

Meeting Agenda

Town Council

| Tuesday, June 24, 2025 | 6:30 PM | Council Chambers |
|------------------------|---------|------------------|
| | | |

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

I. Call Meeting to Order and Pledge of Allegiance

6:30 p.m.

- II. Roll Call
- III. Approval of the Agenda
- IV. Consent Agenda

| | 6:30-6:35 p.m. |
|---------------------|--|
| <u>25-134</u> | Approval of the June 3, 2025 Town Council Special Meeting Minutes |
| <u>Attachments:</u> | 06-03-2025 Council Special Meeting Minutes |
| <u>25-396</u> | Approval of the June 10, 2025 Town Council Meeting Minutes |
| <u>Attachments:</u> | 06-10-2025 Council Minutes |
| <u>25-110</u> | Proclamation of Park and Recreation Month; Sponsor Erie Town Council |
| <u>Attachments:</u> | Proclamation |
| <u>25-202</u> | An Ordinance of the Town Council of the Town of Erie Approving the Transfer of Real Property from HT Flatiron LP to the Town and Approving the Associated Special Warranty Deed |
| <u>Attachments:</u> | Ordinance 009-2025 |
| | Special Warranty Deed |
| <u>25-366</u> | 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 Summerfield Filing No. 2 Subdivision |
| <u>Attachments:</u> | Resolution 25-113 |
| | Development Agreement |
| | Summerfield Filing No. 2 Final Plat |
| <u>25-382</u> | A Resolution of the Town Council of the Town of Erie Approving an |

| | Intergovernmental Agreement with the Urban Drainage and Flood Control District d/b/a/ Mile High Flood District for Drainage Improvements |
|---------------------|--|
| Attachments: | Resolution |
| | Intergovernmental Agreement |
| <u>25-354</u> | A Resolution of the Town Council of the Town of Erie Approving the Fifth Amendment to the Professional Services Agreement with RockSol Consulting Group, Inc. for Post-Design Services for the Weld County Road 3 Bridge Replacement Project |
| Attachments: | Resolution 25-102 |
| | Professional Services Agreement Amendment |
| | Location Map |
| <u>25-392</u> | A Resolution of the Town Council of the Town of Erie Appointing Kathleen Teal to the Sustainability Advisory Board |
| <u>Attachments:</u> | Kathleen Teal |
| | Resolution 25-114 - A Resolution of the Town Council of the Town of Erie Appoi |
| <u>25-378</u> | A Resolution of the Town Council of the Town of Erie Approving the Fourth Amendment to the Professional Services Agreement with Baseline Engineering for Design of the Town Center South Roundabout Improvement Project |
| Attachments: | Fourth Amendment |
| | Resolution 25-110 |
| <u>25-355</u> | A Resolution of the Town Council of the Town of Erie Approving the First Amendment to the Professional Services Agreement with Civil Resources, LLC for Final Design Services for the Boulder Creek Diversion Structure and Pipeline Conveyance Project |
| <u>Attachments:</u> | Resolution 25-103 |
| | First Amendment |
| | Vicinity Map |
| <u>25-322</u> | A Resolution of the Town Council of the Town of Erie Approving an Agreement to Accept Partial Assignment of Relocation Agreement Pertaining to the Spring Hill Ditch Crossing of Erie Coal Creek Ditch |
| <u>Attachments:</u> | Resolution 25-106 |
| | Agreement to Accept Assignment - Erie Coal Creek Agreement |

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

6:35-6:45 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

| <u>25-380</u> | Presentation of 2025 ICSC Award for Excellence in Community Advancement |
|---------------------|--|
| | 6:45-6:50 p.m. Presenter(s): Julian Jacquin, Director of Economic Development & TOEURA Tyler Carlson, Evergreen Devco |
| <u>25-294</u> | A Resolution of the Town Council of the Town of Erie Approving the State of Colorado Subaward Agreement for Erie Flex Ride |
| <u>Attachments:</u> | Resolution 25-081 |
| | CDOT Subaward Agreement 5307 |
| | Presentation |
| | 6:50-6:55 p.m. Presenter(s): Miguel Aguilar, Principal Transportation Planner John Firouzi, Transportation & Mobility Manager David Pasic, Director of Public Works Sara Hancock, Director of Finance |
| <u>25-31</u> | A Resolution of the Town Council of the Town of Erie Approving a Professional Services Agreement with Boulder A.I.R. LLC for Air Quality Monitoring |
| <u>Attachments:</u> | Resolution 25-115 |
| | 18-month contract for services |
| | 18-month Scope of Work and Proposal |
| | Resolution 25-116 |
| | 42-month contract for services |
| | 42-month Scope of Work and Proposal |
| | 6:55-7:10 p.m. Presenter(s): David Frank, Director of Environmental Services |
| <u>25-391</u> | 2025 Erie Balloon Festival/Balloon Glow Update with the Erie Chamber of Commerce |
| | 7:10-7:25 p.m. Presenter(s): Julian Jacquin, Director of Economic Development & TOEURA Pat Vero, Executive Director, Erie Chamber of Commerce |
| <u>25-255</u> | A Resolution of the Town Council of the Town of Erie Approving the First Amendment to the Energy Performance Contract with Iconergy, Ltd. for the Erie North Water Reclamation Facility Floating Solar Project |
| <u>Attachments:</u> | Resolution 25-119 |
| | First Amendment |
| | Presentation |
| | 7:25-7:55 p.m. Presenter(s): David Pasic, Public Works Director |

Chad Alexander, Facilities Manager

VII. Council Member Reports and Announcements

7:55-8:10 p.m.

IX. Executive Session

25-398 EXECUTIVE SESSION: (1) 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); all regarding the Erie Town Center; (2) 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); all for which a topic cannot be disclosed without compromising the purpose of the executive session; and (3) 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); 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)(c); all regarding revenue sharing with the City of Lafayette;

8:10-9:25 p.m.

X. Adjournment

9:25 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 Council

Board Meeting Date: 6/24/2025

File #: 25-134, Version: 1

SUBJECT:

Approval of the June 3, 2025 Town Council Special Meeting Minutes

DEPARTMENT: Administrative Operations

PRESENTER(S): Debbie Stamp, Town Clerk

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY: NA

POLICY ISSUES: Minutes

STAFF RECOMMENDATION:

Approve the minutes from the June 3, 2025 Town Council Special Meeting.

SUMMARY/KEY POINTS

BACKGROUND OF SUBJECT MATTER:

NA

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- □ Safe and Healthy Community
- \boxtimes Effective Governance
- □ Environmentally Sustainable
- □ Fiscally Responsible

5

ATTACHMENT(S):

1. 06-03-2025 Town Council Special Meeting Minutes

6



Meeting Minutes

Town Council

| Tuesday, June 3, 2025 | 6:00 PM | Council Chambers |
|-------------------------|--|------------------|
| | Special Meeting | |
| Link to Watch Virtu | ually: https://bit.ly/TC-Special-1stTuesday | |
| I. Call Meeting to Ord | er and Pledge of Allegiance | |
| | Mayor Moore called the meeting to order at 6:00 p.m. | |
| II. Roll Call | | |
| | Mayor Pro Tem Bell arrived at 6:26 p.m. | |
| Present: | 13 - Mayor Moore, Mayor Pro Tem Bell, Council Member Pesarame O'Connor, Council Member Baer, Council Member Mortellaro, a Hoback | |
| III. Approval of the Ag | genda | |
| | Council Member O'Connor made a motion to approve the agenda. Member Mortellaro seconded the motion. The motion was approv following vote at 6:01 p.m. | |
| Aves | 7 - Mavor Moore | |

yes 7 - Mayor Moore Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback

Absent 1 - Mayor Pro Tem Bell

IV. General Business

<u>25-341</u> Historic Old Town Outreach - Social Capital Exercise

Attachments: Presentation

Josh Campbell, Senior Strategic Planner, presented the item at 6:01 p.m.

Sarah Nurmela, Director of Planning and Development, was on hand to answer questions.

<u>25-318</u> Future Parks Funding Options and Direction

Attachments: Presentation

Luke Bolinger, Director of Parks & Recreation, presented the item at 6:16 p.m.

Mayor Moore made a motion to direct staff to: move forward with the design and getting ready to build Compass and Morgan Hill Parks simultaneously with the Compass Park to be completed at its full 10 acres and the Morgan Hill Park to be at 8 acres unless staff recommends an adjustment of that 8 acres either up or down depending on additional research; conduct additional due diligence on funding these parks through Metro Districts, through the possibility of extending the Rec Center bond, through the use of GoCo funds, through the use of the CIP roll over funds this year, and any FTE that was approved last year that actually can be pushed out and we can use that funding for the parks. Mayor Pro Tem Bell seconded the motion. The motion passed by the following vote at 7:39 p.m.

Ayes 7 - Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback

25-356 Review and Approval of Townwide Special Topic Survey

Attachments: DRAFT Special Topic Survey

Gabi Rae, Director of Communications & Community Engagement, introduced the item at 7:50 p.m.

Courtney Sievers, Director of Survey Research, Magellan Strategies, presented the item at 7:51 p.m.

This item will be continued to a date certain of June 17, 2025 Special Meeting.

V. Adjournment

Mayor Moore adjourned the meeting at 10:12 p.m.

Approved

Mayor

Attest

Town Clerk



Town Council

Board Meeting Date: 6/24/2025

File #: 25-396, Version: 1

SUBJECT:

Approval of the June 10, 2025 Town Council Meeting Minutes

DEPARTMENT: Administrative Operations

PRESENTER(S): Debbie Stamp, Town Clerk

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY: NA

POLICY ISSUES: NA

STAFF RECOMMENDATION:

Approve the June 10, 2025 Town Council Meeting minutes

SUMMARY/KEY POINTS

BACKGROUND OF SUBJECT MATTER: NA

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- □ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- □ Safe and Healthy Community
- \boxtimes Effective Governance
- □ Environmentally Sustainable
- □ Fiscally Responsible

File #: 25-396, Version: 1

ATTACHMENT(S):

Add items in a numbered list OR delete this list and change to N/A.

1. 06-10-2025 Council Minutes



Meeting Minutes

Town Council

| Tuesday, June 10, 2025 | 7:30 PM | Council Chambers |
|-------------------------|---|------------------|
| orl | mmediately Following the Urban Renewal Authority Meeting | 3 |
| Link to | Watch or Comment Virtually: https://bit.ly/TC2025-2ndTues | day |
| I. Call Meeting to Ord | er and Pledge of Allegiance | |
| | Mayor Moore called the meeting to order at 7:32 p.m. | |
| II. Roll Call | | |
| | Councilmember Hoback left the meeting at 10:19 p.m. | |
| Present: | 7 - Mayor Moore, Mayor Pro Tem Bell, Council Member Pesaramelli, C O'Connor, Council Member Baer, Council Member Mortellaro, and C Hoback | |
| III. Approval of the Ag | genda | |
| | Mayor Moore moved Item 25-326; Pride Month Proclamation from Consent Agenda to General Business. He also removed Item 25-3 Presentation of the ICSC Award off of tonight's meeting. It will be scheduled for a future meeting. | 80; |
| | Council Member Mortellaro made a motion to approve the amended Ag Mayor Pro Tem Bell seconded the motion. The motion passed by the vote at 7:32 p.m. | - |
| Ayes | 7 - Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback | |

IV. Consent Agenda

25-133 Approval of the May 20, 2025 Special Town Council Meeting Minutes

Attachments: 05-20-2025 Council Special Meeting Minutes

| <u>25-375</u> | Approval of the May 27, 2025 Town Council Meeting Minutes |
|---------------------|--|
| <u>Attachments:</u> | 05-27-2025 Council Minutes |
| <u>25-327</u> | Juneteenth Proclamation, Sponsored by Council Member John Mortellaro |
| <u>Attachments:</u> | Proclamation |
| <u>25-326</u> | Pride Month Proclamation, Sponsored by Council Member Emily Baer |
| <u>Attachments:</u> | Proclamation |
| | Mayor Moore moved this item to General Business. |
| <u>25-337</u> | Pollinator Week Proclamation 2025; Sponsored by Council Member Pesaramelli |
| <u>Attachments:</u> | Proclamation |
| <u>25-348</u> | A Resolution of the Town Council of the Town of Erie Approving the Development Agreement for Erie Highlands Filing 17 and Accepting Dedications as shown on the Erie Highlands Filing 17 Minor Subdivision Plat |
| <u>Attachments:</u> | Resolution 25-097 |
| | Development Agreement |
| | Erie Highlands Filing 17 Minor Subdivision Plat |
| | Highlighted Public Improvements |
| <u>25-169</u> | 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 |
| <u>25-298</u> | A Resolution of the Town Council of the Town of Erie Authorizing Town Staff to Apply for the Regional Transportation District's Partnership Grant |
| <u>Attachments:</u> | Resolution 25-084 |
| | 2025 RTD Partnership Program |
| | RTD Partnership Grant - Town of Erie - Application |
| | Presentation |

25-344 A Resolution of the Town Council of the Town of Erie Approving a Construction Contract with JOC Construction, LLC for the Kenosha Farms Culvert Repairs

<u>Attachments:</u> <u>Resolution 25-101</u> <u>Contract</u> Budget Change Request

25-347 A Resolution of the Town Council of the Town of Erie Approving a Sixth Amendment to the Lease Agreement with Vector Air Management, LLC

Attachments: Resolution 25-096 Sixth Amendment Lease Agreement 12-12-2023

25-338A Resolution of the Town Council of the Town of Erie Approving a
General Services Agreement with Mr. Asphalt, LLC for Asphalt
Maintenance Services

Attachments: Resolution 25-098

<u>Agreement</u>

- 25-365 A Resolution of the Town Council of the Town of Erie Approving the Sixth Amendment to the Employment Agreement with Town Manager Malcolm Fleming to Increase the Compensation and Reduce the Severance
 - Attachments: Resolution 25-108; Fleming 6th Amend-R060325

Fleming 6th Amend-A060525 Fleming 6th Amend-A060525 Redline

Mayor Pro Tem Bell made a motion to approve the Consent Agenda. Council Member O'Connor seconded the motion. The motion was approved by the following vote at 7:34 p.m.

Ayes 7 - Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback

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

Mayor Moore read the Public Comment rules and opened Public Comment at 7:37 p.m.

The following spoke:

- 1. Shannon Taylor spoke about the Morgan Hill Park.
- 2. Nicole Wickett spoke about transportation advocacy.
- 3. Briana Brown spoke about the Compass Park and safe routes.

With no additional speakers in person or online virtually, Mayor Moore closed Public Comment at 7:46 p.m.

VI. General Business

25-380 Presentation of 2025 ICSC Award for Excellence in Community Advancement

Mayor Moore removed this item from tonight's agenda. It will be scheduled for a future date.

25-326 Pride Month Proclamation, Sponsored by Council Member Emily Baer

Attachments: Proclamation

Council Member Baer read the proclamation at 7:47 p.m.

25-295 A Resolution of the Town Council of the Town of Erie Adopting the Town Neighborhood Speed Management Program

Attachments: Resolution 25-082

Presentation June 2025

Presentation January 2024

Miguel Aguilar, Principal Transportation Planner, presented the item at 7:50 p.m.

David Pasic, Director of Public Works, and John Firouzi, Transportation & Mobility Manager, joined the discussion to answer questions.

Council Member Hoback made a motion to approve Resolution 25-082 subject to staff aligning the application form on page 29 to the language in Section 6.0 that requires signatures from ten households or twenty-five percent of the households on the block.

Mayor Moore asked Council Member Hoback to accept a friendly amendment to add that at the discretion of the Town Manager any unique criteria could be considered for this program.

Council Member Hoback accepted the amendment. Mayor Pro Tem Bell seconded the motion. The motion passed by the following vote at 8:32 p.m.

- Ayes 7 Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback
- 25-294 A Resolution of the Town Council of the Town of Erie Approving the State of Colorado Subaward Agreement for Erie Flex Ride

Attachments: Resolution 25-081

CDOT Subaward Agreement 5307

Presentation

Miguel Aguilar, Principal Transportation Manager, presented the item at 8:32 p.m.

Mayor Pro Tem Bell made a motion to Continue this item to the June 24, 2025 Council Meeting. Council Member O'Connor seconded the motion. The motion passed by the following vote at 9:31 p.m.

- Ayes 4 Mayor Moore Mayor Pro Tem Bell Council Member O'Connor Council Member Mortellaro
- Nayes 3 Council Member Pesaramelli Council Member Baer Council Member Hoback
- 25-218 A Resolution of the Town Council of the Town of Erie Approving an Intergovernmental Agreement with Weld County for Home Water Audit Services

Attachments: Resolution 25-090

Weld County Water Assess IGA

Dylan King, Sustainability and Water Conservation Specialist, and Eryka Thorley, Sustainability Manager, presented the item at 9:32 p.m.

Council Member Pesaramelli made a motion to approve Resolution 25-090. Council Member Mortellaro seconded the motion. The motion passed by the following vote at 9:39 p.m.

- Ayes 7 Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback
- A Resolution of the Town Council of the Town of Erie Approving an

Agreement for Transfer of Federal Entitlement Funds from the Erie Municipal Airport to the Fremont County Airport

Attachments: Resolution 25-094

Transfer Agreement

David Pasic, Public Works Director, presented the item at 9:40 p.m.

Council Member Hoback made a motion to approve Resolution 25-094. Council Member Mortellaro seconded the motion. The motion passed by the following vote at 9:42 p.m.

- Ayes 7 Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback
- 25-349
 1. A Resolution of the Town Council of the Town of Erie Approving a Site Plan Agreement for Village Cooperative of Erie; and 2. A Resolution of the Town Council of the Town of Erie Approving a Permanent Easement Agreement with Village Cooperative of Erie

Attachments: Resolution 25-099

Resolution 25-100

Site Plan Agreement

Permanent Easement Agreement

Harry Brennan, Senior Planner, presented the item at 9:43 p.m.

Mayor Pro Tem Bell made a motion to approve Resolution 25-099. Council Member O'Connor seconded the motion. The motion passed by the following vote at 9:47 p.m.

Ayes 7 - Mayor Moore

Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback

Council Member O'Connor made a motion to approve Resolution 25-100. Mayor Pro Tem Bell seconded the motion. The motion passed by the following vote at 9:48 p.m.

Ayes 7 - Mayor Moore

Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer Council Member Mortellaro Council Member Hoback 25-335 Public Hearing: An Ordinance of the Town Council of the Town of Erie Amending Title 10 of the Erie Municipal Code Regarding Accessory Dwelling Units, Assembly Uses, and Minimum Parking

Attachments: Ordinance No. 018-2025

PC Resolution No. P25-05

Staff Report

Staff Presentation

<u>HB24-1152</u>

<u>HB24-1304</u>

Publication Notice

Mayor Moore opened the Public Hearing at 9:49 p.m.

Sarah Nurmela, Planning & Development Director, and Chris LaRue, Principal Planner, presented the item at 9:49 p.m.

With no speakers in person or online virtually, Mayor Moore closed the Public Comment portion of the Public Hearing at 9:59 p.m.

Council Member O'Connor made a motion to approve Ordinance 018-2025. Council Member Baer seconded the motion. The motion passed by the following vote at 10:24 p.m.

- Ayes 5 Mayor Moore Mayor Pro Tem Bell Council Member Pesaramelli Council Member O'Connor Council Member Baer
- Nayes 1 Council Member Mortellaro
- Absent 1 Council Member Hoback

VII. Council Member Reports and Announcements

Council Members spoke about taking part in the water tour today saying the it was very informative, the PRIDE Celebration was well attended and is a great community event, and heartfelt feelings are going out to all the Boulder community members who went through or witnessed last weekend's attack.

VIII. Executive Session

Mayor Pro Tem Bell made a motion to go into Executive Session. Council Member Baer seconded the motion. The motion passed by the following vote at 10:27 p.m.

The meeting will adjourn at the end of the Executive Session.

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

Absent 1 - Council Member Hoback

25-389 EXECUTIVE SESSION: (1) 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); all regarding the Erie Town Center; and (2) 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); all regarding the purchase and sale agreement with Tebo Properties LLC.

IX. Adjournment



Town Council

Board Meeting Date: 6/24/2025

File #: 25-110, Version: 1

SUBJECT:

Proclamation of Park and Recreation Month; Sponsor Erie Town Council

DEPARTMENT: Parks & Recreation

PRESENTER:Town Council of the Town of Erie, Sponsors
Luke Bolinger, Director of Parks & Recreation

STAFF RECOMMENDATION:

Proclaim July 2025 Park and Recreation Month in the Town of Erie

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Since 1985, people in the United States have celebrated Park and Recreation Month in July to promote building strong, vibrant and resilient communities through the power of parks and recreation and to recognize the more than 160,000 full-time park and recreation professionals - along with hundreds of thousands of part-time and seasonal workers and volunteers - who maintain our country's local, state, and community parks.

According to NRPA's 2024 Engagement with Parks Report, people place a high value on the programs and services that park and recreation agencies deliver to their local communities every day and strongly support their mission.

- 276 million people in the United States visited a local park or recreation facility at least once during the past year.
- Nine in 10 people agree that parks and recreation is an important service provided by their local government.
- 97% of visitors report feelings of inclusion or belonging at their parks and recreation spaces.
- 86% of U.S. adults seek high-quality parks and recreation when choosing a place to live.

The 2025 theme for National Park and Recreation Month is **"Build Together, Play Together."** This theme celebrates the many ways park and recreation professionals make a lasting impact in communities across the country. Park and recreation programs are essential to community health and well-being and help cultivate lifelong friendships, memories, and family bonds that people hold dear decades later.

• Together, we're building and maintaining sustainable parks and green spaces for current and

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future generations.

- Together, we're building a thriving community focused on health and well-being.
- Together, we're creating high-quality programs and spaces accessible and inclusive for all.
- Together, we help people play and connect through yoga, art classes, picnics, and more.

COUNCIL PRIORITY(S) ADDRESSED:

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

ATTACHMENT(S):

1. Park and Recreation Month Proclamation



Park and Recreation Month Proclamation

Whereas, parks and recreation programs are an integral part of communities throughout this country; and

Whereas, parks and recreation promotes health and wellness, improving the physical and mental health of people who live near parks; and

Whereas, parks and recreation promotes time spent in nature, which positively impacts mental health by increasing cognitive performance and well-being, and alleviating illnesses such as depression, attention deficit disorders, and Alzheimers; and

Whereas, parks and natural recreation areas are fundamental to the environmental well-being of our community, improve water quality, protect groundwater, prevent flooding, improve the quality of the air we breathe, provide vegetation buffers to development, produce habitat for wildlife, and ensure the ecological beauty of our community while providing a place for children and adults to connect with nature; and

Whereas, parks and recreation encourages physical activities by providing space for popular sports, trails, swimming pools and many other activities designed to promote active lifestyles and is fundamental to the environmental well-being of our community; and

Whereas, parks and recreation increases a community's economic prosperity through increased property values, expansion of the local tax base, increased tourism, the attraction and retention of businesses, and crime reduction; and

Whereas, the Town of Erie recognizes the benefits derived from parks and recreation.

Now, therefore, we, the Erie Town Council, do hereby proclaim July 2025 to be Park and Recreation Month in the Town of Erie.

Dated this 24th day of June, 2025

Andrew J. Moore, Mayor

Attest:





Town Council

Board Meeting Date: 6/24/2025

File #: 25-202, Version: 1

SUBJECT:

An Ordinance of the Town Council of the Town of Erie Approving the Transfer of Real Property from HT Flatiron LP to the Town and Approving the Associated Special Warranty Deed

DEPARTMENT: Parks & Recreation

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

POLICY ISSUES:

This ordinance addresses the requirement of the Flatiron Meadows Filing No. 13 Development Agreement to be conveyed to the Town of Erie due its function as a regional drainage facility.

STAFF RECOMMENDATION:

Adopt the proposed Ordinance.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The First Amended And Restated Master Development Agreement, executed in 2012 and the Flatiron Meadows Filing No. 13 Development Agreement, executed in 2020 stipulates that Hines, the developer of Flatiron Meadows convey two tracts of land for Rights-of-Ways: Tract H, Tract I, and Tract G-1, a regional drainage facility, to the Town of Erie. The 2020 DA also stipulates that maintenance responsibility will ultimately fall to the Flatiron Meadows Master Association (HOA).

Town staff have been working with Hines, Flatiron Meadows HOA, and the Mile High Flood District (MHFD) to ensure that the drainage channel meets MHFD standards through a separate agreement and a financial contribution by Hines. MHFD will coordinate and lead the remaining improvements this year with the Town and HOA.

The Town and the HOA have also executed a maintenance agreement that includes the drainage facilities, native areas, trees, irrigation, and the trail, to ensure that this area receives adequate maintenance and serves its purpose as a vital trail connection and drainage facility.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- ✓ Safe and Healthy Community
- ✓ Effective Governance

File #: 25-202, Version: 1

✓ Fiscally Responsible

ATTACHMENT:

- 1. Ordinance 009-2025
- 2. Special Warranty Deed

Town of Erie Ordinance No. 009-2025

An Ordinance of the Town Council of the Town of Erie Accepting the Transfer of Real Property from HT Flatiron LP to the Town and Approving the Associated Special Warranty Deed

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

Whereas, Developer wishes to transfer ownership of the Property to the Town.

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

Section 1. The Town Council hereby accepts ownership of the Property to the Town, and approves the associate special warranty deed in the form attached hereto, subject to final approval by the Town Attorney.

Section 2. 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 3. <u>Safety</u>. The Town Council finds that the adoption of this Ordinance is necessary for the protection of the public health, safety and welfare.

Section 4. Effective Date. This Ordinance shall take effect 10 days after publication following adoption.

Introduced, Read, Passed and Ordered Published this 13th day of May, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

Exhibit A Legal Description of Property

Tract G-1 , Flatiron Meadows – Filing No. 13 as recorded at Reception No. 3761318, Boulder County, Colorado.

Tract H, Flatiron Meadows Subdivision Master Plat, Town of Erie, County of Boulder, State of Colorado.

Tract I, Flatiron Meadows Subdivision - Master Plat, as per the plat thereof recorded March 31, 2009 at Reception No. 2988916, County of Boulder, State of Colorado.

RECORDING REQUESTED BY AND WHEN RECORDED MAIL THIS DEED TO:

Town of Erie 645 Holbrook Street Erie, Colorado 80516 Attention: _____

(Space Above For Recorder's Use)

SPECIAL WARRANTY DEED

THIS DEED is made this <u>17</u> day of April, 2025 by **HT Flatiron LP**, a Delaware limited partnership, whose address is c/o Hines Interests Limited Partnership, 2700 Commerce Street, Suite 1600, Dallas, TX 75226 (the "**Grantor**"), to **TOWN OF ERIE**, a political subdivision of the State of Colorado, whose street address is 645 Holbrook Street, Erie, Colorado 80516 (the "**Grantee**"), the following real property in Weld County Colorado, to wit:

See Exhibit A, attached hereto and incorporated herein by this reference.

with all its appurtenances (the "**Property**"), and warrants the title to the same against all persons claiming under me, subject to:

1. X If the box is checked, "statutory exceptions" as defined in § 38-30-113(5)(a), C.R.S., and

2. If the box is checked, any rights of tenants, as to tenants' right to possession only, under unrecorded leases of the Property, as described in that certain contract for the sale of the Property between Grantor and Grantee, and

3. Other:

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed on the date set forth above.

[Remainder of page intentionally left blank]

[Grantor Signature Page to Special Warranty Deed]

IN WITNESS WHEREOF, the Grantor has executed this Special Warranty Deed on the date set forth above.

HT FLATIRON LP, a Delaware limited partnership

- By: Hines Flatiron Associates Limited Partnership, a Texas limited partnership its general partner
 - By: Hines Flatiron GP LLC, a Delaware limited liability company, its general partner
 - By: Hines Investment Management Holdings Limited Partnership, a Texas limited partnership,

its sole member By: Chad Murphy, Managing Director

5000

STATE OF COLORADO

COUNTY OF DENNER

The foregoing instrument was acknowledged before me this <u>17</u> day of April, 2025, by Chad Murphy, as Managing Director of Hines Investment Management Holdings Limited Partnership, a Texas limited partnership, the sole member of Hines Flatiron GP LLC, a Delaware limited liability company, the general partner of Hines Flatiron Associates Limited Partnership, a Texas limited partnership, the general partner of HT FLATIRON LP, a Delaware limited partnership, on behalf of said entities.

MEGAN POMINVILLE NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20184021770 MY COMMISSION EXPIRES MAY 22, 2026 Notary Public -State of Colorado

[seal]

Exhibit A

Land

Tract G-1 , Flatiron Meadows – Filing No. 13 as recorded at Reception No. 3761318, Boulder County, Colorado.

Tract H, Flatiron Meadows Subdivision Master Plat, Town of Erie, County of Boulder, State of Colorado.

Tract I, Flatiron Meadows Subdivision - Master Plat, as per the plat thereof recorded March 31, 2009 at Reception No. 2988916, County of Boulder, State of Colorado.





Town Council

Board Meeting Date: 6/24/2025

File #: 25-366, Version: 1

SUBJECT:

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 Summerfield Filing No. 2 Subdivision

DEPARTMENT: Planning & Development

PRESENTER(S): Chris LaRue, Principal Planner

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY:

N/A

POLICY ISSUES:

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

STAFF RECOMMENDATION:

Approve the Development Agreement and accept the dedications shown on the Summerfield Filing 2 Final Plat subdivision.

