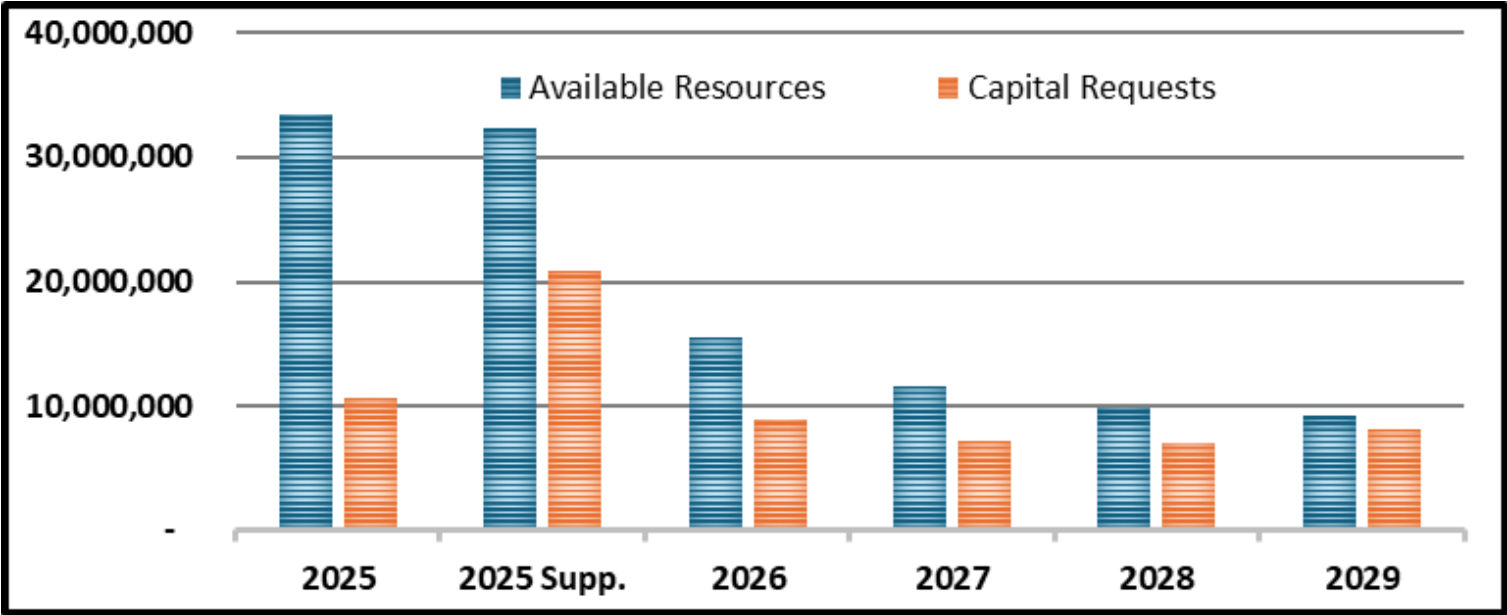


# General Fund FB Forecast





# General CIF Forecast



	2025 Adopted	2025 1st Supp.	2026 Forecast	2027 Forecast	2028 Forecast	2029 Forecast
CIF Beginning FB	27,000,000	27,000,000	11,469,372	6,581,014	4,393,176	2,765,196
General Fund Transfer	6,500,000	5,400,000	4,000,000	5,000,000	5,500,000	6,500,000
Rollovers		9,079,005				
New Requests		411,418				
Interfund Transfers		785,000				
Original Capital Budget	10,655,205	10,655,205	8,888,358	7,187,838	7,127,980	8,110,463
Total Capital Budget	10,655,205	20,930,628	8,888,358	7,187,838	7,127,980	8,110,463
CIF Ending FB	22,844,795	11,469,372	6,581,014	4,393,176	2,765,196	1,154,733

# Questions & Discussion





# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-170, **Version:** 1

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**SUBJECT:**

Utilities Quarterly Report

**DEPARTMENT:** Utilities

**PRESENTER(S):** Todd Fessenden, Utilities Director

**POLICY ISSUES:**

None

**STAFF RECOMMENDATION:**

For information only

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Quarterly Utilities Update includes information regarding water and sewer usage patterns and weather data.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Safe and Healthy Community
- ✓ Effective Governance
- ✓ Environmentally Sustainable
- ✓ Fiscally Responsible

**ATTACHMENT(S):**

1. Quarterly Report

# UTILITIES QUARTERLY REPORT

Review of Q1 2025

## LYNN R. MORGAN WATER TREATMENT FACILITY (WTF)

### Average Flow Million Gallons per Day (MGD):

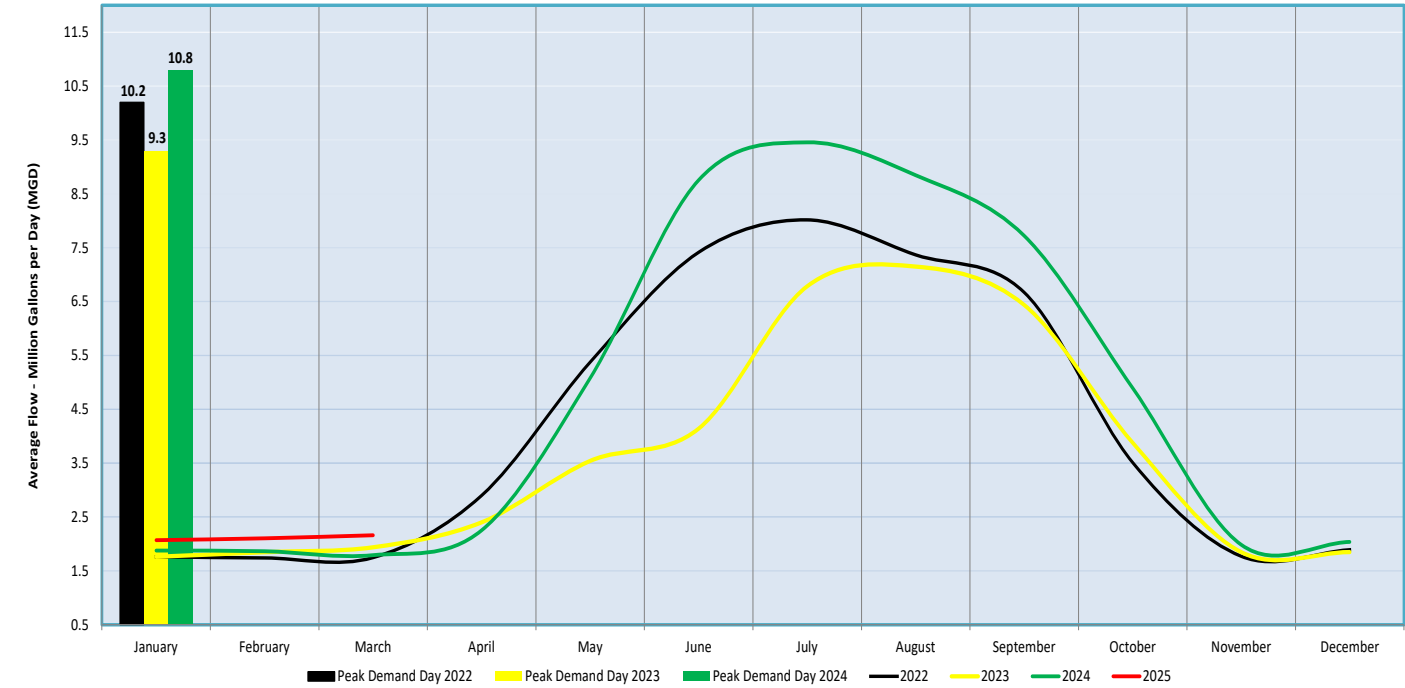
2022 – 4.2 MGD | 2023 – 3.6 MGD | 2024 – 4.7 MGD

The Lynn R Morgan Water Treatment Plant produced 1.7 billion gallons in 2024. 2024 was an unusually hot and dry year, and as a result, we have seen significant water demand over recent years. 2024 stands in stark contrast to 2023, which was a very wet and cool year.

### What Does this Tell Us?

Overall water demands are relatively flat in the winter (indoor demand) over the period of record; this year showed us how a long, dry summer can cause broad shifts in a single year, especially when coupled with rapid growth. Staff will continue to help residents manage their water use with incentives, smart meters, conservation programs, and low water use landscape ordinances. We are holding a multi-departmental internal workshop on April 18 to explore ideas to reduce water demands in our system, with the intent of coming up with 6-8 immediately implementable actions and then monitor the effectiveness over the summer irrigation season.

Average Water Monthly Production



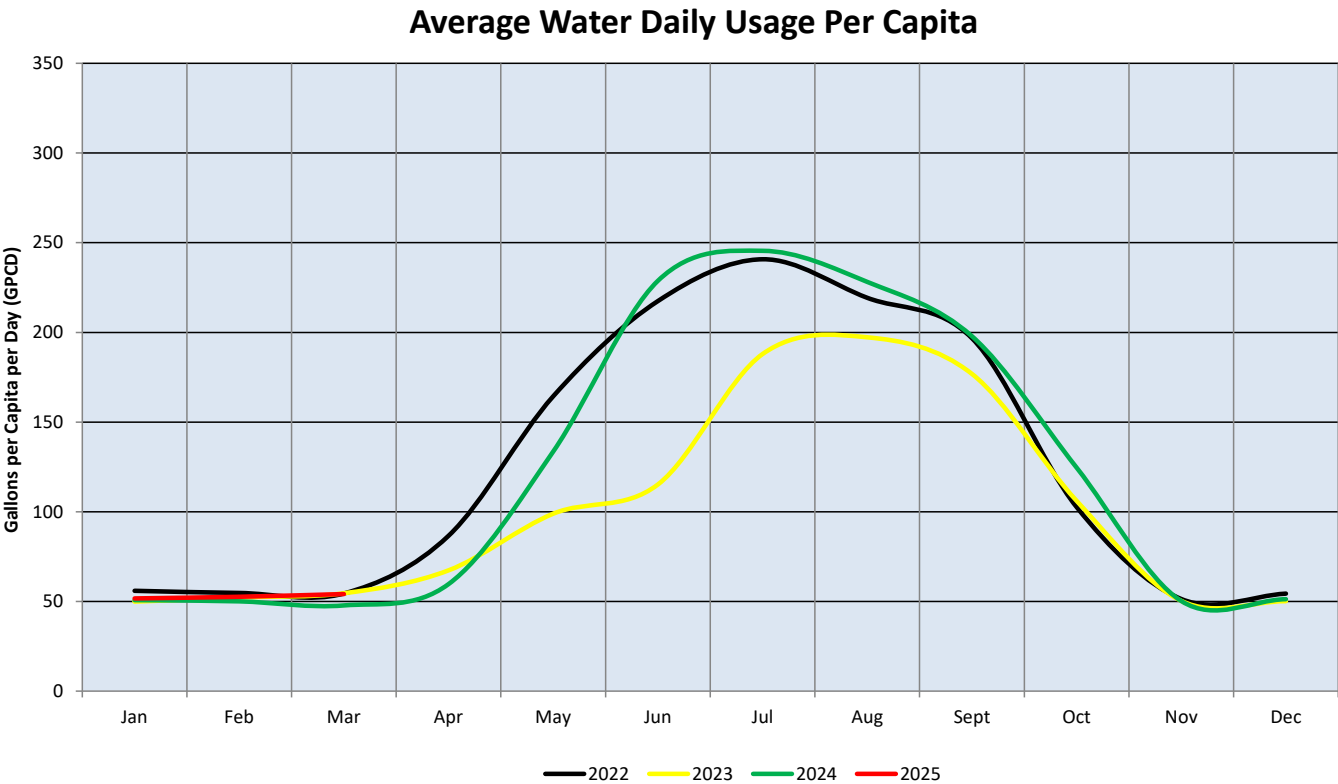
Average Per Capita per Day (GPCD):

2022 – 125 GPCD | 2023 – 101 GPCD | 2024 – 122 GPCD

Per capita demands stayed relatively stable throughout 2024; however, as new development comes online with water saving features and smaller landscaped areas, combined with the Town’s strong tier pricing and conservation messaging; we are seeing water demands generally reacting appropriately in normal years. Outdoor irrigation typically amounts to roughly 40 - 50% of annual deliveries. This year we saw closer to 60% of the water supplied going to irrigation, likely due to dry and hot conditions.

What Does this Tell Us?

Reducing summer irrigation and increasing reuse water availability will reduce reliance on treated water supplies in the future. Staff will be collaborating with Water Conservation staff in Environmental Services to continue with Turf Replacement programs and other conservation messaging. We continue to work to develop a code-based water landscaping standard that can reduce customer bills and demand, while also leveraging our water supply portfolio. The Town is an innovator in the State and region in these areas.



# NORTH WATER RECLAMATION FACILITY (NWRF)

## Average Flow Million Gallons per Day (MGD):

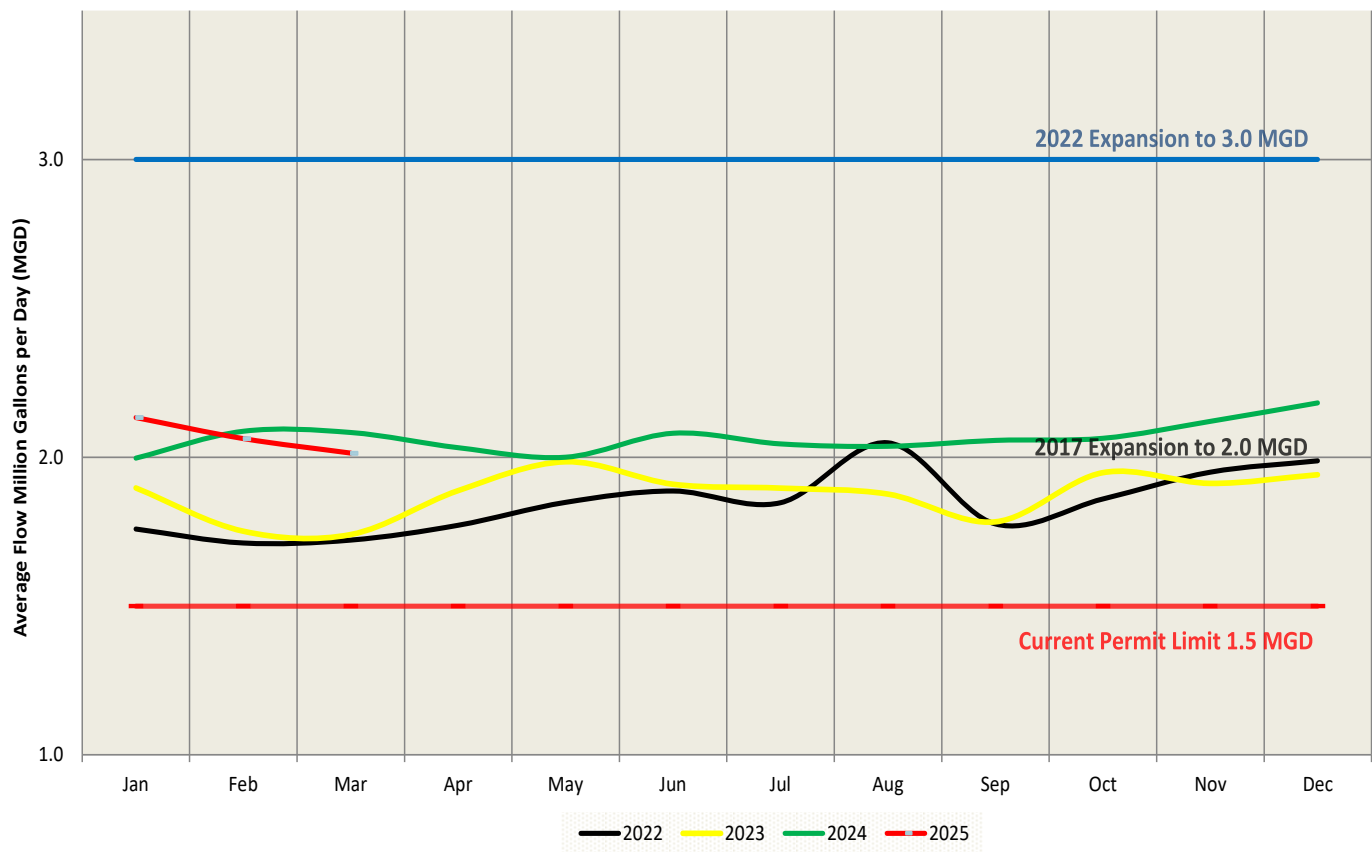
2022 - 1.8 MGD | 2023 – 1.9 MGD | 2024 – 2.1 MGD

As is the case for most wastewater utilities in the State, our permit expired long ago and is on “Administrative Extension”, a sort of limbo period where no changes are made to the permit, even though changes are made to water quality standards along with treatment plant improvements and expansions. Our permit is currently about 8 years expired. State Senators Kirkmeyer and B. Pelton are actively working on a new bill aimed at supporting our wastewater utilities, which has received unanimous approval from the Joint Budget Committee (JBC) and will be adopted alongside the Long Bill. The bill is expected to improve the process for receiving wastewater discharge permits for municipalities and special districts. Town water quality counsel Gabe Racz shared Erie’s experience in receiving violations due to its permit not being current, which helped encourage this action.

### What Does this Tell Us?

The NWRF is permitted to treat 3.03 MGD, design for expansion is required at 80% (2.4 MGD) of permitted capacity, and we must be under construction for an expansion at 95% (2.9 MGD) capacity. Based on current growth trends, we are 7-8 years out from our next expansion and three years out from starting the design for the next expansion, as we tend to increase by about 0.1 MGD per year. We see an uptick throughout winter as snow melts and some of it finds its way into manhole covers.

Average Wastewater Monthly Flows



Annual Gallons Per Capita per Day (GPCD):

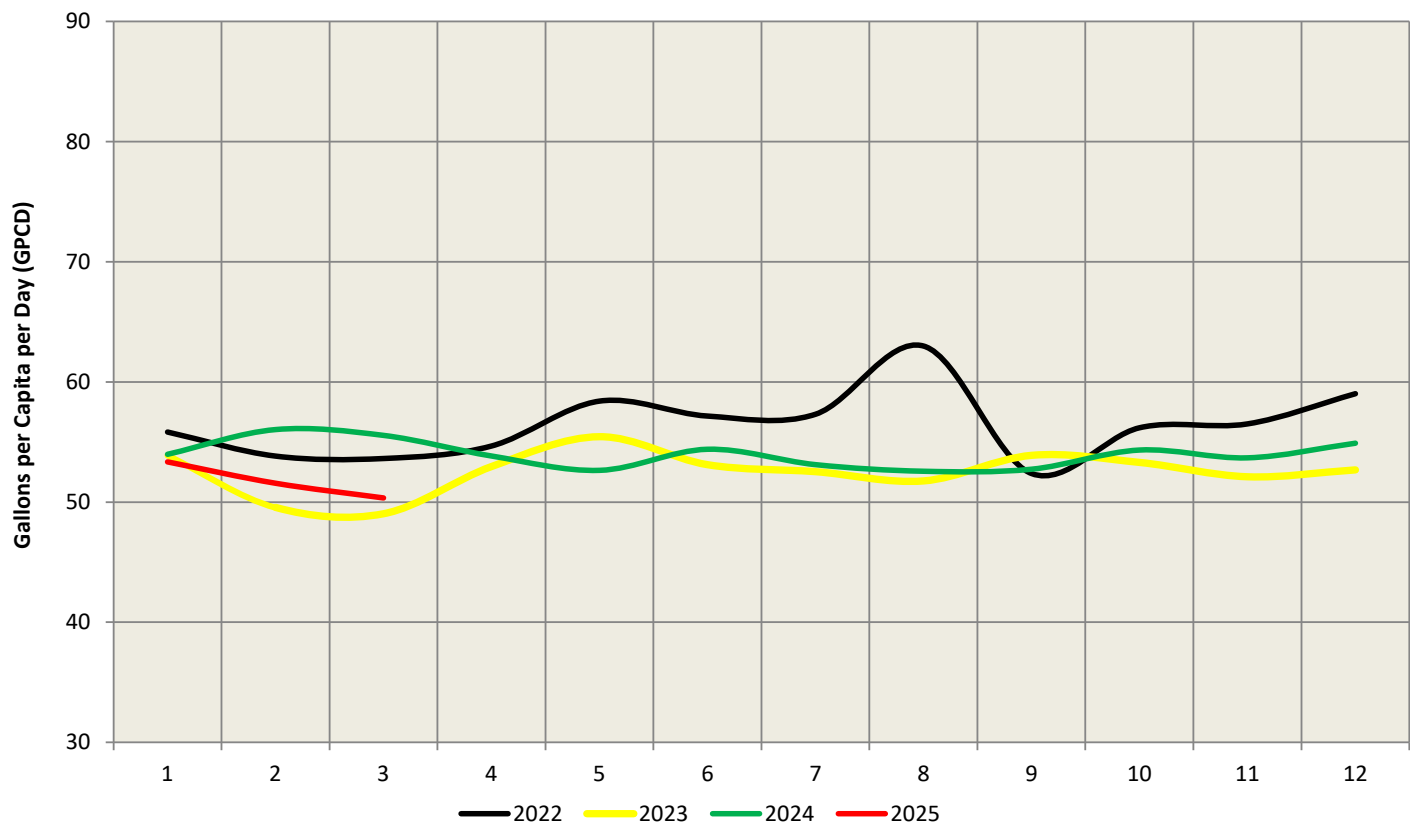
2022 - 56 GPCD | 2023 - 53 GPCD | 2024 - 54 GPCD

This graph depicts customer indoor water usage. The average daily usage per capita in 2024 was stable, due to very low precipitation and general lack of I&I. In comparison, August 2022 had the highest usage at 67 GPCD, again due to intense rain and particularly micro-burst storms that affected multiple sub-divisions on the west side of Town.

