

Agreement for Professional Services
(Schofield Farms Concept Design and Construction Drawings)

This Agreement for Professional Services (the "Agreement") is made and entered into this ____ day of _____, 2024 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516, (the "Town"), and Wenk Associates, Inc., an independent contractor with a principal place of business at 1130 31st Street, Suite 101, Denver, CO 80205 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires professional services; and

Whereas, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required professional services.

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

I. Scope of Services

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 Services set forth in **Exhibit A**, attached hereto and incorporated herein by this reference.

B. A change in the Scope of Services shall not be effective unless authorized as an amendment to this Agreement. If Contractor proceeds without such written authorization, Contractor shall be deemed to have waived any claim for additional compensation, including a claim based on the theory of unjust enrichment, quantum merit or implied contract. Except as expressly provided herein, no agent, employee, or representative of the Town is authorized to modify any term of this Agreement, either directly or implied by a course of action.

II. Term and Termination

A. This Agreement shall commence on the Effective Date, and shall continue until Contractor completes the Scope of Services to the satisfaction of the Town, or until terminated as provided herein.

B. Either Party may terminate this Agreement upon 30 days advance written notice. The Town shall pay Contractor for all work previously authorized and completed prior to the date of termination. If, however, Contractor has substantially or materially breached this Agreement, the Town shall have any remedy or right of set-off available at law and equity.

III. Compensation

In consideration for the completion of the Scope of Services by Contractor, the Town shall pay Contractor \$385,247. This amount shall include all fees, costs and expenses incurred by Contractor, and no additional amounts shall be paid by the Town for such fees, costs and expenses. Contractor may submit periodic invoices, which shall be paid by the Town within 30 days of receipt.

IV. Professional Responsibility

A. Contractor hereby warrants that it is qualified to assume the responsibilities and render the services described herein and has all requisite corporate authority and professional licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted professional practices and the level of competency presently maintained by other practicing professional firms in the same or similar type of work in the applicable community. The work and services to be performed by Contractor hereunder shall be done in compliance with applicable laws, ordinances, rules and regulations.

B. The Town's review, approval or acceptance of, or payment for any services shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

C. Because the Town has hired Contractor for its professional expertise, Contractor agrees not to employ subcontractors to perform any work under this Agreement, except as expressly set forth in the Scope of Services.

D. 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, 42 U.S.C. § 7401, *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. § 651, *et seq.*; all applicable environmental statutes of the State of Colorado; and all other federal, state or local statutes, laws, ordinances, resolutions, codes, rules, regulations, orders or decrees regulating, relating to, or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, as now or at any time hereafter in effect.

V. Ownership

Any materials, items, and work specified in the Scope of Services, 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 Services 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 the Work Product without providing notice to or receiving consent from Contractor; provided that Contractor shall have no liability for any work that has been modified by the Town.

VI. Independent Contractor

Contractor is an independent contractor. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is a Town employee for any purposes.

VII. 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 Agreement. 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.
3. Professional liability insurance with minimum limits of \$1,000,000 each claim and \$2,000,000 general aggregate.

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 Agreement.

VIII. Indemnification

A. Contractor agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable 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 Contractor, any subcontractor of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor; provided that Contractor's liability under this indemnification 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.

B. If Contractor is providing architectural, engineering, surveying or other design services under this Agreement, the extent of Contractor's obligation to 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 between the Parties, as provided by C.R.S. § 13-50.5-102(8)(c).

IX. Miscellaneous

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

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented or sent pre-paid, first class U.S. Mail to the Party at the address set forth on the first page of this Agreement.

F. *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.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

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

I. *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 Agreement, the monetary limitations or any other rights, immunities or 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.

J. *Rights and 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.

K. *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.

L. *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, 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

Justin Brooks, Mayor

Attest:

Debbie Stamp, Town Clerk

Contractor

By:  _____
82249C41B2E1419

State of Colorado)
) ss.
County of _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ____ day of _____, 2024, by _____ as _____ of _____.