SUMMARY/KEY POINTS

- For the Summerfield development to proceed, Town Council must approve the Development Agreement (DA) and accept the dedications on the Summerfield Filing No. 2 Final Plat.
- Final Plat No. 2 consists of 204.36 acres and replats several tracts within Summerfield Filing No. 1 (mix of single-family Blocks 1-5, 8 & 9 and duplex Blocks 6 & 7) into 191 lots and 8 tracts. Of the 191 lots, 135 are planned as active adult homes.
- Among other common requirements, the DA restricts the movement at the intersection of Meadow Boulevard and State Highway 52 to a 3/4 movement (i.e. all movements into and out of a development except a left turnout) until a traffic signal is installed. Per DA requirements,

File #: 25-366, Version: 1

the applicant shall apply to CDOT for a traffic signal at that intersection within 30 days of the effective date of the DA. The traffic signal must be installed when warranted and approved by CDOT.

BACKGROUND OF SUBJECT MATTER:

The overall Summerfield Development is located south of Highway 52, north of Weld County Road 12, and between Weld County Roads 5 and 7. Final Plat No. 2 consists of 204.36 acres and replats several tracts within Summerfield Filing No. 1 (mix of single-family Blocks 1-5, 8 & 9 and duplex Blocks 6 & 7) into 191 lots and 8 tracts. Of the 191 lots, 135 are planned as active adult homes. This application is consistent with the previously approved Summerfield Preliminary Plat No. 1 and the PUD zoning.

The Development Agreement (DA) includes standard Town of Erie requirements to develop the site as well as exhibits outlining phasing and cost estimates for the public improvements the developer will install. Provisions included were negotiated by Town staff with the Town Attorney's counsel and the property owner, Toll Brothers (TL Summerfield, LLC). Among other typical Town language, the DA contains provisions addressing fees and public improvements, including reimbursements to the Town for public improvements. Improvements include streets and sidewalks, right-of-way landscaping and irrigation, utilities, and private improvements with public importance.

Site History and Prior Approvals

- 1. Annexation
 - a. The overall Summerfield area was annexed by the Town in January 2013.
- 2. Zoning
 - a. Summerfield was initially zoned Planned Development (PD) at the time of annexation.
 - b. The Summerfield PD depicts various planning areas and allows a maximum of 2,200 residential units and 500,000 square feet of commercial uses.
- 3. Plats
 - a. 2013: The Town Board of Trustees reviewed a Sketch Plan 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 a formal decision.
 - b. 2022: Preliminary Plat No. 1 was approved by the Town Council and consists 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.
 - c. 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.

The area for Final Plat No. 2 is contained within Filing No. 1 future development tracts B, J, AD, and AE.

d. 2025: Preliminary Plat No. 2 was approved by the Town Council for roughly the southern half of the Summerfield site. The plat consists of 361.39 acres and proposes 1,301 lots (517 traditional single-family detached, 534 active adult single-family detached, 144 active adult duplexes, & 106 traditional townhomes) and 52 tracts.

Summerfield Filing No. 2 Final Plat

Development Information:

- Plat Size: 204.36 acres
- Number of Lots: 191 lots
- Number of Tracts: 8 tracts

Development Agreement

Staff negotiated a Development Agreement (DA) in concert with the Final Plat. 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.

The DA restricts the movement at the intersection of Meadow Boulevard and State Highway 52 to a 3/4 movement (i.e. all movements into and out of a development except a left turnout) until a traffic signal is installed. Per DA requirements, the applicant shall apply to CDOT for a traffic signal at that intersection within 30 days of the effective date of the DA. The traffic signal must be installed when warranted and approved by CDOT.

Action Items

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

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- ⊠ Attractive Community Amenities
- \boxtimes Engaged and Diverse Community
- \boxtimes Prosperous Economy
- ⊠ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- ⊠ Safe and Healthy Community
- □ Effective Governance
- □ Environmentally Sustainable
- ⊠ Fiscally Responsible

ATTACHMENT(S):

1. Resolution No. 25-113

File #: 25-366, Version: 1

- Development Agreement
 Summerfield Filing No. 2 Final Plat

Town of Erie Resolution No. 25-113

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 Summerfield Filing No. 2 Subdivision

Whereas, on April 9, 2024, TL Summerfield, LLC filed an application for approval of the Final Plat for the Summerfield Filing No. 2 Subdivision;

Whereas, on June 6, 2025, the Planning and Development Director 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 June 24, 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:

<u>Section 1</u>. The Town Council hereby approves the Development Agreement for the Summerfield Filing No. 2 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 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

1

Development Agreement (Summerfield Filing No. 2)

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 1140 Virginia Drive, Ft. Washington, PA 19034 ("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 Summerfield Subdivision Filing No.2 (the "Final Plat");

Whereas, the Property is subject to the Summerfield Annexation Agreement dated January 8, 2013 between the Town and Section 4 Investors, LLC, the predecessor in interest to Developer, and recorded in Weld County, Colorado at Reception No. 3908281 (the "Annexation Agreement"); 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. <u>Purpose</u>. 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. <u>District</u>. 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. <u>Construction of Improvements</u>.

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. Notwithstanding the foregoing, in accordance with Section XI.I. of the Annexation Agreement, to assist Developer in obtaining off-site easements required for the installation of Improvements, the Town shall grant any approvals required for the Districts to exercise condemnation authority, and the Town will participate in discussions with affected landowners.

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.

i. *Accessibility*. Developer shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Developer's noncompliance with such accessibility standards.

4. <u>Acceptance of Improvements and Warranty</u>.

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 for Phases 1A and 1C shall receive Initial Acceptance on or before December 31, 2029. All Improvements for Phase 1B shall receive Initial Acceptance on or before December 31, 2031. When warranted pursuant to Section 9.b below, all Improvements for Phase 1D will be complete within the time period set forth in such Section.

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. <u>Maintenance</u>.

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. <u>Improvement Guarantee</u>.

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"), in a form approved by the Town. If the costs listed in **Exhibit B** increase or additional Improvements are required, the Town may require the amount of the Improvement Guarantee to increase accordingly.

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. <u>Reimbursements</u>.

a. *To the Town.* 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.

b. To Developer.

i. Subject to Section 14.j. hereof, the Town shall reimburse Developer for the Final Costs associated with upsizing the sanitary sewer line within Weld County Road 7, in an amount not to exceed \$76,410. The reimbursement shall be made within 60 days of receipt of proof of payment from Developer.

ii. For any reimbursements that are not expressly contained in this Agreement or the Annexation Agreement, Developer may request reimbursement for the oversize portion of utilities and other infrastructure and a pro rata portion of the cost of off-site Improvements required under this Agreement. At the time of final approval of a land use application for properties that use or benefit from such Improvements, the Town may require, as a condition of approval, a proportional reimbursement to Developer. Except as expressly stated in this Agreement or the Annexation Agreement, nothing contained in this Agreement shall create an obligation on the part of the Town to pay or reimburse any costs to Developer in the event such costs are not recovered by the Town from the properties that use such Improvements.

8. <u>Fees and Dedications</u>.

a. *Park Land and Open Space Dedication*. Pursuant to Section XI.L.2.b of the Annexation Agreement and § 10-6-3 of the Code, within 30 days of the Town's request, Developer shall convey Tract E as shown on the Final Plat (7.91 acres) to the Town by special warranty deed, which shall satisfy Developer's park land and open space dedication requirement and one of the 2 Neighborhood Park dedications required by Section XI.L.2.B of the Annexation Agreement.

b. *Park Fees.* Developer shall pay Park Fees to the Town in the amounts and at the times set forth in **Exhibit C**.

c. *School Fees.* Pursuant to the Intergovernmental Agreement between the Town and Saint Vrain Valley School District No. 2, Developer shall pay the fees set forth in **Exhibit C** to Saint Vrain Valley School District No. 2, which shall be paid in a proportional amount for each non-age restricted building permit for the Development. Proof of payment shall be provided with each non-age restricted building permit application for the Development.

9. <u>Phasing</u>. The Development shall be constructed in phases in accordance with **Exhibit D**, attached hereto and incorporated herein by this reference. The following limitations shall apply to the Phasing Plan:

a. Prior to the issuance of any building permits for each Phase, all of the following Improvements shall be installed and shall have received preliminary approval from the Town for that Phase, which requires a finding by the Town Engineer that such

Improvements are safe to be used during construction: streets; street signage; water; wastewater; drainage facilities; and streetlights, provided that such streetlights may be temporary at the time of issuance of building permits for that Phase, but must be permanent prior to issuance of any certificates of occupancy for that Phase.

b. Within thirty (30) days of the Effective Date, Developer agrees to submit an application to the Colorado Department of Transportation ("CDOT") for the installation of a traffic signal at the restricted ³/₄ movement intersection of Meadow Boulevard and State Highway 52 (the "Traffic Signal"). Developer shall not be required to construct, install or complete the Traffic Signal unless and until CDOT determines, in accordance with its standard practices, that the Traffic Signal is warranted. The Traffic Signal will be considered Phase 1D of the Development. When the Traffic Signal is warranted, Developer will use commercially reasonable efforts to commence installation and diligently pursue completion of the Traffic Signal within one (1) year following CDOT's determines it is infeasible to install the Traffic Signal within such time period, Developer will provide notice to the Town and CDOT of such delays, and work to diligently pursue completion of the Traffic Signal as soon as practicable. Until a traffic signal is installed, the intersection will be restricted to ³/₄ movement.

10. <u>Indemnification</u>. 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.

11. <u>Developer's Representations and Warranties</u>. 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.

12. <u>Vested Rights</u>. 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).

13. <u>Breach</u>.

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.

14. <u>Miscellaneous</u>.

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. Notwithstanding the foregoing or anything to the contrary in this Agreement, nothing in this Agreement shall be construed as or constitute a waiver or modification of any rights of Developer under the Annexation Agreement.

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

TL Summerfield, LLC,

a Delaware limited liability company

Toll Southwest, LLC, By: a Delaware limited liability company, its Administrative Member

By: Name: TIM WESTBROOK Title: VICE PRESTRENT

State of Colorado) ss. County of Arapshoe

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 28 day of May , 2025, by Tim Wastbrook as the Vice President of Toll Southwest, LLC, a Delaware limited liability company, as Administrative Member of TL SUMMERFIELD, LLC, a Delaware limited liability company.

My commission expires:

(Seal)

Joyce M. Bish NOTARY PUBLIC STATE OF COLORADO NOTARY ID 20174049148 MY COMMISSION EXPIRES November 30,2025

Joyce M Bish Notary Public

Exhibits List

- Exhibit A Legal Description
- **Exhibit B** Improvements
- Exhibit C Reimbursements and Fees
- Exhibit D Phasing Plan

Exhibit A Legal Description

Summerfield Filing No. 2, Town of Erie, County of Weld, State of Colorado

Exhibit B Improvements

Opinion of Probable Construction Cost

Summerfield Filing 2

Erie, CO Prepared By: Christopher Graf Checked By: Kevin Barney Date Prepared: 05/02/2025

SUMMARY OF PUBLIC IMPROVEMENTS

| Phase 1A | \$ | 3,800,805 |
|-------------------------------|--|---|
| | | |
| Phase 1B | \$ | 659,223 |
| | | |
| Phase 1C - Highway 52 | \$ | 115,639 |
| | | |
| Phase 1C - Weld County Road 7 | \$ | 255,041 |
| | | |
| Phase 1C | \$ | 6,612,757 |
| | | |
| Phase 1D | \$ | 600,000 |
| | | |
| Total: | \$ | 12,043,466 |
| | Phase 1B Phase 1C - Highway 52 Phase 1C - Weld County Road 7 Phase 1C Phase 1D | Phase 1B \$ Phase 1C - Highway 52 \$ Phase 1C - Weld County Road 7 \$ Phase 1C \$ Phase 1D \$ |

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.

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Opinion of Probable Construction Cost

Summerfield Filing 2 - Phase 1A

Erie, CO Prepared By: Christopher Graf Checked By: Kevin Barney Date Prepared: 05/02/2025

| 1.0 PUBLI | C ROADWAY IMPROVEMENTS | Quantity | Units | Price | Cost |
|------------|----------------------------------|----------|-------|-----------------|---------------|
| 1.01 | Subgrade Preparation | 16,789 | SY | \$ 3.50 | \$ 58,761 |
| 1.02 | Asphalt Pavement and Base Course | 13,431 | SY | \$ 42.00 | \$ 564,102 |
| 1.03 | Mountable Curb & Gutter | 8,355 | LF | \$ 22.00 | \$ 183,810 |
| 1.04 | Concrete Sidewalk | 39,748 | SF | \$ 6.50 | \$ 258,362 |
| 1.05 | Concrete Crosspan | 150 | SY | \$ 140.00 | \$ 21,000 |
| 1.06 | Curb Ramp | 15 | EA | \$ 5,500.00 | \$ 82,500 |
| 1.07 | Street Signs | 7 | EA | \$ 350.00 | \$ 2,450 |
| 1.08 | Street Lights | 16 | EA | \$ 12,000.00 | \$ 192,000 |
| Sub-Total: | | | \$ | 1,362,985 | |

| 2.0 SANIT | ARY SEWER IMPROVEMENTS | Quantity | Units | Price | | Cost |
|-----------|-----------------------------------|----------|-------|-------|----------|---------------|
| 2.01 | Sanitary Manhole (4' DIA) | 30 | EA | \$ | 7,000.00 | \$ 210,000 |
| 2.02 | 8-inch Sanitary Sewer Main (PVC) | 2,184 | LF | \$ | 65.00 | \$ 141,960 |
| 2.03 | 12-inch Sanitary Sewer Main (PVC) | 2,727 | LF | \$ | 100.00 | \$ 272,700 |
| 2.04 | Sanitary Sewer Service | 98 | EA | \$ | 2,000.00 | \$ 196,000 |
| | Sub-Total: | | | \$ | | 820,660 |

| 3.0 WATE | RIMPROVEMENTS | Quantity | Units | Price | Cost |
|----------|----------------------------|----------|----------|----------------|---------------|
| 3.01 | 8-Inch Watermain (PVC) | 4,220 | LF | \$ 60.00 | \$ 253,200 |
| 3.02 | 6-inch Watermain (PVC) | 75 | LF | \$ 55.00 | \$ 4,125 |
| 3.03 | 6-inch Gate Valve | 8 | EA | \$ 2,200.00 | \$ 17,600 |
| 3.04 | 8-inch Gate Valve | 24 | EA | \$ 2,500.00 | \$ 60,000 |
| 3.05 | Temporary Blowoff Valve | 1 | EA | \$ 5,500.00 | \$ 5,500 |
| 3.06 | Fire Hydrant Assembly | 8 | EA | \$ 9,500.00 | \$ 76,000 |
| 3.07 | Fitting (Bend, Tee, Cross) | 43 | EA | \$ 1,200.00 | \$ 51,600 |
| 3.08 | Water Main Lowering | 4 | EA | \$ 7,000.00 | \$ 28,000 |
| 3.09 | Water Service and Meter | 98 | EA | \$ 2,500.00 | \$ 245,000 |
| | | Su | b-Total: | \$ | 741.025 |

| 4.0 STOR | M SEWER IMPROVEMENTS | Quantity | Units | Price | Cost |
|----------|---------------------------|----------|----------|-----------------|---------------|
| 4.01 | Storm Manhole (4' DIA) | 3 | EA | \$ 5,500.00 | \$ 16,500 |
| 4.02 | Storm Manhole (5' DIA) | 7 | EA | \$ 8,000.00 | \$ 56,000 |
| 4.03 | Storm Manhole (6' DIA) | 1 | EA | \$ 12,000.00 | \$ 12,000 |
| 4.04 | Type R Inlet (5' LENGTH) | 5 | EA | \$ 8,000.00 | \$ 40,000 |
| 4.05 | Type R Inlet (10' LENGTH) | 5 | EA | \$ 12,500.00 | \$ 62,500 |
| 4.06 | 18-inch Storm Sewer (RCP) | 367 | LF | \$ 100.00 | \$ 36,700 |
| 4.07 | 24-inch Storm Sewer (RCP) | 775 | LF | \$ 135.00 | \$ 104,625 |
| 4.08 | 30-inch Storm Sewer (RCP) | 296 | LF | \$ 145.00 | \$ 42,920 |
| 4.09 | 30-inch FES | 1 | EA | \$ 5,500.00 | \$ 5,500 |
| 4.1 | Forebay | 29 | SY | \$ 175.00 | \$ 5,075 |
| 4.11 | Soil Rip Rap | 13 | SY | \$ 100.00 | \$ 1,300 |
| 4.12 | Trickle Channel | 467 | LF | \$ 45.00 | \$ 21,015 |
| | | Su | b-Total: | \$ | 404.135 |

| 5.0 LAND | SCAPE IMPROVEMENTS | Quantity | Units | Price | Cost |
|----------|---|----------|----------|--------------|---------------|
| 7.01 | Deciduous Trees: 2" Cal. (Lot canopy trees not included - Builder Responsibility) | 17 | EA | \$ 695.00 | \$ 11,815 |
| 7.02 | Ornamental Trees: 1.5" Cal. | 19 | EA | \$ 595.00 | \$ 11,305 |
| 7.03 | Evergreen Trees: 6' Ht. | 11 | EA | \$ 750.00 | \$ 8,250 |
| 7.04 | Deciduous Shrubs: 5 Gal. | 46 | EA | \$ 60.00 | \$ 2,760 |
| 7.06 | Ornamental Grasses: 1 Gal. | 99 | EA | \$ 25.00 | \$ 2,475 |
| 7.07 | Seed Broadcast | 87,254 | SF | \$ 0.30 | \$ 26,176 |
| 7.08 | RTF Sod w/ Soil Prep 4 cy | 2,527 | SF | \$ 1.00 | \$ 2,527 |
| 7.09 | Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy | 1,478 | SF | \$ 1.50 | \$ 2,217 |
| 7.1 | 1.5" Horizon River Rock Mulch 3" depth w/ Fabric | 35 | SF | \$ 1.85 | \$ 65 |
| 7.11 | 4" x 1/8" Rolled Top Steel Edging | 235 | LF | \$ 8.00 | \$ 1,880 |
| 7.12 | Irrigation System | 91,294 | SF | \$ 3.00 | \$ 273,882 |
| 7.13 | Concrete Sidewalk (Open Space Trail system) | 19,792 | SF | \$ 6.50 | \$ 128,648 |
| | | Su | b-Total: | \$ | 472,000 |

| Phase 1A Onsite Total: | \$ 3,800,805 |
|------------------------|-----------------|
| Cost Per Lot: | \$ 38,784 |

Opinion of Probable Construction Cost

Summerfield Filing 2 - Phase 1B

Erie, CO Prepared By: Christopher Graf Checked By: Kevin Barney Date Prepared: 05/02/2025

| 1.0 PUBL | LIC ROADWAY IMPROVEMENTS | Quantity | Units | | Price | | Cost |
|----------|----------------------------------|------------|-------|----|-----------|----|---------|
| 1.01 | Subgrade Preparation | 3,171 | SY | \$ | 3.50 | \$ | 11,099 |
| 1.02 | Asphalt Pavement and Base Course | 2,537 | SY | \$ | 42.00 | \$ | 106,554 |
| 1.03 | Mountable Curb & Gutter | 1,587 | LF | \$ | 22.00 | \$ | 34,914 |
| 1.04 | Concrete Sidewalk | 7,934 | SF | \$ | 6.50 | \$ | 51,571 |
| 1.05 | Street Signs | 1 | EA | \$ | 350.00 | \$ | 350 |
| 1.06 | Street Lights | 4 | EA | \$ | 12,000.00 | \$ | 48,000 |
| | | Sub-Total: | | | | | 252,488 |

| 2.0 SANIT | ARY SEWER IMPROVEMENTS | Quantity | Units | Price | | Cost |
|-----------|----------------------------------|----------|----------|-------|----------|--------------|
| 2.01 | Sanitary Manhole (4' DIA) | 6 | EA | \$ | 7,000.00 | \$ 42,000 |
| 2.02 | 8-inch Sanitary Sewer Main (PVC) | 739 | LF | \$ | 65.00 | \$ 48,035 |
| 2.03 | Sanitary Sewer Service | 34 | EA | \$ | 2,000.00 | \$ 68,000 |
| | • | Su | b-Total: | \$ | | 158,035 |

| 3.0 WATE | R IMPROVEMENTS | Quantity | Units | Price | Cost |
|----------|----------------------------|----------|-----------|-----------------|--------------|
| 3.01 | 8-Inch Watermain (PVC) | 785 | LF | \$ 60.00 | \$ 47,100 |
| 3.02 | 6-inch Watermain (PVC) | 20 | LF | \$ 55.00 | \$ 1,100 |
| 3.03 | 6-inch Gate Valve | 2 | EA | \$ 2,200.00 | \$ 4,400 |
| 3.04 | 8-inch Gate Valve | 2 | EA | \$ 2,500.00 | \$ 5,000 |
| 3.05 | Fire Hydrant Assembly | 2 | EA | \$ 9,500.00 | \$ 19,000 |
| 3.06 | Fitting (Bend, Tee, Cross) | 7 | EA | \$ 1,200.00 | \$ 8,400 |
| 3.07 | Water Main Lowering | 1 | EA | \$ 7,000.00 | \$ 7,000 |
| 3.08 | Water Service and Meter | 34 | EA | \$ 2,500.00 | \$ 85,000 |
| | | Sı | ub-Total: | \$ | 177,000 |
| | | | | | |
| 4.0 STOR | M SEWER IMPROVEMENTS | Quantity | Units | Price | Cost |
| 4.01 | Storm Manhole (4' DIA) | 3 | EA | \$ 5,500.00 | \$ 16,500 |
| 4.02 | Type R Inlet (10' LENGTH) | 1 | EA | \$ 12,500.00 | \$ 12,500 |
| 4.03 | 18-inch Storm Sewer (RCP) | 427 | LF | \$ 100.00 | \$ 42,700 |
| | | Sı | ib-Total: | \$ | 71,700 |

| Phase 1B Onsite Total: | \$ 659,223 |
|------------------------|---------------|
| Cost Per Lot: | \$ 17,348 |

Opinion of Probable Construction Cost

Summerfield Filing 2 - Phase 1C - Highway 52

Erie, CO Prepared By: Maddie Finley Checked By: Kevin Barney Date Prepared: 05/02/2025

| 1.0 PUBL | IC ROADWAY IMPROVEMENTS | Quantity | Units | Price | Cost |
|------------|----------------------------------|----------|--------|--------------|--------------|
| 1.01 | Subgrade Preparation | 1,878 | SY | \$ 3.50 | \$ 6,571 |
| 1.02 | Asphalt Pavement and Base Course | 1,502 | SY | \$ 42.00 | \$ 63,084 |
| 1.03 | Street Signs | 3 | EA | \$ 350.00 | \$ 1,050 |
| 1.04 | Striping | 2,005 | LF | \$ 8.00 | \$ 16,040 |
| Sub-Total: | | \$ | 86,745 | | |

| 4.0 STORI | M SEWER IMPROVEMENTS | Quantity | Units | Price | | Cost |
|------------|---------------------------|----------|-------|-------|----------|--------------|
| 4.01 | 24-inch Storm Sewer (RCP) | 17 | LF | \$ | 135.00 | \$ 2,295 |
| 4.02 | 24-inch FES | 2 | EA | \$ | 7,000.00 | \$ 14,000 |
| Sub-Total: | | | | \$ | | 16,295 |

| 5.0 LANDS | SCAPE IMPROVEMENTS | Quantity | Units | | Price | | st |
|-----------|--------------------|-------------------|--------|----|-------|-------|-------|
| 7.01 | Seed Broadcast | 41,995 | SF | \$ | 0.30 | \$ 12 | 2,599 |
| | | Sub-Total: | | | | 12 | 2,599 |
| | | | | | | | |
| | Phas | e 1C - Highway 52 | Total: | \$ | | 115, | 639 |

Opinion of Probable Construction Cost

Summerfield Filing 2 - Phase 1C - Weld County Road 7

Erie, CO Prepared By: Maddie Finley Checked By: Kevin Barney Date Prepared: 05/02/2025

| 1.0 PUBL | IC ROADWAY IMPROVEMENTS | Quantity | Units | Price | | Cost |
|------------|----------------------------------|----------|-------|--------------|---------|---------|
| 1.01 | Subgrade Preparation | 3,191 | SY | \$ 3.50 | \$ | 11,169 |
| 1.02 | Asphalt Pavement and Base Course | 2,553 | SY | \$ 42.00 | \$ | 107,226 |
| 1.03 | Street Signs | 7 | EA | \$ 350.00 | \$ | 2,450 |
| 1.04 | Striping | 4,412 | LF | \$ 8.00 | \$ | 35,296 |
| Sub-Total: | | | \$ | | 156,141 | |

| 2.0 SANITAR | RY SEWER IMPROVEMENTS | Quantity | Units | Price | | Cost |
|-------------|----------------------------------|----------|-------|-------|----------|--------------|
| 2.01 S | Sanitary Manhole (4' DIA) | 2 | EA | \$ | 7,000.00 | \$ 14,000 |
| 2.02 1 | 8-inch Sanitary Sewer Main (PVC) | 566 | LF | \$ | 150.00 | \$ 84,900 |
| Sub-Total: | | | \$ | | 98,900 | |

| Phase 1C - Weld County Road 7 Total: | \$ |
|--------------------------------------|----|
| | |