What Does this Tell Us?

High precipitation events that flood streets and heavy, wet snowstorms have a major impact on inflows to the NWRf. This is primarily due to leakage into manholes. To avert this, we have installed extra seals in low lying manholes. Overall usage per capita continues to be tempered by lower water using plumbing fixtures and newer, less prone to leakage, infrastructure. Dry periods show the actual sewer inflows related to development and population growth. The differences between 2023 and 2024 are good examples of that here.

Average Wastewater Daily Usage Per Capita



## MONTHLY WEATHER DATA FOR BOULDER

### National Oceanic and Atmospheric Administration (NOAA) & Natural Resource Conservation Service (NRCS)

NOAA is predicting 40 - 50% below normal precipitation in the coming quarter and 33 - 40% chance of above or below normal temperatures April through June. Our own trends are tending to track with this as seen below. Snowpack is hovering around 100% in the Colorado River Basin (where most of our water comes from) and as low as the single digits in areas of Southern Colorado.

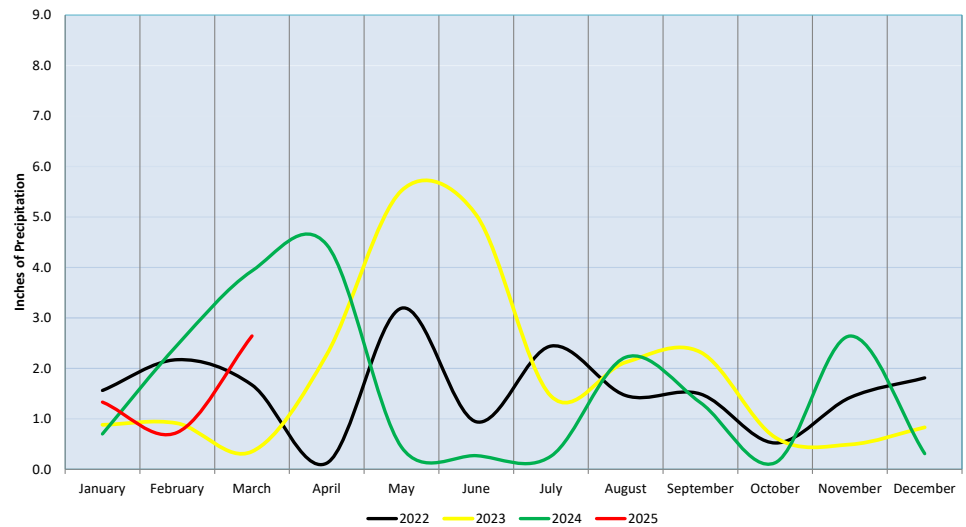
#### HIGHLIGHTS

We continue to move forward to develop the North Water Treatment Facility design as well as Boulder Creek and Filly Lake supplies.

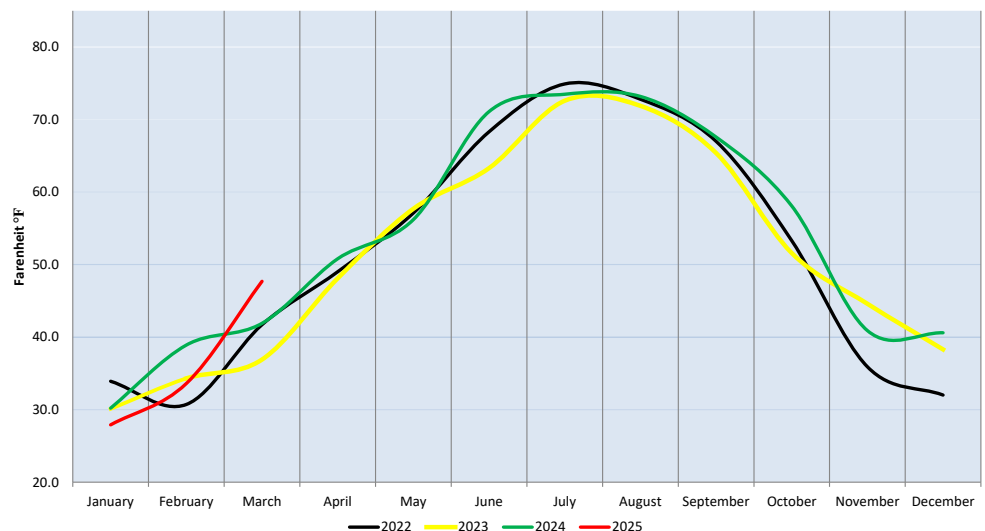
We were successful in working with Southern Land to secure a Zone 2 (North Westerly) tank site after many years of trying.

We cleared all vegetation from the old Prince Forebay at 287 and Arapahoe, ahead of bird migration and nesting. We also received a new 5-year Army Corps of Engineers Permit designating wetlands at that site as non-jurisdictional.

Precipitation

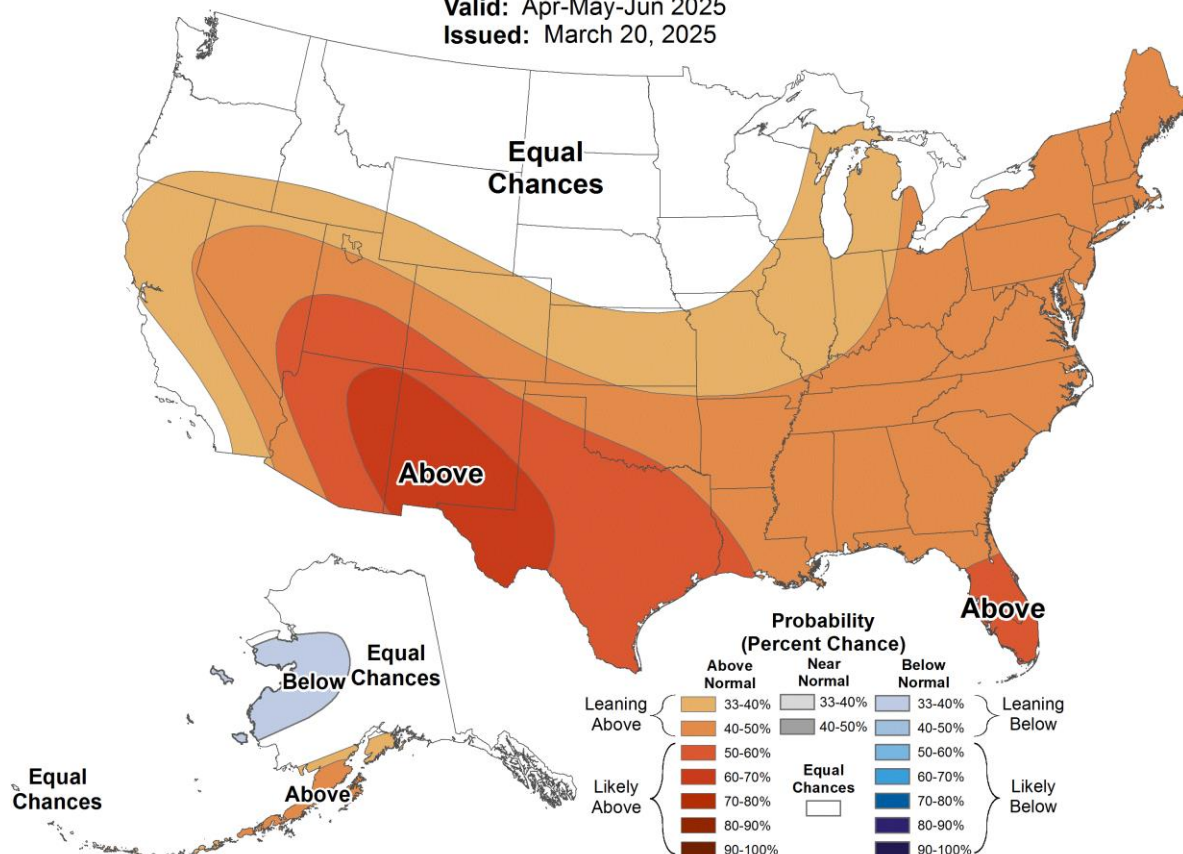
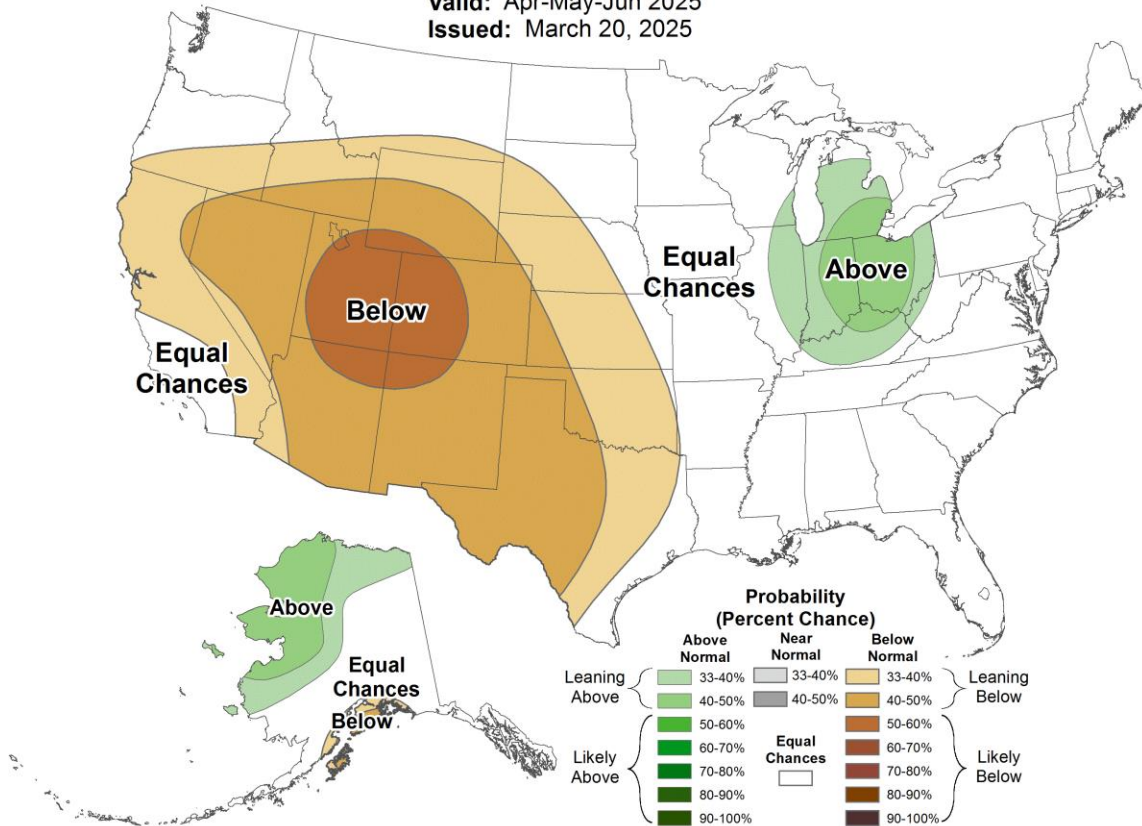


Mean Temperature

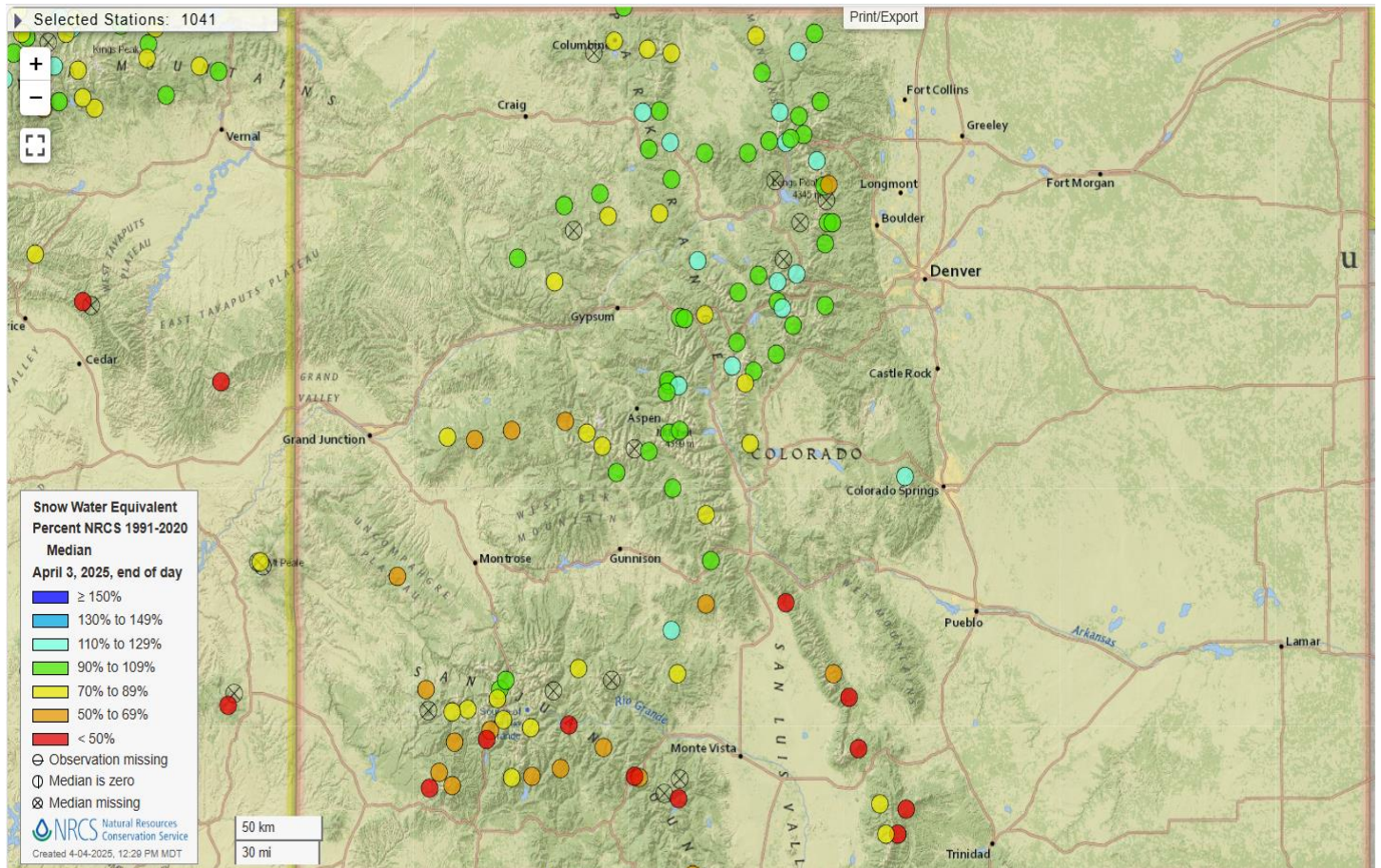


#### What Does this Tell Us?

Precipitation and temperature are the two most significant factors in irrigation season water demands. Tracking these demands over time helps us track patterns and also see factors that may influence demands and timing in water supplies and wastewater inflows.











# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-152, **Version:** 1

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**SUBJECT:**

Environmental Services Monthly Report - March 2025

**DEPARTMENT:** Environmental Services

**PRESENTER:** David Frank, Director of Environmental Services

**STAFF RECOMMENDATION:**

Informational Only

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Environmental Services Monthly Report includes updates from the Environmental Services Department, including the Sustainability and Energy & Environment Divisions.

**ATTACHMENT:**

1. Staff Report - March 2025

# ENVIRONMENTAL SERVICES MONTHLY REPORT

Review of March 2025

## HIGHLIGHTS

- Town of Erie staff have recently connected with Robert Aronoff, the newly hired Oil and Gas Liaison for the Town of Fredrick. Staff are excited to continue to build this relationship and improve local governance and coordination both in and around Erie.
- The Sustainability Division continues to work with Lotus Engineering & Sustainability to develop the Town's first Climate and Sustainability Action Plan.
- Development of the Town's first Resilience Action Plan continues in collaboration with three students from CU Boulder's Masters of the Environment Graduate Program and the Sustainability Division.

## CAPITAL IMPROVEMENT PROJECTS

### Streetlight Acquisition

Negotiations for streetlight acquisition continue with United Power.

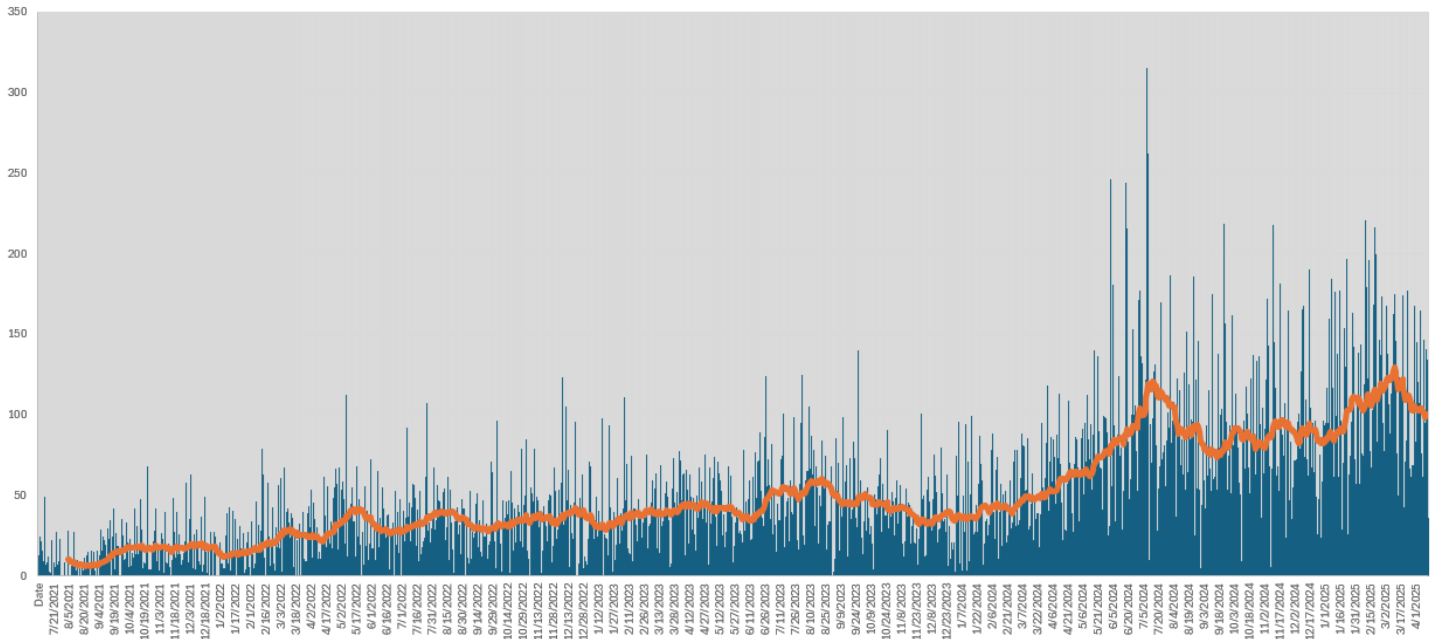
### Lynn R. Morgan Water Treatment Facility Solar Project

Staff met with JVA Consulting Engineers in mid-April to explore a second proposal for various solar array opportunities at the Lynn R. Morgan Water Treatment Facility. This project is exploring available space (Clearwell tank, covered parking and rooftop) for onsite renewable energy generation, maximizing current incentives while offsetting a portion of Erie's largest energy consuming facility.