My commission expires:

(Seal)

Notary Public

Exhibit A Scope of Services

Contractor's Duties

The scope of work builds on the 2018 Schofield Farm & Open Space Master Plan Report based on current program, drainage, parking, and circulation desired for the Site. During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

Phase 1: Startup and Concept Refinement

Task 1: Data Collection:

- Provide Site Survey (by Flatirons, Inc.)
- Review drainage issues and potential based on JVA's Drainage Plan (Drainage Plan under a separate contract with the Town). (With JVA Consulting Engineers).
- Review ditch company requirements and water rights standings.
- USACE classification/process understanding (for potential trails on dam).
- Utility review and opportunities/constraints understanding.
- Review Historical classification and significance (formal and informal/social values).
- Identify environmental considerations, opportunities, and constraints. (by Birch Ecology).
- Wetlands mapping (by Birch Ecology).
- Review existing Phase 1 Environmental Report and identify opportunities and constraints (by Birch Ecology).
- Identify Mile High Flood District access requirements and applicable standards.
- Develop a Stakeholder List outreach strategy (outreach performed by the Town).
- Develop information for distribution to surrounding Homeowners' Association(s) (distribution performed by the Town).
- Coordinate with Erie Makers' Space, identify utility, access/circulation, and visibility needs.
- Coordinate with current property lessee (farmer), identify access/circulation, storage/staging, irrigation, and other requirements.

- Coordinate with Town of Erie Parks Operations to identify goals, objectives, and concerns.
- Coordinate with Town of Erie Parks Event Planner to identify programmatic goals, spatial requirements, technical event requirements/logistics, and parking/access needs/
- Coordinate with Boulder County to identify potential shared use of Prince Reservoir for items such as an overlook from the Schofield site, edge improvements, and trail connection.
- Coordinate with Erie Police Department to identify security, emergency access, visibility, and other needs.
- Coordinate with Mountain View Fire Rescue to identify access, addressing, circulation, and fire hydrant requirements.
- Regular Coordination with Town of Erie Parks & Recreation Project Manager(s).

Task 2: Program Establishment:

- Identify Parking needs, traffic impacts, and triggers for requiring improvements to 111th St.
- Precedents Study (scale, character, and program).
- Program Vicinity study (identify similar venues with a radius as determined in coordination with the TOE)
- Formalize Goals/Objectives for program areas included in this scope of work.
- Establish drainage goals/criteria/strategy to be included with this scope of work.

Task 3: Site-wide Concept Plan:

- Coordinate with drainage study/large scale drainage goals to identify impact and inclusions in the scope of this project.
- Establish final program/refine existing master plan for entire property.
- Determine parking and traffic needs and incorporate potential improvements in the Concept Plan.
- Determine water quality needs and incorporate into the Concept Plan.
- Evaluate layout, program options, and circulation with the Town.
- Finalize preferred Concept to guide next phases.

- Develop detailed phasing plan with ROM cost opinion, including:
 - Program Plan
 - Layout Plan
 - Over-lot grading plan
 - Conceptual utility plan
 - Circulation diagram
 - Access diagram
 - Irrigation strategy (for raw water and potable water by area)

Phase 1 Meetings:

- Weekly Check-In with Parks PM (up to 4)
- Weekly Check-In with Core Design Team (up to 4)
- Up to (2) Meetings with Stakeholders

Phase 2, Package A: Trailhead, Drainage, Trails, & Waypoints.

Task 1: Schematic Design (SD, 30% Construction Documents)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting Concept
 - Irrigation: Hydrozone plan
 - Electrical: concept with product cutsheets
 - Sections
 - Sketch details
- Opinion of Probable Construction Costs
- (1) Submittal to the Town for Review

Task 2: Design Development (DD, 60% Construction Documents)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting
 - Irrigation: Mainline with sized Point of Connection
 - Electrical: One line diagram, 60% plan
 - Sections
 - Details
- Opinion of Probable Construction Costs
- Outline Specifications
- Written responses to 30% Comments
- (1) Submittal to the Town for Review

Task 3: Construction Documents (90% CD and 100%/For Construction)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting
 - Irrigation
 - Electrical
 - Details
- Opinion of Probable Construction Costs
- Specifications
- Written responses to 60% and 90% Comments
- (2) Submittals (90% and 100%) to the Town for Review

Task 4: Bid Assistance:

- Bid tab
- Review of contractor's bids
- Attendance at pre-bid meeting
- Respond to RFI's
- Issue addenda

Task 5: Construction Observation (CO):

CO services are not included, contractor to scope CO when program/inclusions are finalized after the 60% CD submittal as an additional service or under a new contract with the Town.