255,041

Opinion of Probable Construction Cost

Summerfield Filing 2 - Phase 1C

Erie, CO Prepared By: Christopher Graf Checked By: Kevin Barney Date Prepared: 05/02/2025

| 1.0 PUBL | IC ROADWAY IMPROVEMENTS | Quantity | Units | | Price | Cost |
|----------|----------------------------------|----------|-------|----|-----------|---------------|
| 1.01 | Subgrade Preparation | 16,766 | SY | \$ | 3.50 | \$ 58,682 |
| 1.02 | Asphalt Pavement and Base Course | 13,413 | SY | \$ | 42.00 | \$ 563,346 |
| 1.03 | Vertical Curb & Gutter | 1,772 | LF | \$ | 22.00 | \$ 38,984 |
| 1.04 | Mountable Curb & Gutter | 6,080 | LF | \$ | 22.00 | \$ 133,760 |
| 1.05 | Concrete Sidewalk | 42,700 | SF | \$ | 6.50 | \$ 277,550 |
| 1.06 | Concrete Crosspan | 175 | SY | \$ | 140.00 | \$ 24,500 |
| 1.07 | Curb Ramp | 20 | EA | \$ | 5,500.00 | \$ 110,000 |
| 1.08 | Street Signs | 12 | EA | \$ | 350.00 | \$ 4,200 |
| 1.09 | Street Lights | 15 | EA | \$ | 12,000.00 | \$ 180,000 |
| 1.1 | Striping | 1,802 | LF | \$ | 8.00 | \$ 14,416 |
| | Sub-Total: | | | | | 1,405,438 |

| 2.0 SANIT | ARY SEWER IMPROVEMENTS | Quantity | Units | Price | | Cost |
|------------|-----------------------------------|----------|-------|-------|----------|---------------|
| 2.01 | Sanitary Manhole (4' DIA) | 17 | EA | \$ | 7,000.00 | \$ 119,000 |
| 2.02 | 8-inch Sanitary Sewer Main (PVC) | 2,732 | LF | \$ | 65.00 | \$ 177,580 |
| 2.02 | 12-inch Sanitary Sewer Main (PVC) | 1,322 | LF | \$ | 100.00 | \$ 132,200 |
| 2.03 | Sanitary Sewer Service | 76 | EA | \$ | 2,000.00 | \$ 152,000 |
| Sub-Total: | | | \$ | | 580,780 | |

| 3.0 WATE | ER IMPROVEMENTS | Quantity | Units | Price | Cost |
|----------|----------------------------|----------|----------|----------------|---------------|
| 3.01 | 8-Inch Watermain (PVC) | 3,272 | LF | \$ 60.00 | \$ 196,320 |
| 3.02 | 12-inch Watermain (PVC) | 952 | LF | \$ 95.00 | \$ 90,440 |
| 3.03 | 6-inch Watermain (PVC) | 104 | LF | \$ 55.00 | \$ 5,720 |
| 3.04 | 6-inch Gate Valve | 8 | EA | \$ 2,200.00 | \$ 17,600 |
| 3.05 | 8-inch Gate Valve | 21 | EA | \$ 2,500.00 | \$ 52,500 |
| 3.06 | 12-inch Gate Valve | 7 | EA | \$ 5,000.00 | \$ 35,000 |
| 3.07 | 8" x 6" Reducer | 1 | EA | \$ 1,200.00 | \$ 1,200 |
| 3.08 | Temporary Blowoff Valve | 8 | EA | \$ 5,500.00 | \$ 44,000 |
| 3.09 | Fire Hydrant Assembly | 8 | EA | \$ 9,500.00 | \$ 76,000 |
| 3.1 | Fitting (Bend, Tee, Cross) | 16 | EA | \$ 1,200.00 | \$ 19,200 |
| 3.11 | Water Service and Meter | 76 | EA | \$ 2,500.00 | \$ 190,000 |
| | | Su | b-Total: | \$ | 727.980 |

| 4.0 STOR | M SEWER IMPROVEMENTS | Quantity | Units | | Price | Cost |
|----------|---------------------------|----------|-------|----|-----------|---------------|
| 4.01 | Storm Manhole (4' DIA) | 1 | EA | \$ | 5,500.00 | \$ 5,500 |
| 4.02 | Storm Manhole (8' DIA) | 2 | EA | \$ | 15,000.00 | \$ 30,000 |
| 4.03 | CDOT Box Manhole | 6 | EA | \$ | 16,500.00 | \$ 99,000 |
| 4.04 | Type R Inlet (5' LENGTH) | 1 | EA | \$ | 8,000.00 | \$ 8,000 |
| 4.05 | Type R Inlet (10' LENGTH) | 5 | EA | \$ | 12,500.00 | \$ 62,500 |
| 4.06 | 18-inch Storm Sewer (RCP) | 71 | LF | \$ | 100.00 | \$ 7,100 |
| 4.07 | 24-inch Storm Sewer (RCP) | 307 | LF | \$ | 135.00 | \$ 41,445 |
| 4.08 | 36-inch Storm Sewer (RCP) | 47 | LF | \$ | 185.00 | \$ 8,695 |
| 4.09 | 48-inch Storm Sewer (RCP) | 332 | LF | \$ | 280.00 | \$ 92,960 |
| 4.1 | 54-inch Storm Sewer (RCP) | 318 | LF | \$ | 330.00 | \$ 104,940 |
| 4.11 | 60-inch Storm Sewer (RCP) | 274 | LF | \$ | 375.00 | \$ 102,750 |
| 4.12 | 66-inch Storm Sewer (RCP) | 650 | LF | \$ | 420.00 | \$ 273,000 |
| 4.13 | 36-inch FES | 1 | EA | \$ | 10,000.00 | \$ 10,000 |
| 4.14 | 48-inch FES | 4 | EA | \$ | 12,000.00 | \$ 48,000 |
| 4.15 | 66-inch FES | 1 | EA | \$ | 17,000.00 | \$ 17,000 |
| 4.16 | Soil Rip Rap | 420 | SY | \$ | 100.00 | \$ 42,000 |
| | Sub-Total: | | | | | 952,890 |

| 7.02 Ornamental Trees: 1.5" Cal. 48 EA \$ 595.00 \$ 28,6 7.03 Evergreen Trees: 6' Ht. 1 EA \$ 750.00 \$ 7 7.04 Deciduous Shrubs: 5 Gal. 367 EA \$ 60.00 \$ 22,0 7.05 Evergreen Shrubs: 5 Gal. 367 EA \$ 60.00 \$ 22,0 7.05 Evergreen Shrubs: 5 Gal. 88 EA \$ 85.00 \$ 7,4 7.06 Ornamental Grasses: 1 Gal. 658 EA \$ 25.00 \$ 16,4 7.07 Seed Broadcast 772,360 SF \$ 0.30 \$ 231,7 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,7 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,7 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,6 | 5.0 LAND | SCAPE IMPROVEMENTS | Quantity | Units | | Price | Cost | |
|--|------------|---|----------|-------|----|--------|------|-----------|
| 7.03 Evergreen Trees: 6' Ht. 1 EA \$ 750.00 \$ 77 7.04 Deciduous Shrubs: 5 Gal. 367 EA \$ 60.00 \$ 22,0 7.05 Evergreen Shrubs: 5 Gal. 367 EA \$ 60.00 \$ 22,0 7.05 Evergreen Shrubs: 5 Gal. 88 EA \$ 85.00 \$ 7,4 7.06 Ornamental Grasses: 1 Gal. 658 EA \$ 25.00 \$ 16,4 7.07 Seed Broadcast 772,360 SF \$ 0.30 \$ 231,7 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,7 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,7 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 1.50 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 3.00 \$ 2,421,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.01 | Deciduous Trees: 2" Cal. (Lot canopy trees not included - Builder Responsibility) | 73 | EA | \$ | 695.00 | \$ | 50,735 |
| 7.04 Deciduous Shrubs: 5 Gal. 367 EA \$ 60.00 \$ 22,0 7.05 Evergreen Shrubs: 5 Gal. 88 EA \$ 85.00 \$ 7,4 7.06 Ornamental Grasses: 1 Gal. 658 EA \$ 25.00 \$ 16,4 7.07 Seed Broadcast 772,360 SF \$ 0.30 \$ 231,7 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,7 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,7 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 1.60 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 3.00 \$ 2,421,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.02 | Ornamental Trees: 1.5" Cal. | 48 | EA | \$ | 595.00 | \$ | 28,560 |
| 7.05 Evergreen Shrubs: 5 Gal. 88 EA \$ 85.00 \$ 7,4 7.06 Ornamental Grasses: 1 Gal. 658 EA \$ 25.00 \$ 16,4 7.07 Seed Broadcast 772,360 SF \$ 0.30 \$ 231,7 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,7 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,1 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 1.6 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 116,5 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 3.00 \$ 2,421,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.03 | Evergreen Trees: 6' Ht. | 1 | EA | \$ | 750.00 | \$ | 750 |
| 7.06 Ornamental Grasses: 1 Gal. 658 EA \$ 25.00 \$ 16,4 7.07 Seed Broadcast 772,360 SF \$ 0.30 \$ 231,7 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,77 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,1 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 11,6 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 3.00 \$ 2,421,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.04 | Deciduous Shrubs: 5 Gal. | 367 | EA | \$ | 60.00 | \$ | 22,020 |
| 7.07 Seed Broadcast 772,360 SF \$ 0.30 \$ 231,7 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,7 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,1 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 1 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,7 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.05 | Evergreen Shrubs: 5 Gal. | 88 | EA | \$ | 85.00 | \$ | 7,480 |
| 7.14 RTF Sod w/ Soil Prep 4 cy 26,774 SF \$ 1.00 \$ 26,774 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,1 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 1.70 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.06 | Ornamental Grasses: 1 Gal. | 658 | EA | \$ | 25.00 | \$ | 16,450 |
| 7.15 Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy 8,112 SF \$ 1.50 \$ 12,1 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 1 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.07 | Seed Broadcast | 772,360 | SF | \$ | 0.30 | \$ | 231,708 |
| 7.16 1.5" Horizon River Rock Mulch 3" depth w/ Fabric 56 SF \$ 1.85 \$ 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,3 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,6 | 7.14 | RTF Sod w/ Soil Prep 4 cy | 26,774 | SF | \$ | 1.00 | \$ | 26,774 |
| 7.18 4" x 1/8" Rolled Top Steel Edging 1,455 LF \$ 8.00 \$ 11,6 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,6 | 7.15 | Gorilla Hair Wood Mulch 3" depth w/ Soil Prep 4 cy | 8,112 | SF | \$ | 1.50 | \$ | 12,168 |
| 7.19 Concrete Sidewalk (Open Space Trail system) 17,750 SF \$ 6.50 \$ 115,5 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.16 | 1.5" Horizon River Rock Mulch 3" depth w/ Fabric | 56 | SF | \$ | 1.85 | \$ | 104 |
| 7.2 Irrigation System 807,302 SF \$ 3.00 \$ 2,421,5 | 7.18 | 4" x 1/8" Rolled Top Steel Edging | 1,455 | LF | \$ | 8.00 | \$ | 11,640 |
| | 7.19 | Concrete Sidewalk (Open Space Trail system) | 17,750 | SF | \$ | 6.50 | \$ | 115,375 |
| Sub Tataly & 2045 (| 7.2 | Irrigation System | 807,302 | SF | \$ | 3.00 | \$ | 2,421,906 |
| Sub-Total: \$ 2,945,6 | Sub-Total: | | | | | | | 2,945,670 |

| Phase 1C Onsite Total: | \$ 6,612,757 |
|------------------------|-----------------|
| Cost Per Lot: | \$ 120,232 |

Opinion of Probable Construction Cost

Summerfield Filing 2 - Phase 1D

Erie, CO Prepared By: Maddie Finley Checked By: Kevin Barney Date Prepared: 05/02/2025

| 1.0 PUBL | IC ROADWAY IMPROVEMENTS | Quantity | Units | | Price | | Cost |
|----------|---|------------|--------|----|------------|-------|---------|
| 1.01 | Traffic Signal (State Highway 52 & Meadows Boulevard) | 1 | LS | \$ | 600,000.00 | \$ | 600,000 |
| | | Sub-Total: | | | | 600,0 | |
| | | | | | | | |
| | | Phase 1D | Total: | \$ | | | 600.000 |

Exhibit C Reimbursements and Fees

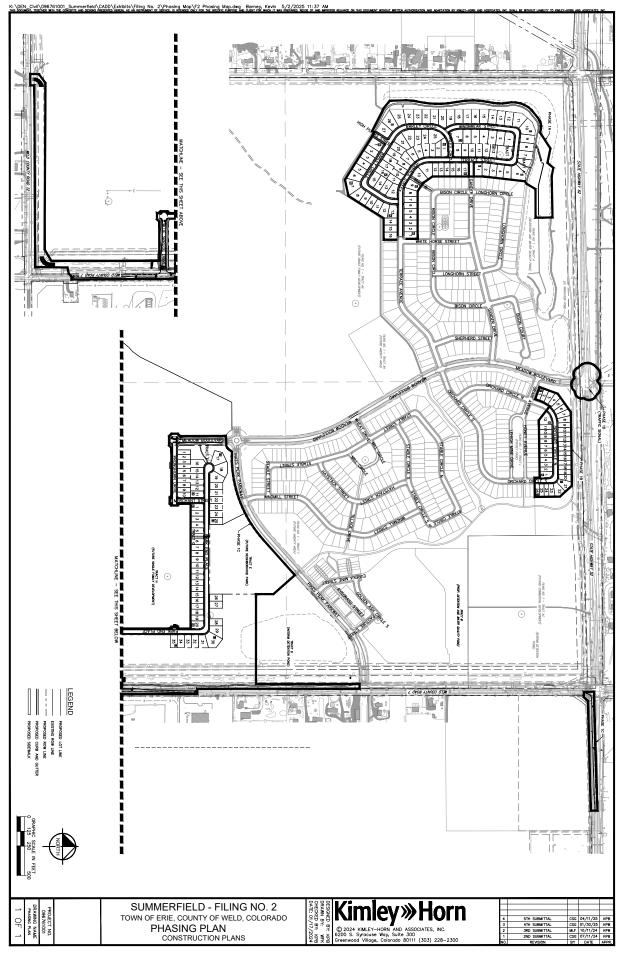
Reimbursements

| Improvement | Amount (\$) | Payment Timing |
|----------------------------|-------------|-----------------------|
| Connection to the North | 78,310 | Within 30 days of the |
| Water Reclamation Facility | | Effective Date |

Fees

| Туре | Amount (\$) Payment Timi | ng |
|-------------|--|-------------|
| Park Fees | 55,037.14 (satisfying 2.25 Within 30 da | ys of the |
| | acres of the 25 total acres Effective Date | |
| | required by the Annexation | |
| | Agreement) Additional, | |
| | 6,917.72 deficit from Filing | |
| | 1 included in above | |
| | amount. | |
| School Fees | 1,143 per applicable non- Proof of payme | ent must be |
| | age restricted lot submitted wit | h building |
| | permit applicati | on |

Exhibit D Phasing Plan



DEDICATION AND OWNERSHIP STATEMENT THE UNDERSIGNED BEING ALL THE OWNERS MORTGAGEES OR LIEN HOLDERS OF CERTAIN LANDS IN THE TOWN OF ERIE. COUNTY

| AS SHOWN HEREON UNDER THE NAME AT HEREON ARE DEDICATED TO THE TOWN A | | | | |
|---|----------------|-----------------|---------|-----|
| CDG SUMMERFIELD, INC., A COLORADO CO | | | | |
| 3Y: | | DATE: | | |
| PRINTED NAME: | | | | |
| TITLE: | | | | |
| ATTEST: | | DATE: | | |
| , | | | | |
| STATE OF COLORADO)) SS. COUNTY OF) | | | | |
| ACKNOWLEDGED BEFORE ME THIS | DAY OF | | , 20 BY | AS |
| · | | | | |
| WITNESS MY HAND AND OFFICIAL SEAL | | | | |
| | | | (SEAL) | |
| NOTARY PUBLIC | - | | (SLAL) | |
| MY COMMISSION EXPIRES: | | | | |
| TL SUMMERFIELD LLC, A DELAWARE LIMIT | ED LIABILITY (| COMPANY | | |
| BY: TOLL SOUTHWEST, LLC, A DELAWARE ITS ADMINISTRATIVE MEMBER | E LIMITED LIAE | BILITY COMPANY, | | |
| BY: | | DATE: | | |
| PRINTED NAME: | | | | |
| TITLE: | | | | |
| STATE OF COLORADO) | | | | |
| STATE OF COLORADO)) SS. COUNTY OF) | | | | |
| ACKNOWLEDGED BEFORE ME THIS | DAY OF | | , 20 BY | AS |
| NOTARY PUBLIC | | | (SEAL) | |
| MY COMMISSION EXPIRES: | | | | |
| SECTION 4 INVESTORS, LLC, A COLORADO | | BILITY COMPANY | | |
| PRINTED NAME: | | | | |
| TITLE: | | | | |
| STATE OF COLORADO) | | | | |
|) SS. COUNTY OF) | | | | |
| ACKNOWLEDGED BEFORE ME THIS | DAY OF | | 20 BY | ۵۵ |
| | | | , 20 D1 | //3 |
| MITNESS MY HAND AND OFFICIAL SEAL | | | | |
| | | | | |
| NOTARY PUBLIC | _ | | (SEAL) | |
| MY COMMISSION EXPIRES: | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| SHEET INDE | Y | | | |
| SHEET 1: LEGAL DESCRIPTION & CE | | | | |
| NOTES AND TABLES | | эт | | |
| SHEET 2: OVERALL SHEET, LAND SU AND TRACT SUMMARY CH | | . 1 | | |
| SHEETS 3–11: DETAIL SHEETS | | | | |

DEVELOFER/AFFLICANI TOLL BROTHERS 10 INVERNESS DRIVE EAST, SUITE 125

ENGLEWOOD, COLORADO 80112 303.708.0730 CONTACT: TIM WESTBROOK EMAIL: TWESTBROOK@TOLLBROTHERS.COM EMAIL: KEVIN.BARNEY@KIMLEY-HORN.COM

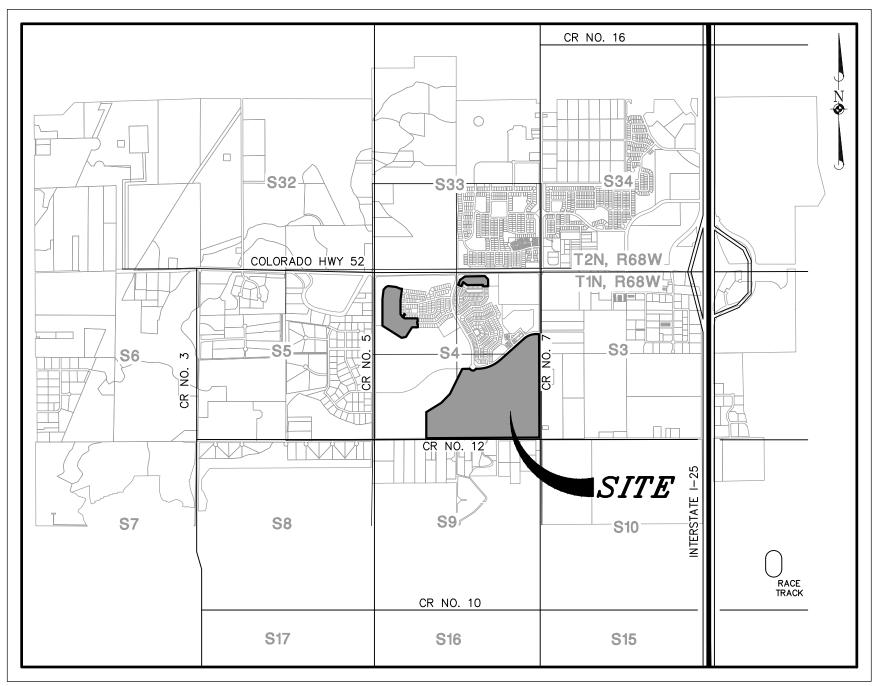
CIVIL ENGINEER KIMLEY-HORN AND ASSOCIATES. INC. 4582 SOUTH ULSTER STREET, SUITE 1500 DENVER, COLORADO 80237 303.228.2300 CONTACT: KEVIN BARNEY

LAND SURVEIUR MANHARD CONSULTING

7600 EAST ORCHARD ROAD, SUITE 150-N GREENWOOD VILLAGE, COLORADO 80111 303.708.0500 CONTACT: STACY JACOBS EMAIL: SJACOBS@MANHARD.COM

SUMMERFIELD FILING NO. 2

A REPLAT OF TRACTS B, J, AD AND AE, SUMMERFIELD FILING NO. 1 LOCATED IN SECTION 4, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO 204.3654 ACRES - 191 LOTS, 8 TRACTS FP-00101695-2024



VICINITY MAP (1" = 2000')

TITLE VERIFICATION CERTIFICATE

| WE LAND TITLE (| GUARANTY | COMPANY, | DO HEREBY | CERTIFY | 'THAT WE | HAVE E | XAMINED | THE | TITLE OF | - ALL | LAND | PLATTE | D HE | EREON |
|-----------------|------------|-------------|------------|---------|----------|---------|----------|-------|----------|--------|--------|--------|------|-------|
| AND THAT TITLE | | | | | | | | | | | | | | |
| EXCEPT AS SET | FORTH IN 1 | THE TITLE (| COMMITMENT | ORDER | NO. RND2 | 5209106 | .2-2 WIT | ГНА (| COMMITM | IENT D | DATE O | F MAY | 29, | 2025: |
| | | | | | | | | | | | | | | |
| LAND TITLE GUAI | RANTY COM | IPANY | | | | | | | | | | | | |
| BY: | | | | DA | ATE: | | — | | | | | | | |

| PRINTED NAME: | | | |
|---|--------|---------|----|
| TITLE: | | | |
| STATE OF COLORADO)) SS. COUNTY OF) | | | |
| , | DAY OF | , 20 BY | AS |
| WITNESS MY HAND AND OFFICIAL SEAL | | | |
| NOTARY PUBLIC | | (SEAL) | |
| MY COMMISSION EXPIRES: | | | |

SURVEYOR'S CERTIFICATE

I, STACY LYNN JACOBS, 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 AUGUST 4, 2023, 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 9TH DAY OF JUNE, 2025.

STACY LYNN JACOBS COLORADO PLS NO. 38495 FOR AND ON BEHALF OF MANHARD CONSULTING 7600 E. ORCHARD ROAD, SUITE 150-N GREENWOOD VILLAGE, COLORADO 80111 (303) 708-0500



- AT 5:00 P.M.
- NAMING SAID PERSON(S) OR ENTITY(S).

- 2012, SHOWN AS NOT PRINTED.

- TOWN OF ERIE REQUIREMENTS.

- OF ERIE.
- DEVELOPMENT AGREEMENT.

_____, 20____.

PLANNING & DEVELOPMENT DIRECTOR

| THIS PLAT IS TO BE KNOW | 'N | A |
|-------------------------|----|---|
| PASSED AND ADOPTED AT | A | I |
| OF | | |

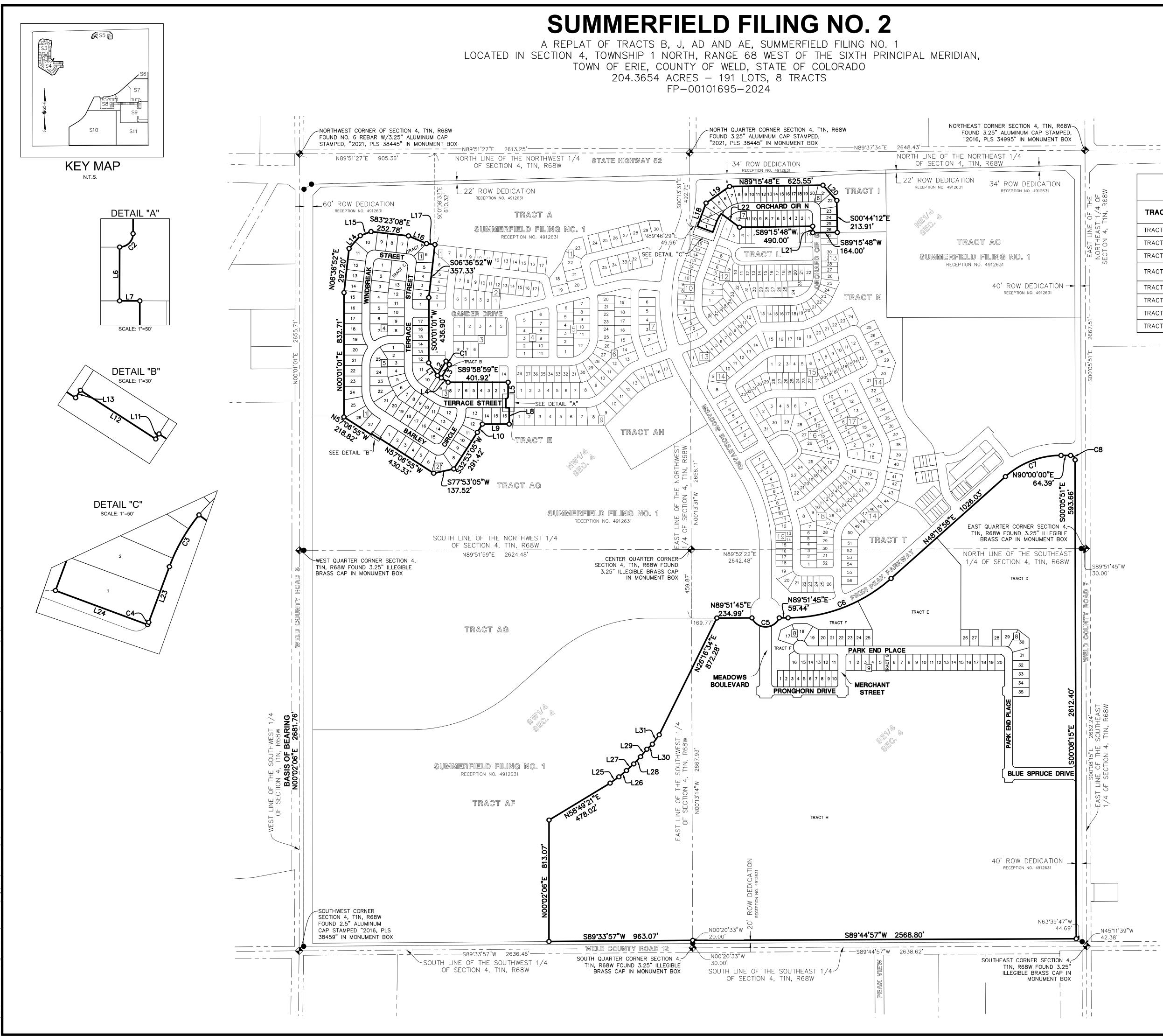
| MAYOR | | | |
|-------|------|------|------|
| | | | |

ATTEST TOWN CLERK

STATE OF COLORADO)) SS. COUNTY OF WELD

COUNTY CLERK AND RECORDER





(IN FEET) 1 inch = 300 ft. U.S. SURVEY FEET

GRAPHIC SCALE 300 450 600

TRACT SUMMARY CHART

S89°51'45"W

30.00'

44.69'

N45°11'39"W

- ____ _ _ _

42.38'

EAS NOR

INE AST 4, 1

| TRACT | AREA (S.F.) | AREA (AC.) | USE |
|---------|----------------|---------------|---|
| TRACT A | 10,224 | 0.2347 | PRIVATE OPEN SPACE & UTILITIES |
| TRACT B | 6,482 | 0.1488 | PRIVATE OPEN SPACE & UTILITIES |
| TRACT C | 14,089 | 0.3234 | PRIVATE OPEN SPACE & UTILITIES |
| TRACT D | 1,173,178 | 26.9325 | FUTURE DEVELOPMENT, UTILITIES, DRAINAGE & DETENTION |
| TRACT E | 344,573 | 7.9103 | NEIGHBORHOOD PARK |
| TRACT F | 96,226 | 2.2091 | PRIVATE OPEN SPACE & UTILITIES |
| TRACT G | 4,735 | 0.1087 | PRIVATE OPEN SPACE & UTILITIES |
| TRACT H | 5,441,136 | 124.9113 | FUTURE DEVELOPMENT |
| | • | | |

| LAND S | UMMA | ARY C | HART |
|------------------|-------------|------------|------------|
| TYPE | AREA (S.F.) | AREA (AC.) | % OF TOTAL |
| RESIDENTIAL LOTS | 1,290,861 | 29.6341 | 14.50% |
| TRACTS | 7,090,644 | 162.7788 | 79.65% |
| ROW | 520,653 | 11.9526 | 5.85% |
| TOTAL | 8,902,158 | 204.3654 | 100.00% |

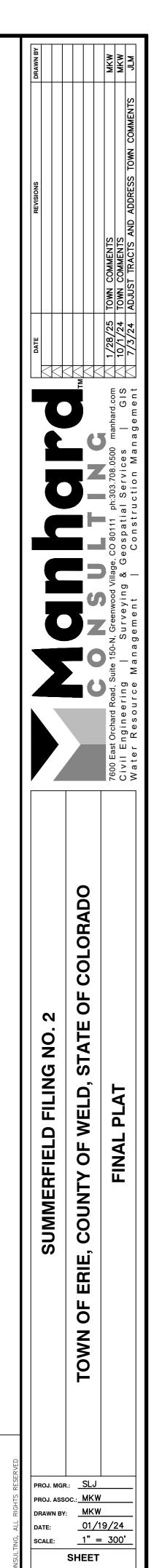
| | CURVE TABLE | | | | | | |
|-------|---------------------|----------|-----------------|----------------------|----------------|--|--|
| CURVE | DELTA | RADIUS | LENGTH | CHORD BEARING | CHORD | | |
| C1 | 32 ° 23'33" | 56.00' | 31.66' | S42*51'21"E | 31.24' | | |
| C3 | 18 ° 58'29" | 202.00' | 66.90' | S29*49'01"W | 66.59 ' | | |
| C4 | 11 ° 32'13" | 15.00' | 3.02' | N26°05'53"E | 3.02' | | |
| C5 | 132 ° 50'37" | 100.00' | 231.86' | N89 ° 51'45"E | 183.30' | | |
| C6 | 41 ° 32'47" | 1040.00' | 754.13 ' | N69°05'22"E | 737.71' | | |
| C7 | 41 ° 41'02" | 560.00' | 407.41' | N69°09'29"E | 398.49' | | |
| C8 | 89 ° 54'09" | 30.00' | 47.07 ' | S45*02'55"E | 42.39' | | |

| LINE TABLE | | | | | |
|------------|----------------------|---------|--|--|--|
| LINE | BEARING | LENGTH | | | |
| L1 | S34°28'10"E | 103.15' | | | |
| L2 | N30*56'52"E | 111.98' | | | |
| L3 | S30 ° 56'52"W | 103.77' | | | |
| L4 | S57 ° 06'55"E | 54.36' | | | |
| L5 | S00°01'01"W | 95.00' | | | |
| L6 | S00°01'01"W | 60.00' | | | |
| L7 | N89 ° 58'59"W | 22.58' | | | |
| L8 | S00°01'01"W | 110.00' | | | |
| L9 | N89 ° 58'59"W | 180.00' | | | |
| L10 | S31°02'25"W | 64.74' | | | |
| L11 | S32 ° 53'05"W | 4.00' | | | |
| L12 | S57 ° 06'55"E | 60.00' | | | |
| L13 | N32*53'05"E | 6.00' | | | |
| L15 | N69°02'19"E | 76.93' | | | |
| L16 | S66 ° 57'43"E | 130.86' | | | |

| LINE TABLE | | | | | |
|------------|-------------------------------|---------|--|--|--|
| LINE | BEARING | LENGTH | | | |
| L17 | S83°23'08"E | 56.89' | | | |
| L18 | N20 ° 19'46"E | 166.23' | | | |
| L19 | N54 ° 47'47"E | 192.98' | | | |
| L20 | S42 ° 17'29"E | 138.00' | | | |
| L21 | N00°44'12"W | 43.17' | | | |
| L22 | N53°24'49"W | 151.66' | | | |
| L23 | S20 ° 19'46"W | 66.10' | | | |
| L24 | N69 ° 40'14"W | 109.70' | | | |
| L25 | N54 * 30'41"E | 72.07' | | | |
| L26 | N50°51'41"E | 66.08' | | | |
| L27 | N47°12'41"E | 66.08' | | | |
| L28 | N43 ° 33'41"E | 66.08' | | | |
| L29 | N39 ° 54'41"E | 66.08' | | | |
| L30 | N47 ° 47 ' 43"E | 49.45' | | | |
| L31 | N36°05'19"E | 78.04' | | | |

MONUMENT LEGEND

- = FOUND SECTION CORNER AS NOTED FOUND NO. 5 REBAR WITH
- = 1.25" RED PLASTIC CAP
- STAMPED, "PLS 38020" SET 18" LONG NO. 5 REBAR WITH
- _ 1.25" YELLOW PLASTIC CAP 0 STAMPED, "PLS 38567" FLUSH WITH GROUND