## SUSTAINABILITY & WATER CONSERVATION

### Air Quality & Transportation

- Work continues to install the grant funded 13 level 2 EV charging ports at Town of Erie facilities. These chargers will be installed at Town Hall, Schofield Farm, and the Leon A. Wurl Service Center, bringing the Town to 35 public level 2 chargers, 10 more than the Town's 2025 goal.
- Indoor air quality rebates continue, including air filters and in [home radon mitigation systems](#). Current 2025 rebates to date include two applications and \$300 total.



- *The above ChargePoint Town of Erie graph (24 ports of Level 2 charging) outlines the total greenhouse gases (GHG) avoided through Town owned ChargePoint chargers since operations began in July 2021. Town of Erie EV chargers have prevented the emission of 67,250 kg of GHG.*

## Energy & Efficiency

- Beneficial Electrification Plan will be presented at the April 22 Council meeting for final adoption. This plan identifies recommendations to electrify Erie's built environment including existing and new residential, existing and new commercial, and town facilities. Community partners in developing this plan included the development community, local school districts, Boulder County, and local businesses and residents.
- Total [Energy Efficiency Rebates](#) for 2025 include \$8,750 to date with 50 participants. Boulder County Matching Grant funds will continue to support Boulder County Town of Erie resident's Energy Efficiency Rebates until 2024 grant funds are exhausted.
- The Sustainability and Building Divisions continue to actively participate in the Regional Energy Code Cohort. Current efforts are focused on the Climate Pollution Reduction Grant championed by the Denver Regional Council of Governments (DRCOG). Erie is a partner in this \$199 million grant focused on emissions reduction from the built environment and transportation sector through building electrification, work force development, and education and outreach. Additionally, programming and funds should soon be available to support electrification related efforts including installer resources and resident adoption. Sustainability Staff are actively participating on the Policy and Technical Committees for this effort.

## Waste Diversion

- [Waste Diversion Rebates](#) continue for Town businesses and residents. This program includes rebates for businesses such as organics and single stream recycling hauling and backyard compost equipment for residents. This program is funded through Bag Fees from Town of Erie businesses, required by state legislation. Total 2025 rebates include \$667.06 to date with six participants.
- Erie's first Compost Giveaway Event was a success. With 30 cubic yards of A1 Organic's highest quality certified organic compost, 55 cars stopped by the event on Saturday, April 5 (~75 people). Residents were excited to be receiving such a high-quality product and learn more about some of the other programs our team offers.



## Outreach & Education

- Erie's Arbor/Earth Day is Saturday, April 26 from 10 a.m.-1 p.m. The Sustainability and Tree Advisory Boards, Sustainability Division and Town Forestry are collaborating on this event again this year. This event is at the Post Pavilion at the Erie Community Park again this year. Event highlights include free trees, giveaways, landscaping experts, renewable energy information, and countless kid's activities like book reading, games and crafts.



*Presented by Town of Erie staff, the Tree Advisory Board, and the Sustainability Advisory Board*

**Saturday, April 26 • 10 a.m. – 1 p.m.**  
**Erie Community Park | 450 Powers Street**

*At The Post Shelter - adjacent to basketball courts*

*In the event of inclement weather, the event will be moved indoors to the Erie Community Library.*

### Activities Include:

- 27th Arbor Day Anniversary Recognition
- 55th Annual Earth Day Celebration: Our Power, Our Planet
- Private & Municipal Arborists
- Kids Activities
- 5th Grade Poster Contest Winners Announced
- Local Nursery Vendors
- Local Solar & Electrification Vendors
- Tree Planting Demonstration
- Raffle, Prizes, Food Trucks, and More!



*Event Details*

For additional event information, please visit  
[erieco.gov/ArborAndEarthDay](http://erieco.gov/ArborAndEarthDay)



*Enter to Win  
Tree Drawing*

- The Town of Erie Sustainability Newsletter has surpassed 550 subscribers. If you're not yet in the sustainability know, [sign up online](#).

## Water Conservation

- Kimley Horn delivered the first site design for the LAWSC turf replacement project. A Staff review with Kimley Horn occurred in April and next steps include updates based on staff feedback as well as an updated pricing model.
- Erie received the next Water-Wise Landscaping Ordinance draft for final staff review in mid-March. Staff review is occurring now with the next steps involving legal review and then external stakeholder engagement.
- Erie's 2025 [Turf Replacement Rebate Program](#):
  - 13 projects are in the pipeline so far in 2025.
- 2025 [Water Efficiency Rebates](#) are live including new commercial rebates for toilets and urinals.
  - Four water rebates approved in 2025 to date with a total of \$285.



## OIL & GAS

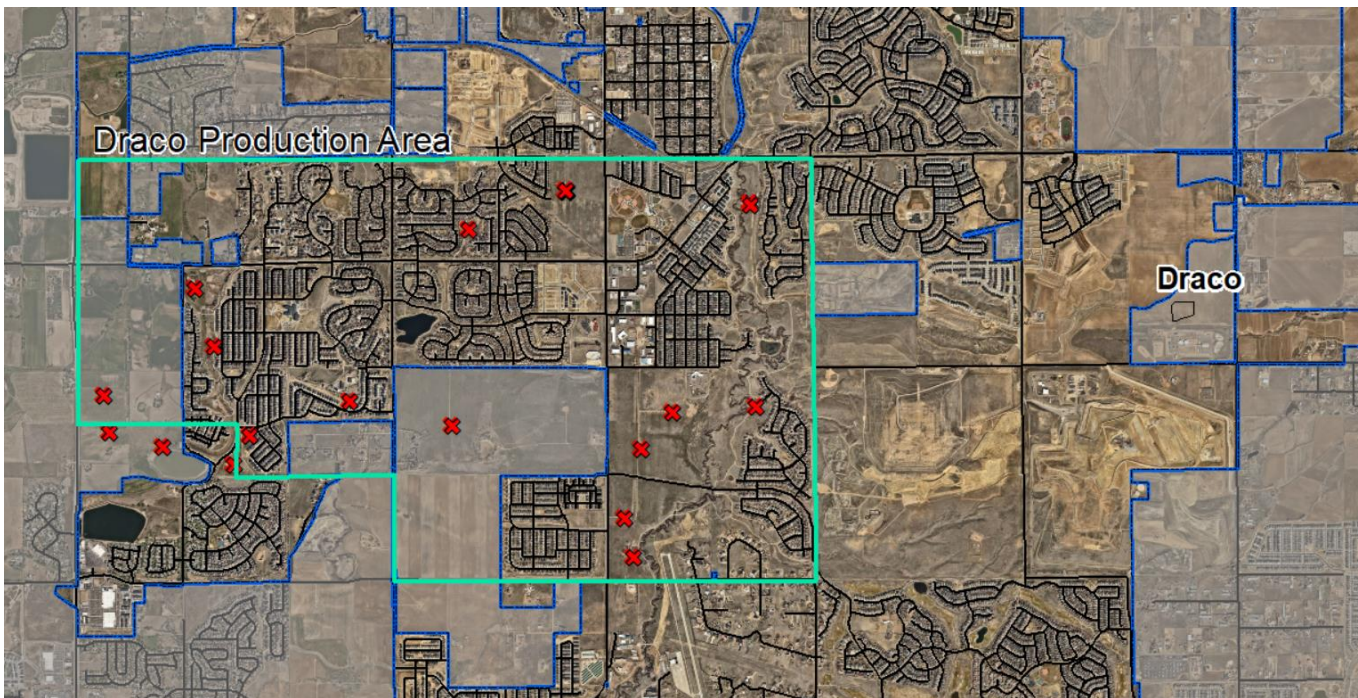
### News & Notes

#### Draco OGD

On Wednesday, March 26, the Energy & Carbon Management Commission (ECMC) voted in favor of the Draco oil and gas development plan (OGDP) in a 4 to 1 ruling. While the Town of Erie is disappointed with the Commission's decision, the Town is grateful for its inclusion of the following conditions of approval to better protect the current and future residents of Erie.

- **Condensed Occupation:** Residential lots within 2000 feet of the Draco development are not to be occupied until October of 2027 to allow for the completion of drilling and completion operations. The Commission opted to abide by the agreement reached between Southern Land Company and Civitas restricting pre-production at Draco to no later than May 13, 2028, with a condition that all reasonable attempts must be made to conclude pre-production by October 2027.
- **Air Quality Monitoring:** Civitas will conduct continuous air quality monitoring around the Draco pad to provide alerts if exceedances occur and immediately address any negative impacts to air quality.
- **Monitoring of Plugged and Abandoned wells within Drilling and Spacing Unit (DSU):** Civitas has agreed to conduct monitoring on six plugged and abandoned wells within their DSU to ensure no disturbances to plug integrity come as a result of the drilling and fracking of Draco. Monitoring will include soil vapor testing, and any issues detected during the life of these wells will be promptly addressed by Civitas.
- **Landscaping and Visual Mitigation:** Civitas will build and improve the land around the Draco facility to provide visual obstructions for the facility from the Westerly Development, thereby reducing the visual impacts of the facility.
- **Traffic Studies:** Civitas will conduct traffic studies to assess the impact of excess vehicle traffic associated with the Draco development. Plans will be devised to minimize disturbances and mitigation measures will be installed where needed to further reduce impacts to the surrounding areas.
- **Paving of County Road 6:** In addition to traffic studies, Civitas will facilitate the paving of the section of County Road 6 that connects County Roads 5 and 7. Improvement of this road will allow for shorter transit between the Draco facility and the landfill for the transportation of cuttings and waste. Doing so will avoid excess travel on County Road 8 and avoid additional traffic by Erie Highschool.
- **Plugging and abandonment of existing wells:** Civitas will plug and abandon 22 wells and close the 18 associated facilities, removing all equipment and reclaiming the sites, most of which are in western Erie. Map of well locations included below for reference.





Draco production area showing oil and gas locations to be plugged and reclaimed.

### Ogren H. Unit 1

Work to plug and abandon the well commenced on March 10 and lasted roughly five days with progress moving on site reclamation. The well is located just outside of Town limits, north of Jasper Road and west of North 119<sup>th</sup> Street. No spills or previous releases have been reported for this well.

### Kerr McGee 19-3i

Work to complete routine maintenance is currently ongoing at Occidental's Kerr McGee 19-3i deep injection well. The well is located outside of town limits south of Highway 52 and west of I-25. Operations were planned to begin on March 15, but due to unforeseen delays began on March 22. These operations include well maintenance and cleanout and are estimated to take between 2-4 weeks.

## Spills & Releases

Operators reported 171 spills/releases during the month of March 2025, state-wide. Of these, none occurred within the municipal boundary of Erie.

## Inspections

ECMC Inspectors visited 12 oil and gas wells at 6 locations in Erie during the month of March 2025:

- **CHAMPLIN 41-4-61N68W4NENE (NON-ACTIVE LOCATION, RECLAMATION INSPECTION)**
  - CHAMPLIN 41-4 1
- **CHAMPLIN 86 AMOCO Q-61N68W4NWNE (NON-ACTIVE LOCATION, RECLAMATION INSPECTION)**
  - CHAMPLIN 86 AMOCO Q 1
- **CHAMPLIN 32-4-61N68W4SWNE (NON-ACTIVE LOCATION, RECLAMATION INSPECTION)**
  - CHAMPLIN 32-4 2
- **CHAMPLIN 86 AMOCO F-61N68W4SENE (NON-ACTIVE LOCATION, RECLAMATION INSPECTION)**
  - CHAMPLIN 86 AMOCO F 5
- **CHAMPLIN 86 AMOCO O-61N68W4CNW (NON-ACTIVE LOCATION, RECLAMATION INSPECTION)**

- CHAMPLIN 86 AMOCO O 9
- SEC FOUR 5-4
- SEC FOUR 6-4
- SEC FOUR 4-4
- SEC FOUR 3-4
- SEC FOUR 21-4
- SEC FOUR 31-4
- CPC-61N68W4NWN (NON-ACTIVE LOCATION, RECLAMATION INSPECTION)
  - CPC 3-31-4

No Notices of Alleged Violation (NOAV) were issued during inspections. However, one corrective action (CA) was issued at the Champlin 86 AMOCO F-61N68W4SENW location on March 24. The corrective action was to comply with the 1100 Series Rule for flowline registration and abandonment.

To date in 2025, ECMC inspections have occurred at 25 of the 118 total active wells (those designated producing, shut-in, or temporarily abandoned) within Erie (21%).

## AIR QUALITY MONITORING

### BoulderAIR

The BoulderAIR ECC monitoring station reported 11 events in March where measured values exceeded the reporting thresholds.

- Four measurements of methane concentrations exceeding the alert threshold of 5,000 parts per billion (ppb), with the highest reported value being 10,086 ppb (0.02% of the Lower Explosive Limit for methane, which is 50 million ppb or 5 parts per hundred). Elevated methane measurements have been frequent since the BoulderAIR station was installed. Back trajectory analysis strongly suggests the source of the majority of methane plumes originate in or near the Front Range and Denver Regional South Landfills.
- Seven measurements of PM<sub>2.5</sub> (particulate matter less than 2.5 microns in diameter) concentrations exceeding the alert threshold of 35.0 µg/m<sup>3</sup>, with the reported value being 133.3 µg/m<sup>3</sup> (380% the National Ambient Air Quality Standard for 24-hour exposure of 35.0 µg/m<sup>3</sup>), though the measured event was less than 5 minutes in duration. While no observations approached the 24-hour primary standard, high PM<sub>2.5</sub> measurements were frequent since the BoulderAIR station was installed. When compared to the other BoulderAIR monitoring stations in the region, Erie's (ECC) PM<sub>2.5</sub> measurements are similar to those at Longmont's Union Reservoir (LUR), higher than those at Broomfield's Soaring Eagle (BSE), and considerably lower than measurements in Commerce City (CCF).

### Ajax/CSU

One canister was triggered for sample collection due to elevated PID sensor readings in the month of March. The event, recorded at the Landfill Northeast station, recorded a Total VOC (volatile organic compounds) concentration of 44.36 ppb with slight elevations of methane, several alkanes and some heavy VOCs. While the trigger cannot be attributed to a single emissions source, the i/n pentane ratio of 0.84 suggests a mix of oil and gas and combustion emissions, both of which are present in the nearby area. Analysis of this event can be found here: 3/08/26 landfill northeast event: <https://trello.com/c/lscifavs/170-3-8-25-746-am-landfill-northeast-500mv>

A reminder that residents of Erie can rent an air quality sample canister free-of-charge from Town Hall. Full event reports are available from the AJAX data dashboard [Public-EventReports | Retool](#).





# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-185, **Version:** 1

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### Public Works Bi-Monthly Report

**DEPARTMENT:** Public Works

**PRESENTER(S):** David Pasic, Public Works Director

**STAFF RECOMMENDATION:**

For information only.

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Public Works Bi-Monthly Report includes Capital Improvement Project updates, Engineering and development-related information, and other significant Public Works related activity.

**COUNCIL PRIORITY(S) ADDRESSED:**

- ✓ Safe and Healthy Community
- ✓ Effective Governance
- ✓ Environmentally Sustainable
- ✓ Fiscally Responsible

**ATTACHMENT(S):**

1. Public Works Bi-Monthly Report

# PUBLIC WORKS

## BI-MONTHLY REPORT

Review of March and April 2025

### HIGHLIGHTS

- Engineering Division: Expecting three new staff to start over the next two months: Town Engineer, Capital Projects Engineer, and Development Review Engineer
- Transportation Division: Bringing on an intern for planning support and hiring for a transportation tech. Connor Conologue has been promoted to Pavement and Traffic Coordinator
- Facilities Division: Advertising for a new Project Manager Position

### CAPITAL IMPROVEMENT PROJECTS

#### WCR 7 Water Transmission Line Project

**History:** This project is intended to fulfill our partnership with the Summerfield Development, but it is of great benefit and importance to the I-25 Gateway site, the North Station Development site, and other future growth areas for the Town. This project will extend a water transmission line from Erie Parkway to US Highway 52.

**Current Status:** The Contractor is working north toward WCR 12. WCR 7 between WCR 12 and HWY 52 will be closed for waterline work starting April 12.

The Contractor is also expected to coordinate with Town staff for the upcoming Erie Parkway connection for this project. This is tentative planned for April.

**Communication and Impact:** Staff have phased the project to minimize the number of full closures on north-south through streets from multiple projects. Staff have been coordinating with Mountain View Fire and the community in preparation for work in front of their facility at WCR7 and WCR 12.

To remain informed on the status of the project and the communications of status, please review the Erie project page: <https://www.erieco.gov/2468/WCR-7-Waterline-Project>

#### Next Steps:

Construction has begun, and staff will work toward project completion.

#### Sheridan and Ridgeview Traffic Signal

**History:** This project is to address signal warrant due to volume and safety. This project is a joint partnership with City and County of Broomfield that was memorialized in an IGA in 2022. The Town is grateful to our City and County Partners.

**Current Status:** Three of the four poles and mast arms are in place for the signal. One signal pole was manufactured incorrectly and a replacement is planned to be delivered in three weeks for installation. Street signs were delivered to the project as well, which were manufactured incorrectly. Staff have had this corrected moving forward.

**Communication and Impact:** Staff will continue to communicate with residents and businesses in the area to minimize impacts.

#### Next Steps:

Construction is ongoing, and staff will work toward project completion.

## WCR 3 Bridge Replacement

**History:** This project will replace the existing bridge over the Lower Boulder Ditch on WCR 3 based on the recommendation of our partnership with CDOT and their off-system bridge team. This project was awarded a grant to complete the work.

**Current Status:** Construction is ongoing. The WCR3 full closure is no longer in place, and WCR 3 is open to thru traffic. The contractor has completed the box culvert and paving over the top of the culvert. The contractor is currently working to install the guardrails for the bridge. Jersey barriers are in place currently to be able to have the road open.

**Communication and Impact:** With the road open, there are minimal communication changes that impact the road. As staff works toward closeout, we will communicate any project changes.

### **Next Steps:**

Construction is ongoing, and staff will work toward project completion.

## Downtown Improvements

**History:** This project will bring enhanced lighting and landscaping to the 500 and 600 blocks of Briggs Street in Downtown Erie.

**Current Status:** This project is currently under construction. Since the Town closed on the streetlight acquisition, the project has progressed much more quickly. Xcel has shut off the power to the streetlights, and the existing streetlights and bases have been removed.

The Contractor has focused their efforts on the 600 block and have installed the conduit for electric and irrigation. As of April, they have poured all the paver bands and will begin filling in the 600 block. The contractor plans to begin installation of paver blocks in mid-April. The contractor will then progress to streetlights, plantings, and seat benches left.

The contractor has also begun work on the 500 block. The lights and electrical were removed the first week of April, with caissons installed and electrical conduits being bored the first two weeks of April. The contractor will then begin work on the Silva cells, irrigation, paver bands, and pavers. The Contractor has learned a lot of ways to be more efficient going forward, so we anticipate the 500 block to progress more quickly. The schedule is tentatively set to be out of the ground on the 500 block by May 17.

**Communication and Impact:** There are weekly project meetings held with engineering, economic development, and communications staff to ensure adequate communication goes out to residents and business owners in Downtown.

### **Next Steps:**

Construction is ongoing, and staff will work toward project completion.

## County Line Road Improvements

### **Telleen to Evans**

**History:** This Safer Main Streets Grant Funded project began work in May, working in phases along County Line Road. Concurrently, Xcel Energy has been coordinating with the Town on the undergrounding of overhead electrical lines along the project area. This project will help enhance safety and promote slower speeds along two schools within the Town of Erie.

**Current Status:** The Contractor is currently working on project punch list items and landscaping efforts.

**Communications and Impact:** Communications will be sent out as work occurs to finalize the project between Cheesman and Telleen.

**Next Steps:**

Staff will ensure proper traffic control be implemented as we work toward project completion. Staff will continue to work with local businesses and residents for access as the project continues.

**Austin to Erie Parkway – South Roundabout & Road Widening**

**History:** This project is the next planned segment of improvements for County Line Road (shown as segment 4 on our [Town website](#)). As part of these planned improvements, the Town will be widening County Line Road, constructing a roundabout at the intersection of Austin and County Line Road, and implementing multi-modal improvements for pedestrians and cyclists.

**Current Status:** The project is currently out to bid and is anticipated to be awarded in May. The project has a tentative start timeframe of June.

**Communications and Impact:** This section of the County Line Corridor improvements will have more room to work. Town staff anticipate that County Line Road will be able to maintain two directional travel during the project, but this will be evaluated further as we get a contractor on board. Communication meetings have begun with the Erie Economic Development Council and Aspen Ridge School.

**Next Steps:**

As we move to the bid phase of the project, Town staff will be coordinating with the school and businesses further to coordinate communication.

**Other Project Updates/Upcoming Projects:**

**Lagoon Conversion to Water Quality Pond:** This project is in the closeout phase currently. Punch list items are being addressed by the Contractor. Staff is also working on educational signage for the project, which will be finalized and installed in April/May.