Phase 2, Package A Meetings:

- Bi-Weekly Check-In with Parks PM (up to 8)
- Bi-Weekly Check-In with Core Design Team (up to 8)
- Meeting total with TOE Departments or Reviewers (Public Works, Other)

Phase 2, Package B: Event/Multi-Use Areas, Landscaping Around Buildings, and Staff Parking:

Task 1: Schematic Design (SD, 30% Construction Documents)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting Concept
 - Irrigation: Hydrozone plans
 - Electrical: concept with product cutsheets
 - Sections
 - Sketch details
- Opinion of Probable Construction Costs
- (1) Submittal to the Town for Review

Task 2: Design Development (DD, 60% Construction Documents)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting
 - Irrigation: Mainline with sized Point of Connection
 - Electrical: One line diagram, 60% plan
 - Sections
 - Details
- Opinion of Probable Construction Costs
- Outline Specifications
- Written responses to 30% Comments
- (1) Submittal to the Town for Review

Task 3: Construction Documents (90% CD and 100%/For Construction)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting
 - Irrigation
 - Electrical
 - Details
- Opinion of Probable Construction Costs
- Specifications
- Written responses to 60% and 90% Comments
- (2) Submittals (90% and 100%) to the Town for Review

Task 4: Bid Assistance:

- Bid tab
- Review of contractor's bids
- Attendance at pre-bid meeting
- Respond to Contractor's RFI's
- Issue addenda

Task 5: Construction Observation (CO):

CO services are not included, contractor to scope CO when program/inclusions are finalized after the 60% CD submittal as an additional service or under a new contract with the Town.

Phase 2, Package B Meetings:

- Bi-Weekly Check-In with Parks PM (up to 6, assumes 4 week overlap with Package A)
- Bi-Weekly Check-In with Core Design Team (up to 6, assumes 4 week overlap with Package A)
- (1) Meeting total with TOE Departments or Reviewers (Public Works, Other)

Phase 3: West/Other Improvements

Task 1: SD (30% CD)

- Drawings:
 - Plans:
 - Existing Conditions
 - Demolition
 - Grading
 - Layout
 - Utilities
 - Planting Concept
 - Irrigation: Hydrozone plans
 - Electrical: concept with product cutsheets
 - Sections
 - Sketch details
- Opinion of Probable Construction Costs
- (1) Submittal to the TOE for Review

Task 2: Phasing Plan

- Graphic Phasing Plan
- Descriptions of Phases/inclusions
- Summary of Costs by Phase

Tasks 2-5, Design Development, Construction Documents, Bid Assistance, and Construction Observation:

Design services beyond SD are not included, contractor to scope additional tasks to completion after program and inclusions are determined in the SD Phase as an additional service or under a new contract with the Town.

Phase 3 Meetings:

- Bi-Weekly Check-In with Parks PM (up to 3)
- Bi-Weekly Check-In with Core Design Team (up to 3)
- (1) Meeting total with TOE Departments or Reviewers (Public Works, Other)
- (1) Meeting with Recreation Staff

Contractor's Deliverables

In performance of the duties described above, Contractor shall deliver the following items to the Town, during the timeframes established by the Town:

- Sitewide Concept Plan Refinement
- Construction Drawings for two sub-areas
- Schematic Design for a third sub-area

OVERALL CONCEPT

- SURVEY TO INCLUDE FFE'S AT DOORS, BUILDING CORNERS, AND STOOPS.
- ASSUME SUE WILL BE REQUIRED FOR WQA, MISC. TRENCHING.
- ALL UNDERGROUND UTILITIES, INCLUDING RAW WATER (MAY NOT BE MAPPED BY 311)