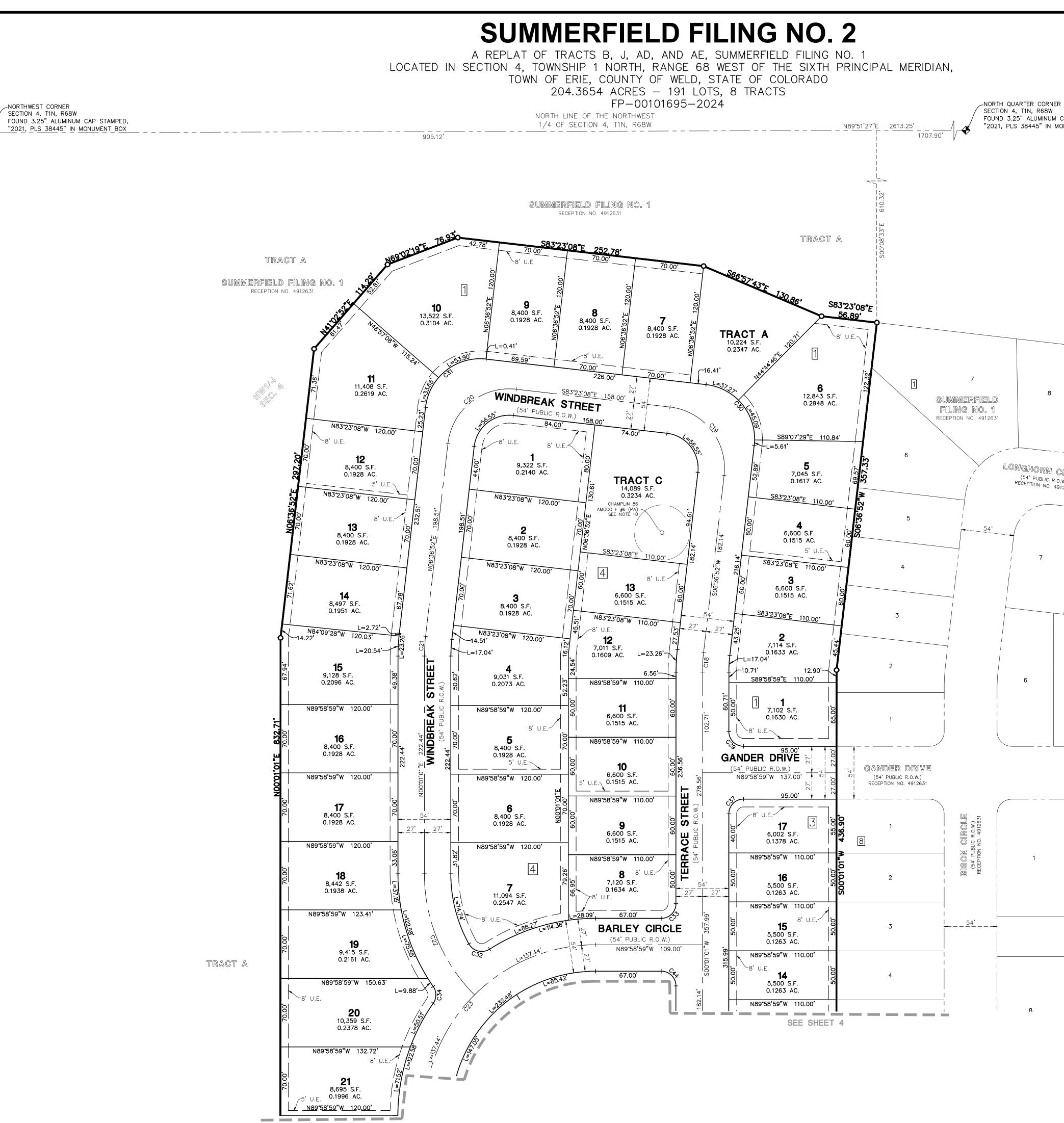
FOR AND ON BEHALF OF

MANHARD CONSULTING

OF



SEE SHEET 4





NORTHWEST CORNER SECTION 4, T1N, R68W

| R CAP STAMPED, MONUMENT BOX | |
|-----------------------------------|---|
| | N |
| | |

7

| | CURVE TABLE | | | | | |
|-------|--------------------|-----------------|---------|----------------------|---------|--|
| CURVE | DELTA | RADIUS | LENGTH | CHORD BEARING | CHORD | |
| C18 | 6 ° 35'51" | 175.00' | 20.15' | S03°18'57"W | 20.14' | |
| C19 | 90 ° 00'00" | 63.00' | 98.96' | S38°23'08"E | 89.10' | |
| C20 | 90 ° 00'00" | 63.00' | 98.96' | N51°36'52"E | 89.10' | |
| C21 | 6 ° 35'51" | 175.00' | 20.15' | N03°18'57"E | 20.14' | |
| C22 | 45 ° 00'00" | 175.00' | 137.44' | N22°28'59"W | 133.94' | |
| C23 | 90°00'00" | 175.00 ' | 274.89' | S45°01'01"W | 247.49' | |
| C29 | 90 ° 00'00" | 15.00' | 23.56' | N44°58'59"W | 21.21' | |
| C30 | 90 ° 00'00" | 56.00' | 87.96' | N38°23'08"W | 79.20' | |
| C31 | 90°00'00" | 56.00' | 87.96' | S51°36'52"W | 79.20' | |
| C32 | 93 ° 30'15" | 15.00' | 24.48' | N75°40'11"W | 21.85' | |
| C33 | 90 ° 00'00" | 15.00' | 23.56' | S45°01'01"W | 21.21' | |
| C34 | 69 ° 32'06" | 15.00' | 18.20' | S00°01'01"W | 17.11' | |
| C37 | 90°00'00" | 15.00' | 23.56' | N45°01'01"E | 21.21' | |
| C44 | 90°00'00" | 15.00' | 23.56' | S44 ° 58'59"E | 21.21' | |

GRAPHIC SCALE 50 75 100

(IN FEET)

1 inch = 50 ft.U.S. SURVEY FEET

€ S5 **1**

S10

KEY MAP

N.T.S.

S11

150



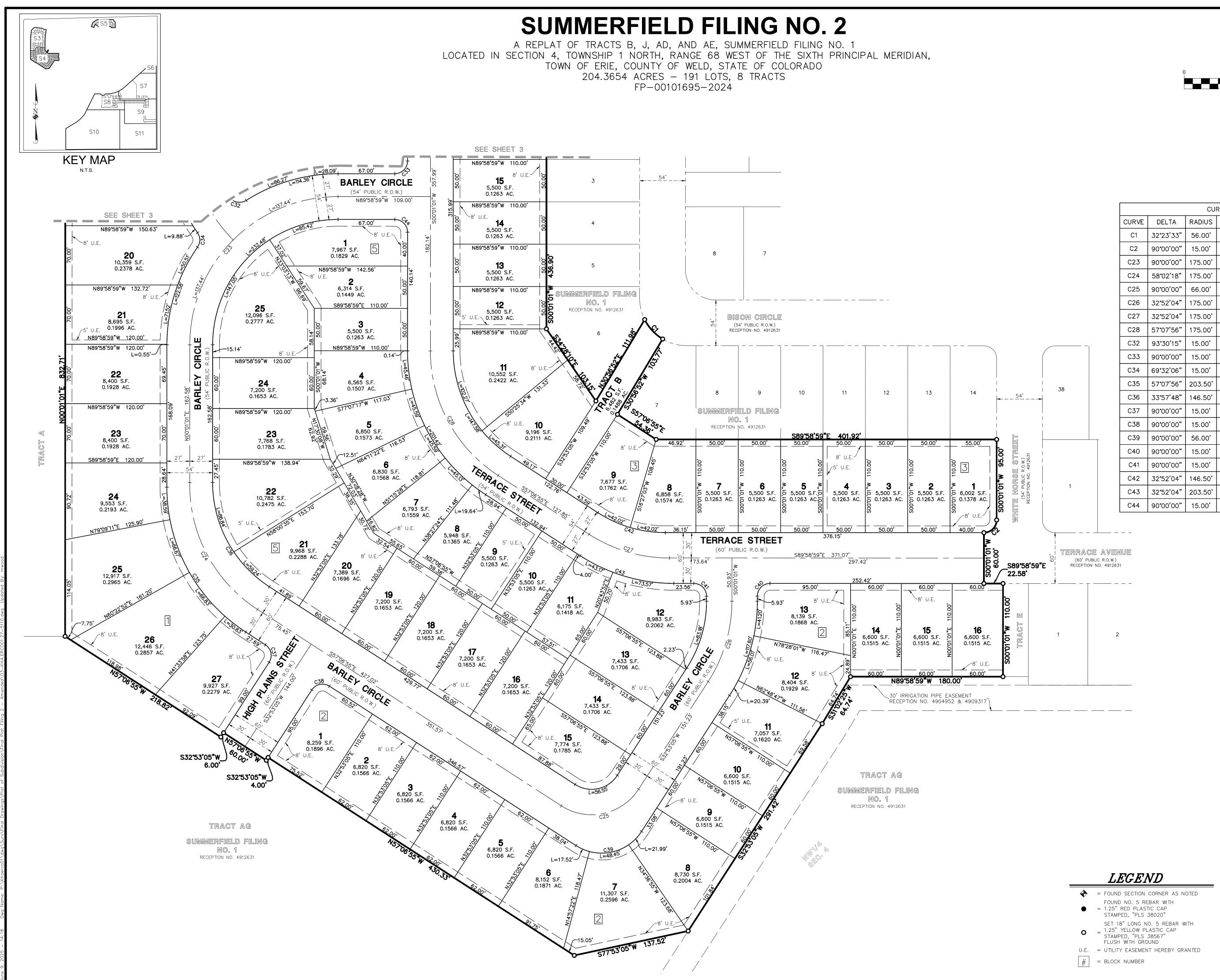
- FOUND SECTION CORNER AS NOTED FOUND NO. 5 REBAR WITH
- = 1.25" RED PLASTIC CAP STAMPED, "PLS 38020"
- SET 18" LONG NO. 5 REBAR WITH = 1.25" YELLOW PLASTIC CAP 0
- STAMPED, "PLS 38567"
- FLUSH WITH GROUND U.E. = UTILITY EASEMENT HEREBY GRANTED
- # = BLOCK NUMBER



FOR AND ON BEHALF OF MANHARD CONSULTING

| SCALE: | PROJ. MG PROJ. ASS PROJ. ASS DRAWN B' DATE: | SUMMERFIELD FILING NO. 2 | | REVISIONS | DRAWN BY |
|----------------------------|---|---|--|--|------------|
| <u>1" =</u> SHEET OF | soc.: <u>MKW</u> y: <u>MKW</u> | TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO | | | |
| | | FINAL PLAT | 7600 East Orchard Road, Suite 150-N, Greenwood Village, CO 80111 ph:303.708.0500 manhard.com Civil Engineering Surveying & Geospatial Services GIS 10/1/24 / Water Resource Management Construction Management | 1/28/25REVISION TO EASEMENT10/1/24ADDRESS TOWN COMMENTS7/3/24ADJUST TRACTS AND ADDRESS TOWN COMMENTS | MKW MKW |

61

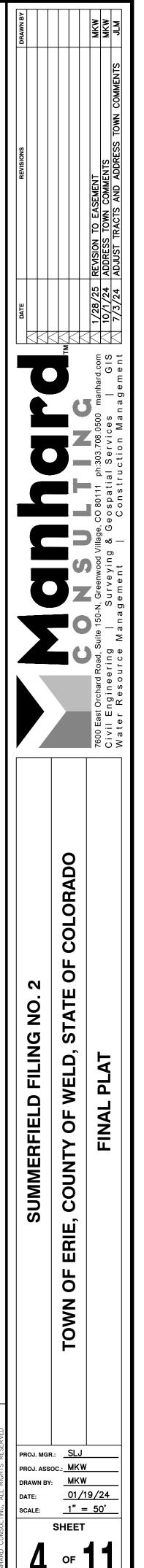


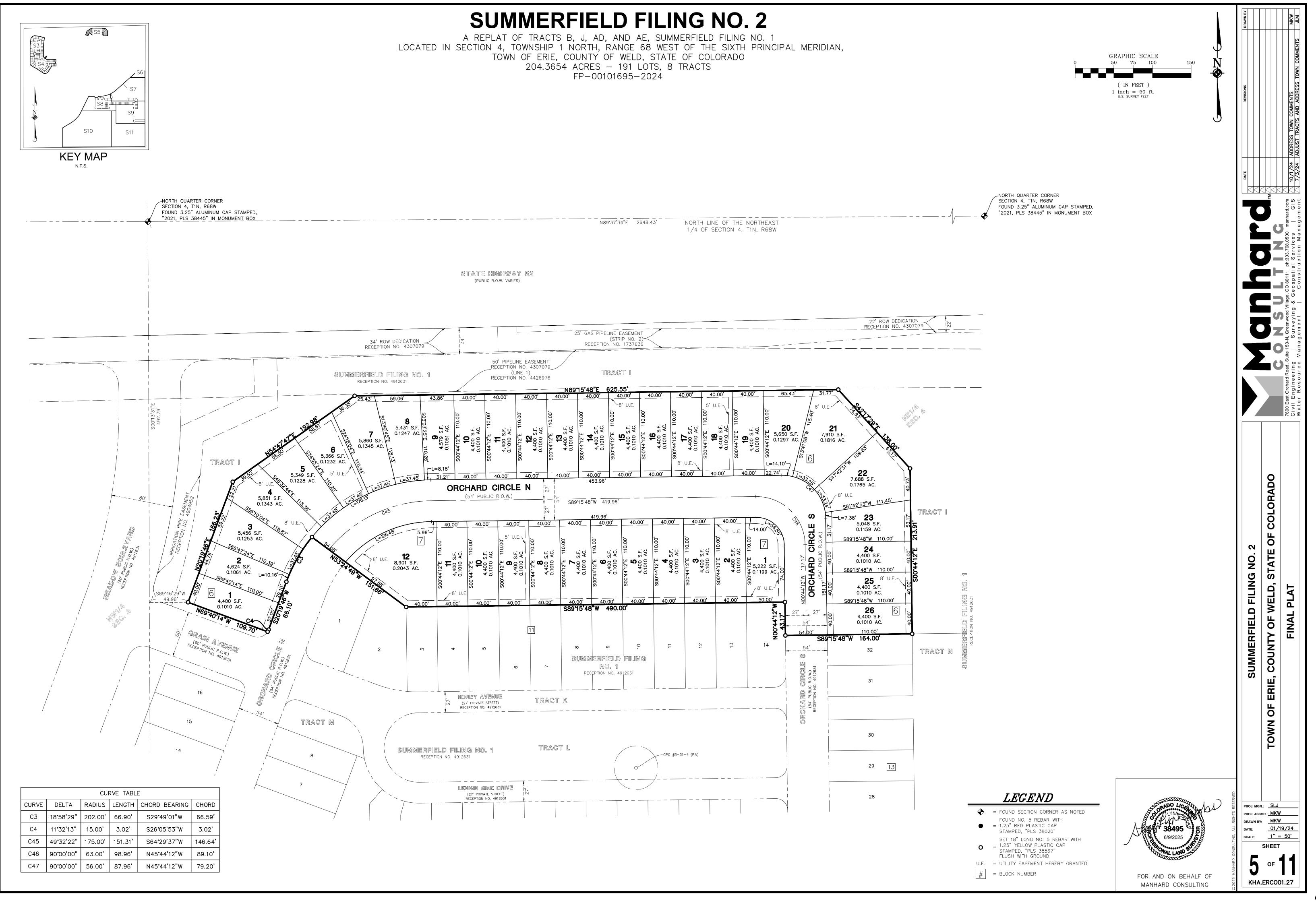
GRAPHIC SCALE 50 75 100 (IN FEET) 1 inch = 50 ft.U.S. SURVEY FEET

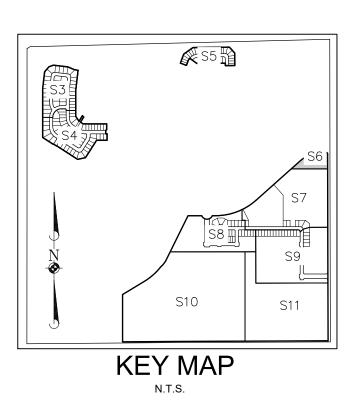
| | CURVE TABLE | | | | | | |
|-------|--------------------|---------|---------|----------------------|---------|--|--|
| CURVE | DELTA | RADIUS | LENGTH | CHORD BEARING | CHORD | | |
| C1 | 32°23'33" | 56.00' | 31.66' | S42°51'21"E | 31.24' | | |
| C2 | 90°00'00" | 15.00' | 23.56' | S45°01'01"W | 21.21' | | |
| C23 | 90°00'00" | 175.00' | 274.89' | S45°01'01"W | 247.49 | | |
| C24 | 58 ° 02'18" | 175.00' | 177.27' | N28°06'17"W | 169.79 | | |
| C25 | 90°00'00" | 66.00' | 103.67' | S77*53'05"W | 93.34' | | |
| C26 | 32 ° 52'04" | 175.00' | 100.39' | S16°27'03"W | 99.02' | | |
| C27 | 32 ° 52'04" | 175.00' | 100.39' | S73 ° 32'57"E | 99.02' | | |
| C28 | 57 ° 07'56" | 175.00' | 174.50' | S28 ° 32'57"E | 167.36 | | |
| C32 | 93 ° 30'15" | 15.00' | 24.48' | N75°40'11"W | 21.85' | | |
| C33 | 90 ° 00'00" | 15.00' | 23.56' | S45°01'01"W | 21.21' | | |
| C34 | 69 ° 32'06" | 15.00' | 18.20' | S00°01'01"W | 17.11' | | |
| C35 | 57 ° 07'56" | 203.50' | 202.92' | S28 ° 32'57"E | 194.62' | | |
| C36 | 33 ° 57'48" | 146.50' | 86.84' | S16 ° 57'53"E | 85.58' | | |
| C37 | 90 ° 00'00" | 15.00' | 23.56' | S12°06'55"E | 21.21' | | |
| C38 | 90 ° 00'00" | 15.00' | 23.56' | N77 ° 53'05"E | 21.21' | | |
| C39 | 90°00'00" | 56.00' | 87.96' | N77°53'05"E | 79.20' | | |
| C40 | 90°00'00" | 15.00' | 23.56' | N45°01'01"E | 21.21' | | |
| C41 | 90°00'00" | 15.00' | 23.56' | S44°58'59"E | 21.21' | | |
| C42 | 32 ° 52'04" | 146.50' | 84.04' | S73 ° 32'57"E | 82.89' | | |
| C43 | 32 ° 52'04" | 203.50' | 116.74' | S73°32'57"E | 115.14' | | |
| C44 | 90°00'00" | 15.00' | 23.56' | S44°58'59"E | 21.21' | | |



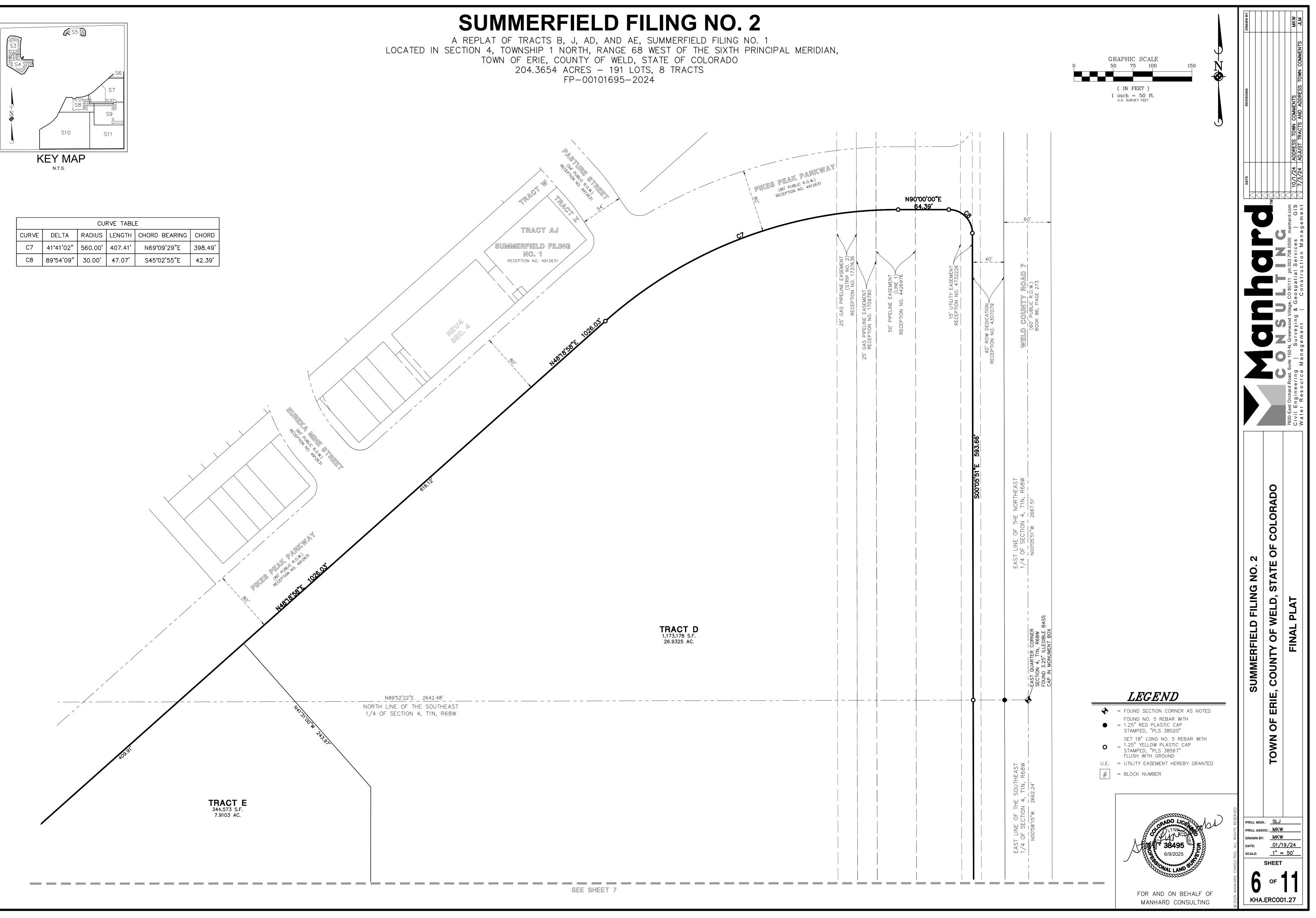
FOR AND ON BEHALF OF MANHARD CONSULTING

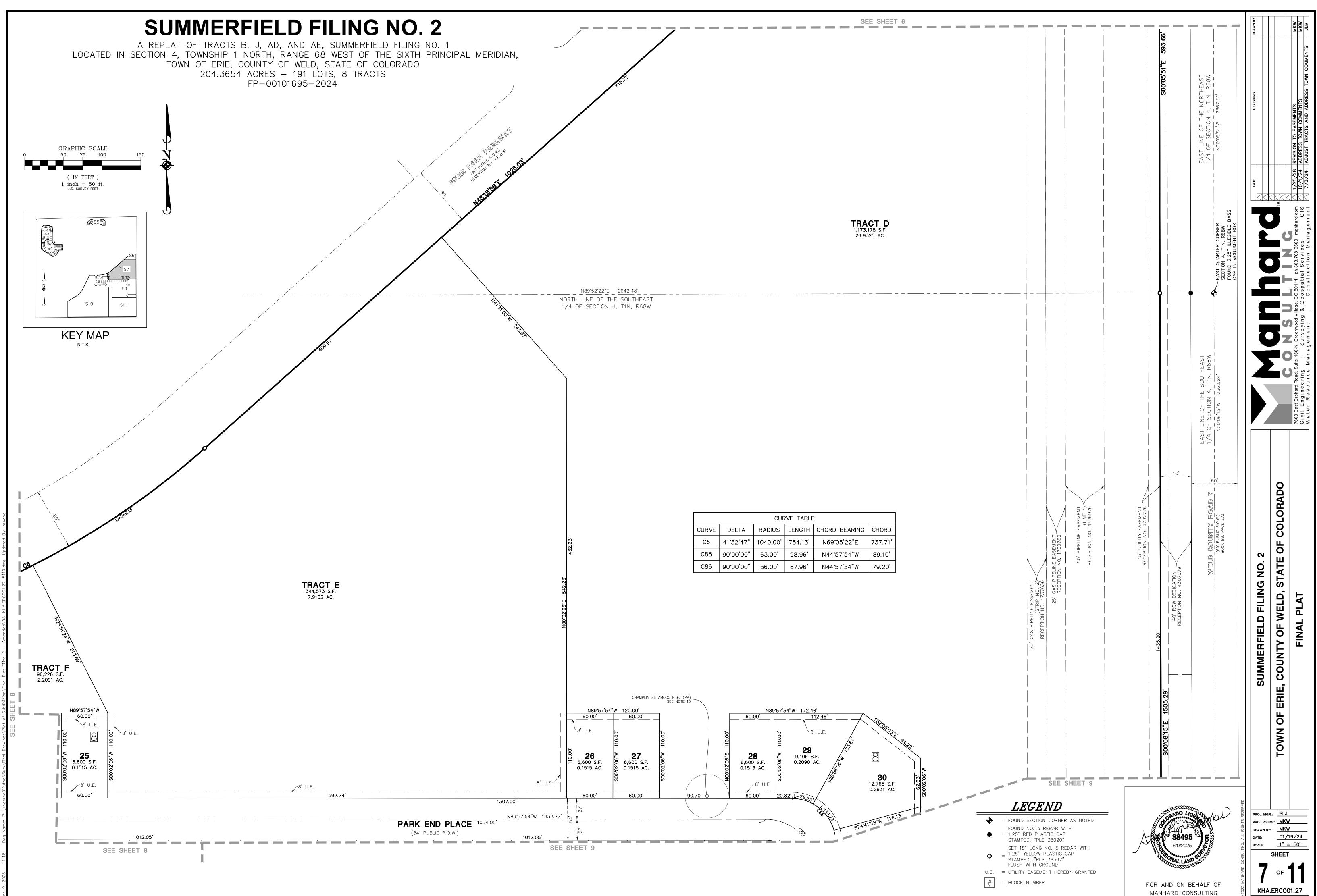


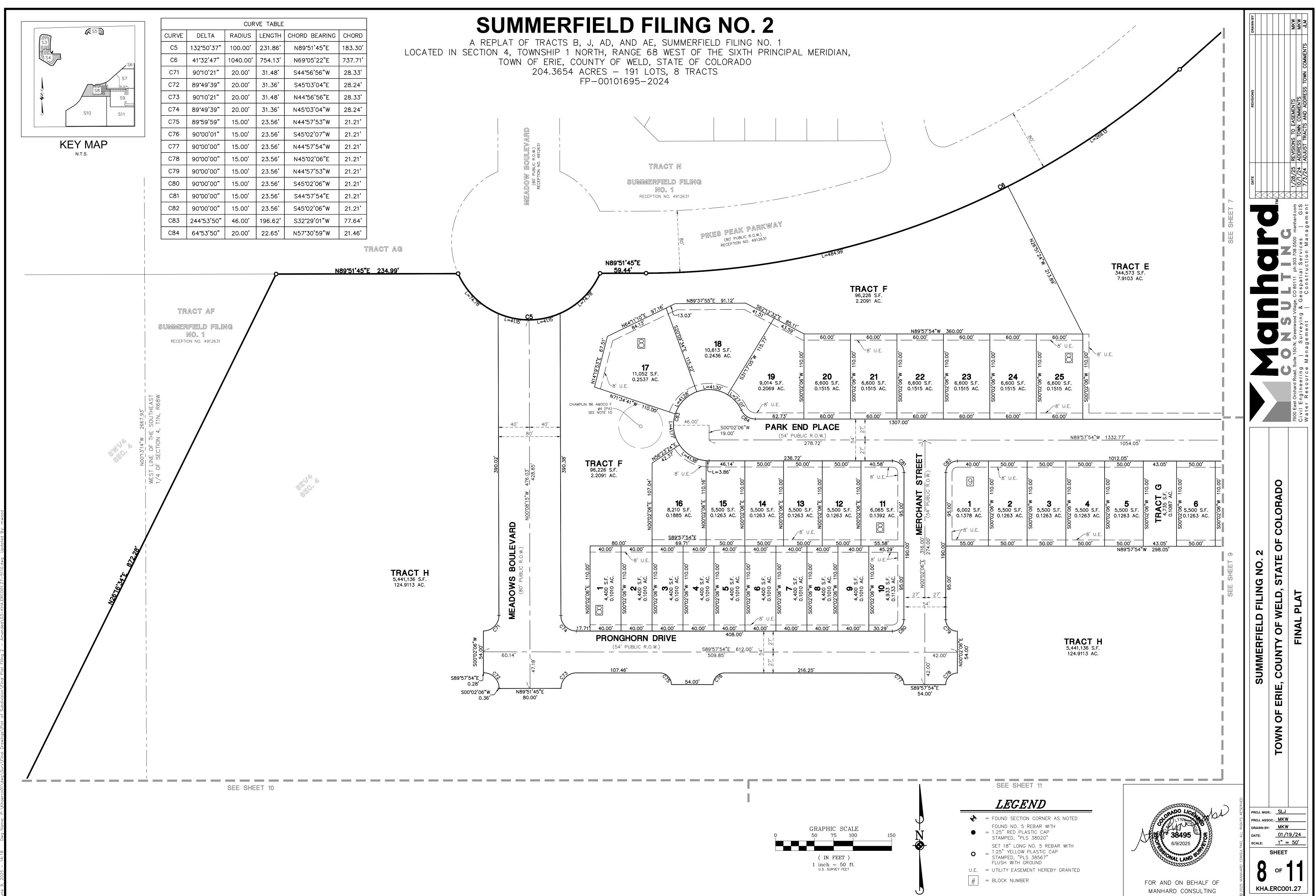




| | | CUI | RVE TABL | E | |
|-------|--------------------|---------|----------------|---------------|---------|
| CURVE | DELTA | RADIUS | LENGTH | CHORD BEARING | CHORD |
| C7 | 41 ° 41'02" | 560.00' | 407.41' | N69°09'29"E | 398.49' |
| C8 | 89°54'09" | 30.00' | 47.07 ' | S45°02'55"E | 42.39' |