**Coal Creek Reach 3:** The Contractor has been waiting for Western Midstream to relocate a gas line through the project site. This work has been completed, and the Contractor has remobilized to complete the trail connection to Erie Village. The landscaping contractor will also be mobilized to complete restoration of the open space and finish the additional plantings.

**Colliers Hill Detention Pond Improvements (Upcoming):** The Town has evaluated the drainage basin for Colliers Hill and surrounding basins to determine any improvements that may be needed. The Town's consultant has recommended improvements to the Colliers Pond Outfall Structure. The Town will be moving forward a supplemental budget request from the URA and Council to begin design of improvements.

**111<sup>th</sup> and Arapahoe Intersection (Upcoming):** Asphalt and ground boring will occur at this intersection to work toward finalizing design for interim safety improvements at this intersection, which are anticipated to begin this year. Communications will send out notifications for work occurring in this area.

**111<sup>th</sup> Street Drainage Evaluation:** As part of the funds budgeted for evaluating specific components of the Town's OSP, the Town is partnering with MHFD to look at a more comprehensive solution to the drainage concerns along 111<sup>th</sup>. Staff anticipates bringing forward an agreement for Council to consider in May. This is in addition to the effort already under way with the Schofield project that will also help with the drainage in this area.

## ENGINEERING

### What's Going On

- The months of January and February saw 25 current projects referred to Engineering for review. Of those referrals, 9 were for commercial, industrial, or mixed-use projects, and the remaining 13 were for residential projects. The remainder were for other Minor Subdivision efforts.
- In addition to active projects, engineering participated in reviews of 4 pre-application meeting submittals for prospective projects within the Town.

### What's Going Up:

- The Engineering Division is actively engaged in 39 development construction projects in the Town, whether in active construction or in warranty period. There are 3 additional projects anticipated to start construction within the next two months: Ranchwood Development, Erie Indoor Sports, and O'Reilly's.
- There are 7 active construction capital projects ongoing, with 4 additional projects anticipated to start in the spring/summer.

### Collaborative Projects:

- Hwy 7 & 119<sup>th</sup> Intersection Improvements –Lafayette/CDOT
- Hwy 7 Preliminary Corridor Design – CDOT/ Broomfield
- 111<sup>th</sup> and Arapahoe Improvements –Lafayette
- Neighborhood Speed Mitigation Program (NSMP) – Communications Department, EPD
- Central Square Software Implementation – Townwide collaboration
- NISP Pipeline Conveyance Study – Lafayette and Left Hand Water District
- US287 Safety Improvements – CDOT/Boulder County/Longmont
- I25 Interchange Study – CDOT/Frederick/Firestone/Dacono
- Hwy 52 and WCR 7 Drainage Evaluation - Frederick

## TRANSPORTATION AND MOBILITY

- June 17 Study Session with Council – The Transportation Division will be meeting with Council to discuss planning, safety, operations, and maintenance. Specifically, we will discuss the results of developing the Town Wide transportation model, our Diexsys safety analysis, and our street maintenance program.
- Neighborhood Speed Management Program – Town staff and council had a great study session on this program. Staff will be advancing the Neighborhood Speed Mitigation Program by creating a website and selecting a consultant to help manage the program. We plan to bring this forward late Q2/early Q3 for launch.
- Transportation Standards and Specifications Update – With the support of Council, we have begun implementation of our standards update for transportation.
- Bus Stop Design for Jump Route – The design effort for this project is under way with Kimley Horn.
- Vision Zero and Diexsys Vision Zero Software - The Town is taking next steps with our TMP adoption to advance safety. The Town will be purchasing Diexsys Vision Zero Software and begin analyzing transportation safety in the Town. This will support the Town in providing a data-driven approach to pursuing safety-based grants and projects. It will also lay the foundation of a greater safety action plan for the Town.

- I-25 Study – CDOT has approved the scope, and Council has approved the agreement to proceed with Design. Project will study I-25/Erie Pkwy and I-25/SH-52 interchanges to understand planned capacity with area growth. I-25 Express Lane (Segment 4) will be included.

## **Streets & Traffic Maintenance**

- The Town has approved the acquisition of the Xcel streetlights, and staff are working towards a deal for acquisition of the United Power streetlights as well. With that, the Public Works staff will be assuming ongoing maintenance of the streetlights along with our traffic signals.
- Transportation has contracted with a consultant to do a street light audit for the Xcel lights acquired. That effort is under way to implement asset management inventory and do an existing condition analysis.
- Signal Updates – Our streets team is upgrading signal detection cameras throughout Town to help with better efficiency.
- Staff is working with StreetLogic and Street Scan to do updated data capture for Town of Erie streets. This will allow staff to evaluate our current 5-year plan for street maintenance and make updates and adjustments. This contract has been signed, and that effort is under way.

## **GIS & ADMINISTRATION**

- GIS is under way with a big datum conversion project, which is happening in phases. The team is currently hoping to complete this effort in Q2 of 2025.
- GIS is working on a server upgrade with our GIS database and hope to have this effort completed in April of 2025.

## **FACILITIES MANAGEMENT**

- Town Hall project: The Contractor is in progress with shoring and framing/rough in. Staff currently anticipate early December to move in for Phase 2 due to Structural re-design and Phase 1 move schedule. The contractor will try to make up time where possible.  
Staff will be bringing forward a CMAR contract amendment for Fransen Pittman to release retainage for phase 1 since Town staff have taken occupancy of the building. There was contract language to support a future amendment for this purpose. Staff will still withhold retainage for phase 2, and the project bonds are still in place.
- PD Design: The Schematic Design phase is nearing completion. Negotiations with the successful bidder for the CMAR contract are in progress. Funding is to be determined pending town-wide survey results requested by Council.
- ECC addition/renovation pre-design RFP – proposals due 5/4/25
- LAWSC modular office space – The contract has been awarded. The design consultant will be addressing site considerations, fire rating, and electrical connections. Modular Restroom for P&OS technicians (annex) agreement is being routed for approvals.
- NWRF Solar – Awarded \$900K from DOLA for 1<sup>st</sup> phase of the float solar project. Draft contract from Iconergy is expected the second week of April. Staff is targeting the late May council meeting for contract approval.



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #:** 25-230, **Version:** 1

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**SUBJECT:**

Planning & Development Monthly Report - March 2025

**DEPARTMENT:** Planning & Development

**PRESENTER:** Sarah Nurmela, AICP, Director of Planning & Development

**STAFF RECOMMENDATION:**

Informational Only

**SUMMARY AND BACKGROUND OF SUBJECT MATTER:**

The Planning & Development Monthly Report includes updates from all divisions within the Planning & Development department, including Planning, Building and Affordable Housing.

Updates and information include land usage application and building permit activity as well as interdepartmental and intergovernmental efforts.

**ATTACHMENTS:**

1. Planning & Development Monthly Report - March 2025

# PLANNING & DEVELOPMENT MONTHLY REPORT

Review of March 2025

## STAFF HIGHLIGHTS

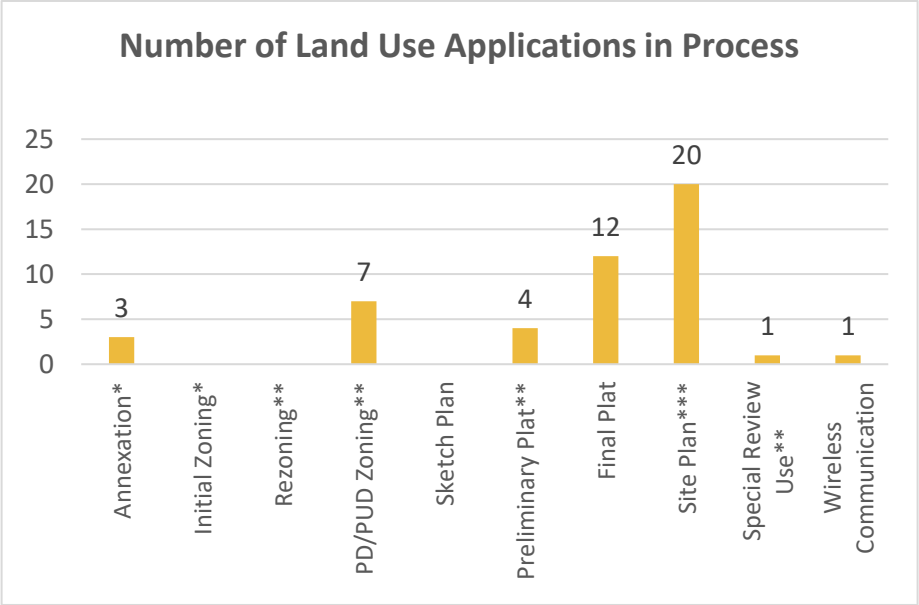
- The Building Division staff attended at least two days of the 5-day Colorado Chapter of the International Code Council (CCICC) Code Education Institute in Loveland. Classes attended include significant changes to the updated codes (including energy conservation), over-the-counter plan review, specific inspection training and overview, as well as disaster response, assessment, and communication.

## PLANNING DIVISION

### Current Planning

#### Land Use Applications

Planning had a total of 48 land use applications in process in March; the graph illustrates the breakdown of applications by type. The land use application project type details can be found in the Development Application List on the [Town website](#) along with a map of current projects.



\*TC review \*\* PC & TC review \*\*\* PC review – Projects 25,000 square feet or greater

Note: Land use applications for Sketch Plan, Site Plan (under 25,000 square feet) and Final Plat are approved administratively. Projects within a PD zone district also have an administrative approval depending on their specific land use requirements.



## Pre-Application Meetings

In addition to the land use applications listed above, Planning staff also meet with potential developers in pre-application meetings to discuss a concept or idea for development. Planning provides guidance on Code requirements and which formal land use applications apply. In March 2025, the Planning staff had six Pre-Application meeting requests submitted for the following projects/properties:

- PA2025-00010 – Westerly – Temporary Marketing Center
- PA2025-00011 – Sierra Vista – Rezoning from LR – Low Density Residential to Commercial Mixed Use
- PA2025-00012 – Old Town – 735 Pierce Street – Single Family Residence
- PA2025-00013 – Erie Air Park – 3000 Airport Drive – Special Review Use for Mini Gymnastics and Play Facility
- PA2025-00014 – 1109 Telleen Avenue – Special Review Use – Warehouse
- PA2025-00015 – Old Town – 445 Briggs Street – Cellar West

## Strategic Planning

### Multi-Department Projects

Other Town departments and other jurisdictions rely on the participation of Planning staff in their projects. Below is a list of the projects Planning participated in during March 2025.

- **Economic Development and Interdepartmental**
  - Planning staff continue to regularly meet with Lafayette and Frederick staff regarding coordination efforts and IGA drafting.
  - Staff are working with Sustainability, Public Works, and Parks on Landscape Code updates related to state legislation on non-functional turf.

## BUILDING DIVISION

### Building Activity

#### What's Going On

- The Building Division received an Insurance Services Office (ISO) “Building Code Effectiveness Grading Schedule” (BCEGS) final report after completing a survey and analysis of our adopted building codes and enforcement efforts. On a scale of 1 to 10 (1 being the best), we received a “Grade” of 5 for residential property and 4 for commercial and industrial property, both higher than the statewide average score.

- The Deputy Building Official and Permit Coordinator participated in the Economic Development Department's first business community open house to answer questions related to permitting, inspections, and Certificate of Occupancy requirements for businesses opening or considering opening in an existing building.
- The Deputy Building Official and Permit Coordinator also participated in the first North Metro Denver Home Builders Association (HBA) roundtable discussion with Town staff.

### **What's Going Up**

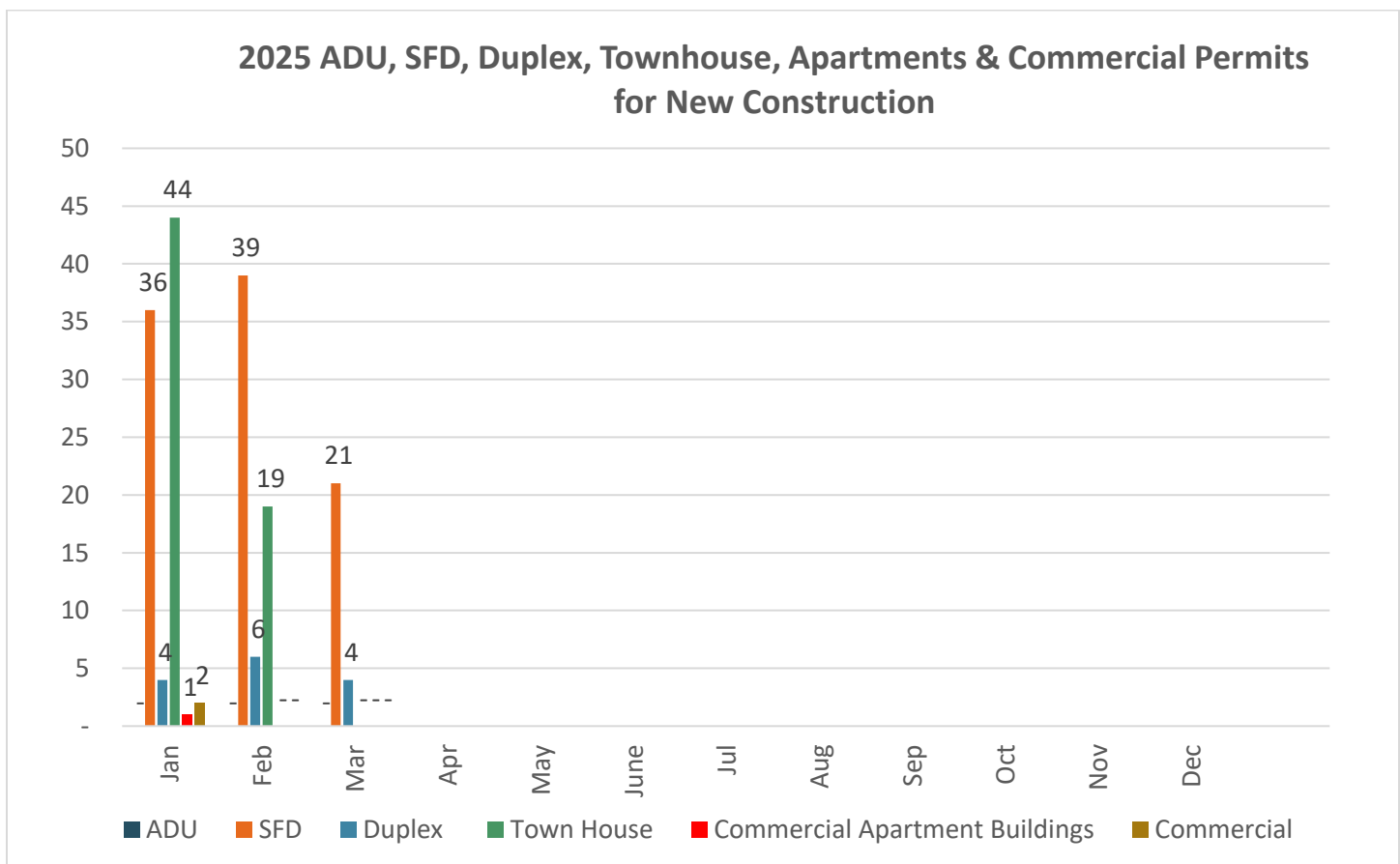
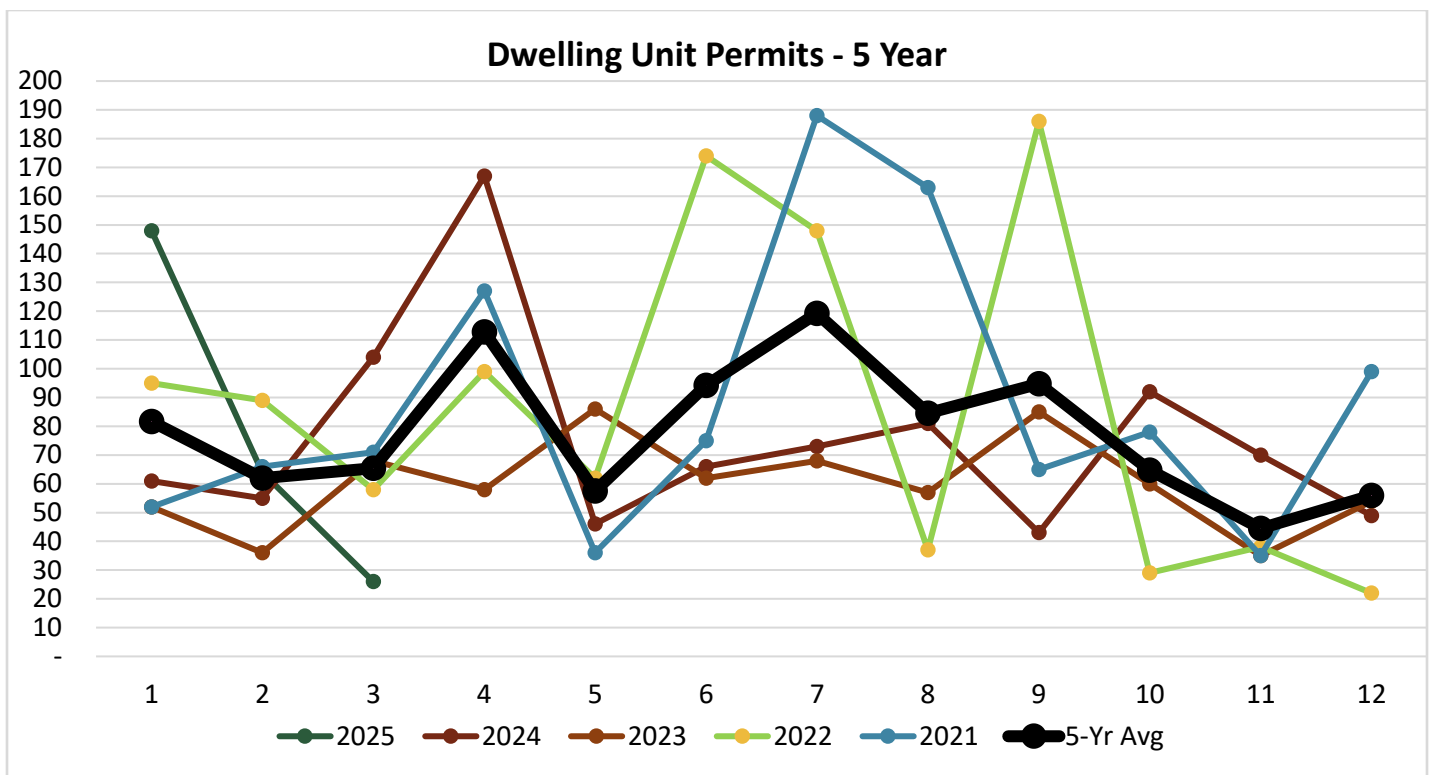
- Children's Eye Clinic – Vista Ridge
- Bellco Credit Union – Erie Commons
- Dutch Brothers Coffee – Erie Commons
- Valvoline – Nine Mile
- Chick-Fil-A – Nine Mile

### **Summary of this month's Permit and Inspection Activity:**

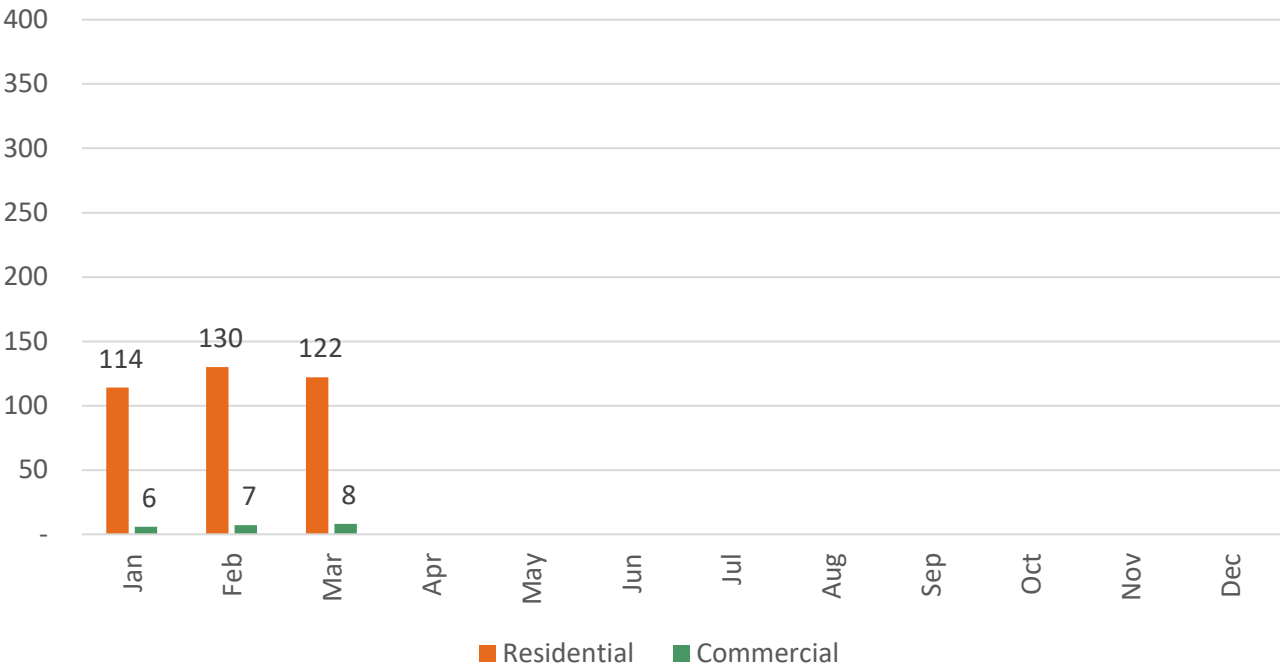
- 155 Total Building Permits (563 YTD) – 25 single-family dwellings (attached, detached & townhomes / 173 YTD). 23 re-roof permits (14.8% of monthly total / 47 YTD)
- 2,240 inspections - 107 per business day/21 per inspector per day: 5 inspectors
- 64 Certificates of Occupancy (184 YTD) – 64 Residential (184 YTD) and 0 Commercial (0 YTD)