LEGEND

- TOWN OWNED PROPERTY
- TRAIL
- FUTURE TRAIL CRUSHER
- FINES PATH
- EXISTING BUILDING
- NEW BUILDING
- PLANTING BED
- SEAT BOULDERS
- INTERPRETIVE SIGNAGE
- ★ PICNIC AREA/WAYSIDE

KEY

- | | | |
|------------------------|------------------------------------|-------------------------------|
| ① TRAILHEAD/PARKING | ⑥ EXISTING BUILDINGS OR STRUCTURES | ⑮ CLOSE EXISTING ACCESS DRIVE |
| ② RESTROOMS | ⑦ OUTDOOR EDUCATION AREA | ⑯ PICNIC SHELTER / PAVILION |
| ③ NEW ENTRY DRIVE | ⑧ INTERPRETIVE PATH | ⑰ WILDLIFE CORRIDOR |
| ④ PEDESTRIAN CROSSWALK | ⑨ INTERPRETIVE SIGN | ⑱ BALLOON LAUNCH AREA |
| ⑤ PLAY POD | ⑩ TRAIL | ⑲ WAYSIDE |
| ⑥ BI-TRANCE | ⑪ AGRICULTURAL FIELD | ⑳ TRAIL EXPANSION |
| ⑦ HERBLOOM GARDEN BEDS | ⑫ PICNIC AREA/WAYSIDE | ㉑ BIOSWALE/DRAINAGE |