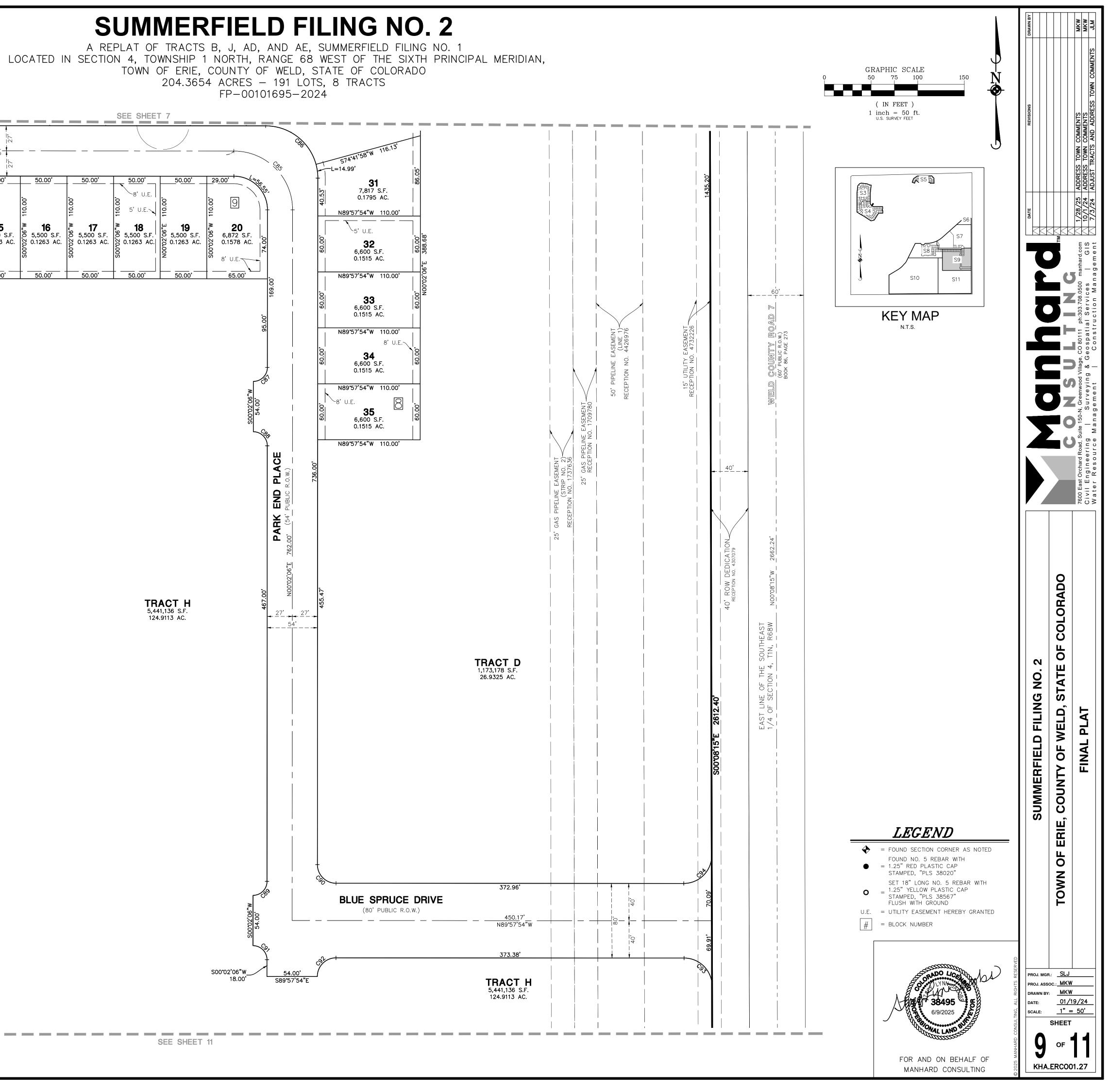


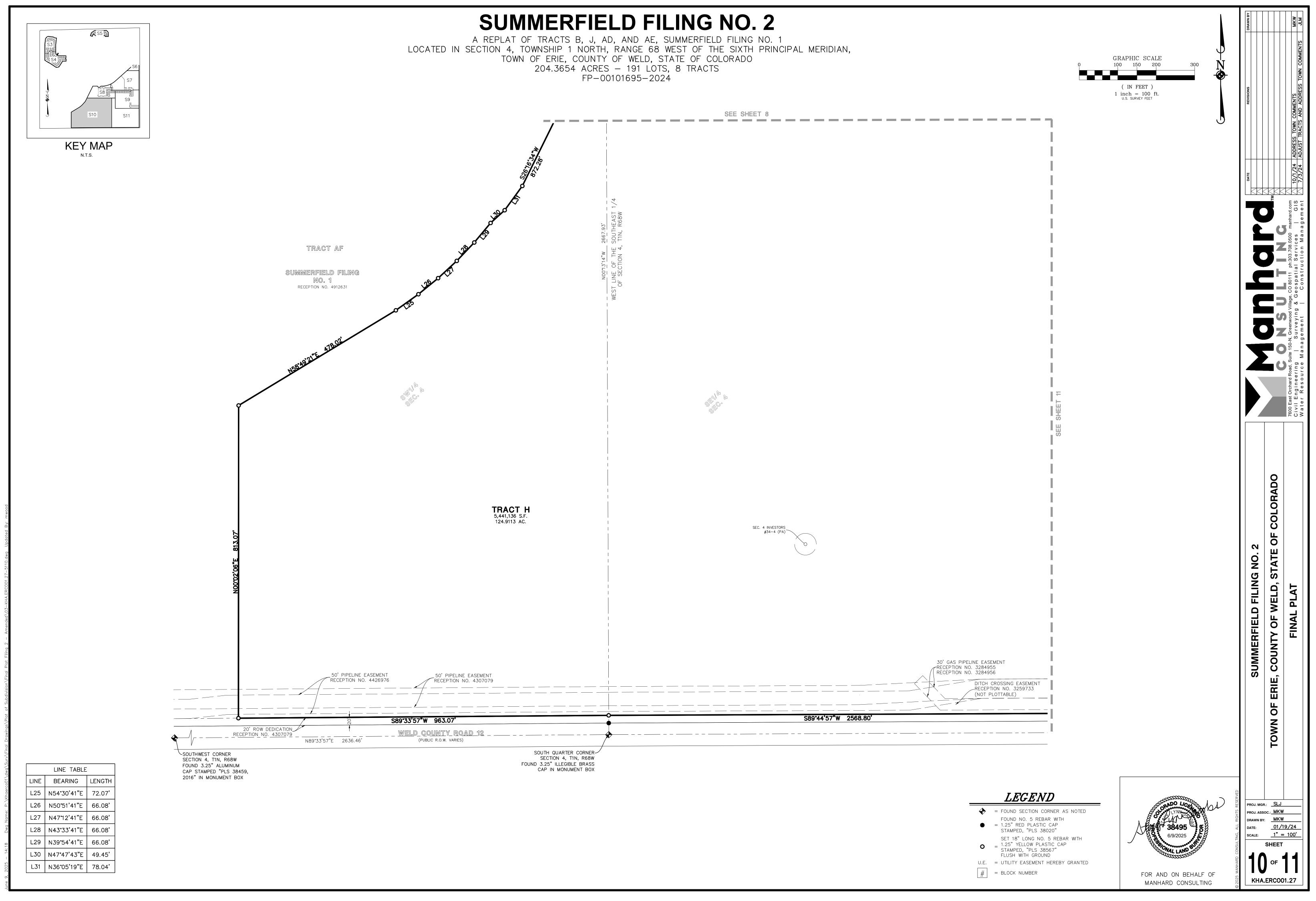


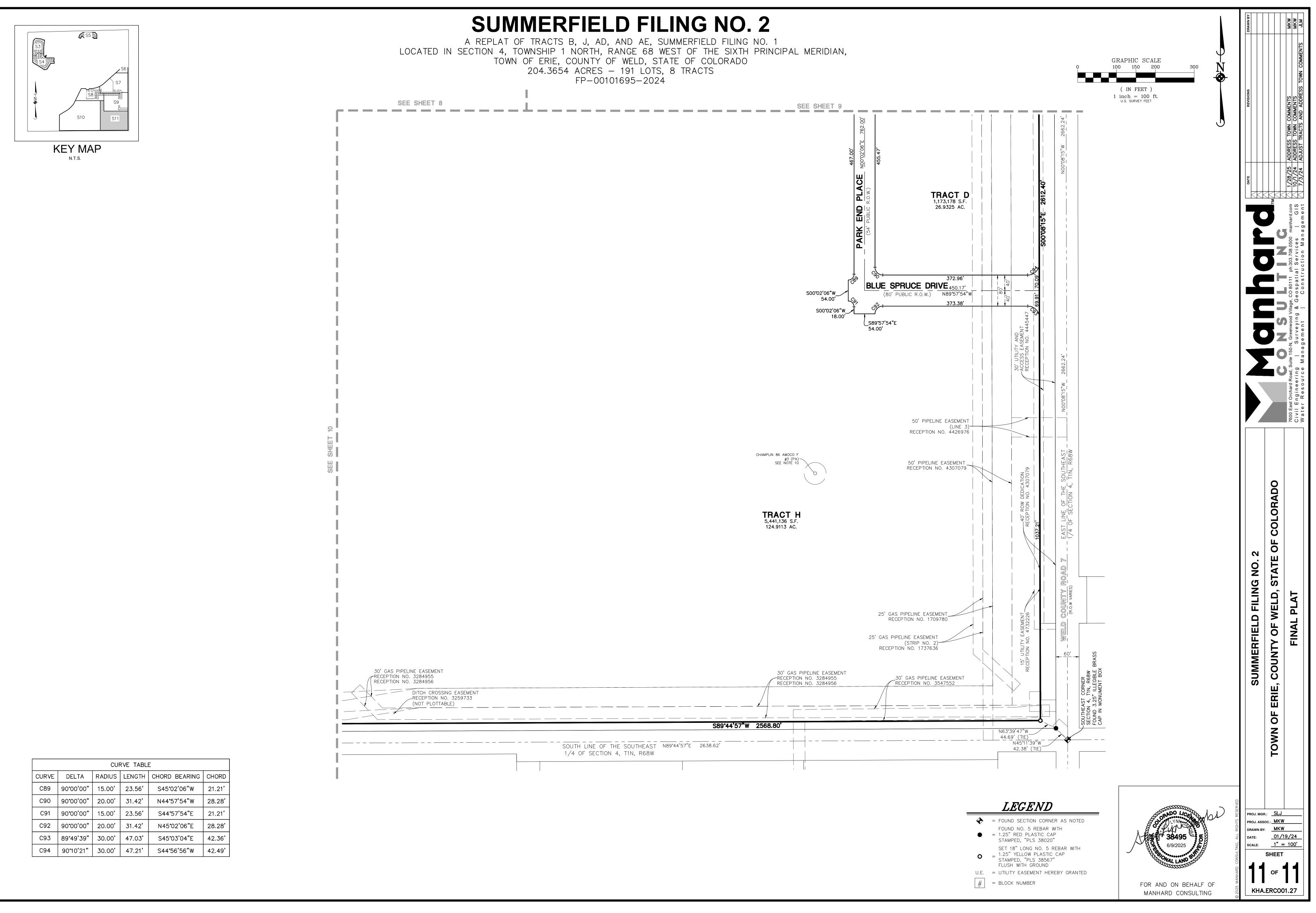


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TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO 204.3654 ACRES - 191 LOTS, 8 TRACTS











Town Council

Board Meeting Date: 6/24/2025

File #: 25-382, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving an Intergovernmental Agreement with the Urban Drainage and Flood Control District d/b/a/ Mile High Flood District for Drainage Improvements

DEPARTMENT: Parks & Recreation

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

TIME ESTIMATE: 0 minutes

FISCAL SUMMARY:

| Cost as Recommended: | \$90,000 |
|-----------------------------|---|
| Balance Available: | \$90,000 |
| Fund | General Fund |
| Line Item Number: | 110-50-110-605000-255002 |
| New Appropriation Required: | Yes (to appropriate the Developer provided funds) |

POLICY ISSUES:

This IGA supports the partnership between the Town of Erie and MHFD and provides funding from the developer to achieve final acceptance of this regional drainageway.

STAFF RECOMMENDATION:

Approve the resolution to approve the IGA with MHFD

SUMMARY/KEY POINTS

- This IGA provides the mechanism for MHFD to perform the necessary work for this drainage area.
- The work conducted by MHFD ensures that the area is MHFD maintenance eligible.
- The funds for this work were provided by the developer, not the Town.

BACKGROUND OF SUBJECT MATTER:

Council approval of the resolution authorizes execution of an intergovernmental agreement (IGA) with Mile High Flood District (MHFD) to implement final vegetation establishment for the Prince Lake

File #: 25-382, Version: 1

Tributary project (Tract G-1 in Flatiron Meadows). MHFD, the Town of Erie, and Hines-the developerhave partnered to fund and complete this final acceptance phase. Hines has agreed to provide \$90,000, which has already been transferred to the Town, which the Town will then transfer to MHFD upon execution of the agreement. MHFD will then proceed with vegetation establishment to meet final acceptance standards and will develop a long-term vegetation management plan. This plan will guide will assist in shared maintenance responsibilities between the Town and the Flatiron Meadows HOA, ensuring the drainage improvements remain effective and compliant.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- ⊠ Attractive Community Amenities
- □ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- ⊠ Safe and Healthy Community
- \boxtimes Effective Governance
- ⊠ Environmentally Sustainable
- ⊠ Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution
- 2. Intergovernmental Agreement

Town of Erie Resolution No. 25-107

A Resolution of the Town Council of the Town of Erie Approving an Intergovernmental Agreement with the Urban Drainage and Flood Control District d/b/a Mile High Flood District for Drainage Improvements

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 Intergovernmental Agreement with Urban Drainage and Flood Control District for Drainage Improvements.

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

Section 1. The Intergovernmental Agreement with the Urban Drainage and Flood Control District d/b/a Mile High Flood District is hereby approved in substantially in the form attached hereto, subject to final approval of the Town Attorney. Upon such approval, the Mayor is authorized to execute the Intergovernmental Agreement on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

AGREEMENT REGARDING VEGETATION ESTABLISHMENT OF DEVELOPMENT IMPROVEMENT PROJECT DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR PRINCE LAKE NO. 2 DRAINAGE AT FLATIRON MEADOWS

Agreement No. 25-05.06 Project No. 110474

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and TOWN OF ERIE (hereinafter called "TOWN") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES desire to participate in a joint effort to establish vegetation from the drainage improvements associated with the civil plan set titled "Flatiron Meadows-Phase II Regional Drainage Improvements" by Calibre Engineering Inc, dated August 8, 2016 (hereinafter called "PLAN"); and

WHEREAS, TOWN (is the owner of certain real property consisting of 14 acres, as shown on Exhibit A (hereinafter called "PROPERTY")

WHEREAS, Hines has applied to TOWN for approval of Residential; and

WHEREAS, as a condition of DEVELOPMENT, TOWN required Hines to implement drainage improvements identified in PLAN as shown in Exhibit A. Hines has implemented drainage improvements.

WHEREAS, TOWN now desire the DISTRICT to manage vegetation establishment of drainage and flood control improvements constructed by Hines as shown in Exhibit A (hereinafter called "PROJECT"); and

WHEREAS, TOWN and DISTRICT agree to a Development Improvement Project improvements options whereas DISTRICT shall manage vegetation establishment of PROJECT and Hines shall pay for the services.

WHEREAS, the TOWN Council by appropriation or resolution, have authorized all of PROJECT costs from DEVELOPER. Hines has conveyed the funding for the PROJECT to the TOWN.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. <u>SCOPE OF THIS AGREEMENT</u>

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. <u>SCOPE OF PROJECT</u>

A. <u>Project Limits</u>. PROJECT limits are approximately Prince Lake No. 2 Drainage of Prince Lake Tributary at Flatiron Meadows, as shown on Exhibit A.

3. <u>PUBLIC NECESSITY</u>

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following Project Costs:
 - 1. Vegetation Establishment
- B. It is understood that PROJECT costs as defined above are not to exceed \$90,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

| | PROJECT ITEM | <u>AMOUNT</u> |
|----|--------------------------|---------------|
| 1. | Vegetation Establishment | \$ 90,000 |
| | Grand Total | \$ 90,000 |

5. <u>MANAGEMENT OF FINANCES</u>

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval.

Project Payment by TOWN of \$90,000 shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The project payment shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to TOWN of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

6. <u>MANAGEMENT OF WORK</u>

<u>Vegetation Establishment</u>. Vegetation establishment services shall consist of, but not be limited to, the following:

- 1. <u>Costs</u>. Vegetation establishment costs shall consist of those costs as incurred by the most qualified contractor(s) including licenses and permits.
- 2. <u>Management and Payment</u>
 - a. DISTRICT, with the concurrence of TOWN, shall administer and coordinate the related work.
 - b. DISTRICT, with concurrence of TOWN, shall select and award contract(s).

- c. DISTRICT shall require the contractor to provide adequate liability insurance that includes TOWN. The contractor shall be required to indemnify TOWN. Copies of the insurance coverage shall be provided to TOWN upon request.
- d. PARTIES shall have access to the site during at all times to observe the progress of work and conformance to workplan.
- g. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.

7. <u>RIGHT OF WAY OR NON-REVOCABLE EASEMENT</u>

TOWN shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, TOWN disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary within their legal authority to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at no expense to DISTRICT.

8. <u>MAINTENANCE</u>

PARTIES agree that TOWN shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at TOWN's request, shall assist TOWN with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to TOWN, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

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9. FLOODPLAIN REGULATION

TOWN agrees to regulate and control the floodplain of Prince Lake Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that TOWN cannot obligate itself by contract to exercise its police powers. If TOWN fails to regulate the floodplain of Prince Lake Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and TOWN shall cooperate fully.

10. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 9. <u>FLOODPLAIN REGULATION</u>, Paragraph 7.B. <u>Ownership of Property and Limitation of Use</u>, and Paragraph 8. <u>MAINTENANCE</u>, which shall run in perpetuity.

11. <u>LIABILITY</u>

Each party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

12. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be Town Administrator, 645 Holbrook Street, Erie, Colorado 80516.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 West Bayaud Avenue Lakewood, CO 80228.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or TOWN. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

13. <u>RESPONSIBILITIES OF PARTIES</u>

DISTRICT shall be responsible for coordinating with TOWN the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from TOWN needed to complete PROJECT in a timely manner. TOWN agrees to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to TOWN.

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14. <u>AMENDMENTS</u>

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

15. <u>SEVERABILITY</u>

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

16. <u>APPLICABLE LAWS</u>

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the TOWN where PROJECT is located.

17. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

18. <u>BINDING EFFECT</u>

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

19. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

20. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

21. PUBLIC RELATIONS

It shall be at TOWN's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

22. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender,

age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

23. <u>APPROPRIATIONS</u>

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of TOWN and/or DISTRICT.

24. <u>NO THIRD PARTY BENEFICIARIES</u>

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

25 <u>GOVERNMENTAL IMMUNITIES</u>

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

26. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of TOWN, DISTRICT, or any other entity not a party hereto.

27. <u>EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES</u>

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

A. Electronic or facsimile delivery of a fully executed copy of a signature page; or

B. The image of the signature of an authorized signer inserted onto PDF format documents. Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

6

URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT

-DS Ы Checked By

| | DocuSigned by: |
|----------|-----------------|
| | |
| | |
| Bv | |
| <i>J</i> | A51B5ED3FB99401 |

Name Laura A. Kroeger

Title Executive Director

18 June 2025 Date_____

TOWN

By_____

Name

Title_____

Date_____

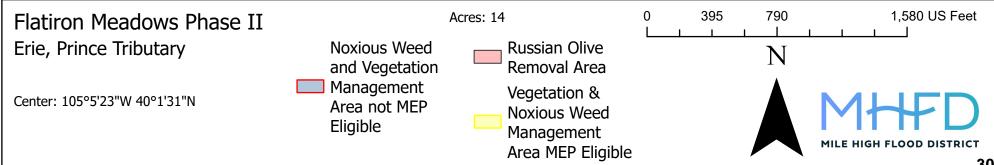
AGREEMENT REGARDING VEGETATION ESTABLISHMENT OF DEVELOPMENT IMPROVEMENT PROJECT DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR PRINCE LAKE NO. 2 DRAINAGE AT FLATIRON MEADOWS

Agreement No. 25-05.06 Project No. 110474

Exhibit A

Docusign Envelope ID: 7BE907BD-1890-4B4C-855C-C2457EB1D97C





306



Town Council

Board Meeting Date: 6/24/2025

File #: 25-354, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving the Fifth Amendment to the Professional Services Agreement with RockSol Consulting Group, Inc. for Post-Design Services for the Weld County Road 3 Bridge Replacement Project

DEPARTMENT: Public Works

PRESENTER(S): David Pasic, Public Works Director Kieth Fiebig, Town Engineer

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY:

| Cost as Recommended: | \$11,054.00 |
|-----------------------------|--------------------------|
| Balance Available: | \$208,562.90 |
| Fund | General Fund |
| Line Item Number: | 100-70-710-523000-100085 |
| New Appropriation Required: | No |

POLICY ISSUES:

The policy issue at hand is whether to expend budgeted funds for this CDOT grant funded project to ensure compliance with grant funding obligations.

STAFF RECOMMENDATION:

Approve the Resolution.

SUMMARY/KEY POINTS

- This Fifth Amendment to the Professional Services Agreement includes additional construction support services to ensure the bridge rails and rail concrete supports are constructed in accordance with contract plans and specifications.
- Specific services include providing field change drawings, coordination with Town and CDOT for approval of field changes, review of additional traffic control plans, and field inspections of construction.
- Approval of the Fifth Amendment will ensure the project meets quality requirements, is

File #: 25-354, Version: 1

compliant with all CDOT Grant Funding obligations, and completes the "Essential Repairs" recommended by the CDOT Bridge Program.

BACKGROUND OF SUBJECT MATTER:

The original bridge was constructed in 1989 and is located approximately one-half-mile south of State Highway 52 on Weld County Road 3. The original bridge construction included a single-span bridge structure with a corrugated metal deck supported by steel girders on concrete abutments which supports the WCR3 roadway. It spans over the Lower Boulder Ditch. See the attached Location Map.

This Fifth Amendment to the Professional Services Agreement is to authorize additional:

- Field change drawings and recommendations to address corrective measures related to the bridge guard rails and concrete rail supports;
- Coordination with Town and CDOT for approval of field changes; and
- Review of additional traffic control plans, and field inspections of corrected construction.

Staff recommends approving the Fifth Amendment with RockSol Consulting for the Weld County Road 3 Bridge Replacement Project to ensure the project meets quality requirements, is compliant with all CDOT Grant Funding obligations; and completes the "Essential Repairs" recommended by the CDOT Bridge Program.

Project History

In mid-2021, based on Colorado Department of Transportation (CDOT) bridge inspection reports, Engineering staff identified and prioritized the Weld County Road 3 bridge for repairs as soon as funding was available.

On Feb. 14, 2023, the Town was notified by the CDOT Bridge Inspection Program that the Weld County Road 3 bridge was inspected in January 2023 and was designated as requiring "Essential Repairs;" a designation that recommended replacement of the existing corrugated steel deck due to severe corrosion, within one-year of the notification.

In April 2023, CDOT selected the project to receive a \$1,036,368 CDOT Off-System Bridge Grant for construction costs to replace the existing bridge and roadway using a box-culvert bridge design.

On Oct. 10, 2023, the Town executed an Intergovernmental Agreement with CDOT; accepting the grant, in accordance with Town Resolution No. 23-112.

Since May 2022, RockSol Consulting Group has been retained under a Professional Services Agreement; and as the Engineer of Record has supported the project to prepare final construction plans for replacement of the existing bridge, and provided post-design services during the current bridge re-construction project.

File #: 25-354, Version: 1

Other prior contractual items related to this project include:

- March 1, 2023, staff issued the First Amendment to the Professional Services Agreement with RockSol Consulting to revise the Preliminary design to implement a bridge structure replacement with concrete box culverts.
- March 28, 2023, the Board of Trustees approved the Second Amendment to the Professional Services Agreement to revise final construction plans to implement a bridge structure replacement with concrete box culverts.
- Nov. 14, 2023, the Board of Trustees approved the Third Amendment to the Professional Services Agreement to perform Hydraulic modeling and Historic Clearance studies required by CDOT; and provide post-design construction support services.
- Jan. 17, 2025, staff issued the Fourth Amendment to the Professional Services Agreement to provide Bid Advertising services not initially included in the original scope of work.

Fiscal Impact:

Sufficient funding is included in the CIP Project budget including: \$9,212 for services and a 20% contingency of \$1,842 for a total recommended cost of \$11,054. In accordance with the CDOT Grant provisions, the Town is responsible for the design and post-design services; and the construction costs and construction management costs will be credited to the CIP Project as reimbursements are received.

| Item | Estimate Cost |
|-------------------------------|--------------------|
| Original Contract | \$ 53,759 |
| 1st Amendment | \$ 8,063 |
| 2nd Amendment | \$ 69,406 |
| 3rd Amendment | \$ 43,453 |
| 4th Amendment | \$ 16,927 |
| 5th Amendment | <u>\$ 9,212</u> |
| Revised Agreement (subtotal) | \$ 202,820 |
| Contingency Available | \$ 1,842 |
| Total Agreement Cost Estimate | \$ 202,662 |

Agreement Cost Summary:

Future consent items anticipated for Town Council to approve is Authorization for additional construction management services by Ultieg in order to close-out the construction project.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- □ Engaged and Diverse Community
- \boxtimes Prosperous Economy

File #: 25-354, Version: 1

- ⊠ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- ⊠ Safe and Healthy Community
- □ Effective Governance
- Environmentally Sustainable
- \boxtimes Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution 25-102
- 2. Professional Services Agreement Amendment
- 3. Location Map

Town of Erie Resolution No. 25-102

A Resolution of the Town Council of the Town of Erie Approving the Fifth Amendment to the Professional Services Agreement with RockSol Consulting Group, Inc. for Post-Design Services for the Weld County Road 3 Bridge Replacement Project

Whereas, on May 13, 2022, the Town and RockSol Consulting Group, Inc. entered into an Agreement for Professional Services;

Whereas, on March 1, 2023, March 28, 2023, November 14, 2023, and January 17, 2025, the Parties amended the Agreement to add additional services and change the amount of compensation;

Whereas, the Parties wish to amend the Agreement again; and

Whereas, the Town Council finds it in the best interest of the public health, safety and welfare to approve the Fifth Amendment to the Professional Services Agreement.

Now Therefore be it Resolved by the Board of Trustees of the Town of Erie, Colorado, that:

Section 1. The Fifth Amendment to the Professional Services Agreement with RockSol Consulting Group, Inc., is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Fifth Amendment on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

1

<u>Fifth Amendment to Agreement for Professional Services</u> (Weld County Road 3 Bridge Replacement Project P22-076)

This Fifth Amendment to Agreement for Professional Services (the "Fifth Amendment") 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 RockSol Consulting Group, Inc., an independent contractor with a principal place of business at 12076 Grant Street, Thornton, CO 80214 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, on May 13, 2022, the Parties entered into an Agreement for Professional Services (the "Agreement");

Whereas, on March 1, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "First Amendment");

Whereas, on March 28, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Second Amendment");

Whereas, on November 14, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Third Amendment");

Whereas, on January 17, 2025, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Fourth Amendment"); and

Whereas, the Parties wish to amend the Agreement again as set forth herein.

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

1. <u>Scope of Work</u>. **Exhibit A** to the Agreement is hereby amended by the inclusion of the additional items set forth in **Exhibit A-1**, attached hereto and incorporated herein by this reference.

2. <u>Compensation</u>. The compensation amount in Section III of the Agreement is hereby amended to increase the maximum amount of compensation to \$202,662, which includes a base amount of \$200,820 and a contingency of \$1,842.

3. <u>Term</u>. The term of the Agreement is hereby extended through July 31, 2025.

4. <u>Accessibility</u>. Section IV of the Agreement is hereby amended to include the following new subsection E:

E. Accessibility. Contractor shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Contractor's noncompliance with such accessibility standards.

5. <u>Remainder of Agreement</u>. Except as expressly modified herein, the Agreement, as modified by the First Amendment, Second Amendment, Third Amendment and Fourth Amendment shall remain in full force and effect.

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

Town of Erie, Colorado

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

Contractor

Signed by: 4C62D458CC1B4CF.

State of Colorado)

) ss. (County of ______)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ______, 2025, by ______ as _____ of RockSol Consulting Group, Inc.

My commission expires:

(Seal)

Notary Public

6/11/2025 P:\CAPITAL IMPROVEMENT PROJECTS (CIPS)\2022\WCR3 BRIDGE REHABILITATION PROJECT (P22-076)\ROCKSOL PSA\PSA CONTRACT DOCS\FIFTH AMENDMENT BOT DOCS\FINAL - ROCKSOL 5TH AMENDMENT - 5-27-25.DOCX

Exhibit A-1 Scope of Services

Contractor's Duties:

During the term of this agreement Contractor shall provide the following Post Design Services:

Contractor shall respond to construction contractor requests for information, and provide design and coordination with the Town and CDOT to address construction issues for the bridge rail and bridge rail transitions specifically to address the following items:

- Reviewing and responding to RFI 7 in regards to incorrectly installed bridge rail.
- Reviewing and responding to RFI 9 in regards to incorrectly installed bridge rail transitions.
- Reviewing and responding to RFI 11 in regards to rework pertaining to the bridge rail.
- Additional coordination with CDOT to provide concurrence for lowered bridge height and development of "Evaluation of As Constructed Bridge Rail Adequacy Memo".
- Additional coordination with the Town to review traffic control for remedial work.
- Additional site visits to review issues in the field and verify rework prior to completion.