### **Commercial Project Permit Applications in Plan Review Queue:**

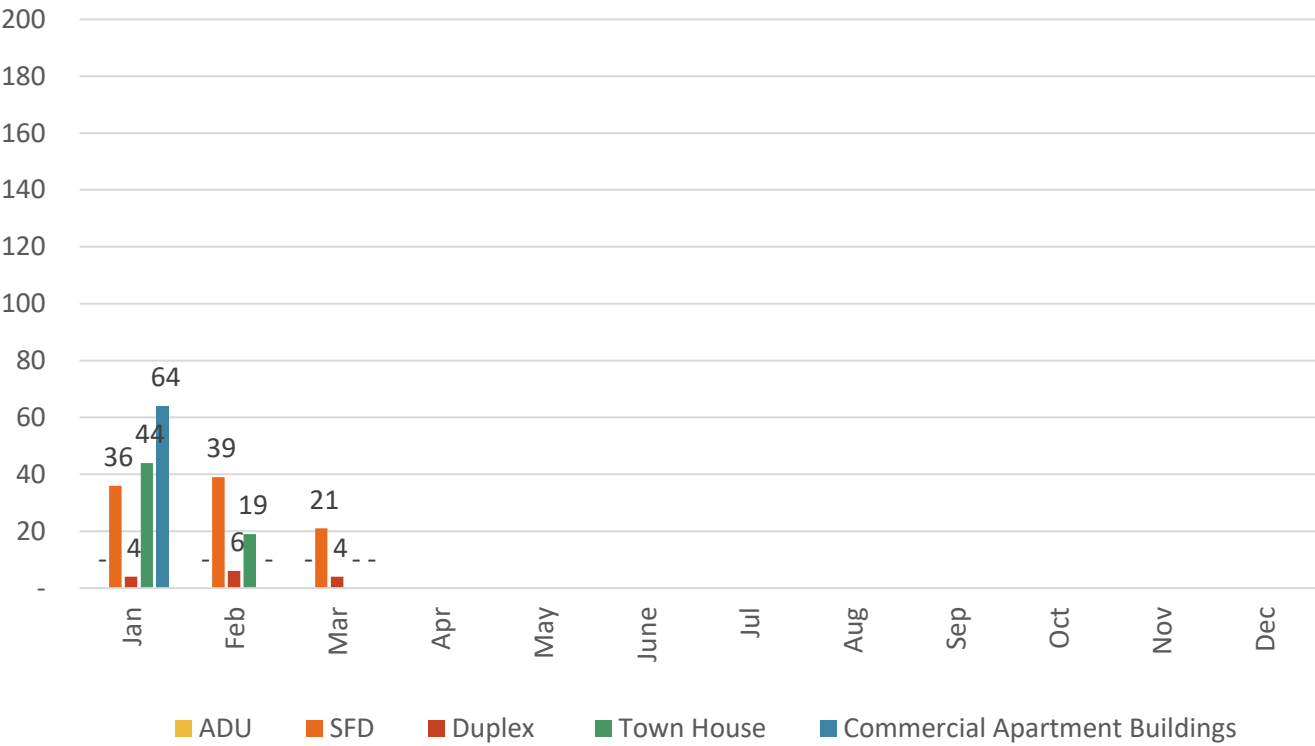
- 3000 Airport Dr., Suite 406 – Children's gym tenant improvement
- 445 Briggs St. – Cellar West Brewery tenant improvement
- 700 Lloyd Ave. – O'Reilly's Auto Parts Store



### 2025 Total All Other Permits



### 2025 Total New Dwelling Units



### All Permit Types by Month

2025	Residential Permits*	Commercial Permits*	All Permit Types*	New Dwellings Permits
Jan	114	6	207	148
Feb	130	7	201	64
Mar	122	8	155	26
Apr				
May				
Jun				
Jul				
Aug				
Sep				
Oct				
Nov				
Dec				
<b>TOTAL</b>	<b>366</b>	<b>21</b>	<b>563</b>	<b>238</b>

\* Includes: Mechanical, Electrical, Plumbing, Roofing, Decks, and Fence permits.

### Detached Single Family New Construction Building Permit Trends

	2021	2022	2023	2024	2025	5-Yr. Avg	2025 Month to Avg	Cum Yr. to Avg
Jan	38	55	52	41	36	44	-8	-8
Feb	52	53	33	46	39	45	-6	-14
Mar	51	44	68	98	21	56	-35	-49
Apr	87	67	58	162		94		
May	18	54	54	37		41		
Jun	56	74	54	35		55		
Jul	20	17	50	51		35		
Aug	28	31	49	47		39		
Sep	41	62	75	17		49		
Oct	51	25	50	53		45		
Nov	30	32	27	43		33		
Dec	55	22	42	28		37		
<b>TOTAL</b>	<b>527</b>	<b>536</b>	<b>612</b>	<b>658</b>	<b>96</b>	<b>571</b>	<b>-49</b>	<b>-71</b>

## AFFORDABLE HOUSING DIVISION

- **Affordable Housing** – Presented as an element of the Comprehensive Plan at the March 4 Town Council meeting. Staff is outlining the process to initiate rescission of Ordinance No. 017-2023, per Council direction.
- **Cheesman Street Residences** –Marketing and outreach for the project is ongoing. Review of potential buyers’ applications is ongoing to determine eligibility. Five modular homes were delivered and are onsite and townhome construction continued. The project is on schedule for the first closings in mid-2025.
- **Village at Coal Creek (Page Property)** – Contracts are on hold pending direction from Council.
- **CDBG Housing Rehabilitation Grant** – Contracts have been finalized for the Home Repair Program. Marketing and outreach have been initiated with applications opening April 1.
- **Regional Housing Partnership (RHP) – Several Initiatives**
  - Staffing changes at RHP have delayed strategic planning efforts.
  - 1B Funding also known as Affordable and Attainable Housing Tax (AAHT) (Boulder County Tax in support of affordable housing) – Boulder County Commissioners have made allocations of funding development with approximately each receiving 1/3 (Longmont, Boulder and Boulder County).
  - The [Data Dashboard](#) is available for review.
  - IGA with City of Boulder for Monitoring and Compliance of affordable housing units has been created.
    - Development of policies for homeownership and rental developments substantially completed.
    - Legal review will occur in March, with implementation targeted for mid-2025.
  - The scope of services for Local Planning Capacity Grant is finalized. Boulder County has issued the RFP for consultants.



### Leadership

Sarah Nurmela, Director  
Deborah Bachelder, Deputy

### Division Leads

Kelly Driscoll – Planning  
Ed Kotlinksi – Building  
MJ Adams – Affordable Housing



# TOWN OF ERIE

645 Holbrook Street  
Erie, CO 80516

## Town Council

**Board Meeting Date: 4/22/2025**

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**File #: 25-278, Version: 1**

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**SUBJECT:**

Executive Session: (1) To hold a conference with the Town Attorney to receive legal advice on specific legal questions, pursuant to C.R.S. § 24-6-402(4)(b); to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(c); and to consider the purchase, acquisition, lease, transfer or sale of real, personal or other property, pursuant to C.R.S. § 24-6-402(4)(a); for which a topic cannot be disclosed without compromising the purpose of the executive session;

(2) To determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(c), regarding the Erie Town Center;

(3) To consider personnel matters, pursuant to C.R.S. § 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees, and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiations, and/or instruct negotiators, pursuant to C.R.S. § 24-6-402(4)(e), concerning the Town Manager's evaluation and contract.

**DEPARTMENT:** Administration

**PRESENTER(S):**

**TIME ESTIMATE:** 30 minutes

**Construction Contract**  
**(Arapahoe Ridge Sidewalk Removal and Replacement – PR-25-04))**

This Construction Contract (the "Contract") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2025 (the "Effective Date"), by and between the Town of Erie, a Colorado home rule municipality with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and JOC Construction, LLC, ("Contractor") (each a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. Scope of Work**

A. Contractor shall furnish all labor and materials required for the complete and prompt execution and performance of all duties, obligations, and responsibilities which are described or reasonably implied from the Scope of Work set forth in **Exhibit A**, attached hereto and incorporated herein by this reference. No change to the Scope of Work, including any additional compensation, shall be effective or paid unless authorized by written amendment executed by the Town.

B. Contractor shall complete the Scope of Work within 120 days of the Town's issuance of a Notice to Proceed.

**II. Term and Termination**

This Contract shall commence on the Effective Date, and shall terminate when all the work described in the Scope of Work is completed to the Town's satisfaction, or upon the Town's providing Contractor with 30 days advance written notice, whichever occurs first; provided that the indemnification and warranty provisions of this Contract shall survive termination.

**III. Compensation**

Upon final acceptance by the Town of the work set forth in the Scope of Work, the Town shall pay Contractor an amount not to exceed \$258,877.69 (the "Contract Price"), subject to the requirements of C.R.S. § 38-26-107. If Contractor completes the Scope of Work for a lesser amount than the Contract Price, Contractor shall be paid the lesser amount.

**IV. Ownership**

Any materials, items, and work specified in the Scope of Work, and any and all related documentation and materials provided or developed by Contractor shall be exclusively owned by the Town. Contractor expressly acknowledges and agrees that all work performed under the Scope of Work constitutes a "work made for hire." To the



extent, if at all, that it does not constitute a "work made for hire," Contractor hereby transfers, sells, and assigns to the Town all of its right, title, and interest in such work. The Town may, with respect to all or any portion of such work, use, publish, display, reproduce, distribute, destroy, alter, retouch, modify, adapt, translate, or change such work without providing notice to or receiving consent from Contractor.

#### **V. Keep Jobs in Colorado Act**

Pursuant to the Keep Jobs in Colorado Act, C.R.S. § 8-17-101, *et seq.* (the "Act"), and the rules adopted by the Division of Labor of the Colorado Department of Labor and Employment implementing the Act (the "Rules"), Contractor shall employ Colorado labor to perform at least 80% of the work under this Contract and shall obtain and maintain the records required by the Act and the Rules. For purposes of this Section, "Colorado labor" means a person who is a resident of the state of Colorado at the time of this Contract, without discrimination as to race, color, creed, sex, sexual orientation, marital status, national origin, ancestry, age, or religion except when sex or age is a *bona fide* qualification. A resident of the state of Colorado is a person with a valid Colorado driver's license, a valid Colorado state-issued photo identification, or documentation that they have resided in Colorado for the last 30 days. Contractor represents that it is familiar with the requirements of the Act and the Rules and will fully comply with same. This Section shall not apply to any project for which appropriation or expenditure of moneys may be reasonably expected not to exceed \$500,000 in the aggregate for any fiscal year.

#### **VI. Miscellaneous**

A. *Governing Law and Venue.* This Contract shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in \_\_\_\_\_ County, Colorado.

B. *Integration.* This Contract and any attached exhibits constitute the entire agreement between Contractor and the Town, superseding all prior oral or written communications.

C. *Third Parties.* There are no intended third-party beneficiaries to this Contract.

D. *Notice.* Any notice under this Contract shall be in writing and shall be deemed sufficient when directly presented or sent pre-paid, first class United States Mail to the Party at the address included on the first page of this Contract.

E. *Severability.* If any provision of this Contract 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.

F. *Modification.* This Contract may only be modified upon written agreement of the Parties.

G. *Assignment.* Neither this Contract nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

H. *Governmental Immunity.* The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Contract, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

I. *Rights and Remedies.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Contract by the Town shall not constitute a waiver of any of the other terms or obligation of this Contract. The rights and remedies of the Town under this Contract are in addition to any other rights and remedies provided by law. The expiration of this Contract 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.

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 or liability beyond the current fiscal year.

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

**Town of Erie, Colorado**

\_\_\_\_\_  
Andrew J. Moore, Mayor

Attest:

\_\_\_\_\_  
Debbie Stamp, Town Clerk

Contractor

Signed by:  
By: Kiryl Kavalenka  
1688568E721E42B

State of Colorado )  
 ) ss.  
County of \_\_\_\_\_ )

The foregoing instrument was subscribed, sworn to and acknowledged before me  
this \_\_\_\_ day of \_\_\_\_\_, 2025, by \_\_\_\_\_ as  
\_\_\_\_\_ of \_\_\_\_\_.

My commission expires:

(Seal) \_\_\_\_\_  
Notary Public

## **Exhibit A Scope of Work**

This project involves the removal and replacement of an existing concrete sidewalk, ensuring the new installation meets safety and quality standards. The work includes all necessary preparations, safety measures, demolition, site clearing, and installation of a new 6-inch-thick concrete sidewalk, as well as final site cleanup to make the area safe for pedestrian use. All work shall be in accordance with Town of Erie Standards and Specifications.

### **Equipment and Safety Measures:**

- Contractor shall provide all necessary equipment to safely remove the existing concrete sidewalk and install a new one
- Contractor shall implement pedestrian traffic control measures, including detours, barriers, and signage, to ensure safety during construction
- Contractor shall install warning signs, such as "Construction Ahead," to notify pedestrians and nearby traffic
- Contractor shall coordinate inspections as required / if required
- Contractor shall be responsible for protection of all surfaces including those not in the scope of work from construction dust, debris or damage during construction up until final acceptance. The methods of protection including wood, plastic, paper or other means for sealing / protecting furniture, sidewalks, doors or windows, etc.
- Contractor shall be responsible for 48 hours advanced notice to coordinate Utility Interruptions

### **Demolition and Site Preparation:**

- Contractor shall remove the existing sidewalk using appropriate equipment and techniques to minimize disruption
- Contractor shall properly dispose of all debris generated from the removal process in accordance with local regulations
- Contractor shall clear and prepare the site for the installation of the new sidewalk

### **Base Preparation:**

- Contractor shall provide and install a layer of compactable aggregate under the new sidewalk as a base
- Contractor shall compact the aggregate to achieve 50% compaction, ensuring a stable foundation for the concrete

### **Formwork and Concrete Installation:**

- Contractor shall construct wood forms to shape and support the new 6-inch-thick concrete sidewalk
- Contractor shall pour and install the new concrete sidewalk to the specified dimensions and depth
- Contractor shall cut expansion joints into the sidewalk at 5-foot intervals to allow for thermal movement and prevent cracking
- Contractor shall finish the surface of the sidewalk with a broom finish to ensure a non-slip surface for pedestrians

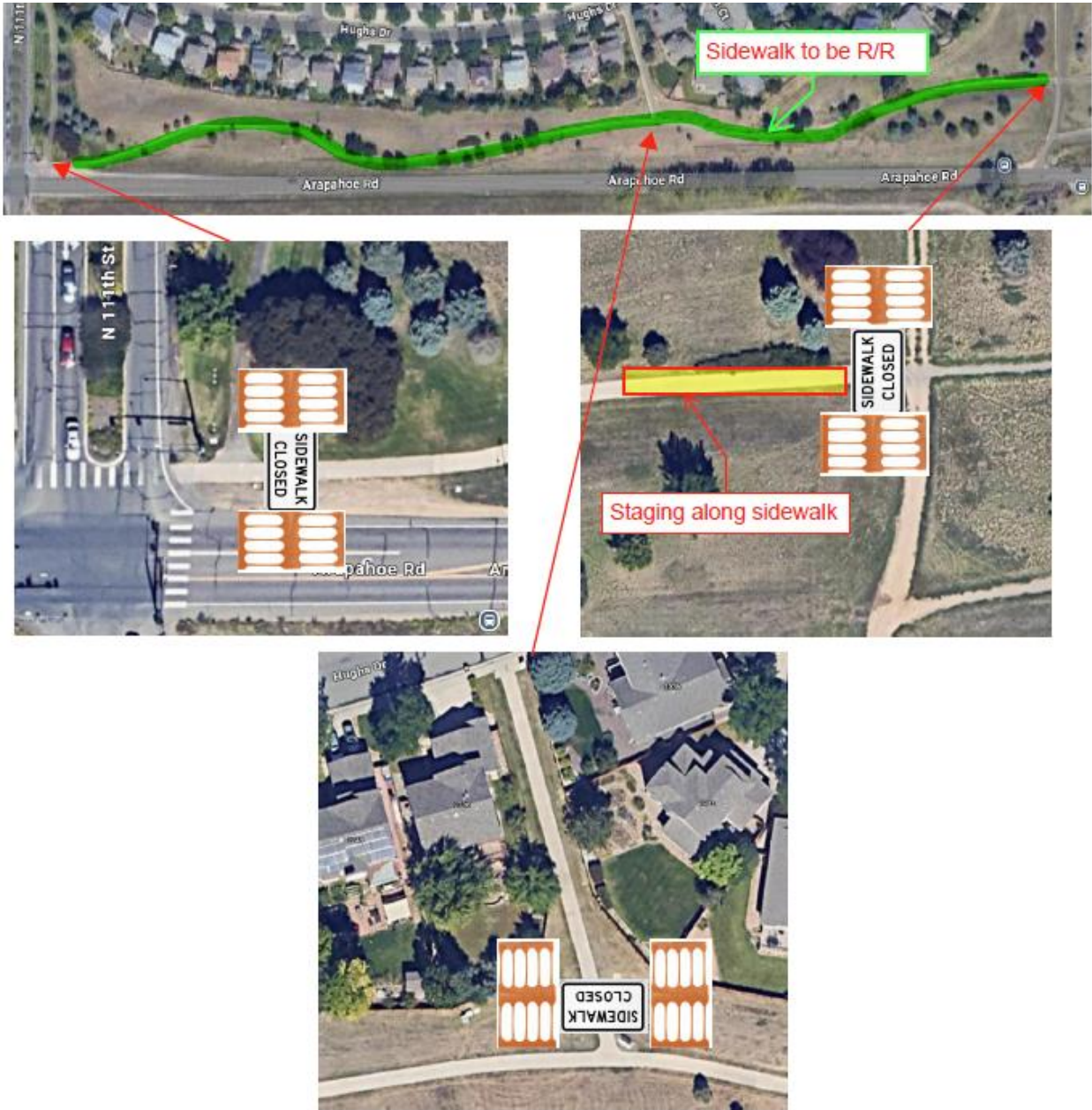
### **Curing and Final Steps:**

- Contractor shall apply a curing agent to the new concrete to promote even curing and enhance strength and durability
- Contractor shall remove all formwork once the concrete has set sufficiently

### **Site Cleanup and Demobilization:**

- Contractor shall demobilize all equipment and materials from the site.
- Contractor shall perform a final site cleanup to ensure the area is safe and ready for pedestrian use
- Contractor shall be responsible for protection of all surfaces including those not in the scope of work from construction dust, debris or damage during construction up until final acceptance. The methods of protection including wood, plastic, paper or other means for sealing / protecting furniture, sidewalks, doors or windows, etc.
- Contractor shall be responsible for daily job site clean-up and will make provisions for disposing of all debris. There shall not at any time be any material or debris left on site that could endanger the public

Arapahoe Ridge Trail Site & Staging Maps



**Notice to Proceed**

Date: \_\_\_\_\_  
\_\_\_\_\_

Contractor Name

\_\_\_\_\_

Address

\_\_\_\_\_

\_\_\_\_\_

RE: \_\_\_\_Job Order Contract # \_\_\_\_\_

Dear \_\_\_\_\_:

This letter is your Notice to Proceed, effective as of the date cited below. This notice is in reference to the Construction Contract between you and the Town of Erie concerning the \_\_\_\_\_.

Please note that in accordance with the Construction Contract, Work must commence within 10 days of the date of this Notice, and all Work must be substantially completed within \_\_\_\_\_ (\_\_\_\_\_) days of the date of this Notice, which shall be the \_\_\_\_ day of \_\_\_\_\_, 2025, and finally completed within \_\_\_\_\_ days of the date of this Notice, which shall be the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

If you have any questions, please call me at \_\_\_\_\_.