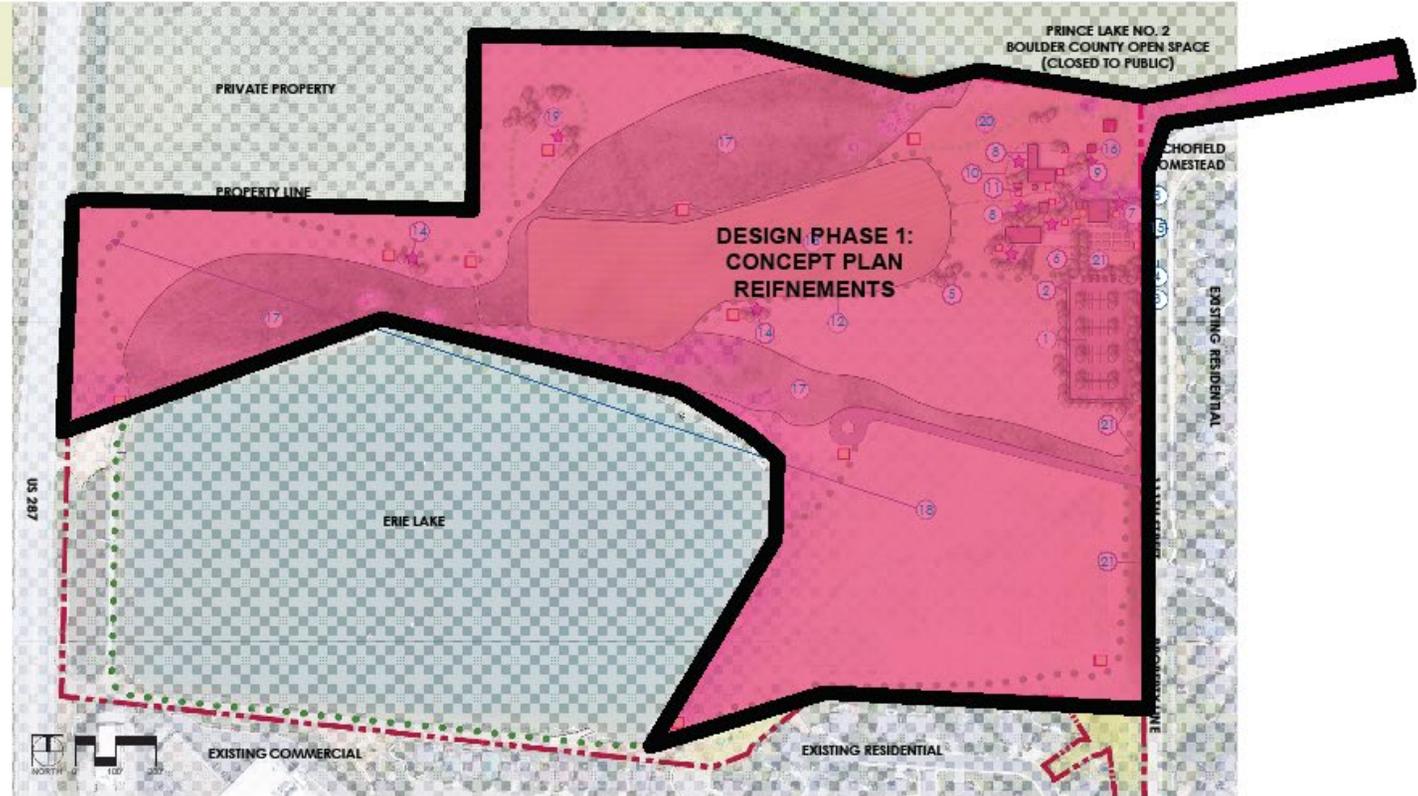
Project Area



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DESIGN PHASES DIAGRAM

OVERALL CONCEPT



LEGEND

- TOWN OWNED PROPERTY
- TRAIL
- FUTURE TRAIL CRUSHER
- PINES PATH
- EXISTING BUILDING
- NEW BUILDING
- PLANTING BED
- SEAT BOULDERS
- INTERPRETIVE SIGNAGE
- ★ PICNIC AREA/WAYSIDE