Contractor's Deliverables:

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

• Final design construction change documentation.

Schedule:

Contractor shall complete this Scope of Services within 8 weeks from the Effective Date.

3

docusign

Certificate Of Completion

| Envelope Id: 5DC32B1E-F04C-4B5A-BE0D-D1965FCAAF57 | | | |
|--|---------------|--|--|
| Subject: Complete with Docusign: Final - RockSol 5th Amendment - 5-27-25.pdf | | | |
| Source Envelope: | | | |
| Document Pages: 3 | Signatures: 1 | | |
| Certificate Pages: 5 | Initials: 0 | | |
| AutoNav: Enabled | | | |
| Envelopeld Stamping: Enabled | | | |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | | | |

Record Tracking

Signer Events

saeb@rocksol.com

Saeid Saeb, President

RockSol Consulting Group, Inc.

Security Level: Email, Account Authentication

Electronic Record and Signature Disclosure: Accepted: 6/12/2025 2:02:58 PM

ID: 37663c34-a41b-4b90-b1d6-3328c0dfc06e

Saeid Saeb

(None)

Status: Original 6/12/2025 12:33:11 PM Holder: Lyndsy Willette lwillette@erieco.gov

Signature Adoption: Drawn on Device

Using IP Address: 174.218.169.133

Signature

S.S.S.

C62D458CC1B4CF

Signed using mobile

Status: Completed

Envelope Originator: Lyndsy Willette 645 Holbrook Street P.O. Box 750 Erie, CO 80516 Iwillette@erieco.gov IP Address: 50.206.104.130

Location: DocuSign

Timestamp

Sent: 6/12/2025 12:33:40 PM Viewed: 6/12/2025 2:02:58 PM Signed: 6/12/2025 2:07:03 PM

| In Person Signer Events | Signature | Timestamp |
|--|-----------|---|
| Editor Delivery Events | Status | Timestamp |
| Agent Delivery Events | Status | Timestamp |
| Intermediary Delivery Events | Status | Timestamp |
| Certified Delivery Events | Status | Timestamp |
| Carbon Copy Events | Status | Timestamp |
| Zachary Ahinga zahinga@erieco.gov | COPIED | Sent: 6/12/2025 2:07:07 PM Viewed: 6/13/2025 10:43:56 AM |
| Security Level: Email, Account Authentication (None) | | |
| Electronic Record and Signature Disclosure: | | |

Accepted: 1/21/2021 8:37:15 AM ID: 4929dc91-03c6-4879-95ae-23b1a958ad37

| Witness Events | Signature | Timestamp |
|-------------------------|------------------|-----------------------|
| Notary Events | Signature | Timestamp |
| Envelope Summary Events | Status | Timestamps |
| Envelope Sent | Hashed/Encrypted | 6/12/2025 12:33:40 PM |
| Certified Delivered | Security Checked | 6/12/2025 2:02:58 PM |
| Signing Complete | Security Checked | 6/12/2025 2:07:03 PM |
| Completed | Security Checked | 6/12/2025 2:07:07 PM |

| Payment Events | Status | Timestamps |
|--|--------|------------|
| Electronic Record and Signature Discle | osure | |

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Town of Erie (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Town of Erie:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows: To contact us by email send messages to: docusign@erieco.gov

To advise Town of Erie of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@erieco.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Town of Erie

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to townclerk@erieco.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Town of Erie

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to docusign@erieco.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <u>https://support.docusign.com/guides/signer-guide-signing-system-requirements</u>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Town of Erie as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Town of Erie during the course of your relationship with Town of Erie.







Town Council

Board Meeting Date: 6/24/2025

File #: 25-392, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Appointing Kathleen Teal to the Sustainability Advisory Board

DEPARTMENT: Administrative Operations

PRESENTER(S): Michele Crawford Deputy Town Clerk

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

POLICY ISSUES:

Council approves all appointments to advisory boards and commissions.

STAFF RECOMMENDATION:

Approve Resolution 25-392 to appoint Kathleen Teal to the Sustainability Advisory Board

SUMMARY/KEY POINTS

The Sustainability Advisory Board has one vacancy which three residents applied to fill. The Sustainability Advisory Board reviewed all three applications during their June 4, 2025, meeting and based on those reviews recommend Town Council appointing Kathleen Teal to one of the board vacancies. The application for Kathleen Teal is attached.

BACKGROUND OF SUBJECT MATTER:

Sustainability Advisory Board

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- ⊠ Attractive Community Amenities
- ⊠ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- □ Safe and Healthy Community
- \boxtimes Effective Governance

File #: 25-392, Version: 1

- ⊠ Environmentally Sustainable
- □ Fiscally Responsible

ATTACHMENT(S):

Add items in a numbered list OR delete this list and change to N/A.

- 1. Kathleen Teal Application
- 2. Resolution 25-114 A Resolution of the Town Council of the Town of Erie Appointing Kathleen Teal to the Sustainability Advisory Board

Board and Commission Application

Which Boards would you like to apply for?

Sustainability Advisory Board: Eligible

All advisory board and commission members will be expected to support the <u>priorities</u> <u>and work plan</u> set forth by the Town Council.

Board and Commission Meeting Days and Times

- Airport Economic Development Advisory Board meets on the Third Thursday of each month at 6:30 p.m.
- Board of Adjustment meets on an as needed basis.
- Historic Preservation Advisory Board meets on the Fourth Monday of each month at 6:30 p.m.
- Open Space Trails Advisory Board meets on the Second Monday of each month at 6:30 p.m.
- Planning Commission meets on the First and Third Wednesday of each month at 6:30 p.m.
- Sustainability Advisory Board meets on the First Wednesday of each month at 6:30 p.m.
- Tree Advisory Board meets on the Second Wednesday of each month at 6:30 p.m.

Profile

| Kathleen | | Teal | | |
|---------------------------|----------------------|----------------------|--------------|-------------|
| First Name | Middle Initial | Last Name | | |
| kathleenteal23@gmail.com | | | | |
| Email Address | | | | |
| 1668 Holeman Dr | | | | |
| Home Address | | | Suite or Apt | |
| Erie | | | СО | 80516 |
| City | | | State | Postal Code |
| Mobile: (908) 209-7719 | | | | |
| Primary Phone | Alternate Ph | none | | |
| Clearway Energy | Associa Job Title | te project developer | | |
| Are you an Erie resident? | | | | |

⊙ Yes ⊖ No

⊙ Yes ⊙ No

Question applies to Tree Advisory Board, Sustainability Advisory Board If yes, on what date will you turn twenty-one (21) years old?

N/a

Have you ever been employed by the Town of Erie?

⊙ Yes ⊙ No

If so, please explain your employment with the Town of Erie.

Do you work for or own a company that does business with the Town of Erie? If so, please explain.

No

Interests & Experiences

Why are you interested in serving on a board or commission and what specific talents or expertise do you bring if appointed?

I'm passionate about building resilient, climate-forward communities and believe local engagement is one of the most impactful ways to drive change. My background in renewable energy project development—from site control and permitting to stakeholder outreach and financial structuring—gives me a deep understanding of how large-scale sustainable infrastructure is successfully implemented. I've also worked across sustainability consulting, ESG reporting, and impact investing, which has given me a systems-level view of both environmental and economic outcomes. I bring strong project management, public-private collaboration experience, and a genuine commitment to helping our town make meaningful progress on its sustainability goals.

Have you served on another board/commission in an advisory capacity? If so, please describe the board and what made serving in that capacity a good experience? What were the major concerns or issues?

While I haven't served on a formal municipal board, I have provided strategic advice and stakeholder engagement support for large renewable energy projects in partnership with federal, state, and tribal agencies. Additionally, during my AmeriCorps service and various graduate school consulting roles, I worked closely with nonprofit and private stakeholders to design and implement community-based sustainability programs. These experiences taught me how to navigate diverse perspectives, build trust, and contribute to solutions that reflect shared values. Common challenges included aligning environmental objectives with financial feasibility and navigating regulatory hurdles—both of which I've grown comfortable addressing collaboratively.

Please describe a situation where you were working with a small group and disagreed with the direction of the project, what did you do? What was the result?

While developing a transmission corridor project, I was part of a team planning outreach strategy for landowners and community groups. I had concerns that our initial approach didn't adequately consider the historical and cultural context of affected communities, particularly tribal partners. I voiced these concerns and proposed a more inclusive engagement strategy that incorporated early dialogue and formal consultation. The team agreed to revise the outreach plan, and the result was a much stronger foundation of trust with key stakeholders—helping us avoid costly delays and fostering long-term support for the project. This experience reinforced my belief in the importance of active listening and thoughtful collaboration.

If you were appointed, what goals would you like to see accomplished on this board or commission?

If appointed, I'd like to support the development and implementation of actionable sustainability initiatives that improve both environmental outcomes and community wellbeing. Specifically, I'd advocate for: • Adopting a municipal climate action plan with defined emissions reduction targets and timelines, including sector-specific goals for transportation, buildings, and waste. • Accelerating the transition to clean energy, such as supporting solar installations on municipal buildings and community solar projects accessible to lower-income households. • Improving energy efficiency in town infrastructure, including LED streetlight upgrades, high-performance HVAC systems, and building envelope improvements. • Promoting electrification of municipal fleets and incentivizing EV adoption through expanded charging infrastructure. • Leveraging federal and state funding under the Inflation Reduction Act and Colorado's Greenhouse Gas Pollution Reduction Roadmap to help finance these initiatives. • Engaging the community through education campaigns, sustainability workshops, and climate resilience planning to ensure that the town's efforts are inclusive, transparent, and informed by resident priorities. My goal is to help the town translate big-picture sustainability goals into specific, measurable, and community-driven actions.

Are you aware of the time commitment, and do you have the personal time to devote to this board or commission?

Yes, I understand the time commitment and have the flexibility to dedicate time to board responsibilities. I'm currently working in a professional role that supports public engagement and collaboration, and I'm committed to contributing consistently and reliably to this important work.

Questions

Demographics (optional)

The following questions are optional. This information helps track our recruitment and diversity efforts.

Ethnicity

 Caucasian/Non-Hispanic
 Gender
 Female
 Sexual Orientation
 Straight/Heterosexual
 03/31/1993 Date of Birth
 Highest Grade or Degree Completed and Major
 Masters

Trade School or Licenses/Certifications? If so, please list.

Resume and Additional Documents

Teal_Resume_1.28.25.pdf
Upload a Resume

Please Agree with the Following Statement

I certify that the facts and statements contained in this Board and Commission Application is true and correct. I further understand that false statements shall be sufficient cause for rejection of this application. I further certify that I have not been convicted of a felony under the laws of the State of Colorado or in another jurisdiction. I understand that falsification, omission or misrepresentation will result in a rejection of this application. Any falsification, omission is representation is evidence of perjury in the second degree. If I become a Board or Commission member with the Town, this form is valid for the period of my term with the Town and the crime records may be updated periodically at the discretion of the Town. I understand that this application is considered a public record and subject to the Colorado Open Records Act.

I Agree

Boulder, CO · 908.209.7719 · kathleenteal23@gmail.com · linkedin.com/in/kathleenteal

SKILLS:

- Well developed understanding of the project development lifecycle
- Thorough knowledge of US energy markets and nuances of each ISO
- Exceptional networking and relationship building skills, diligent work ethic
- Strong analytical skills, including experience with financial modeling, report writing, and risk analysis
- Proven project management skills and decision making capability
- Confident communicator with the ability to tailor presentations to various stakeholders

PROFESSIONAL EXPERIENCE

TRANSALTA

Project Developer, Renewables

- Accountable for leading project teams and development through all stages from conception to hand-off including: community outreach and stakeholder management, land acquisition, regulations, permitting at all levels, transmission and interconnection, engineering, and Power Purchase Agreements
- Leading development of multiple projects in various stages across PJM, MISO, SPP, WECC, and ERCOT
- Overseeing and managing due diligence for acquisitions of portfolios and greenfield opportunities
- Oversee budgets and schedules, maintaining financial models and key assumptions, conducting feasibility studies
- Coordinating divestiture of assets including creating CIM's and VDR's and handling questions from buyers

INVENERGY

Senior Analyst, Transmission Development

- Developed the NM North Path transmission line, a 400-mile, 4,000 MW HVDC transmission line
- Worked directly with partners along the route, including private landowners, Native American tribal governments, state and federal government agencies
- Secured site control for development, including negotiating leases, easements, and other agreements
- Assisted with obtaining local, state, and federal permits and handling of confidential and sensitive information

GREEN ALPHA ADVISORS

Equity Analyst

- Continually sought new corporate equity candidates for portfolio investment consideration and regularly reevaluated existing holdings through a comprehensive research and financial analysis process
 - Ο Focused on renewable energy generation, storage at scale, and real estate development
- Built and maintained critical reports, financial models, and master list of Green Alpha's investable securities
- Led Investment Committee meetings and Investor Relations calls with external companies
- Authored blog posts and white papers, coauthored quarter and year end macro attribution commentary

MERCER ADVISORS

Sustainability Consultant - Intern

- Collected usage data for 50+ offices, built a reporting tool, and calculated total GHG emissions
- Wrote high level report of findings for ESG reporting and tracking for SASB and TCFD
- Provided recommendations for reduction of GHG emissions, waste, and energy usage across 50+ offices

ECOPRODUCTS

B Impact Assessment - Consultant

- Completed B Lab's B Impact Assessment (BIA) for Eco Products recertification application
- Created a gap assessment to determine where the company needs to improve to meet their target BIA score
- Benchmarked BIA performance to other certified B Corps in their industry

REPLANT CAPITAL Impact Investing Intern

Boulder, CO January 2021 – September 2021

May 2022 - March 2023

102

Boulder, CO

Spring 2022

Boulder, CO

Spring 2022

Louisville, CO

March 2023 - December 2023

Denver, CO

Boulder, CO

December 2023 - present

Worked side-by-side with co-founder, managed CRM for fundraising contacts, deals, and partnerships

- Had a seat at the table with farmers, HNWI's, family foundations, and CPG's
- Collaborated with executives and co-founders to source, fundraise, develop, and build partnerships

EARTHHERO

Graduate Sustainability Consultant - Supply Chain Evaluation

- Conducted life cycle analysis research to evaluate the sustainability of each stage of the supply chain for four product categories sold on EarthHero's marketplace (textiles, cleaning products, pots/pans, cooking utensils)
- Delivered a comprehensive, detailed, and data backed guidebook for EarthHero's future purchasing and sourcing decisions
- Presented findings to the greater community through a webinar and workshop

COLUMBIA COLLEGE

Student Services Manager - Undergraduate Advisor

- Provided academic advising and support to 300 online bachelors and masters degree students
- Designed and implemented a new format for course scheduling, staff hiring, and textbook and lab kit ordering
- Created transfer pathways for 20 South Carolina technical college transfer programs
- Increased student retention by 23% through increased weekly contact with all students

NOTRE DAME MISSION VOLUNTEERS - AMERICORPS

Service Member

Immokalee, FL

August 2015 – July 2017

- Managed and implemented all aspects of 21st CCLC grant, Miracle After School Program, in accordance with approved grant application requirements
- Prepared required reports and summaries, collected and analyzed data to guide program changes
- Hired and trained staff, created schedule for an enrollment of 150 students, managed program budget of \$300,000

EDUCATION

| UNIVERSITY OF COLORADO BOULDER, LEEDS SCHOOL OF BUSINESS <i>Master of Business Administration</i> Focus on socially responsible business, project management, and renewable energy | Boulder, CO May 2022 |
|--|--------------------------|
| UNIVERSITY OF COLORADO BOULDER, MASTERS OF THE ENVIRONMENT <i>Masters of the Environment</i> Focus on renewable energy, corporate social responsibility, and sustainability consulting | Boulder, CO May 2022 |
| GREEN MOUNTAIN COLLEGE Bachelor of Arts, Sustainable Agriculture and Food Systems Dean's list each semester, graduated Summa Cum Laude, captain of cross country and tennis teams | Poultney, VT May 2015 |

Boulder, CO

January 2020 – December 2020

January 2018 – June 2019

Columbia, SC

Town of Erie Resolution No. 25-114

A Resolution of the Town Council of the Town of Erie Appointing Kathleen Teal to the Sustainability Advisory Board

Whereas, the Town Council wishes to appoint Kathleen Teal to the Sustainability Advisory Board.

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

Section 1. The Town Council hereby appoints Kathleen Teal to the Sustainability Advisory Board.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk





Town Council

Board Meeting Date: 6/24/2025

File #: 25-378, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving the Fourth Amendment to the Professional Services Agreement with Baseline Engineering for Design of the Town Center South Roundabout Improvement Project

 DEPARTMENT: Public Works
 PRESENTER(S): David Pasic, Public Works Director Jon Williams, Civil Engineer
 FISCAL SUMMARY: Cost as Recommended: \$32,300

| 452,500 |
|--------------------------|
| \$4,515,252 |
| Transportation Impact |
| 300-70-110-605000-100389 |
| ed: No |
| |

POLICY ISSUES:

Should the Town amend the agreement with Baseline Engineering for design support services, utility coordination, and construction management for the Town Center South Roundabout Improvement Project, which would require additional Transportation Impact funds.

STAFF RECOMMENDATION:

Approve the Resolution to amend the agreement

SUMMARY/KEY POINTS

- Council approval is needed to amend existing Professional Services Agreements.
- Baseline Engineering has completed contingency work facilitating progression of the project to the bidding phase.
- This amendment is needed for design support, utility coordination and construction management assistance which is imperative to successful project delivery with minimal disruption.

BACKGROUND OF SUBJECT MATTER:

This Fourth Amendment includes additional funding for items that were recently completed for the

File #: 25-378, Version: 1

South Roundabout project design phase as well as compensation for upcoming activities anticipated to be necessary during project construction. This will include:

- 1) Coordination to relocate utilities including Lumen fiber optic lines.
- 2) Plan/profile display and permit submission for existing gas lines in the corridor.
- 3) As needed, construction management assistance.
- 4) Delivery of post-construction As-built Drawings.

Project History:

At the Sept. 8, 2020 Board of Trustees Meeting, Economic Development staff and Baseline Engineering Corporation presented its Peel Analysis, conceptual design alternatives and cost estimates; and the Board supported the Peanut (Double) Roundabout design concept for the South Gateway; and a Traditional Roundabout concept for the North Gateway.

At the March 23, 2021 Board Meeting, the Board authorized the award of a Professional Services Agreement in the amount of \$448,449 and a contingency of \$56,051 to Baseline Engineering Corporation to design the South (Double) Roundabout and North (Traditional) Roundabout Gateways and provide Preliminary Engineering, Final Engineering construction documents, and provide Bidding Support Services.

In April 2021, Baseline Engineering started design activities on both Gateways with the North Gateway design as the higher priority. Design plans for the North Gateway were progressed to 90% completion in late September 2021.

In early 2022, staff designated the East County Line Road Corridor Improvement projects (ECLRCI) that extends between Cheesman Street to Austin Avenue as a higher priority for design and construction; and therefore, design schedules on the North and South Gateways were extended to ensure timely design integration with the ECLRCI projects. See the attached Location Map.

In July 2022, Baseline Engineering progressed the South Gateway preliminary design for the Double Roundabout to 75% complete. In November 2022, staff determined that additional traffic analysis and modeling was needed to incorporate updated current and future 2045 vehicle counts and peakhour vehicle volumes at Erie Parkway and Austin Avenue intersections, and school afternoon peakhour vehicle volumes. The traffic analysis and modeling were used to simulate traffic operations, pedestrian demand, and impacts on each intersection to optimize the South Gateway design. In May 2023, the traffic analysis and modeling results supported a recommendation to change the design to a Traditional Roundabout that would better manage traffic flow through the five-leg intersection at Austin Avenue.

In June 2023, Town Council authorized a Third Amendment to redesign the South Gateway from a Double Roundabout to a traditional roundabout. Detailed analysis showed that changing the design would enable the affected intersections to perform at similar or superior levels of service (time delays), and vehicle queue lengths compared to the double roundabout configuration.

TOWN COUNCIL PRIORITY(S) 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

ATTACHMENT(S):

- 1. Resolution No. 25-110
- 2. Fourth Amendment

Fourth Amendment to Agreement for Professional Services

This Fourth Amendment to Agreement for Professional Services (the "Fourth Amendment") 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 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and Baseline Engineering Corporation, an independent contractor with a principal place of business at 112 North Ruby Drive., Suite 210 Golden, CO 80403 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, on April 7, 2021, the Parties entered into an Agreement for Professional Services (the "Agreement");

Whereas, on June 3, 2022, the Parties amended the Agreement to add additional services and change the amount of compensation (the "First Amendment");

Whereas, on March 28, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Second Amendment"); and

Whereas, on June 13, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Third Amendment"); and

Whereas, the Parties wish to amend the Agreement again as set forth herein.

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

1. <u>Scope of Work</u>. Exhibit A to the Agreement is hereby amended by the inclusion of the following additional items in the Scope of Work.

Contractor shall design a water quality bioswale measures, irrigation design and revised landscape design. Contractor will also provide as-built drawings and construction phase services.

2. <u>Compensation</u>. Exhibit B to the Agreement is hereby amended to increase the maximum amount of compensation to \$764,287, allocated as follows

| Original Contract Amount: | \$ · | 448,449 |
|---------------------------|------|---------|
| 1st Amendment: | \$ | 38,000 |
| 2nd Amendment: | \$ | 8,197 |
| 3rd Amendment: | \$ | 237,341 |
| 4th Amendment: | \$ | 32,300 |

Total New Contract Amount \$ 764,287

3. <u>Term</u>. The term of the Agreement is hereby extended through May 15, 2026.

4. Illegal Aliens. Section IX of the Agreement is hereby deleted in its entirety.

5. The following new subsections are added to the Section X of the Agreement:

M. *Accessibility*. Licensee shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Licensee's noncompliance with such accessibility standards.

N. *Electronic Signatures*. The Parties intend that this Agreement be governed by the Uniform Electronic Transactions Act, C.R.S. § 24-71.3-101, *et seq*.

6. <u>Remainder of Agreement</u>. Except as expressly modified herein, the Agreement, as amended by the First Amendment, Second Amendment and Third Amendment, shall remain in full force and effect.

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

Town of Erie, Colorado

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

Baseline Engineering Corporation

Signed by: John McLain AFF295AEF19A470...

John McLain, Managing Partner

| State of Co | olorado |) |
|-------------|---------|-----------|
| County of | |)ss.) |

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ______, 2025, by ______ as _____ of Baseline Engineering Corporation.

My commission expires:

(Seal)

Notary Public

Exhibit A Scope of Services – South Roundabout Redesign

Contractor's Duties

During the term of this Agreement, Contractor shall perform the following duties, as directed by the Town:

- A. Utility Coordination for Excel and Lumen Contractor shall
- B. Construction Phase Services Contractor shall
- C. **As-Built Drawings** Contractor shall
- D. Revised Landscape Plans Contractor shall
- E. Field Stake Easements for St Lukes Church Contractor shall
- F. Water Quality / Bioswale Contractor shall
- G. Irrigation Planning Contractor shall

Contractor's Schedule

Contractor shall complete the scope of work within 319 work days from the Town's execution of this Fourth Amendment.

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docusign

Certificate Of Completion

| Envelope Id: 510F7150-53EE-4870-B2EA-0B415FA6A879 | | |
|--|---------------|--|
| Subject: Complete with Docusign: Fourth Amendment to PSA.pdf | | |
| Source Envelope: | | |
| Document Pages: 5 | Signatures: 1 | |
| Certificate Pages: 4 | Initials: 0 | |
| AutoNav: Enabled | | |
| Envelopeld Stamping: Enabled | | |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | | |

Record Tracking

Signer Events

john@baselinecorp.com

Baseline Engineering Corp

Security Level: Email, Account Authentication

Electronic Record and Signature Disclosure: Accepted: 6/5/2025 1:04:52 PM

ID: dc406527-bcc5-4e24-a2c5-1f266e7e1069

John McLain

JMc

(None)

Status: Original 6/5/2025 12:06:56 PM Holder: Kris McDaniel

Signature

Signed by:

John McLain

AFF295AEF19A470..

krismc@erieco.gov

Signature Adoption: Pre-selected Style

Using IP Address: 208.46.81.26

Status: Completed

Envelope Originator: Kris McDaniel 645 Holbrook Street P.O. Box 750 Erie, CO 80516 krismc@erieco.gov IP Address: 73.34.182.144

Location: DocuSign

Timestamp

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ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Town of Erie (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Town of Erie:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows: To contact us by email send messages to: docusign@erieco.gov

To advise Town of Erie of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@erieco.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Town of Erie

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to townclerk@erieco.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Town of Erie

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to docusign@erieco.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <u>https://support.docusign.com/guides/signer-guide-signing-system-requirements</u>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Town of Erie as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Town of Erie during the course of your relationship with Town of Erie.

Town of Erie Resolution No. 25-110

A Resolution of the Town Council of the Town of Erie Approving the Fourth Amendment to the Professional Services Agreement with Baseline Engineering for Design of the Town Center South Roundabout Improvement Project

Whereas, on April 7, 2021, the Town and Baseline Engineering Corporation entered into a Professional Services Agreement for Design of the Town Center South Roundabout Improvement Project; and

Whereas, on June 3, 2022, March 28, 2023, and June 13, 2023, the Parties amended the Agreement 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 Fourth Amendment to Professional Services Agreement with Baseline Engineering Corporation is hereby approved in substantially the form attached hereto, subject to approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Fourth Amendment to Professional Services Agreement on behalf of the Town.

1

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk



Town Council

Board Meeting Date: 6/24/2025

File #: 25-355, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving the First Amendment to the Professional Services Agreement with Civil Resources, LLC for Final Design Services for the Boulder Creek Diversion Structure and Pipeline Conveyance Project

DEPARTMENT: Utilities

PRESENTER(S): Todd Fessenden, Utilities Director Kieth Fiebig, Town Engineer

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY:

| Cost as Recommended: | \$109,212 |
|-----------------------------|--------------------------|
| Balance Available: | \$3,837,795.00 |
| Fund | Water Fund |
| Line Item Number: | 500-75-110-605000-257514 |
| New Appropriation Required: | No |

POLICY ISSUES:

This design work for this well off of Boulder Creek is critical to facilitate timely construction of new North Water Treatment Facility, in line with the 2020 Water System Master Plan.

STAFF RECOMMENDATION:

Approve the Resolution.

SUMMARY/KEY POINTS

- This First Amendment to the Professional Services Agreement includes additional scope to perform final design services to relocate the diversion structure and add an underdrain system; perform additional geotechnical investigation and field aquifer pumping tests.
- The information obtained from additional testing is critical to design a reliable, creek diversion/headgate well or underdrain system
- This project will enable the Town to effectively utilize native groundwater and reusable water

sources, thereby maximizing our water rights.

BACKGROUND OF SUBJECT MATTER:

The Boulder Creek Diversion Structure and Pipeline Conveyance Project plan includes the construction of an on-creek diversion structure on the east bank of Boulder Creek and a pipeline that will supply raw water to the North Water Treatment Facility, in order to produce potable water to meet future water demands. (see the Vicinity Map)

On Oct. 3, 2023, the Town Council approved a Professional Services Agreement with Civil Resources, LLC for the Preliminary and Final Design, bid support and construction support services for the project; for a fee of \$74,500 and a contingency of \$11,175.

Civil Resources has completed the preliminary design and a portion of the final design effort to 60% completion. This design is based on previous ground water aquifer investigations and estimated aquifer properties for a specific diversion structure location and pipeline alignment approved by staff. However, staff has requested changes to the design including:

- a. Relocating the diversion structure to a location north of the original location to take advantage of the creek bank contours to improve reliable flow into the diversion and to avoid conflicts with a future storm water drainage facility;
- Additional design effort for a "headgate" well system or underdrain pipeline to increase the reliable yield of the combined creek diversion/aquifer system to supply raw water;
- c. Additional geotechnical investigation and aquifer pumping tests to enable more accurate aquifer modeling and estimates of aquifer yield.

Civil Resources has submitted a formal scope and fee proposal for the additional services that is detailed in the First Amendment, Exhibit A-1 Scope of Services.

Given the urgency to provide new water treatment facilities to meet growing demands as well as provide redundancy, resiliency and a water supply off the Colorado River Basin, staff believe it is in the Town's best interest to approve the First Amendment.

Staff recommend authorizing the First Amendment to the agreement for Professional Services for Final Design Services for the Boulder Creek Diversion Structure and Conveyance Pipeline to Civil Resources, LLC in the amount of \$109,212. This includes a proposal amount of \$88,800 and a contingency amount of \$20,412.

Fiscal Impact:

File #: 25-355, Version: 1

The 2025 Water Fund Budget includes \$3,837,795 for design and construction for the Boulder Creek Diversion Structure and Conveyance Pipeline project.

Agreement Cost Summary:

| Item | Estimated Cost |
|--------------------|----------------|
| Original Agreement | \$ 74,500 |
| First Amendment | \$ 88,800 |
| Contingency | \$ 20,412 |
| Revised Agreement | \$ 183,712 |

Future items that may be presented for Town Council approval include: award of a construction contract and purchase of right-of-way or easement acquisition for the facilities.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- □ Engaged and Diverse Community
- □ Prosperous Economy
- ⊠ Well-Maintained Infrastructure
- □ Small Town Feel
- \boxtimes Safe and Healthy Community
- \boxtimes Effective Governance
- ⊠ Environmentally Sustainable
- \boxtimes Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution 25-
- 2. First Amendment
- 3. Vicinity Map.