Sincerely,

\_\_\_\_\_

\_\_\_\_\_, Project Manager

\_\_\_\_\_

Date

**Certificate of Final Payment (submitted per Job Order)**

With reference to Contract Number \_\_\_\_\_ dated \_\_\_\_\_, 2025, between the undersigned Contractor and the Town of Erie, for: Job Order Contract \_\_\_\_\_ at Erie, CO.

The undersigned hereby certifies that all costs, charges and expenses incurred by it on its behalf for work, labor, services, materials and equipment supplied to the foregoing premises, and/or used in connection with its Work under the Contract have been duly paid.

The undersigned further certifies that to its best knowledge and belief (based upon reasonable investigation) each of its subcontractors and material men have duly paid all costs, charges and expenses incurred by them or on their behalf for work, labor, services, materials and equipment supplied to the foregoing premises and/or used by them in connection with the Undersigned's Work under the Contract.

In consideration of \$\_\_\_\_\_ representing final payment under the Contract, the undersigned hereby releases and discharges the Owner and Owner's property from all claims, liens and obligations of every nature arising out of or in connection with the performance of the Work.

As additional consideration for the final payment, and to the fullest extent permitted by law, the undersigned agrees to indemnify and hold harmless Owner from and against all costs, losses, damages, claims, causes of action, judgments and expenses arising out of or in connection with claims against Owner which may be asserted by the undersigned or any suppliers, subcontractors of any tier or any of their representatives, officers, agents and employees for the costs, losses, damages, claims, causes of action, judgments and expenses and expenses that are attributable to the act, omission, error, professional error, mistake, negligence or other fault of the undersigned.

The foregoing shall not relieve the Undersigned of its obligations under the provisions of the Contract as amended, which by their nature survive completion of the Work including, without limitation, warranties, guarantees and indemnities.

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2025.

\_\_\_\_\_  
Contractor



**Certificate of Final Acceptance (Submitted per Job Order)**

TO: \_\_\_\_\_ Date: \_\_\_\_\_  
Project No.: \_\_\_\_\_  
Project Title: \_\_\_\_\_

This is to advise you that a final inspection of the referenced Work has been made and all work and material was found to be satisfactory. Therefore, the Work is considered to be complete in accordance with the approved plans, specifications and contract documents.

In accordance with the Contract, all Warranty periods shall begin as of the date of this letter.

Town of Erie  
By: \_\_\_\_\_  
Title: \_\_\_\_\_

## **General Provisions**

### **Part 1. Definitions**

#### **1.01 Contract Documents:**

- A. Construction Contract;
- B. General Provisions
- C. Special Provisions;
- D. Town of Erie Standard Specifications for the Design and Construction of Public Improvements;
- E. Construction Task Catalog®;
- F. Technical Specifications (Gordian);
- G. Construction Drawings (if applicable);
- H. Certificate of Insurance Verification;
- I. Notice of Award;
- J. Documentation submitted by Contractor prior to Notice of Award; and

#### **Documents Submitted with Each Job Order:**

- A. Notice to Proceed;
- B. Payment and Performance Bond;
- C. Certificate of Final Payment; and
- D. Final Acceptance Form.

#### **1.02 Contract Amendment:**

A written order issued by the Town after execution of the Contract authorizing a revision to the Contract as a whole.

#### **1.03 Town:**

The Town of Erie, Colorado.

#### **1.04 Contract:**

The entire written agreement covering the performance of the Work described in the Contract Documents.

#### **1.05 Contract Price:**

The amount set forth in Section 4 of the Construction Contract.

#### **1.06 Contract Time:**

The time for completion of the Work as set forth in Section 3 of the Construction Contract.

#### **1.07 Day:**

Calendar day, unless otherwise specified. When the last day for the occurrence of an event falls on a Sunday or legal holiday as recognized by the Town, the time for performance shall be automatically extended to the next business day.

**1.08 Final Completion:**

The date as certified by the Project Manager when all of the Work is completed and final payment may be made.

**1.09 Project Manager:**

The Town's duly authorized representative in connection with the Work.

**1.10 Subcontractor:**

Any person, firm or corporation with a direct contract with Contractor who acts for or on behalf of Contractor in executing any part of the Contract, excluding one who merely furnishes material.

**1.11 Substantial Completion:**

The date as certified by the Project Manager when the Town occupies or takes possession of all or substantially all of the Work, or when the Town may occupy or take possession of all or substantially all of the Work and put it to beneficial use for its intended purposes.

**1.12 Work:**

All the work specified, indicated, shown or contemplated in the Contract Documents, including all alterations, amendments or extensions thereto made by supplemental agreements or written orders of the Project Manager.

**Part 2. Time****2.01 Time of the Essence:**

All times stated in the Contract Documents are of the essence.

**2.02 Final Acceptance:**

Upon Final Completion, the Project Manager will issue final acceptance.

**2.03 Changes in the Work:**

The Town reserves the right to order changes in the Work, in the nature of additions, deletions or modifications, without invalidating the Contract, and to make corresponding adjustments in the Job Order Price and the Job Order Completion Time. All changes shall be authorized by a written Supplemental Job Order signed by the Project Manager. The Supplemental Job Order shall include appropriate changes in the Job Order Proposal and the Job Order Completion Time. The Work shall be changed and the Job Order Price and Job Order Completion Time modified only as set forth in the written Supplemental Job Order. Any adjustment in the Job Order Price resulting in a credit or a charge to the Town shall be determined by mutual agreement of the parties before the work set forth in the Supplemental Job Order is commenced. If a Supplemental Job Order results in an increase in the Job Order Price, approval of the Erie Town Council shall be required, and if such approval is not obtained, the Town shall have no payment obligation regardless of whether the Work pursuant to the Supplemental Job Order has been performed.

**2.04 Delays:**

A. If Contractor is delayed in the progress of the Work by fire, unusual delay in transportation, unanticipated adverse weather conditions, or other unavoidable casualties beyond Contractor's control other than unanticipated adverse weather conditions, the Contract Time shall be extended for a reasonable period of time. "Weather" means precipitation, temperature, or wind, and an "adverse weather condition" means weather that on any calendar day varies from the average weather conditions for that day by more than 100% as measured by the National Oceanic and Atmospheric Administration. The term "unanticipated adverse weather conditions" means the number of days in excess of the anticipated adverse weather days per month as set forth below:

Monthly Anticipated Adverse Weather Days											
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7	4	4	4	6	3	4	2	3	3	2	5

*By reason of example only*, if in March there are two days when the snowfall exceeds the average snowfall for that day by 100%, those two days will have experienced an adverse weather condition. However, there will have been no unanticipated adverse weather condition in March, because there are four anticipated adverse weather days in March, which should be accounted for in the schedule. If, however, there are 5 days in which the snowfall exceeds the average snowfall by 100%, an unanticipated adverse weather condition will have occurred, and Contractor shall be entitled to request an extension of Job Order Completion Time.

- B. Any request for extension of the Job Order Completion Time shall be made in writing to the Project Manager not more than 7 days after commencement of the delay; otherwise it shall be waived. Any such request shall contain an estimate of the probable effect of such delay on the progress of the Work and should be contained in a Supplemental Job Order.
- C. Contractor shall not be entitled to any increase in the Job Order Price, or to damages, or to additional compensation as a consequence of any such delays.

**2.05 No Damages for Delay:**

In strict accordance with C.R.S. § 24-91-103.5, the Town shall not amend the Contract Price or any Price associated with an individual Job Order to provide for additional compensation for any delays in performance which are not the result of acts or omissions of the Town or persons acting on behalf of the Town.

**Part 3. Contractor's Responsibilities**

**3.01 Completion/Supervision of Work:**

Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and licenses in

good standing. The services performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with applicable laws, ordinances, rules and regulations. Contractor shall be responsible for completion of all Work in a timely and workmanlike manner in accordance with the terms and specifications of the Contract Documents, including the techniques, sequences, procedures and means. Contractor shall be responsible for the coordination of all Work. Contractor shall supervise and direct the Work and give it all attention necessary for proper supervision and direction. Contractor shall maintain a supervisor on site at all times when Contractor or any subcontractor is performing Work.

### **3.02 Duty to Inspect:**

Contractor shall inspect all Contract Documents, tests and reports, including soil tests and engineering tests, if applicable, and shall conduct a site or field review prior to executing the Contract. Contractor assumes the risk of all conditions which are disclosed, or which are reasonably suggested by any such tests or reports, or which would be disclosed by a field or site review. Contractor shall have the affirmative duty to advise the Town of any concerns which Contractor may have regarding construction conditions prior to executing the Contract.

### **3.03 Furnishing of Labor and Materials:**

A. Contractor shall provide and pay for all labor, materials and equipment, including: tools; construction equipment and machinery; utilities, including water; transportation; and all other facilities and services necessary for the proper completion of the Work.

B. In all purchases of supplies, materials and provisions to be incorporated or otherwise used by Contractor in the Work, Contractor shall use supplies, materials and provisions produced, manufactured or grown in Colorado if such supplies, materials and provisions are not of inferior quality to those offered by competitors outside of Colorado.

C. While engaged in the performance of the Work, Contractor shall maintain employment practices that do not violate the provisions of the Colorado Antidiscrimination Act of 1957, C.R.S. § 24-34-301, *et seq.*

### **3.04 Employees and Safety:**

A. Contractor shall maintain at all times strict discipline of its employees, and Contractor shall not employ on the Work any person unfit or without sufficient knowledge, skill, and experience to perform properly the job for which the employee was hired.

B. Contractor shall be responsible to the Town for the acts, negligence and omissions of all direct and indirect employees and subcontractors. The Contract Documents shall not be construed as creating any contractual relation between any subcontractor and the Town.

C. Contractor shall provide for and oversee all safety orders and precautions necessary for the safe performance of the Work. Contractor shall take reasonable precautions for the safety of all employees and others whom the Work might affect, all work and materials incorporated into the Work, and all property and improvements on the work site and adjacent property.

### **3.05 Cleanup:**

A. Contractor shall keep the work site and adjoining ways free of waste material and rubbish. Contractor shall remove all waste material and rubbish daily during construction, together with all tools, equipment, machinery and surplus materials. Contractor shall, upon completion of its Work, conduct general cleanup operations on the work site, including the cleaning of all surfaces, paved streets and walks. Contractor shall also conduct such general cleanup operations on adjacent properties disturbed by the Work.

B. If Contractor fails to perform the cleanup required by this Section, after written notice, the Town may cause the cleanup to be performed at Contractor's expense. Upon receipt of a statement for such cleanup, Contractor shall pay to the Town the costs incurred by the Town for such cleanup, or the Town shall have the right to withhold said amount from any final payment due to Contractor.

### **3.06 Payment of Royalties and License Fees:**

Contractor shall pay all royalties and license fees necessary for the Work, and to defend against all actions for infringement of copyright or patent rights, and to save and hold the Town harmless from such actions.

### **3.07 Taxes, Licenses and Permits:**

Contractor shall pay all taxes imposed by law in connection with the Work and shall procure all permits and licenses necessary for the prosecution of the Work. Contractor shall obtain a Town tax-exempt number for exemption from the Town's sales tax.

### **3.08 Samples and Shop Drawings:**

Contractor shall furnish, upon the request of the Project Manager, samples and shop drawings to the Project Manager, who shall review them for conformance with the Contract Documents.

### **3.09 Compliance with Laws and Regulations:**

Contractor 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; the Federal Water Pollution Control Act; the Occupational Safety and Health Act; 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.

### **3.10 Subcontractors:**

- A. Contractor shall furnish to the Project Manager at the time each Job Order Proposal is submitted, a list of names of subcontractors to whom Contractor proposes to award the portions of the Work to be subcontracted by Contractor.
- B. Contractor shall not employ a subcontractor to whose employment the Town reasonably objects, nor shall Contractor be required to hire a subcontractor to whose employment Contractor reasonably objects.
- C. All contracts between Contractor and subcontractor shall conform to the provisions of the Contract Documents and shall incorporate the relevant provisions of the Contract Documents.

### **3.11 Corrective Work:**

When any Work does not conform to the Contract Documents, Contractor shall make the necessary corrections so that the Work will so conform, within the time period approved by the Project Manager. The Town's review, approval or acceptance of, or payment for any work shall not be construed as a waiver of any rights under this Contract or any cause of action arising out of the performance of this Contract.

### **3.12 Other Contracts:**

The Town reserves the right to let other contracts in connection with the Work. Contractor shall cooperate with all other contractors so that their work is not impeded by the Work, and Contractor shall give other contractors access to the work site necessary to perform their contracts.

### **3.13 Communication:**

Contractor shall direct all communications to the Town regarding the Work to the attention of the Project Manager.

## **Part 4. Termination**

### **4.01 Labor Disputes:**

Notwithstanding any other provision contained in this Contract, in the event of any picket or other form of labor dispute at the construction site, Contractor shall continue to perform the Work without interruption or delay. If Contractor ceases performance of the

Work because of such picket or other form of labor dispute, the Town may terminate the services of Contractor after giving 48 hours' written notice of its intent to do so.

#### **4.02 Default:**

The Town may terminate this Contract upon 30 days' written notice to Contractor if Contractor defaults in the timely performance of any provision of the Contract Documents, or otherwise fails to perform the Work, or any part thereof, in accordance with the Contract Documents. Termination of the Contract by the Town shall not be the Town's exclusive remedy, and the Town may pursue such other remedies lawfully available to the Town including without limitation an action at law for damages against Contractor or any bonding agency issuing a bond hereunder, or an action in equity for injunctive relief.

### **Part 5. Warranties**

#### **5.01 Warranty of Fitness of Equipment and Materials:**

Contractor represents and warrants to the Town that all equipment and materials used in the Work, and made a part of the Work, or placed permanently in the Work, shall be new unless otherwise specified in the Contract Documents. All equipment and materials used shall be of good quality, free of defects and in conformity with the Contract Documents. All equipment and materials not in conformity with the Contract Documents shall be considered defective.

#### **5.02 General Warranty:**

Contractor shall warrant and guarantee all material furnished and work performed by Contractor for a period of 2 years from the date of final acceptance of the Work by the Project Manager. Under this warranty, Contractor agrees to repair or replace, at its own expense and under the direction of the Project Manager, any portion of the Work which fails or is defective, unsound, unsatisfactory because of materials or workmanship, or which is not in conformity with the provisions of the Contract. Should Contractor fail to perform any such work within the warranty period after a request by the Town, the Town may withdraw from the Payment and Performance Bond any and all amounts necessary to complete the required work. The expiration of the warranty period 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.

### **Part 6. Bonds, Insurance and Indemnification**

#### **6.01 Indemnification:**

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including attorney fees, on account of injury, loss, or damage, including, without limitation, claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Contract or the Contract Documents, to the extent that such injury, loss or damage is attributable to the act, omission, error,



professional error, mistake, negligence or other fault of Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor, or which arise out of any worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

B. Contractor, to the fullest extent permitted by law, shall defend, investigate, handle, respond and provide defense for and defend against any such liability, claims, damages, losses, expenses or demands at the sole expense of Contractor, or at the option of the Town, Contractor agrees to pay the Town or reimburse the Town for defense costs incurred by the Town in connection with any such liability, claims, damages, losses, expenses or demands. Contractor, to the fullest extent permitted by law, shall defend and bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not such liability, claims or demands alleged are groundless, false or fraudulent.

C. This indemnification provision is intended to comply with C.R.S. § 13-21-111.5(6) and shall be read as broadly as permitted to satisfy that intent. Contractor's liability under this provision shall be to the fullest extent of, but shall not exceed, that amount represented by the degree or percentage of negligence or fault attributable to Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor or of any subcontractor of Contractor. If Contractor is providing architectural, engineering, surveying or other design services under this Contract, the extent of Contractor's obligation to defend, indemnify and hold harmless the Town may be determined only after Contractor's liability or fault has been determined by adjudication, alternative dispute resolution or otherwise resolved by mutual agreement of the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

## **6.02 Notice of Claim:**

If Contractor receives any claim arising from the performance of the Work, Contractor shall notify the Town in writing of the nature of the claim within 24 hours of receipt of the claim by Contractor. In this notice, Contractor shall provide evidence that Contractor has notified Contractor's insurer of the claim. Contractor shall keep the Town apprised of the disposition of the claim, and Contractor shall take all necessary action to resolve the claim and make restitution, if required, as quickly as possible.

## **6.03 Insurance:**

A. Contractor agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Contractor pursuant to this Contract. At a minimum, Contractor shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.

2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Contractor. Contractor shall be solely responsible for any deductible losses under any policy.

C. Contractor shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Contract.

#### **6.04 Performance and Payment Bond:**

Contractor shall furnish a Payment and Performance Bond in the full amount of the Job Order Price on all Job Orders valued \$50,000 and above, as security for the faithful performance and payment of all Contractor's obligations under the Contract Documents, including the warranty. This bond shall remain in effect at least until 2 years after the date of Final Completion.

### **Part 7. Payment**

#### **7.01 Progress Payments:**

A. The Town shall make periodic progress payments to Contractor for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. A progress payment shall be made only after Contractor has submitted an application for a progress payment on a form approved by the Project Manager, and if requested by the Project Manager, Contractor shall submit copies of invoices from subcontractors or supplies and partial waivers executed by each.

B. Progress payments shall be in an amount equal to 95% of the Work actually completed. Completed Work shall include materials and equipment not incorporated in the Work but delivered to the work site and suitably stored.

C. If Contractor fails to complete any required Work within the time period agreed between Contractor and the Project Manager, or within any time period set forth in the Contract Documents, as modified or extended, the Town is expressly authorized to withhold any progress payment for such Work until such Work is completed.

D. For all other Job Orders, the Owner may make partial, monthly payments based on the percentage of the work completed.

## **7.02 Final Payment:**

Upon final acceptance of the Work, the Town shall make final payment to Contractor pursuant to C.R.S. § 38-26-107.

## **7.03 Liquidated Damages:**

A. Because time is of the essence and delayed performance causes a compensable, yet difficult to precisely ascertain, damage to the Town and its residents, the liquidated damages established in this Section shall be enforced. Such damages are not a penalty. For each day Final Completion is delayed after the Final Completion date stated in each Job Order Proposal, as modified through approved Supplemental Job Order(s), Contractor shall be assessed the following amounts which constitute a reasonable estimate of the actual damages such delay would cause the Town:

<b>Value of Job Order</b>	<b>Amount per day</b>
\$0-\$50,000	\$350
\$50,000-\$100,000	\$380
\$100,000-\$250,000	\$440
\$250,000-\$500,000	\$520
\$500,000-\$1,000,000	\$640
\$1,000,000-\$2,000,000	\$820
\$2,000,000-\$4,000,000	\$1,080
\$4,000,000-\$8,000,000	\$1,450
\$8,000,000-\$12,000,000	\$1,820
\$12,000,000 or greater	\$2,250

B. Allowing Contractor to continue and finish the Work or any part thereof after the Final Completion date shall not operate as a waiver on the part of the Town of any of its rights under the Contract Documents. Any liquidated damages assessed shall not relieve Contractor from liability for any damages or costs of other contractors caused by a failure of Contractor to complete the Work in the Job Order Completion Time. Liquidated damages may be deducted from any

payment due Contractor or the retainage. If the liquidated damages exceed the amount owed to Contractor, Contractor shall reimburse the Town.

#### **7.04 Oral Agreements Prohibited:**

This Contract is expressly subject to the provisions of C.R.S. § 29-1-110(1), and Contractor acknowledges that neither the Town nor any employee or agent thereof is authorized to expend or contract for the expenditure of any monies in excess of those appropriated by the Erie Town Council. The Town acknowledges that sufficient funds have been appropriated to pay the Contract Estimated Annual Value, but Contractor shall not rely upon the appropriation of any funds in addition to those already appropriated unless and until the same are lawfully appropriated by the Erie Town Council.

#### **7.05 Items Not Included in Bid:**

No additional compensation shall be paid for any costs or services listed in the Contract Documents but not specifically accounted for by Contractor in their bid Adjustment Factor(s).

#### **7.06 Changes in Quantity:**

- A. Except as provided in Section 7.08, Contractor shall not be entitled to compensation for any increased expense, loss of expected reimbursement or loss of anticipated profits, directly or indirectly caused by any changes in quantity.
- B. All other Changes in the Work shall be addressed by Section 8 of the Job Order Contract Special Conditions: Changes in the Work.