KEY

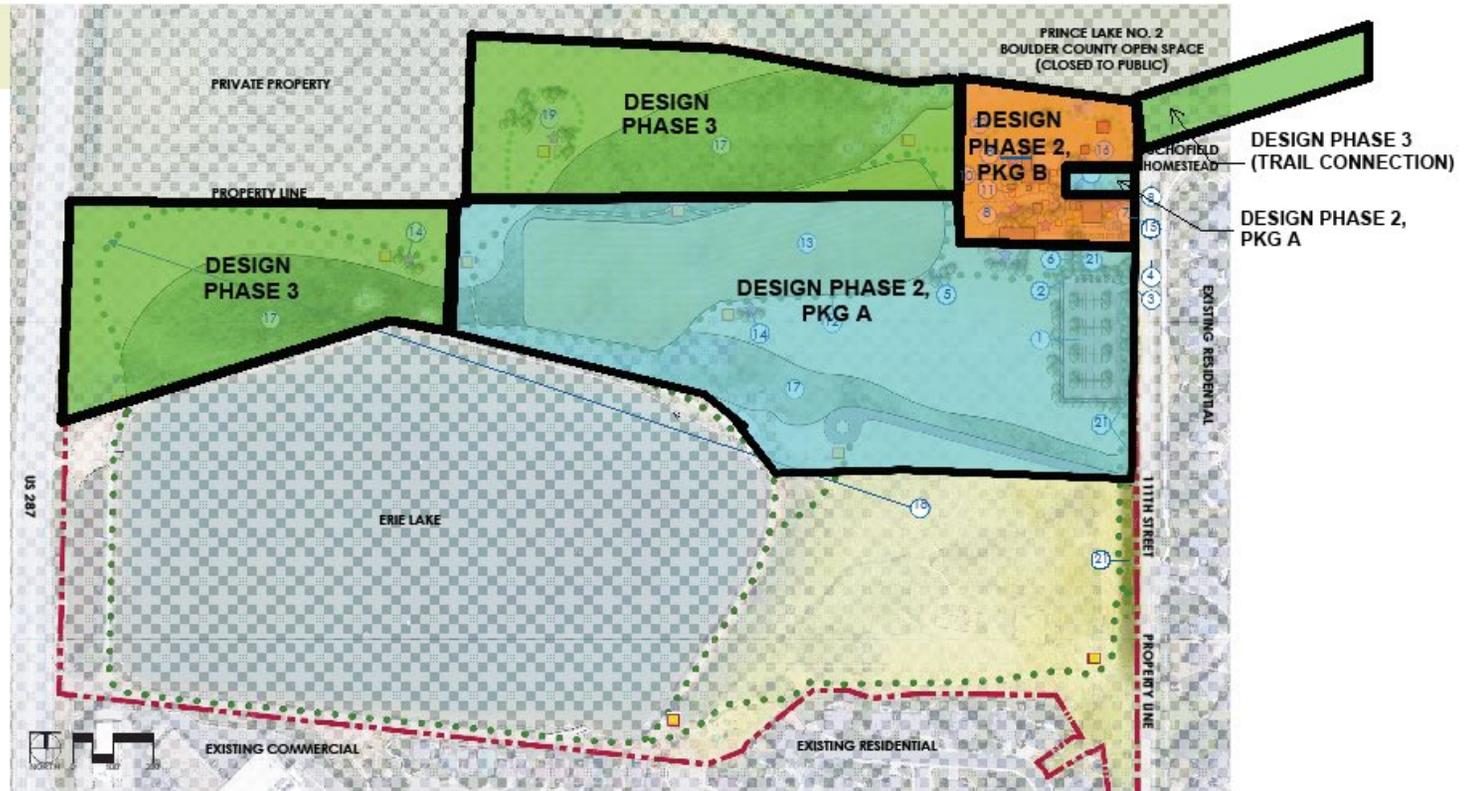
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|------------------------|------------------------------------|-------------------------------|
| ① TRAILHEAD/PARKING | ⑧ EXISTING BUILDINGS OR STRUCTURES | ⑮ CLOSE EXISTING ACCESS DRIVE |
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| ③ NEW ENTRY DRIVE | ⑩ INTERPRETIVE PATH | ⑰ WILDLIFE CORRIDOR |
| ④ PEDESTRIAN CROSSWALK | ⑪ INTERPRETIVE SIGN | ⑱ BALLOON LAUNCH AREA |
| ⑤ PLAY POD | ⑫ TRAIL | ⑲ WAYSIDE |
| ⑥ ENTRANCE | ⑬ AGRICULTURAL FIELD | ⑳ TRAIL EXPANSION |
| ⑦ HEIRLOOM GARDEN BEDS | ⑭ PICNIC AREA/WAYSIDE | ㉑ BIOSWALE/DRAINAGE |

Moved west to adjacent property

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OVERALL CONCEPT

DESIGN PHASES DIAGRAM



LEGEND

- - - - - TOWN OWNED PROPERTY
- ● ● ● ● TRAIL
- ● ● ● ● FUTURE TRAIL CRUSHER
- - - - - FINES PATH
- EXISTING BUILDING
- NEW BUILDING
- PLANTING BED
- SEAT BOULDERS
- INTERPRETIVE SIGNAGE
- ★ PICNIC AREA/WAYSIDE

KEY

- | | | |
|------------------------|------------------------------------|-------------------------------|
| ① TRAILHEAD/PARKING | ⑧ EXISTING BUILDINGS OR STRUCTURES | ⑮ CLOSE EXISTING ACCESS DRIVE |
| ② RESTROOMS | ⑨ OUTDOOR EDUCATION AREA | ⑯ PICNIC SHELTER / PAVILION |
| ③ NEW ENTRY DRIVE | ⑩ INTERPRETIVE PATH | ⑰ WILDLIFE CORRIDOR |
| ④ PEDESTRIAN CROSSWALK | ⑪ INTERPRETIVE SIGN | ⑱ BALLOON LAUNCH AREA |
| ⑤ PLAY POD | ⑫ TRAIL | ⑲ WAYSIDE |
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| ⑦ HERLOOM GARDEN BEDS | ⑭ PICNIC AREA/WAYSIDE | ㉑ BIOSWALE/DRAINAGE |

Moved west to adjacent property

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