Town of Erie Resolution No. 25-103

A Resolution of the Town Council of the Town of Erie Approving a First Amendment to the Professional Services Agreement with Civil Resources, LLC for Final Design Services for the Boulder Creek Diversion Structure and Pipeline Conveyance Project

Whereas, on October 3, 2023, the Town and Civil Resources, LLC entered into a Professional Services Agreement for Final Design Services for the Boulder Creek Diversion Structure and Pipeline Conveyance Project; and

Whereas, the Parties wish to amend the Agreement.

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

Section 1. The First Amendment to Professional Services Agreement with Civil Resources, LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the First Amendment on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

First Amendment to Agreement for Professional Services (Boulder Creek Diversion Structure and Pipeline P23-097)

This First Amendment to Agreement for Professional Services (the "First Amendment") 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 Civil Resources, LLC, an independent contractor with a principal place of business at 8308 Colorado Blvd., Suite 200, Firestone Colorado 80504 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, on October 3, 2023, the Parties entered into an Agreement for Professional Services (the "Agreement"); and

Whereas, the Parties wish to amend the Agreement as set forth herein.

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

1. <u>Scope of Work</u>. **Exhibit A** to the Agreement is hereby amended by the inclusion of the additional items set forth in **Exhibit A-1**, attached hereto and incorporated herein by this reference.

2. <u>Compensation</u>. The compensation amount in Section III of the Agreement is hereby amended to increase the maximum amount of compensation to \$183,712, which includes a base amount of \$163,300 and a contingency of \$20,412.

3. Accessibility. Section IV of the Agreement is hereby amended to include the following new subsection E:

E. *Accessibility*. Contractor shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Contractor's noncompliance with such accessibility standards.

4. <u>Remainder of Agreement</u>. Except as expressly modified herein, the Agreement shall remain in full force and effect.

6/11/2025

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

Town of Erie, Colorado

Attest:

Andrew J. Moore, Mayor

Debbie Stamp, Town Clerk

Contractor

BC45D3FD23F94BD

State of Colorado)) ss. County of _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ______, 2025, by ______ as _____ of Civil Resources, LLC.

My commission expires:

(Seal)

Notary Public

Exhibit A-1 Scope of Services

Contractor's Duties:

During the term of this agreement Contractor shall provide the following Services at the North Water Treatment Facility:

Project Management:

Contractor shall coordinate with Town and other Town consultants to ensure the completed design meets project goals and the design of the North Water Treatment Facility.

Final Design:

Contractor shall conduct geotechnical investigation including aquifer pumping tests to more accurately estimate the aquifer parameters and resulting likely yield of the proposed underdrains. Contractor shall summarize the detailed design analyses, calculations and assumptions in a design basis memorandum, which shall explain the system component sizing and also present the results of the hydrogeology investigation. Contractor shall provide an Opinion of Construction Cost at 90% design.

Field Investigation:

Contractor shall subcontract with Authentic Drilling, LLC or other qualified drilling company to install monitoring and pumping wells and conduct aquifer pumping tests. The field investigation shall include 18 borings with 4 completed as observation wells (1.5 to 2" diameter) and 3 converted to pumping wells (4- to 6" diameter).

Contractor's Deliverables:

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

- Geotechnical investigation including boring logs, aquifer pumping tests report, aquifer conductivity and estimate of yield of the underdrains system.
- Basis of design memorandum
- Opinion of Construction Cost estimate at 90% design completion

Schedule:

Contractor shall complete this Scope of Services within 16 weeks from the Effective Date.

3

6/11/2025

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| | Certificate | Of | Completion |
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| Envelope Id: E102275B-747E-407B-8CD6-E0868E5B04D3 | | | |
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| Subject: Complete with Docusign: Final - Civil Resources 1st Amend-A051525 - 5-21-25.docx | | | |
| Source Envelope: | | | |
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| Certificate Pages: 5 | Initials: 0 | | |
| AutoNav: Enabled | | | |
| EnvelopeId Stamping: Enabled | | | |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | | | |

Holder: Lyndsy Willette

Signature

BC45D3ED23F94BD.

Signed using mobile

Signature

Status

Status

Status

Status

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COPIED

lwillette@erieco.gov

Signature Adoption: Drawn on Device

Using IP Address: 174.237.3.232

Record Tracking

Status: Original 6/11/2025 11:05:24 AM

Signer Events Brad Hagen brad@civilresources.com Member Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure: Accepted: 6/13/2025 11:57:35 AM ID: 8cbe77ca-bfe6-4fb7-8a0c-77aa5726fea8

| In Person Signer Events | |
|------------------------------|--|
| Editor Delivery Events | |
| Agent Delivery Events | |
| | |
| Intermediary Delivery Events | |
| Certified Delivery Events | |
| Carbon Copy Events | |
| Zachary Ahinga | |

zahinga@erieco.gov

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure: Accepted: 1/21/2021 8:37:15 AM ID: 4929dc91-03c6-4879-95ae-23b1a958ad37

| Witness Events | Signature | |
|-------------------------|------------------|--|
| Notary Events | Signature | |
| Envelope Summary Events | Status | |
| Envelope Sent | Hashed/Encrypted | |
| Certified Delivered | Security Checked | |
| Signing Complete | Security Checked | |
| Completed | Security Checked | |
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Status: Completed

Envelope Originator: Lyndsy Willette 645 Holbrook Street P.O. Box 750 Erie, CO 80516 lwillette@erieco.gov IP Address: 73.78.40.90

Location: DocuSign

Timestamp

Sent: 6/11/2025 11:08:18 AM Resent: 6/13/2025 11:29:37 AM Viewed: 6/13/2025 11:57:35 AM Signed: 6/13/2025 11:58:00 AM

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| 6/13/2025 11:58:02 AM |

| Payment Events | Status | Timestamps |
|--|--------|------------|
| Electronic Record and Signature Discle | | |

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Town of Erie (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Town of Erie:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows: To contact us by email send messages to: docusign@erieco.gov

To advise Town of Erie of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@erieco.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Town of Erie

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to townclerk@erieco.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Town of Erie

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to docusign@erieco.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

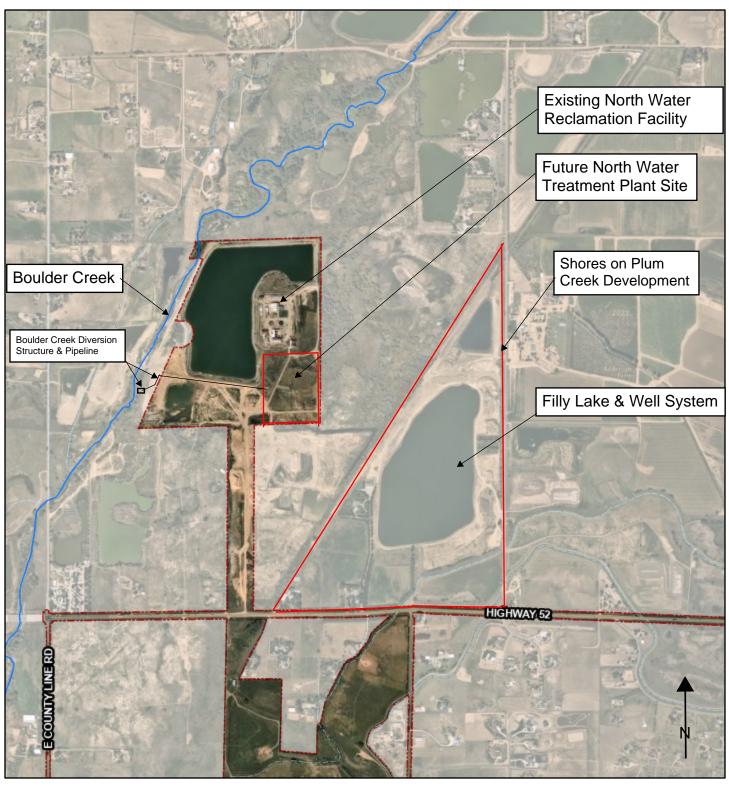
The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <u>https://support.docusign.com/guides/signer-guide-signing-system-requirements</u>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

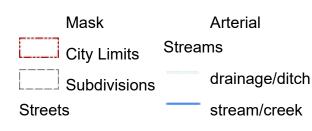
By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

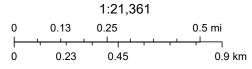
- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Town of Erie as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Town of Erie during the course of your relationship with Town of Erie.





Collector





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Town Council

Board Meeting Date: 6/24/2025

File #: 25-322, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving an Agreement to Accept Partial Assignment of Relocation Agreement Pertaining to the Spring Hill Ditch Crossing of Erie Coal Creek Ditch

DEPARTMENT: Planning & Development

PRESENTER(S): Chad Schroeder, Development Engineer Harry Brennan, Senior Planner

TIME ESTIMATE: 0 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY:

N/A

POLICY ISSUES:

Town consent to an agreement between the ditch company and the private developer providing for crossing Town right-of-way and the Erie Coal Creek Ditch.

STAFF RECOMMENDATION:

Approve the resolution to accept this agreement to allow future infrastructure improvements that may cross Town right-of-way and the Erie Coal Creek Ditch canal.

SUMMARY/KEY POINTS

- The Ditch Company and Developer have agreed to relocate and cross the irrigation/drainage ditch in the future Spring Hill development
- This item gives Town consent for the Ditch Company and Developer to proceed with said agreement.

BACKGROUND OF SUBJECT MATTER:

The Developer, ME, LLC, plans to develop a residential subdivision known as Spring Hill on property through which the Erie Coal Creek Ditch passes. To facilitate the proposed development, the

File #: 25-322, Version: 1

Developer may install road, pedestrian, and/or utility infrastructure across the ditch canal. Some of these crossings occur within Town-owned right-of-way.

This agreement indicates the Town's approval for the Developer to install the necessary improvements that may impact the Town right-of-way and the ditch canal. The ditch company has agreed to a separate agreement with the Developer to this effect.

Approving this resolution and agreement does not obligate the Town or Town Council to approve the forthcoming Spring Hill Preliminary Plat. If the forthcoming Spring Hill Preliminary Plat is not approved, this agreement will be null and void.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- □ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- \boxtimes Safe and Healthy Community
- \boxtimes Effective Governance
- □ Environmentally Sustainable
- \Box Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution 25-106
- 2. Agreement To Accept Partial Assignment of Relocation Agreement

Town of Erie Resolution No. 25-106

A Resolution of the Town Council of the Town of Erie Approving an Agreement to Accept Partial Assignment of Relocation Agreement Pertaining to the Spring Hill Ditch Crossing of Erie Coal Creek Ditch

Whereas, the Town Council finds it in the best interest of the public health, safety and welfare to accept an Agreement with ME Erie, LLC to Accept Partial Assignment of Relocation Agreement pertaining to the Spring Hill Ditch Crossing of Erie Coal Creek Ditch.

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

Section 1. The Agreement with ME Erie, LLC to Accept Partial Assignment of Relocation Agreement is hereby approved in substantially the form attached hereto, subject to approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Agreement on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

1

AGREEMENT TO ACCEPT PARTIAL ASSIGNMENT OF RELOCATION AGREEMENT

(Spring Hill)

THIS AGREEMENT TO ACCEPT PARTIAL ASSIGNMENT OF RELOCATION AGREEMENT ("Agreement") is made and executed this ______ day of ______, 2025 by and among the **Erie Coal Creek Ditch and Reservoir Company**, a Colorado mutual irrigation company and nonprofit corporation ("Company"), the **Town of Erie**, Colorado ("Town"), and **ME Erie**, **LLC**, a Colorado limited liability company ("Developer"). The Town, the Company, and Developer may collectively be referred to as the "Parties" and individually as a "party."

RECITALS

A. The Company and Developer are parties to that certain Relocation Agreement recorded at reception number ______ in the Weld County real estate records ("Relocation Agreement").

B. Pursuant to the Relocation Agreement, Developer may install certain road, pedestrian path/sidewalk, water and dry utility facilities across a pipeline owned by the Company (each a "Crossing").

C. Certain of the Crossings, specifically the Roadway and Waterline Crossings (the "Assigned Crossings"), will be located within the right of way owned by the Town, and Developer contemplates assignment of the Relocation Agreement from Developer to the Town with respect to the Assigned Crossings.

D. The Town wishes to evidence its agreement to accept assignment of obligations pertaining to the Assigned Crossings as anticipated in the Relocation Agreement, subject to the modifications to the Relocation Agreement set forth in this Agreement.

E. As a condition of approving this Agreement which assigns the certain of the obligations in the Relocation Agreement to the Town, but not others, the Company desires to ensure that the obligations not assumed by the Town will be the responsibility of an entity that continues in existence.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree:

AGREEMENT

1. Agreement to Accept Assignment. If the Company accepts the Crossings and the Town issues a final written acceptance of the Assigned Crossings, then the Town agrees to accept an assignment from Developer or its successors of the rights and obligations pertaining to the Assigned Crossings and be bound by the Relocation Agreement, subject to the following: (a) in no event will the Town be responsible for any party's attorney fees under Section 18 of the Relocation Agreement; and (b) the Town will not be subject to the provisions in Sections 11.2 and 11.3 of the Relocation Agreement. Developer shall continue to be responsible for all fees and assessments due as set forth in Section 7 of the Relocation Agreement. At or before the Town acceptance of an assignment of the Assigned Crossings, Developer shall assign any continuing

obligations with respect to the Assigned Crossings not assumed by the Town to a special district formed and operating under Colorado law which boundaries that include the Assigned Crossings.

2. **Remainder of Crossings Unaffected.** The obligations of the Developer pertaining to the Crossings that are not assigned by this Agreement shall remain unaffected by this Agreement.

IN WITNESS WHEREOF, this instrument has been executed the day and year first above written.

TOWN OF ERIE, COLORADO

ERIE COAL CREEK DITCH AND RESERVOIR COMPANY

DocuSigned by: By: Mike Schmidt 04FF9FCFE29E

Michael Schmidt, President

Attest: DocuSigned by:

Angie Swanson 39ABCFAB6DF3457...

Angela R. Swanson, Secretary

ME ERIELLLC By: Prin me Title





Town Council

Board Meeting Date: 6/24/2025

File #: 25-380, Version: 1

SUBJECT:

Presentation of 2025 ICSC Award for Excellence in Community Advancement

- **DEPARTMENT:** Economic Development
- **PRESENTER(S):** Julian Jacquin, Director of Economic Development & TOEURA Tyler Carlson, Evergreen Devco

TIME ESTIMATE: 5 minutes

FISCAL SUMMARY: N/A

POLICY ISSUES:

This item has minimal policy implications.

STAFF RECOMMENDATION:

None

SUMMARY/KEY POINTS

None

BACKGROUND OF SUBJECT MATTER:

Erie staff, alongside Evergreen Devco, proudly accepted the 2025 ICSC Award for Excellence in Community Advancement, recognizing Nine Mile Corner at the 2025 ICSC show in Las Vegas. The project is a standout example of smart retail development and community-driven design in action.

"Nine Mile Corner exemplifies small-town brownfield redevelopment success in Erie, Colorado. The collaboration, which also included the Town of Erie Urban Renewal Authority, transformed a 45-acre site from a blighted property into a thriving retail center anchored by Lowe's Home Improvement and supermarket chain King Soopers, plus a 287-unit attainable multifamily community. The project utilized a metropolitan district and urban renewal area to issue \$17.7 million in tax-exempt public improvement bonds funded by tax increment financing, successfully addressing extraordinary infrastructure costs while delivering critical sales tax revenue and jobs to the community. Named for

File #: 25-380, Version: 1

its location exactly nine miles from Boulder, Colorado, Nine Mile Corner has accelerated development in the area by nearly 20 years, illustrating how strategic public financing can attract significant private investment in smaller communities."

Additional Key Stakeholders

Architects and Engineers: G3 Architecture and Galloway & Company Engineering (retail center); and Kephart and HKS (multifamily) General Contractors: Brinkmann Constructors, Waner Construction and Nexus Builders Leasing Company: David, Hicks & Lampert Brokerage Finance Company: D.A. Davidson

">https://www.icsc.com/news-and-views/icsc-exchange/5-transformative-public-private-partnerships-the-2025-icsc-excellence-in-community-advancement-award-winners>">https://www.icsc.com/news-and-views/icsc-exchange/5-transformative-public-private-partnerships-the-2025-icsc-excellence-in-community-advancement-award-winners>">https://www.icsc.com/news-and-views/icsc-exchange/5-transformative-public-private-partnerships-the-2025-icsc-excellence-in-community-advancement-award-winners>">https://www.icsc.com/news-and-views/icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-advancement-award-winners>">https://www.icsc-excellence-in-community-award-winners</advancement-award-winners>">https://www.icsc-excellence-in-community-ad

Evergreen will attend the Jun. 24 Town Council meeting to jointly accept the award and provide remarks.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- ☑ Attractive Community Amenities
- □ Engaged and Diverse Community
- ⊠ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- Small Town Feel
- □ Safe and Healthy Community
- \boxtimes Effective Governance
- □ Environmentally Sustainable
- ⊠ Fiscally Responsible

ATTACHMENT(S):

None





Town Council

Board Meeting Date: 6/24/2025

File #: 25-294, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving the State of Colorado Subaward Agreement for Erie Flex Ride

DEPARTMENT: Public Works

Finance

PRESENTER(S): Miguel Aguilar, Principal Transportation Planner John Firouzi, Transportation & Mobility Manager David Pasic, Director of Public Works Sara Hancock, Director of Finance

TIME ESTIMATE: 10 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY:

| Cost as Recommended: | \$450,000 |
|----------------------|---|
| Balance Available: | \$450,000 (\$200,000 grant revenue, \$250,000 fund balance) |
| Fund | General Fund |
| Fund | Governmental Grants Fund |
| Line Item Number: | 100-70-425-560100-243003 |
| | 205-70-425-560120-243003 |
| | |

New Appropriation Required: Yes - Commitment of funds to be appropriated at supplemental appropriation

POLICY ISSUES:

By direction of Town Council and the Erie Transportation Mobility Plan to expand transit service, this contract will fund the Flex Ride transit service now named, Erie Bee.

STAFF RECOMMENDATION:

Approve the resolution.

SUMMARY/KEY POINTS

- This Agenda Item is to approve a grant contract with CDOT, accepting funds for the Erie Bee.
- The deadline for signing this contract is Oct. 1, 2025.

File #: 25-294, Version: 1

• The Public Works & Finance Departments are presenting this item a second time with an update about the budget for this grant.

BACKGROUND OF SUBJECT MATTER:

Town staff identified a funding opportunity to fund a Flex Ride transit service to expand transit service in the Town of Erie. The Town branded the service as Erie Bee. The Town applied for funding through the Denver Regional Council of Governments (DRCOG) and was awarded a grant. The funding includes \$250,000 as a Town match, and grant award of \$200,000 for a total of \$450,000 for the project. Future funding for the project will come from other awarded DRCOG grants to continue operations after the first year.

Prior to transit service operations, staff developed a Flex Ride Service Plan for the service operations. Council approved the Flex Ride Service Plan in August 2024.

Though DRCOG awarded the grant, the contract and funds will be administered through the Colorado Department of Transportation (CDOT). This contract is between CDOT and the Town of Erie to distribute funds for the operations of Erie's Flex Ride transit service, Erie Bee. It is intended that the Town will use a third-party for the service operations. Staff will advertise an RFP for the operations of this service. Council will see another contract related to the Erie Bee when a vendor is selected.

The Finance team, including the Grants and Budget Divisions, worked with Public Works to confirm the following key financial components of this project and provide clarification for the Council:

- The original appropriation for the match was budgeted in 2023 and was appropriated at the time of award from DRCOG.
- Delay in receipt of funding from the grant pass-through/administration (CDOT) prompted the matching funds to be rolled in the supplemental appropriation in 2024.
- The original appropriation was not rolled in 2025, therefore fell to unappropriated fund balance, therefore needs to be re-appropriated in the next supplemental budget.
- Re-appropriation of these funds allows the Town to proceed with the grant agreement and accept the awarded funds from DRCOG.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- \boxtimes Attractive Community Amenities
- \boxtimes Engaged and Diverse Community
- \boxtimes Prosperous Economy
- ⊠ Well-Maintained Transportation Infrastructure
- Small Town Feel
- \boxtimes Safe and Healthy Community
- \boxtimes Effective Governance
- \boxtimes Environmentally Sustainable

File #: 25-294, Version: 1

\boxtimes Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution 25-081
- 2. CDOT Subaward Agreement 5307
- 3. Presentation

Town of Erie Resolution No. 25-081

A Resolution of the Town Council of the Town of Erie Approving the State of Colorado Subaward Agreement for Erie Flex Ride

Whereas, the Town Council finds that it is in the best interest of the Town and the public health, safety and welfare to approve the State of Colorado Subaward Agreement for Erie Flex Ride.

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

Section 1. The State of Colorado Subaward Agreement for Erie Flex Ride is hereby approved in substantially the form attached hereto, subject to final approval of the Town Attorney. Upon such approval, the Mayor is authorized to execute the Agreement on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

| COVER FAGE | | | | |
|---|--------------|---|--|--|
| State Agency Department of Transportation | | Agreement Number / PO Number 25-HTR-ZL-00204 / 491003911 | | |
| Subrecipient Town of Erie | | Agreement Performance Beginning Date The Effective Date | | |
| Subaward Agreement Amount | | Initial Agreement Expiration Date June 30, 2026 | | |
| Federal Funds-Operating Maximum Amount (80%) | \$200,000.00 | Fund Expenditure End Date June 30, 2026 | | |
| Local Funds-Operating Local Match Amount (20%) | \$50,000.00 | Agreement Authority Authority to enter into this Agreement exists in CRS §§43-1-106, 43-1-110, 43-1-117.5, 43-1-701, | | |
| Agreement Total | \$250,000.00 | 43-1-702 and 43-2-101(4)(c), appropriated and otherwise made available pursuant to the FAST ACT, MAP-21, SAFETEA_LU, 23 USC §104, 23 USC §149, 49 USC §5307(a)(2) and (3). | | |

STATE OF COLORADO SUBAWARD AGREEMENT

Agreement Purpose

In accordance with 49 USC §5307, the purpose of this Agreement is to provide for transit capital and operating assistance and for transportation related planning in urbanized areas. The work to be completed under this Agreement by the Subrecipient is more specifically described in Exhibit A.

Exhibits and Order of Precedence

The following Exhibits and attachments are included with this Agreement:

- 1. Exhibit A Statement of Work and Budget.
- 2. Exhibit B Sample Option Letter.
- 3. Exhibit C Federal Provisions.
- 4. Exhibit D Required Federal Contract/Agreement Clauses.
- 5. Exhibit E Verification of Payment.

In the event of a conflict or inconsistency between this Agreement and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- 1. Exhibit C Federal Provisions.
- 2. Exhibit D Required Federal Contract/Agreement Clauses.
- 3. Colorado Special Provisions in §17 of the main body of this Agreement.
- 4. The provisions of the other sections of the main body of this Agreement.
- 5. Exhibit A Statement of Work and Budget.
- 6. Executed Option Letters (if any).

Principal Representatives

For the State: Robin Rocke Division of Transit and Rail Colorado Dept. of Transportation 2829 W. Howard Place Denver, CO 80204 robin.rocke@state.co.us For Subrecipient: Miguel Aguilar Town of Erie P.O. Box 168 Erie, CO 80516 maguilar@erieco.gov

SIGNATURE PAGE

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that the signer is duly authorized to execute this Agreement and to bind the Party authorizing such signature.

| SUBRECIPIENT Town of Erie | STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director | | | | |
|--|--|--|--|--|--|
| Ву: | By: | | | | |
| Name: <u>Andrew Moore</u> | Name: | | | | |
| Title: <u>Mayor</u> | Title: | | | | |
| Date: | Date: | | | | |
| | | | | | |
| | | | | | |
| Second Subrecipient Signature, If Needed Town of Erie | | | | | |
| | | | | | |
| By: | | | | | |
| Name: <u>Debbie Stamp</u> | | | | | |
| Title:Town Clerk | | | | | |
| Date: | | | | | |
| | | | | | |
| In accordance with §24-30-202, C.R.S., this Agreeme | nt is not valid until signed and dated below by the State | | | | |
| | uthorized delegate. | | | | |
| STATE CONTROLLER Robert Jaros, CPA, MBA, JD | | | | | |
| | | | | | |
| By: Department | of Transportation | | | | |
| Effective Date: | | | | | |

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1. PARTIES

This Agreement is entered into by and between Subrecipient named on the Cover Page for this Agreement (the "Subrecipient"), and the STATE OF COLORADO acting by and through the State agency named on the Cover Page for this Agreement (the "State"). Subrecipient and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and the Grant Funds shall be expended by the Fund Expenditure End Date shown on the Cover Page for this Agreement. The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Subrecipient for any Work performed or expense incurred before the Effective Date, except as described in **§5.D**, or after the Fund Expenditure End Date.

B. Initial Term

The Parties' respective performances under this Agreement shall commence on the Agreement Performance Beginning Date shown on the Cover Page for this Agreement and shall terminate on the Initial Agreement Expiration Date shown on the Cover Page for this Agreement (the "Initial Term") unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Extension Terms - State's Option

The State, at its discretion, shall have the option to extend the performance under this Agreement beyond the Initial Term for a period, or for successive periods, of one year or less at the same rates and under the same terms specified in this Agreement (each such period an "Extension Term"). In order to exercise this option, the State shall provide written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement.

D. End of Term Extension

If this Agreement approaches the end of its Initial Term, or any Extension Term then in place, the State, at its discretion, upon written notice to Subrecipient in a form substantially equivalent to the Sample Option Letter attached to this Agreement, may unilaterally extend such Initial Term or Extension Term for a period not to exceed two months (an "End of Term Extension"), regardless of whether additional Extension Terms are available or not. The provisions of this Agreement in effect when such notice is given shall remain in effect during the End of Term Extension. The End of Term Extension shall automatically terminate upon execution of a replacement Agreement or modification extending the total term of this Agreement.

E. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. A determination that this Agreement should be terminated in the public interest shall not be equivalent to a State right to terminate for convenience. This subsection shall not apply to a termination of this Agreement by the State for Breach of Agreement by Subrecipient, which shall be governed by **§12.A.i**.

i. Method and Content

The State shall notify Subrecipient of such termination in accordance with **§14**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement, and shall include, to the extent practicable, the public interest justification for the termination.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Subrecipient shall be subject to the rights and obligations set forth in **§12.A.i.a**.

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Subrecipient an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Subrecipient for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Subrecipient which are directly attributable to the uncompleted portion of Subrecipient's obligations, provided that the sum of any and all reimbursement shall not exceed the Subaward Maximum Amount payable to Subrecipient hereunder.

F. Subrecipient's Termination Under Federal Requirements

Subrecipient may request termination of this Agreement by sending notice to the State, or to the Federal Awarding Agency with a copy to the State, which includes the reasons for the termination and the effective date of the termination. If this Agreement is terminated in this manner, then Subrecipient shall return any advanced payments made for work that will not be performed prior to the effective date of the termination.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. "Agreement" means this subaward agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. "Award" means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- C. "Breach of Agreement" means the failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Subrecipient, or the appointment of a receiver or similar officer for Subrecipient or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach. If Subrecipient is debarred or suspended under §24-109-105, C.R.S., at any time during the term of this Agreement, then such debarment or suspension shall constitute a breach.
- D. "Budget" means the budget for the Work described in Exhibit A.
- E. "**Business Day**" means any day other than Saturday, Sunday, or a legal holiday as listed in §24-11-101(1), C.R.S.
- F. "CORA" means the Colorado Open Records Act, §§24-72-200.1, et. seq., C.R.S.
- G. "**Deliverable**" means the outcome to be achieved or output to be provided, in the form of a tangible or intangible Good or Service that is produced as a result of Subrecipient's Work that is intended to be delivered by Subrecipient.

- H. "Effective Date" means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature Page for this Agreement.
- I. "End of Term Extension" means the time period defined in §2.D.
- J. "Exhibits" means the exhibits and attachments included with this Agreement as shown on the Cover Page for this Agreement.
- K. "Extension Term" means the time period defined in §2.C.
- L. "Federal Award" means an award of Federal financial assistance or a cost-reimbursement contract, under the Federal Acquisition Regulations or by a formula or block grant, by a Federal Awarding Agency to the Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a Subrecipient or payments to an individual that is a beneficiary of a Federal program.
- M. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient. Federal Transit Administration (FTA) is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- N. "FTA" means Federal Transit Administration.
- O. "Goods" means any movable material acquired, produced, or delivered by Subrecipient as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Subrecipient in connection with the Services.
- P. "Grant Funds" means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- Q. "Incident" means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access, loss, disclosure, modification, disruption, or destruction of any communications or information resources of the State, which are included as part of the Work, as described in §§24-37.5-401, *et. seq.*, C.R.S. Incidents include, without limitation (i) successful attempts to gain unauthorized access to a State system or State Records regardless of where such information is located; (ii) unwanted disruption or denial of service; (iii) the unauthorized use of a State system for the processing or storage of data; or (iv) changes to State system hardware, firmware, or software characteristics without the State's knowledge, instruction, or consent.
- R. "Initial Term" means the time period defined in §2.B.
- S. "Master Agreement" means the FTA Master Agreement document incorporated by reference and made part of FTA's standard terms and conditions governing the administration of a project supported with federal assistance awarded by FTA.
- T. "**Matching Funds**" (Local Funds, or Local Match) means the funds provided by Subrecipient as a match required to receive the Grant Funds and includes in-kind contribution.
- U. "Party" means the State or Subrecipient, and "Parties" means both the State and Subrecipient.
- V. "PII" means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101, C.R.S.
- W. "**Recipient**" means the State agency shown on the Signature and Cover Pages of this Agreement, for the purposes of this Federal Award.
- X. "Services" means the services to be performed by Subrecipient as set forth in this Agreement and shall include any services to be rendered by Subrecipient in connection with the Goods.
- Y. "State Confidential Information" means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include but is not limited to PII and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Subrecipient which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Subrecipient without restrictions at the time of its disclosure to Subrecipient; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Subrecipient to the State; (iv) is disclosed to Subrecipient, without confidentiality obligations, by a third party

who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.