#### **7.07 Bid Price Adjustments:**

- A. When a major item is increased to more than 125% or decreased below 75% of the original quantity stated in the original Job Order, the Price Proposal shall be modified by written Supplemental Job Order. Payment for major items shall be calculated by the terms of the Supplemental Job Order.
- B. A "major spike" is defined as a spike in a specific material cost of more than 25% above what the cost of that material was on the date the Construction Task Catalog® was issued. If a major spike occurs, Contractor may submit a request for a price modification to a Unit Price or individual Job Order. To initiate such a request, Contractor shall:
  - 1. Identify the specific material that has experienced a major spike;
  - 2. Identify Pre-priced Task(s) or Job Orders that require the material experiencing a major spike; and
  - 3. Demonstrate that the spike exists by submitting at least 3 quotes on material supplier letterhead to show that the current price is a "major spike".
- C. The Town, after review of a request, may elect to adjust the Unit Price or Job Order by considering it a NPP item. The adjustment will be for the difference between the material cost at the time the Construction Task Catalog® was issued

times the quantity stated in the Job Order. The adjustment will not include any other markup, and the NPP adjustment factor will not apply.

D. The Town, at its option, may also determine that a drastic decrease in a material cost warrants the same NPP adjustment downward in the Unit Price or a Job Order.

### **7.08 Eliminated Items:**

Should any items contained in the Job Order Price Proposal be found unnecessary for completion of the Work, the items shall be eliminated. The Job Order Price shall be modified through written Supplemental Job Order, and the amount of the Supplemental Job Order shall be the eliminated quantity multiplied by the unit price stated in the Construction Task Catalog®, minus any reasonable costs incurred by Contractor for the eliminated items. Reasonable costs shall be determined by the Project Manager based on information provided by Contractor and may include mobilization of eliminated materials and equipment mobilization costs, if the sole purpose of the equipment was to place the eliminated material. In no case shall the costs exceed the amount of the eliminated items.

### **7.09 Materials Stored But Not Incorporated:**

Payments may be made to Contractor for materials stored on the work site but not incorporated into the Work as evidenced by invoices or cost analyses of material produced, if the material has been fabricated or processed and is ready for installation into the Work and conforms with the Contract Documents. Payments shall not exceed 85% of the price shown in the Job Order or 100% of the certified invoice cost of the stockpiled material, whichever is less. Payment for stockpiled materials shall not relieve Contractor of responsibility for loss or damage to the material. Payment for living plant materials or perishable materials shall not be made until the living or perishable material is made an integral part of the finished Work.

### **7.10 Cost Records:**

Contractor shall make cost records available to the Town if the Town deems it necessary to determine the validity and amount of any item claimed.

## **Part 8. Miscellaneous**

### **8.01 Publications:**

Any and all publications relating to the Work and authored by Contractor or any of its subcontractors shall be submitted to the Town for its prior written approval of the content of the publication. If the Town disapproves of the content of the publication, the author shall withdraw it from publication. The term "publication" as used herein shall include articles or letters to be published in any newspaper, magazine, trade journal or other periodical.

### **8.02 Confidentiality:**

Any and all reports, information, data, statistics, forms, designs, plans, procedures, systems, studies and any other communication form of knowledge given to or prepared

or assembled by Contractor under this Contract shall, to the extent permitted by law, be kept as confidential and not be made available by Contractor to any individual, company or organization without the prior written consent of the Town. Notwithstanding the foregoing, Contractor shall not be restricted from releasing information in response to a subpoena, court order, or legal process, but Contractor shall notify the Town in writing before responding.

### **8.03 Independent Contractor:**

Contractor, for all purposes arising out of this Contract, is an independent contractor and not an employee of the Town. It is expressly understood and agreed that Contractor shall not be entitled to any benefits to which the Town's employees are entitled, such as overtime, retirement benefits, worker's compensation, injury leave or other benefits.

### **8.04 Conflicts:**

Should any conflict arise in the Contract Documents, the order of precedence is as follows:

1. Contract Modifications (later takes precedence over earlier).
2. Construction Contract.
3. Addenda.
4. Job Orders (including Detailed Scopes of Work, Job Order Proposals and any Supplemental Job Orders).
5. Job Order Contract Special Conditions.
6. Request for Bids.
7. Special Provisions.
8. General Provisions.
9. Town Technical Specifications.
10. Standards and Specifications for Design and Construction of Public Improvements. \*Most recent iteration.
11. Construction Task Catalog®.
12. Gordian Technical Specifications.
13. Supplemental Specifications.
14. Detailed Plans (Calculated dimensions will govern over scaled dimensions).

## **Special Provisions**

### 1. General.

A. All labor, services, material, and other work necessary for construction shall be provided by Contractor, including without limitation: managing the budget; scheduling and coordinating work meetings; conducting field tests and geotechnical studies; preparing exhibits and participating in formal and informal public meetings at locations provided by the Town; and timely processing field orders, change orders, Supplemental Job Orders and notices of substantial completion.

B. Contractor shall carefully examine all Work, and shall be solely responsible for the character, quality, and quantities of Work, materials, and compliance with the Contract Documents.

C. Contractor shall identify any and all necessary easements for construction and maintenance of the Work.

### 2. Other Regulations.

A. Contractor shall ensure that the Work is in compliance with the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and other applicable codes and specifications.

B. In case of any discrepancy between any of the requirements set forth in the Urban Drainage and Flood Control District Urban Storm Drainage Criteria Manual, CDOT Specifications, AASHTO Specifications, International Building Code, Uniform Plumbing Code, Uniform Mechanical Code, National Electrical Code, Americans with Disabilities Act, and these Contract Documents, the more stringent requirement shall apply. If any questions arise as to which requirement is more stringent than another, the Project Manager shall be authorized to determine which is more stringent, and the Project Manager's decision shall be final.

### 3. Representatives. Contractor shall have at the work site at all times as its agent, a competent superintendent capable of reading and thoroughly understanding the Contract Documents and being thoroughly experienced in the type of work being performed. The Town shall have a representative on the job site to observe work for conformance with the Contract Documents (Job Order(s)).

### 4. Work Administration. The Town shall administer the Work, including the finalization of all Job Orders, any Supplemental Job Orders, pay estimates and payments of such, acceptance of work, and other matters as stipulated in the Contract Documents.

### 5. Engineer. The Engineer for this Work shall be the Town Engineer.

6. Inspections and Testing.

A. Contractor shall be responsible for performing materials testing. In addition to the materials testing performed by Contractor, the Town may conduct Quality Assurance testing at its own discretion.

B. Contractor shall coordinate its construction schedule with the testing agency and Town so that key inspection points may be observed. If Contractor fails to provide reasonably adequate notice or proceeds without the required inspection, the subject work shall be re-exposed or redone in its entirety, while the inspector is present. No extra compensation shall be awarded to Contractor for extra work due to Contractor's failure to coordinate inspections with the testing agency or the Town. All costs associated with Contractor's failure to coordinate inspections shall be borne by Contractor.

C. Contractor shall perform construction inspections. Contractor shall attend any pre-construction meeting(s) and be available to provide technical assistance during the course of construction as necessary. Contractor shall provide site visits and reviews upon request from the Town during the construction phase to ensure compliance with the intent of the plans and to resolve any potential conflicts. Contractor shall provide a written summary after each site visit.

D. Contractor shall be responsible for scheduling the final inspection with the Town.

7. Construction Schedule.

A. At the time of the Pre-construction Conference (Joint Scope Meeting), Contractor shall prepare and submit to the Town for review a construction schedule including: proposed daily construction hours; details of all construction items; start and finish dates; confirmation and dates for coordinating all utility relocation and/or interruptions; and the same information for all subcontractor(s). The schedule shall not be changed without prior notification and review by the Town. The schedule shall be in the form of a chart of suitable scale to indicate approximately the percentage of Work scheduled for completion at any time. Contractor shall enter on the chart the actual progress at the end of each 2-week interval as directed by the Town and shall deliver to the Town 3 copies thereof on a biweekly basis.

B. Contractor shall also prepare and submit a schedule of the anticipated manpower by title and duty. The manpower shall be adequate for orderly flow of work and completion within the time specified in the Contract Documents.

C. All construction activities shall be coordinated with the Project Manager.

8. Saturday, Sunday, Holiday and Night Work.

A. The majority of work shall be performed during Normal Working hours as described in the Bid Schedule. Normal Working hours is work performed including the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday, except for Town



holidays. If Work is identified outside of those hours and days, it will be deemed as Other than Normal Working hours, which shall include the hours of 6:00 p.m. to 7:00 a.m., Monday through Friday and all day Saturday, Sunday and Town Holidays. Lane closures are restricted to 8:30 a.m. to 3:30 p.m. on arterial and collector streets, except for such work as may be necessary for proper care, maintenance, and protection of Work already completed, or in cases where the Work would be endangered or if hazards to life or property would result.

B. If Contractor and Town agree it is necessary to perform work on Saturdays, Sundays, holidays, or at night, Contractor shall make prior arrangements with the Town and receive written approval at least 48 hours before such time. Such approval may be revoked by the Town if Contractor fails to maintain adequate equipment and lighting at night for the proper control, and inspection of the work. If Work is performed without the Town's prior approval, and as a result the Town had not assigned inspectors to the work, the Town may declare Work performed during this period of time defective.

9. Progress Reports.

A. Progress reports and progress/manpower schedules shall be updated and submitted to the Project Manager at the end of each 2-week period, or at such other times as the Project Manager may request. Contractor shall also forward to the Project Manager, at the end of each month, an itemized report of the delivery status of major and critical items of purchased equipment and material, including shop drawings and the status of shop and field fabricated work.

B. If the completion of any part of the Work or the delivery of materials is behind the approved schedule, Contractor shall submit a plan acceptable to the Project Manager for bringing the Work up to schedule. The Town shall have the right to withhold progress payments for the work if Contractor fails to update and submit the progress/manpower schedule and reports as specified.

10. Pre-construction Conference. See Section 5.4 of the Job Order Contract Special Conditions for Joint Scope Meeting Conference requirements.

11. Permit Fees. All fees for permits issued by the Town shall be waived.

12. Existing Utilities.

A. The Work shall be coordinated with all impacted utility companies, districts, associations, agencies, and residents located in the work site. Contractor shall conduct the meeting and provide summary minutes.

B. Contractor shall determine the actual location of all existing utilities prior to starting any Work. Contractor shall contact utility companies for field locations prior to the start of Construction Work and shall contact all utilities at least 48 hours prior to beginning excavation and/or grading. If the exact location and depth of existing underground utilities are unknown, Contractor shall perform all necessary exploratory excavation to locate these facilities which may affect the Work prior to beginning construction. Contractor shall obtain required locates and

Contractor shall include the information on the plans. Contractor shall resolve any utility discrepancies. Contractor shall be liable for all damage done to existing utilities in the performance of the Work.

C. If Contractor requests that utility companies relocate utilities for Contractor's convenience, such relocation shall be at Contractor's expense.

D. The time of performance under the Contract shall not be extended to account for repair of utilities which are damaged by Contractor.

13. Water and Electricity. Contractor shall provide and maintain, at its own expense, an adequate supply of water and electricity required for the Work. Contractor shall install and maintain supply connections and lines satisfactory to the Project Manager, and prior to Final Completion, Contractor shall remove the supply lines at its expense.
14. Dust Control. Contractor shall use measures to prevent and control dust within the area affected by the Work. No additional compensation shall be paid to Contractor for dust control. Contractor shall clean any soil, dirt, or debris tracked onto any adjacent streets. Within 24 hours of notification by the Town that any adjacent streets require cleaning, Contractor shall clean such streets or the Town may have the streets cleaned and deduct the cost of such cleaning from the Contract Price.
15. Construction Staging Areas. All construction staging areas shall be located within the work site. The boundaries of construction staging areas shall be approved by the Town. Construction staging areas shall be used for material storage, parking for equipment, and employees' vehicles. A construction trailer shall not be required, but may be used if the location of the trailer is approved by the Town. Upon Final Completion, all staging areas shall be clean and restored to their original condition. No additional compensation shall be provided to Contractor for cleaning of construction staging areas.
16. Sanitary Facilities.
  - A. Sanitary convenience for the use of all persons employed on the work, properly screened from public observation, shall be provided in sufficient numbers and in such a manner and at such points as approved by the Town. The contents shall be removed and disposed of in a satisfactory manner.
  - B. The sanitary conveniences specified above shall be the obligation and responsibility of Contractor. The facilities shall be made available to all other contractors, subcontractors, and inspection personnel in the work site.
  - C. Contractor shall supply sufficient drinking water from approved sources to all of its employees.
  - D. Full compensation for compliance with this Section is included in the Job Order Price, and no additional compensation shall be provided.
17. Soils Investigations and Foundation Engineering. Contractor shall be responsible for all geotechnical investigations necessary to design and perform the Work.

18. Lines and Grades. Contractor shall lay out the Work and shall be responsible for all measurements in connection therewith. Contractor shall, at its own expense, furnish all stakes, templates, platforms, equipment, and labor, including surveyors, that may be required in setting and cutting or laying out any part of the Work. Contractor shall be responsible for the proper execution of the Work to such lines and grades.
19. Traffic Control.
  - A. Contractor shall furnish all necessary flag persons; erect and maintain warning lights, advance warning signs, detour signs, barricades, temporary fence, and sufficient safeguards around all excavations, embankments, obstructions; and perform any other work necessary for the protection of all work being performed, and for the safety of the public and pedestrian traffic, as well as motor vehicles. All signs and barricades shall conform to the current Manual on Uniform Traffic Control Devices.
  - B. At the Pre-construction Conference, Contractor shall submit a traffic control plan for review by the Town. The plan shall discuss the traffic control measures proposed for the safety of vehicular and pedestrian traffic through the work site.
  - C. Contractor shall at all times take proper precautions for the protection of and replacement or restoration of landscaping, driveway culverts, street intersection culverts or aprons, irrigation crossings and systems, mailboxes, driveway approaches, signs, existing utilities, and all other public and private installations that may be encountered during the Work.
  - D. No driveway or private alley shall be blocked without prior written permission from the resident who would be affected by such blocking, with a copy to the Town.
  - E. No road shall be closed at any time.
  - F. Contractor shall advise the Police Department, school districts, trash services, and homeowners of any lane closures, including dates and times.
  - G. It shall be Contractor's responsibility to: maintain, protect, and control traffic in the vicinity of and in the work site; restrict parking on streets near the work site; and provide necessary parking areas for all employees in suitable locations as approved by the Town.
20. Archaeological and Historical Discoveries.
  - A. Contractor shall inform the Town of any evidence which might suggest to a layperson that archaeological or historical materials may be present in the work site. Upon making such a discovery, Contractor shall do whatever is necessary to avoid disturbing the work site. This may require that Contractor's activities be redirected or stopped until the Town determines how to proceed.
  - B. As a result of Contractor's efforts to preserve the potential discovery at the work site, if Contractor's activities are delayed for longer than 8 normal work

hours, Contractor shall prepare accounting information to support an adjustment to the Job Order Price.

21. Water Control.

A. Contractor shall take such precautions as necessary to construct the Work in a dry condition, and Contractor shall provide for drainage, dewatering, and control of all surface and subsurface water and shall erect any necessary temporary structures or other facilities at its own expense.

B. Contractor, at its own expense, shall furnish all necessary equipment and materials required to control the surface and subsurface water in all the areas from the commencement of Work through Final Completion.

C. Contractor shall be responsible for furnishing, transporting, and installing all materials and equipment, well points, pumping, channelization, diversion, damming, or other means of controlling surface water and ground waters.

22. Disposal Site.

A. Contractor shall be responsible for the removal of all excess excavation, debris, deleterious material, muck, asphalt, concrete, trees, stumps, remains from clearing and grubbing, and all other materials not used for the construction of the improvements. Costs of disposal are included in the Job Order Price and shall not entitle Contractor to additional compensation. Contractor shall designate in writing a disposal site located outside the Town limits and acceptable to the Town.

B. Contractor's cost for loading, hauling, daily cleaning of streets, disposal of the earthwork (excavation) materials, together with the construction, maintaining and watering of haul roads, and dump fees and permits are included in the Job Order Price and shall not entitle Contractor to additional compensation.

23. Video Prior to Construction. Contractor shall provide the Town with a video of the entire work site prior to beginning construction, including all adjacent areas, at Contractor's own expense. One copy of the video shall be provided to the Town and become the property of the Town prior to the commencement of any Work.

24. Existing Improvements and Restoration.

A. Contractor has field inspected the work site and fully understands that existing landscaping and improvements are present within the work site. Such existing improvements shall be protected. Any damage or disruption in the public right-of-way, drainage easements, Town property, or private property related to the Work shall be restored to pre-existing or better condition.

B. Contractor shall be responsible for replacing all existing improvements, including irrigation systems and landscaping, damaged during Contractor's activities, except as otherwise provided in the Contract Documents.

25. Erosion Control. Contractor shall provide an erosion/sediment control plan for use during construction. The plan shall include site specific details showing the type,

location, and quantity of BMP's to be used. The erosion/sediment control plan shall be designed to prevent sediment from leaving the construction area. Special attention shall be given to prevent sediment from entering into any wetland area.

26. Vandalism. Contractor shall take all necessary steps to protect the work site from vandalism. Contractor shall be solely responsible to repair any damage caused by vandalism, including the removal of graffiti, at Contractor's own cost. The Contract Price or Job Order Price shall not be increased to reimburse Contractor for such costs.

### **Job Order Contract (JOC) Special Conditions**

The following clarifications and modifications apply to the General, Supplemental and Special Provisions:

- a) When the term "Contract" is used to describe the Work associated with an individual project, the term "Contract" shall be replaced with "Job Order".
- b) When the term "Contract Time" is used to describe the duration associated with an individual project, the term "Contract Time" shall be replaced with "Job Order Completion Time".
- c) When the term "Contract Sum or Price" is used to describe the value associated with an individual project, the term "Contract Sum or Price" shall be replaced with "Job Order Price".
- d) The Job Order Price shall set forth the fixed price, lump sum amount for which Contractor is paid to complete the Detailed Scope of Work. Unless specifically stated for a Job Order, estimated quantities, lists of materials and bid prices shall not apply, the descriptions as related to costs and payment shall not apply, and the payment sections within the individual sections shall not apply.
- e) All references to "Bid Items" shall be interpreted to mean Work tasks necessary to complete the Detailed Scope of Work.
- f) All references to "change order work", "extra work", "force account work", and any other descriptions to changes to the Detailed Scope of Work shall be interpreted to mean work described in a Detailed Scope of Work of a Supplemental Job Order.
- g) The Construction Task Catalog® shall govern the work included in the Unit Price of a Pre-Priced Task.

#### **1. Definitions**

- 1.1. **Adjustment Factor** - A competitively bid adjustment to be applied to the Unit Prices listed in the Construction Task Catalog®.
- 1.2. **Award Criteria Figure** - The amount determined in the Award Criteria Figure Calculation section of the Bid Form, which is used for the purposes of determining the lowest Bid.
- 1.3. **Base Term** - The initial period of the Contract and does not include any Option Terms.
- 1.4. **Construction Task Catalog®** - A comprehensive listing of construction related tasks together with a specific unit of measure and a published Unit Price.
- 1.5. **Detailed Scope of Work** - A document setting forth the work Contractor is obligated to complete for a particular Job Order.

- 1.6. **Estimated Annual Value** - An estimate of the value of Job Orders that could be issued to Contractor each year.
- 1.7. **Job Order** - A written order issued by the Town, such as a Purchase Order, requiring Contractor to complete the Detailed Scope of Work within the Job Order Completion Time for the Job Order Price. A project may consist of one or more Job Orders.
- 1.8. **Job Order Completion Time** - The time within which Contractor must complete the Detailed Scope of Work.
- 1.9. **Job Order Price** - The value of the approved Job Order Price Proposal and the amount Contractor will be paid for completing a Job Order.
- 1.10. **Job Order Price Proposal** - A price proposal prepared by Contractor that includes the Pre-priced Tasks, Non Pre-priced Tasks, quantities and appropriate Adjustment Factors required to complete the Detailed Scope of Work.
- 1.11. **Job Order Proposal** - A set of documents including at least: (a) Job Order Price Proposal; (b) required drawings or sketches; (c) list of anticipated Subcontractors and Materialmen; (d) Construction schedule; and (e) other requested documents.
- 1.12. **Joint Scope Meeting** - A site meeting to discuss the work before the Detailed Scope of Work is finalized.
- 1.13. **Non Pre-priced Task** - A task that is not set forth in the Construction Task Catalog®.
- 1.14. **Normal Working Hours** - Normal Working hours is work performed including the hours of 7:00 a.m. to 6:00 p.m., Monday-Friday, except for Town holidays.
- 1.15. **Notice to Proceed** - A written notice issued by the Town directing Contractor to proceed with construction activities to complete the Job Order.
- 1.16. **Option Term** - An additional period of time beyond the Contract Time which extends the termination date of the Contract.
- 1.17. **Other than Normal Working Hours**- Include the hours of 6:00 p.m. to 7:00 a.m., Monday-Friday and all day Saturday, Sunday and Town Holidays.
- 1.18. **Pre-priced Task** - A task described in, and for which a Unit Price is set forth in, the Construction Task Catalog®.
- 1.19. **Project** - The collective improvements to be constructed by Contractor pursuant to a Job Order, or a series of related Job Orders.
- 1.20. **Request for Proposal** - A written request to Contractor to prepare a Proposal for the Detailed Scope of Work referenced therein.

- 1.21. **Secured Facilities** – Any facility deemed to be “Secured” by the Town will require, at a minimum, tool inventory and a series of check in procedures. For each facility, the Town Project Manager shall determine and communicate the access and egress requirements in each request for Job Order Proposal.
- 1.22. **Supplemental Job Order** - A secondary Job Order developed after the initial Job Order has been issued for the purpose of changing, deleting, or adding work to the initial Detailed Scope of Work, or changing the Job Order Completion Time.
- 1.23. **Unit Price** - The price published in the Construction Task Catalog® for a specific construction or construction related work task. Unit Prices for new Pre-priced Tasks can be established during the course of the Contract and added to the Construction Task Catalogs®. Each Unit Price is comprised of labor, equipment, and material costs to accomplish that specific Pre-priced Task.

## **2. Contractor Selection**

- 2.1. Job Order Contracting: The Town may award an individual Job Order to any selected Contractor. Selection of Contractor and award of the Job Order will be in compliance with established Town procedures and based on one or more of the following criteria:
  - 2.1.1. Rotational selection among all contractors, unless otherwise determined by the Town.
  - 2.1.2. Evaluation of past and current performance on Job Orders of a similar nature and type of work, project size, construction management challenges, schedule performance, and design management.
  - 2.1.3. Balancing Job Order volume among contractors.
  - 2.1.4. Price, as determined by the Adjustment Factors of contractors.
  - 2.1.5. Limitations posed by bonding capacity of the contractors.
  - 2.1.6. Other appropriate criteria as deemed in the best interest of the Town.

## **3. Contractor’s Personnel**

- 3.1. Contractor shall assign a full-time person as its representative for this Contract. This person shall be acceptable to the Town and shall have a cell phone at which they can be reached at all times.
- 3.2. Contractor shall have an office with the Town or within the County in which the work is being completed, or if the office is located in another location, offices will be approved at the Town’s discretion.
- 3.3. Contractor shall also have at all times an Office Manager and a Superintendent assigned to this Contract. Additional staff will be provided depending on the volume of work. For each Job Order issued, Contractor shall identify the Superintendent responsible for that Job Order. The



Superintendent shall be reachable 24 hours a day, 7 days a week. If the named Superintendent is not available because of illness or vacation or the like, Contractor shall notify the Town of a substitute Superintendent. At all times, Contractor shall provide at least one Superintendent for every 4 Job Orders. Whenever, in the sole discretion of the Town, Contractor is not providing a sufficient level of supervision, the Town may direct Contractor to increase the level of supervision for any or all projects, including but not limited to the right to direct Contractor to assign a full time, dedicated Superintendent for any project; submit daily management, inspection, activity, and planning reports; substitute subcontractors; submit daily photographs of the work in place and the work areas prepared for the next day's work; and develop a site specific quality control program, all at no cost to the Town.

#### **4. Procedure for Ordering Work**

- 4.1. Conduct the Joint Scope Meeting
- 4.2. As the need exists, the Town will notify Contractor of a Project, schedule a Joint Scope Meeting and issue a Notice of Joint Scope Meeting.
- 4.3. Contractor does not have the right to refuse to perform any Project, Pre-priced Task, or Non Pre-priced Task.
- 4.4. Contractor shall attend the Joint Scope Meeting and discuss, at a minimum:
  - 4.4.1. The work to be performed;
  - 4.4.2. Presence of hazardous materials;
  - 4.4.3. Job Order specific Insurance (if any);
  - 4.4.4. Required permits – including drawings for permits;
  - 4.4.5. Long lead time materials;
  - 4.4.6. Protocol for workers entering the site;
  - 4.4.7. Staging area and areas that are off-limits;
  - 4.4.8. Construction schedule and work hours – with critical milestones and phasing requirements;
  - 4.4.9. Controlled inspections, testing requirements;
  - 4.4.10. Value Engineering suggestions;
  - 4.4.11. Organization of Price Proposal – by location, by corner, etc.;
  - 4.4.12. Due Date for Detailed Scope of Work and for Price Proposal; and
  - 4.4.13. The Traffic Control Plan, if required
- 4.5. Upon completion of the joint scoping process, the Town will prepare a draft Detailed Scope of Work referencing any sketches, drawings, photographs,

and specifications required to document accurately the work to be accomplished. Contractor shall review the Detailed Scope of Work and request any required changes or modifications. When an acceptable Detailed Scope of Work has been prepared, the Town will issue a Request for Proposal that will require Contractor to prepare a Job Order Proposal. The Detailed Scope of Work, unless modified by both Contractor and the Town, will be the basis on which Contractor will develop its Job Order Proposal and the Town will evaluate the same. Contractor does not have the right to refuse to perform any task or any work in connection with a particular Project.

- 4.6. The Town may, at its option, include quantities in the Detailed Scope of Work if it helps to define the Detailed Scope of Work, if the actual quantities required are not known or cannot be determined at the time the Detailed Scope of Work is prepared, if Contractor and the Town cannot agree on the quantities required, or for any other reason as determined by the Town. In all such cases, the Town shall issue a Supplemental Job Order adjusting the quantities appearing in the Detailed Scope of Work to the actual quantities.
- 4.7. If Contractor requires additional information to clarify the Detailed Scope of Work before preparing the Job Order Proposal, Contractor shall make such request quickly so that the Job Order Proposal can be submitted on time.

## **5. Preparation of a Job Order Proposal**

- 5.1. Contractor's Job Order Proposal shall include, at a minimum:
  - 5.1.1. Job Order Price Proposal;
  - 5.1.2. Support documentation for Non Pre-priced Tasks;
  - 5.1.3. Required drawings or sketches;
  - 5.1.4. List of anticipated Subcontractors including a MBE/WBE Certification;
  - 5.1.5. Construction schedule; and
  - 5.1.6. Other requested documents.
- 5.2. The Job Order Price shall be the value of the approved Job Order Price Proposal.
- 5.3. The value of the Job Order Price Proposal shall be calculated by summing the total of the calculations for each Pre-priced Tasks (Unit Price x quantity x Adjustment Factor) plus the value of all Non Pre-priced Tasks.
- 5.4. Contractor shall prepare Job Order Price Proposals in accordance with the following:
  - 5.4.1. Pre-priced Task: Contractor shall select the appropriate Pre-priced Tasks, enter the accurate quantities, and select the appropriate Adjustment Factor to be used for each such Pre-priced Task. Contractor shall use the Adjustment Factors in effect on the date the

Price Proposal is due, even though the Job Order may be issued after the Adjustment Factors have been updated.

- 5.4.2. Non Pre-priced Task: A task that is not set forth in the Construction Task Catalog®. The final price submitted for Non Pre-priced Tasks shall be according to the following formula:

**For Non Pre-priced Tasks Performed with Contractor's own forces:**

**A** = The hourly rate for each trade classification not in the Construction Task Catalog® multiplied by the quantity;

**B** = The hourly, weekly, or monthly rate for each piece of equipment not in the Construction Task Catalog® multiplied by the quantity;

**C** = Lowest of three independent quotes for all materials.

**Total for Non Pre-priced Tasks performed with Contractor's own forces** =  $(A+B+C) \times \text{Non Pre-priced Task Adjustment Factor}$

**For Non Pre-priced Tasks Performed by subcontractors:**

If the Non Pre-priced Task will be subcontracted, Contractor must submit three independent quotes for the work.

**D** = Lowest of 3 subcontractor quotes. If 3 quotes are not attainable, Contractor may submit less than 3 with a letter of justification explaining the circumstances.

**Total for Non Pre-priced Tasks performed by subcontractors** =  $D \times \text{Non Pre-priced Task Adjustment Factor}$

- 5.4.3. Information submitted in support of Non Pre-priced Tasks shall include the following without limitation:

5.4.3.1. Catalog cuts, specifications, technical data, drawings, or other information as required to evaluate the task.

5.4.3.2. If Contractor will perform the work with its own forces, it shall submit three independent quotes for all material to be installed and shall, to the extent possible, use Pre-priced Tasks for labor and equipment from the Construction Task Catalog®. If the work is to be subcontracted, Contractor shall submit 3 independent quotes from subcontractors. Contractor shall not submit a quote or bid from any supplier or subcontractor that Contractor is not prepared to use. The Town may require additional quotes and bids if the suppliers or

subcontractors are not acceptable or if the prices are not reasonable. If 3 quotes or bids cannot be obtained, Contractor will provide the reason in writing for the Town's approval.

5.4.3.3. After a Non Pre-priced Task has been approved by the Town, the Unit Price for such task will be established, following approval by the Town, and fixed as a permanent Non Pre-priced Task which will no longer require price justification.

5.4.3.4. The Town's determination as to whether a task is a Pre-priced Task or a Non Pre-priced Task shall be final, binding and conclusive as to Contractor.

- 5.5. Whenever, because of trade jurisdiction rules or small quantities, the cost of a minor task in the Job Order Price Proposal is less than the cost of the actual labor and material to perform such task, the Town may permit Contractor to be paid for such task as a Non Pre-priced Task, or use Pre-priced labor tasks and material component pricing to cover the actual costs incurred; provided, however, that there is no other work for that trade on the Project or other work for that trade cannot be scheduled at the same time and the final charge does not exceed \$1,000.
- 5.6. Contractor shall make the necessary arrangements for and obtain all filings and permits required for the Work, including the preparation of all drawings, sketches, calculations and other documents and information that may be required therefor. If Contractor is required to pay an application fee for filing a project, a fee to obtain a building permit, or any other permit fee to the City, State or some other governmental or regulatory agency, then the amount of such fee paid by Contractor for which a receipt is obtained shall be treated as a Reimbursable Task to be paid without mark-up. The cost of expediting services or equipment use fees are not reimbursable.
- 5.7. Contractor shall provide incidental engineering and architectural services required in connection with a particular Job Order including drawings and information required for filing.
- 5.8. Contractor's Job Order Proposal shall be submitted by the date indicated on the Request for Proposal. All incomplete Job Order Proposals shall be rejected. The time allowed for preparation of Contractor's Job Order Proposal will depend on the complexity and urgency of the Job Order but should average between 7 and 14 days. On complex Job Orders, such as Job Orders requiring incidental engineering/architectural drawings and approvals and permits, allowance will be made to provide adequate time for preparation and submittal of the necessary documents.

- 5.9. In immediate response situations and minor maintenance and repair Job Orders requiring immediate completion, the Job Order Proposal may be required quickly and the due date will be so indicated on the Request for Proposal or, as described below, Contractor may be directed to begin work immediately with the paperwork to follow.
- 5.10. For purposes of Using the Construction Task Catalog®, the project site is defined as the exterior perimeter of a building. For work not performed in a building, the project site is defined as the limits of the work area.
- 5.11. By submitting a Job Order Proposal to the Town, Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the price submitted. It is Contractor's responsibility to include the necessary tasks and quantities in the Job Order Price Proposal and apply the appropriate Adjustment Factor(s) prior to delivering it to the Town.
- 5.12. If Contractor requires clarifications or additional information regarding the Detailed Scope of work in order to prepare the Job Order Proposal, the request must be submitted so that the submittal of the Job Order Proposal is not delayed.
- 5.13. If Contractor is required to work in a secured facility or location where labor, materials, and equipment must be inspected, Contractor will be permitted to add labor hours to the Job Order Price Proposal to account for lost time as a result of such inspection.

## **6. Review of the Job Order Proposal and Issuance of the Job Order**

- 6.1. The Town will evaluate the entire Job Order Price Proposal and compare these with the Town's estimate of the Detailed Scope of Work to determine the reasonableness of approach, including the appropriateness of the tasks and quantities proposed. All incomplete Job Order Proposals will be rejected. The Town will review the Price Proposal to determine the accuracy of the Pre-priced Tasks, quantities, Adjustment Factors, and Non Pre-priced Tasks.
- 6.2. Contractor may choose the means and methods of construction; subject however, to the Town's right to reject any means and methods proposed by Contractor that:
  - 6.2.1. Will constitute or create a hazard to the work, or to persons or property;
  - 6.2.2. Will not produce finished Work in accordance with the terms of the Contract; or
  - 6.2.3. Unnecessarily increases the price of the Job Order when alternative means and methods are available.
- 6.3. The Town reserves the right to reject a Job Order Proposal or cancel a Project for any reason. The Town also reserves the right not to issue a Job Order if it is determined to be in the best interests of the Town. The Town may

perform such work by other means. Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to the costs to attend the Joint Scope Meeting, review the Detailed Scope of Work, prepare a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, and the costs to review the Job Order Proposal with the Town.

- 6.4. By submitting a Job Order Proposal, Contractor agrees to accomplish the Detailed Scope of Work in accordance with the Request for Proposal at the lump sum price submitted. It is Contractor's responsibility to include the necessary Pre-priced Tasks and Non Pre-priced Tasks and quantities in the Job Order Price Proposal prior to delivering it to the Town.
- 6.5. It is Contractor's responsibility to include the necessary Pre-priced Tasks and Non-Pre-priced Tasks, accurate quantities, and correct Adjustment Factors in the Price Proposal prior to delivering it to the Town.
- 6.6. If the Job Order Proposal is found to be complete and accurate, the Town may issue a Job Order to Contractor.
- 6.7. The Job Order signed by the Town and delivered to Contractor constitutes the Town's acceptance of Contractor's Job Order Proposal.
- 6.8. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time and the Job Order Price. The Job Order Price shall be the value of the approved Price Proposal.
- 6.9. All clauses of this Contract shall apply to each Job Order.
- 6.10. Contractor will be paid the Job Order Price for completing the Detailed Scope of Work within the Job Order Completion Time.
- 6.11. The Town, without invalidating the Job Order, may order changes in the Detailed Scope of Work by adding to, changing, or deleting from the Detailed Scope of Work, by issuing a Supplemental Job Order. All Supplemental Job Orders shall be developed in accordance with these procedures for ordering work.
- 6.12. The Town may decide not to issue a Job Order under development, may decide to cancel a Job Order or any portion of a Job Order, or cancel a Project or any portion of a Project, for any reason. In such case, Contractor shall not recover any costs arising out of or related to the development of the Job Order including but not limited to attending the Joint Scope Meeting, preparing or reviewing the Detailed Scope of Work, preparing a Job Order Proposal (including incidental architectural and engineering services), subcontractor costs, or reviewing the Job Order Proposal with The Town. The Town may perform such work by other means.
- 6.13. A Job Order will reference the Detailed Scope of Work and set forth the Job Order Completion Time, and the Job Order Price. A separate Job Order will

be issued for each Project. Extra work, credits, and deletions will be contained in a Supplemental Job Order. The Job Order Price shall be a lump sum, fixed price for the completion of the Detailed Scope of Work,

- 6.14. Each Job Order provided to Contractor shall reference the Detailed Scope of Work and set forth the Job Order Price and the Job Order Completion Time. All clauses of this Contract shall be applicable to each Job Order. The Job Order, signed by the Town and delivered to Contractor constitutes the Town's acceptance of Contractor's Job Order Proposal. A signed copy of the Job Order will be provided to Contractor.
- 6.15. In the event that immediate emergency response is necessary, Contractor shall be required to follow alternative procedures as established by the Town. Contractor shall begin work as directed notwithstanding the absence of a fully developed Request for Proposal, Detailed Scope of Work, or Job Order. Contractor shall be compensated for such work as if the work had been ordered under the standard procedures. Contractor must submit to the Town's Representative, their emergency procedure/ safety plan prior to starting work. Contractor must be responsible for quality assurance and quality control.

## **7. Changes in the Work**

- 7.1. The Town, without invalidating the Job Order, may order changes in the Work by altering, adding to or deducting from the Work, by issuing a Supplemental Job Order.
- 7.2. All Supplemental Job Orders shall be developed and priced in accordance with the Procedures for Developing All Job Orders
- 7.3. Credits for Pre-priced and Non Pre-priced Tasks shall be calculated at the pre-set Unit Prices and multiplied by the appropriate Adjustment Factors. The result is that a credit for Tasks that have been deleted from the Detailed Scope of Work will be given at 100% of the value at which they were included in the original Job Order Price Proposal.

## **8. Contract Modifications**

- 8.1. Changes to the Contract may be accomplished after execution of the Contract and without invalidating the Contract, by Contract Amendment.

## **9. Payments**

- 9.1. The Town will make one payment for all Job Orders that have a Job Order Completion Time of 45 days or less, or a Job Order Price of \$25,000 or less. For all other Job Orders, the Town may make partial, monthly payments based on a percentage of the work completed.
- 9.2. Before submitting an Application for Payment (Final or Partial), Contractor shall reach an agreement with the Project Manager concerning the

percentage complete of the detailed Scope of work and the dollar value for which the Application for Payment may be submitted.

## **10. Job Order Contracting Software**

### **10.1. Job Order Contracting Software**

10.1.1. The Town selected The Gordian Group's (Gordian) Job Order Contracting ("JOC") System for the JOC program. The Gordian JOC Solution includes Gordian's proprietary JOC System Software and JOC applications (JOC Applications) and construction cost data (Construction Task Catalog®), which shall be used by Contractor solely for the purpose of fulfilling its obligations under this Contract, including preparation and submission of Job Order Proposals, subcontractor lists, and other requirements specified by the Town. Contractor's use, in whole or in part, of Gordian's JOC Applications, Construction Task Catalog® and other proprietary materials provided by Gordian for any purpose other than to execute work under this Contract for the Town is strictly prohibited unless otherwise approved in writing by Gordian. Contractor shall be required to execute Gordian's JOC System License and Fee Agreement, and pay a 1% JOC System License Fee to obtain access to the Gordian JOC Solution. This Gordian JOC Solution is expressly excepted from Section IV of the Construction Contract.

## **11. ENR CCI Adjustment of the Adjustment Factors**

11.1. Economic Price Adjustment: The Adjustment Factors may be updated on each anniversary of the Effective Date to account for changes in construction costs, provided, Contractor requests in writing, approximately 14 to 30 days prior to such anniversary, that the Adjustment Factors be updated. The request shall be delivered to the Town and to Gordian. If Contractor fails to deliver the request timely, then the Town shall determine the date on which the Adjustment Factors will be updated, but in no event will such date be later than thirty days after the written request to update the Adjustment Factors is received by the Town. Thereafter, Contractor's Adjustment Factors will be adjusted according to the following:

11.2.A Base Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the twenty cities, published in the Engineering News Record (ENR) for the 12 months immediately prior to the month of the bid due date (e.g. February bid due date, Base Year Index is February of the prior year to January of the bid due date year).

11.3.A Current Year Index shall be calculated by averaging the 12 month Construction Cost Indices (CCI) for the average of the 20 cities published in the Engineering News Record (ENR) for the 12 months beginning with the



month of anniversary of the bid due date (*e.g.* February bid due date, Current Year Index is February of the prior year to January of the current year).

- 11.4. The Economic Price Adjustment shall be calculated by dividing the Current Year Index by the Base Year Index.
- 11.5. Contractor's original Adjustment Factors shall be multiplied by the Economic Price Adjustment to obtain Contractor's new Adjustment Factors effective for the next 12 months.
- 11.6. Averages shall be obtained by summing the 12-month indices and dividing by 12.
- 11.7. All calculations shall be carried to the fifth decimal place and rounded to the fourth decimal place. The following rules shall be used for rounding:
  - 11.7.1. The fourth decimal place shall be rounded up when the fifth decimal place is 5 or greater.
  - 11.7.2. The fourth decimal place shall remain unchanged when the fifth decimal place is less than 5.
- 11.8. ENR occasionally revises indices. ENR CCIs used in the calculations described above shall be those currently published at the time the Economic Price Adjustment calculation is performed. No retroactive adjustments will be made as a result of an ENR revision. Revised CCI indices, if any, shall be used in subsequent calculations.
- 11.9. If Contractor submits a Price Proposal with outdated Adjustment Factors, then Contractor waives its right to resubmit the Price Proposal using updated Adjustment Factors.
- 11.10. Contractor cannot delay submitting a Job Order Proposal to take advantage of a scheduled update of the Adjustment Factors. In that event, Contractor shall use the Adjustment Factors that would have been in effect without the delay.
- 11.11. The Non Pre-priced Adjustment Factor shall remain fixed for the duration of the Contract.

## **12. As-Built Drawings**

- 12.1. If Contractor is provided, or prepares, drawings as part of the Detailed Scope of Work, then, as the Detailed Scope of Work progresses, Contractor shall keep a complete and accurate record of changes to, and deviations from, such drawings. The As-Built Drawings will be created in the same medium (paper, electronic) in which they were originally prepared.