- Z. "**State Fiscal Rules**" means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a), C.R.S.
- AA. "**State Fiscal Year**" means a 12-month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- BB. "State Records" means any and all State data, information, and records regardless of physical form.
- CC. "Subaward Maximum Amount" means an amount equal to the total of Grant Funds for this Agreement.
- DD. "Subcontractor" means any third party engaged by Subrecipient to aid in performance of the Work. "Subcontractor" also includes sub-recipients of Grant Funds.
- EE. "**Subrecipient**" means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency. For the purposes of this Agreement, Contractor is a Subrecipient.
- FF. "**Uniform Guidance**" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, commonly known as the "Super Circular, which supersedes requirements from OMB Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.
- GG. "Work" means the Goods delivered and Services performed pursuant to this Agreement.
- HH. "Work Product" means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, information, and any other results of the Work. "Work Product" does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined elsewhere in this Agreement or in an Exhibit shall be construed and interpreted as defined in that section.

4. STATEMENT OF WORK AND BUDGET

Subrecipient shall complete the Work as described in this Agreement and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate Subrecipient for the delivery of any goods or the performance of any services that are not specifically set forth in this Agreement.

5. PAYMENTS TO SUBRECIPIENT

A. Subaward Maximum Amount

Payments to Subrecipient are limited to the unpaid, obligated balance of the Grant Funds. The State shall not pay Subrecipient any amount under this Agreement that exceeds the Subaward Maximum Amount shown on the Cover Page of this Agreement as "Federal Funds Maximum Amount".

- B. Payment Procedures
 - i. Invoices and Payment
 - a. The State shall pay Subrecipient in the amounts and in accordance with the schedule and other conditions set forth in Exhibit A.
 - b. Subrecipient shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
 - c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Subrecipient and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Subrecipient shall make all changes necessary to correct that invoice.
 - d. The acceptance of an invoice shall not constitute acceptance of any Work performed or Deliverables provided under this Agreement.

ii. Interest

Amounts not paid by the State within 45 days of the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 45th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Subrecipient shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days' interest to be paid and the interest rate.

iii. Payment Disputes

If Subrecipient disputes any calculation, determination or amount of any payment, Subrecipient shall notify the State in writing of its dispute within 30 days following the earlier to occur of Subrecipient's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Subrecipient and may make changes to its determination based on this review. The calculation, determination or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Subrecipient beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Grant Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Grant Funds, the State's obligation to pay Subrecipient shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Grant Funds, and the State's liability for such payments shall be limited to the amount remaining of such Grant Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.E**.

v. Federal Recovery

The close-out of a Federal Award does not affect the right of the Federal Awarding Agency or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period, as defined below.

C. Matching Funds

Subrecipient shall provide Matching Funds as provided in Exhibit A. Subrecipient shall have raised the full amount of Matching Funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Subrecipient's obligation to pay all or any part of any Matching Funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Subrecipient and paid into Subrecipient's Matching Funds," in Exhibit A has been legally appropriated for the purposes of this Agreement by its authorized representatives and paid into its treasury or bank account. Subrecipient does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Subrecipient. Subrecipient shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Subrecipient's laws or policies.

- D. Reimbursement of Subrecipient Costs
 - i. The State shall reimburse Subrecipient for the federal share of properly documented allowable costs related to the Work after review and approval thereof, subject to the provisions of **§5**, this Agreement, and Exhibit A. However, any costs incurred by Subrecipient prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. The State shall pay Subrecipient for costs or expenses incurred or performance by the Subrecipient prior to the Effective Date, only if (1) the Grant Funds involve federal funding and (2) federal laws, rules, and regulations applicable to the Work provide for such retroactive payments to the

Subrecipient. Any such retroactive payments shall comply with State Fiscal Rules and be made in accordance with the provisions of this Agreement.

- ii. The State shall reimburse Subrecipient's allowable costs, not exceeding the Subaward Maximum Amount shown on the Cover Page of this Agreement and on Exhibit A for all allowable costs described in this Agreement and shown in Exhibit A, except that Subrecipient may adjust the amounts between each line item of Exhibit A without formal modification to this Agreement as long as the Subrecipient provides notice to the State of the change, the change does not modify the Subaward Maximum Amount or the Subaward Maximum Amount for any federal fiscal year or State Fiscal Year, and the change does not modify any requirements of the Work.
- iii. The State shall only reimburse allowable costs described in this Agreement and shown in the Budget if those costs are:
 - a. Reasonable and necessary to accomplish the Work and for the Goods and Services provided; and
 - b. Equal to the actual net cost to Subrecipient (i.e. the price paid minus any items of value received by Subrecipient that reduce the cost actually incurred).
- iv. Subrecipient's costs for Work performed after the Fund Expenditure End Date shown on the Cover Page for this Agreement, or after any phase performance period end date for a respective phase of the Work, shall not be reimbursable. Subrecipient shall initiate any payment request by submitting invoices to the State in the form and manner set forth and approved by the State.

E. Close-Out

Subrecipient shall close out this Award within 45 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement. To complete close-out, Subrecipient shall submit to the State all Deliverables (including documentation) as defined in this Agreement and Subrecipient's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If the Federal Awarding Agency has not closed this Federal Award within one year and 90 days after the Fund Expenditure End Date shown on the Cover Page for this Agreement due to Subrecipient's failure to submit required documentation, then Subrecipient may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

6. **REPORTING - NOTIFICATION**

A. Quarterly Reports

In addition to any reports required pursuant to any other Exhibit, for any Agreement having a term longer than three months, Subrecipient shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Subrecipient is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Subrecipient's ability to perform its obligations under this Agreement, Subrecipient shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's Principal Representative identified on the Cover Page for this Agreement.

C. Performance and Final Status

Subrecipient shall submit all financial, performance and other reports to the State no later than 45 calendar days after the end of the Initial Term if no Extension Terms are exercised, or the final Extension Term exercised by the State, containing an evaluation and review of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Subrecipient shall disclose, in a timely manner, in writing to the State and the Federal Awarding Agency, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. The State or the Federal Awarding Agency may impose any penalties for noncompliance

allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. SUBRECIPIENT RECORDS

A. Maintenance

Subrecipient shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work and the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder (collectively, the "Subrecipient Records"). Subrecipient shall maintain such records for a period of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively (the "Record Retention Period"). If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Subrecipient in writing that the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Subrecipient shall permit the State, the federal government, and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and transcribe Subrecipient Records during the Record Retention Period. Subrecipient shall make Subrecipient Records available during normal business hours at Subrecipient's office or place of business, or at other mutually agreed upon times or locations, upon no fewer than two Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State, the federal government, and any other duly authorized agent of a governmental agency, in its discretion, may monitor Subrecipient's performance of its obligations under this Agreement using procedures as determined by the State or that governmental entity. Subrecipient shall allow the State to perform all monitoring required by the Uniform Guidance, based on the State's risk analysis of Subrecipient and this Agreement. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Subrecipient's performance in a manner that does not unduly interfere with Subrecipient's performance of the Work.

D. Final Audit Report

Subrecipient shall promptly submit to the State a copy of any final audit report of an audit performed on Subrecipient's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Subrecipient or a third party. Additionally, if Subrecipient is required to perform a single audit under 2 CFR 200.501, *et. seq.*, then Subrecipient shall submit a copy of the results of that audit to the State within the same timelines as the submission to the federal government.

8. CONFIDENTIAL INFORMATION - STATE RECORDS

A. Confidentiality

Subrecipient shall keep confidential, and cause all Subcontractors to keep confidential, all State Records, unless those State Records are publicly available. Subrecipient shall not, without prior written approval of the State, use, publish, copy, disclose to any third party, or permit the use by any third party of any State Records, except as otherwise stated in this Agreement, permitted by law or approved in writing by the State. Subrecipient shall provide for the security of all State Confidential Information in accordance with all applicable laws, rules, publications, and guidelines. Subrecipient shall immediately forward any request or demand for State Records to the State's Principal Representative identified on the Cover Page of the Agreement.

B. Other Entity Access and Nondisclosure Agreements

Subrecipient may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement.

Contract Number: 25-HTR-ZL-00204 / PO: 491003911 Subrecipient shall ensure all such agents, employees, assigns, and Subcontractors sign agreements containing nondisclosure provisions at least as protective as those in this Agreement, and that the nondisclosure provisions are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Subrecipient shall provide copies of those signed nondisclosure provisions to the State upon execution of the nondisclosure provisions if requested by the State.

C. Use, Security, and Retention

Subrecipient shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations only in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information. Subrecipient shall provide the State with access, subject to Subrecipient's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Subrecipient shall return State Records provided to Subrecipient or destroy such State Records and certify to the State that it has done so, as directed by the State. If Subrecipient is prevented by law or regulation from returning or destroying State Confidential Information, Subrecipient warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Subrecipient becomes aware of any Incident, Subrecipient shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Subrecipient can establish that Subrecipient and its agents, employees, and Subcontractors are not the cause or source of the Incident, Subrecipient shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Subrecipient shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State. The State may adjust or direct modifications to this plan, in its sole discretion and Subrecipient shall make all modifications as directed by the State. If Subrecipient cannot produce its analysis and plan within the allotted time, the State, in its sole discretion, may perform such analysis and produce a remediation plan, and Subrecipient shall reimburse the State for the reasonable costs thereof. The State may, in its sole discretion and at Subrecipient's sole expense, require Subrecipient to engage the services of an independent, qualified, State-approved third party to conduct a security audit. Subrecipient shall provide the State with the results of such audit and evidence of Subrecipient's planned remediation in response to any negative findings.

E. Data Protection and Handling

Subrecipient shall ensure that all State Records and Work Product in the possession of Subrecipient or any Subcontractors are protected and handled in accordance with the requirements of this Agreement, including the requirements of any Exhibits hereto, at all times. As used in this section, the protections afforded Work Product only apply to Work Product that requires confidential treatment.

F. Safeguarding PII

If Subrecipient or any of its Subcontractors will or may receive PII under this Agreement, Subrecipient shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Subrecipient shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S., and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S.

9. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Subrecipient shall not engage in any business or activities or maintain any relationships that conflict in any way with the full performance of the obligations of Subrecipient under this Agreement. Such a conflict of interest would arise when a Subrecipient or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement.

B. Apparent Conflicts of Interest

Subrecipient acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Subrecipient shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Subrecipient's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Subrecipient is uncertain whether a conflict or the appearance of a conflict has arisen, Subrecipient shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

D. Subrecipient acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Subrecipient further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S., with regard to this Agreement. For the avoidance of doubt, an actual or apparent conflict of interest shall exist if Subrecipient employs or contracts with any State employee, any former State employee within six months following such employee's termination of employment with the State, or any immediate family member of such current or former State employee. Subrecipient shall provide a disclosure statement as described in §9.C. no later than ten days following entry into a contractual or employment relationship as described in this section. Failure to timely submit a disclosure statement shall constitute a Breach of Agreement. Subrecipient may also be subject to such penalties as are allowed by law.

10. INSURANCE

Subrecipient shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies as approved by the State.

A. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Subrecipient or Subcontractor employees acting within the course and scope of their employment.

B. General Liability

Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- i. \$1,000,000 each occurrence;
- ii. \$1,000,000 general aggregate;
- iii. \$1,000,000 products and completed operations aggregate; and
- iv. \$50,000 any 1 fire.
- C. Automobile Liability

Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

D. Additional Insured

The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Subrecipient and Subcontractors.

E. Primacy of Coverage

Coverage required of Subrecipient and each Subcontractor shall be primary over any insurance or selfinsurance program carried by Subrecipient or the State.

F. Cancellation

All insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Subrecipient and

Subrecipient shall forward such notice to the State in accordance with **§14** within seven days of Subrecipient's receipt of such notice.

G. Subrogation Waiver

All insurance policies secured or maintained by Subrecipient or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Subrecipient or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

H. Public Entities

If Subrecipient is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"), Subrecipient shall maintain, in lieu of the liability insurance requirements stated above, at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. If a Subcontractor is a public entity within the meaning of the GIA, Subrecipient shall ensure that the Subcontractor maintain at all times during the terms of this Subrecipient, in lieu of the liability insurance, requirements stated above, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA.

I. Certificates

For each insurance plan provided by Subrecipient under this Agreement, Subrecipient shall provide to the State certificates evidencing Subrecipient's insurance coverage required in this Agreement prior to the Effective Date. Subrecipient shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement prior to the Effective Date, except that, if Subrecipient's subcontract is not in effect as of the Effective Date, Subrecipient shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within seven Business Days following Subrecipient's execution of the subcontract. No later than 15 days before the expiration date of Subrecipient's or any Subcontractor's coverage, Subrecipient shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Subrecipient shall, within seven Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this section.

11. BREACH OF AGREEMENT

In the event of a Breach of Agreement, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the Breach of Agreement, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in **\$12** for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in this Agreement in order to protect the public interest of the State; or if Subrecipient is debarred or suspended under \$24-109-105, C.R.S., the State, in its discretion, need not provide notice or cure period and may terminate this Agreement in whole or in part or institute any other remedy in this Agreement or suspension takes effect.

12. REMEDIES

A. State's Remedies

If Subrecipient is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in **§11**, shall have all of the remedies listed in this section in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach of Agreement

In the event of Subrecipient's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Additionally, if Subrecipient fails to comply with any terms of the Federal Award, then the State may, in its discretion or at the direction of a Federal Awarding Agency, terminate this entire Agreement or any part of this Agreement. Subrecipient shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Subrecipient shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Subrecipient shall complete and deliver to the State all Work not cancelled by the termination notice, and may incur obligations as necessary to do so within this Agreement's terms. At the request of the State, Subrecipient shall assign to the State all of Subrecipient's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Subrecipient shall take timely, reasonable and necessary action to protect and preserve property in the possession of Subrecipient but in which the State has an interest. At the State's request, Subrecipient shall return materials owned by the State in Subrecipient's possession at the time of any termination. Subrecipient shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Subrecipient for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Subrecipient was not in breach or that Subrecipient's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under **§2.E**.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Subrecipient shall remain liable to the State for any damages sustained by the State in connection with any breach by Subrecipient, and the State may withhold payment to Subrecipient for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Subrecipient is determined. The State may withhold any amount that may be due Subrecipient as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Subrecipient's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Subrecipient to an adjustment in price or cost or an adjustment in the performance schedule. Subrecipient shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Subrecipient after the suspension of performance.

b. Withhold Payment

Withhold payment to Subrecipient until Subrecipient corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Subrecipient's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal of any of Subrecipient's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes, or if the State in its sole discretion determines that any Work is likely to infringe, a patent, copyright, trademark, trade secret or other intellectual property right, Subrecipient shall, as approved by the State (i) secure that right to use such Work for the State and Subrecipient;

Contract Number: 25-HTR-ZL-00204 / PO: 491003911 (ii) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing;

or, (iii) remove any infringing Work and refund the amount paid for such Work to the State.

B. Subrecipient's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Subrecipient, following the notice and cure period in **§11** and the dispute resolution process in **§13** shall have all remedies available at law and equity.

13. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Subrecipient for resolution.

B. Resolution of Controversies

If the initial resolution described in **§13.A** fails to resolve the dispute within 10 Business Days, Subrecipient shall submit any alleged breach of this Agreement by the State to the Procurement Official of the State Agency named on the Cover Page of this Agreement as described in §24-101-301(30), C.R.S., for resolution following the same resolution of controversies process as described in §\$24-106-109, and 24-109-101.1 through 24-109-505, C.R.S., (collectively, the "Resolution Statutes"), except that if Subrecipient wishes to challenge any decision rendered by the Procurement Official, Subrecipient's challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, in the same manner as described in the Resolution Statutes before Subrecipient pursues any further action. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations regardless of whether the Colorado Procurement Code applies to this Agreement.

14. NOTICES and REPRESENTATIVES

Each individual identified as a Principal Representative on the Cover Page for this Agreement shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (A) by hand with receipt required, (B) by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement or (C) as an email with read receipt requested to the principal representative at the email address, if any, set forth on the Cover Page for this Agreement. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative at the address set forth on the Cover Page for this Agreement. Either Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party's principal representative or principal representative contact information, or may designate specific other individuals to receive certain types of notices in addition to or in lieu of a principal representative, by notice submitted in accordance with this section without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

15. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Subrecipient agrees to provide to the State a royalty-free, non-exclusive and irrevocable license to reproduce publish or otherwise use and to authorize others to use the Work Product described herein, for the Federal Awarding Agency's and State's purposes. All Work Product shall be delivered to the State by Subrecipient upon completion or termination hereof.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, all State Records, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and information provided by or on behalf of the State to Subrecipient are the exclusive property of the State (collectively, "State Materials"). Subrecipient shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Subrecipient's obligations in this Agreement without the prior written consent of the State. Upon termination

of this Agreement for any reason, Subrecipient shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

C. Exclusive Property of Subrecipient

Subrecipient retains the exclusive rights, title, and ownership to any and all pre-existing materials owned or licensed to Subrecipient including, but not limited to, all pre-existing software, licensed products, associated source code, machine code, text images, audio and/or video, and third-party materials, delivered by Subrecipient under this Agreement, whether incorporated in a Deliverable or necessary to use a Deliverable (collectively, "Subrecipient Property"). Subrecipient Property shall be licensed to the State as set forth in this Agreement or a State approved license agreement: (i) entered into as exhibits to this Agreement, (ii) obtained by the State from the applicable third-party vendor, or (iii) in the case of open source software, the license terms set forth in the applicable open source license agreement.

16. GENERAL PROVISIONS

A. Assignment

Subrecipient's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Subrecipient's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Subcontracts

Subrecipient shall not enter into any subaward or subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Subrecipient shall submit to the State a copy of each such subaward or subcontract upon request by the State. All subawards and subcontracts entered into by Subrecipient in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement. If the entity with whom Subrecipient enters into a subcontract or subaward would also be considered a Subrecipient, then the subcontract or subaward entered into by Subrecipient shall also contain provisions permitting both Subrecipient and the State to perform all monitoring of that Subcontractor in accordance with the Uniform Guidance.

C. Binding Effect

Except as otherwise provided in **§16.A**, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments are preferences to sections.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement. Prior or contemporaneous additions, deletions, or other changes to this Agreement shall not have any force or effect whatsoever, unless embodied herein.

H. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

I. Modification

Except as otherwise provided in this Agreement, any modification to this Agreement shall only be effective if agreed to in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules. Modifications permitted under this Agreement, other than Agreement amendments, shall conform to the policies issued by the Colorado State Controller.

J. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Effective Date of this Agreement.

K. External Terms and Conditions

Notwithstanding anything to the contrary herein, the State shall not be subject to any provision included in any terms, conditions, or agreements appearing on Subrecipient's or a Subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in this Agreement.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of this Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of this Agreement shall survive the termination or expiration of this Agreement and shall be enforceable by the other Party.

N. Taxes

The State is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) (Federal Excise Tax Exemption Certificate of Registry No. 84-730123K) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-02565). The State shall not be liable for the payment of any excise, sales, or use taxes, regardless of whether any political subdivision of the State imposes such taxes on Subrecipient. Subrecipient shall be solely responsible for any exemptions from the collection of excise, sales or use taxes that Subrecipient may wish to have in place in connection with this Agreement.

O. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§16.A**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to this Agreement, and do not create any rights for such third parties.

P. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

Q. CORA Disclosure

To the extent not prohibited by federal law, this Agreement and the performance measures and standards required under §24-106-107, C.R.S., if any, are subject to public release through the CORA.

R. Standard and Manner of Performance

Subrecipient shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Subrecipient's industry, trade, or profession.

- S. Licenses, Permits, and Other Authorizations
 - i. Subrecipient shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or

Subcontractor, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

ii. Subrecipient, if a foreign corporation or other foreign entity transacting business in the State of Colorado, shall obtain prior to the Effective Date and maintain at all times during the term of this Agreement, at its sole expense, a certificate of authority to transact business in the State of Colorado and designate a registered agent in Colorado to accept service of process.

T. Federal Provisions

Subrecipient shall comply with all applicable requirements of Exhibits C and D at all times during the term of this Agreement.

17. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all agreements except where noted in italics.

A. STATUTORY APPROVAL. §24-30-202(1), C.R.S.

This Agreement shall not be valid until it has been approved by the Colorado State Controller or designee. If this Agreement is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), C.R.S., then this Agreement shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Subrecipient shall perform its duties hereunder as an independent contractor and not as an employee. Neither Subrecipient nor any agent or employee of Subrecipient shall be deemed to be an agent or employee of the State. Subrecipient shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. Subrecipient and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Subrecipient or any of its agents or employees. Subrecipient shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. Subrecipient shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Subrecipient shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Agreement that requires the State to indemnify or hold Subrecipient harmless; requires the State to agree to binding arbitration; limits Subrecipient's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Agreement shall be construed as a waiver of any provision of §24-106-109, C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Subrecipient hereby certifies and warrants that, during the term of this Agreement and any extensions, Subrecipient has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Subrecipient is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Agreement, including, without limitation, immediate termination of this Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. Subrecipient has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Subrecipient's services and Subrecipient shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[Not applicable to intergovernmental agreements] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Subrecipient in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Subrecipient by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Subrecipient, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services [Subrecipient certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Agreement and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Subrecipient shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a Subcontractor that fails to certify to Subrecipient that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. Subrecipient (i) shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment ("Department Program") to undertake pre-employment screening of job applicants while this Agreement is being performed, (ii) shall notify the Subcontractor and the contracting State agency or institution of higher education within three days if Subrecipient has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Agreement, (iii) shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (iv) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Subrecipient participates in the Department program, Subrecipient shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Subrecipient has examined the legal work status of such employee, and shall comply with all of the other requirements of the

Department program. If Subrecipient fails to comply with any requirement of this provision or §§8-17.5-101, *et seq.*, C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, Subrecipient shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Subrecipient, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Subrecipient (i) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (ii) shall comply with the provisions of §§24-76.5-101, *et seq.*, C.R.S., and (iii) has produced one form of identification required by §24-76.5-103, C.R.S., prior to the Effective Date of this Agreement.

| Total Project Amount Encumbered via this Subaward Agreement | | | | | | | \$250,000.00 | |
|---|------------------|---|---------------|------|--------------------------------------|-----|----------------|--------------|
| Operating | 24-07-4001.ERIE. | .300 30.09.01 | 80% | \$20 | 0,000.00 | 20% | \$50,000.00 | \$250,000.00 |
| Budget | WBS*** | ALI | Federal Funds | | Local Funds | | Total | |
| Total Project B | udget | 1 | | | | | | \$250,000.00 |
| Email maguilar@erieco | | erieco.gov | .gov | | Indirect Rate | | N/A | |
| Address | | P.O. Box 750 Erie, CO 80516 | | | Phone # | | (303) 926-2700 | |
| Contact Name Miguel Aguilar | | uilar | | | Vendor # | | 2000001 | |
| Subrecipient Erie, Town of | | of | | | UEID # | | X54EMT612417 | |
| Project End Date | | | | | June 30, 2026 | | | |
| Federal Award Date** | | | | | To Be Determined | | | |
| CFDA # 20.507 | | | | | FAIN** | | 1130-2024-8 | |
| CFDA Title Urbanized Area Formula Grants Program | | | | | | | | |
| Year of Funding and Federal Funding Source | | | | | FFY 2024 FTA-5307 | | | |
| Federal Regional Contact | | | | | David Beckhouse | | | |
| Federal Awarding Agency | | | | | Federal Transit Administration (FTA) | | | |
| Project Descrip | tion* 2024-5307 | 2024-5307: Flexride Starter Service Operating | | | | | | |

EXHIBIT A, STATEMENT OF WORK AND BUDGET

*This is not a research and development grant.

**The FAIN and/or Federal Award Date are not available at the time of execution of this Subaward Agreement. This information will be maintained in COTRAMS, CDOT's transit awards management system, and will be provided to Town of Erie there once obtained.

***The WBS numbers may be replaced without changing the amount of the grant at CDOT's discretion.

A. Project Description

Town of Erie shall use FTA-5307 funds, along with local matching funds, to maintain the existence of public transportation services through the following goals:

- 1. Enhance access to health care, education, employment, public services, recreation, social transactions, and other basic needs;
- 2. Assist in the maintenance, development, improvement and use of public transportation in their Transportation Planning Region (TPR);
- 3. Encourage and facilitate the most efficient use of all transportation funds used to provide passenger transportation in their TPR through the coordination of programs and services; and
- 4. Encourage mobility management, employment-related transportation alternatives, joint development practices, and transit-oriented development.

This funding is provided to support the services described above from the date of execution of this Subaward Agreement through June 30, 2026.

B. Performance Standards

1. Project Milestones

| Milestone Description | Original Estimated Completion Date | | |
|--|---------------------------------------|--|--|
| Submit Initial Reimbursement Request in COTRAMS | 9/5/2025 | | |
| Submit Progress Reports to Project Manager | 10/28/2025 | | |
| Submit Final Reimbursement Request in COTRAMS | 6/30/2026 | | |
| IMPORTANT NOTE: All milestones in this Statement of Work (except for the final reimbursement request) must be completed no later than the expiration date of this Subaward Agreement: June 30, 2026 . | | | |

- 2. Performance will be reviewed throughout the duration of this Subaward Agreement. Town of Erie shall report to the CDOT Project Manager whenever one or more of the following occurs:
 - a. Budget or schedule changes;
 - b. Scheduled milestone or completion dates are not met;
 - c. Identification of problem areas and how the problems will be resolved; and/or
 - d. Expected impacts and the efforts to recover from delays.
- 3. Town of Erie shall assist CDOT with Disadvantaged Business Enterprise (DBE) reporting to FTA by using the biannual FTA DBE Report in COTRAMS to report:
 - a. Contracts awarded, payments made, and contracts completed between Town of Erie and prime contractors; and
 - b. Contracts awarded, payments made, and contracts completed between Town of Erie's prime contractors and their subcontractors.
- 4. DBE Program Measure Reports shall be submitted in COTRAMS by Town of Erie on or before the following due dates:
 - a. Quarter 4 Quarter 1 (for October 1 March 31) due April 28th; and
 - b. Quarter 2 Quarter 3 (for April 1 September 30) due October 28th.

C. Project Budget

- 1. The Total Project Budget is \$250,000.00. CDOT will pay no more than 80% of the eligible, actual operating costs, up to the maximum amount of \$200,000.00. CDOT will retain any remaining balance of the federal share of FTA-5307 Funds. Town of Erie shall be solely responsible for all costs incurred in the project in excess of the amount paid by CDOT from Federal Funds for the federal share of eligible, actual costs. For CDOT accounting purposes, the Federal Funds of \$200,000.00 (80%) and matching Local Funds of \$50,000.00 (20%) will be encumbered for this Subaward Agreement.
- 2. No refund or reduction of the amount of Town of Erie's share to be provided will be allowed unless there is at the same time a refund or reduction of the federal share of a proportionate amount.
- 3. Town of Erie may use eligible federal funds for the Local Funds share, but those funds cannot be from other Federal Department of Transportation (DOT) programs. Town of Erie's share, together with the Federal Funds share, shall be enough to ensure payment of Total Project Budget.
- 4. Per the terms of this Subaward Agreement, CDOT will have no obligation to provide state funds for use on this project. CDOT will administer Federal Funds for this Project under the terms of this Subaward Agreement, provided that the federal share of FTA funds to be administered by CDOT are made available and remain available. Town of Erie shall initiate and prosecute to completion all actions necessary to enable Town of Erie to provide its share of the Total Project Budget at or prior to the time that such funds are needed to meet the Total Project Budget.

D. Allowable Costs

- 1. Town of Erie shall agree to adhere to the provisions for allowable and unallowable costs cited in the following regulations: 2 CFR 200.420 through 200.476; FTA C 5010.1 Chapter VI: Financial Management; Master Agreement, Section 6 "Non-Federal Share;" and 2 CFR 200.102. Other applicable requirements for cost allowability not cited previously shall also be considered.
- 2. Town of Erie's operating expenses are those costs directly related to system operations. Town of Erie at a minimum, should consider the following items as operating expenses: fuel, oil, drivers and dispatcher salaries and fringe benefits, and licenses.
- 3. If Town of Erie elects to take administrative assistance, eligible costs may include but are not limited to: general administrative expenses (e.g., salaries of the project director, secretary, and bookkeeper); marketing expenses; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; standard overhead rates; and the costs of administering drug and alcohol testing. Additionally, administrative costs for promoting and coordinating ridesharing are eligible as project administration if the activity is part of a coordinated public transportation program.

E. Reimbursement Eligibility

- 1. Town of Erie must submit invoice(s) monthly via COTRAMS. Reimbursement will apply only to eligible expenses that are incurred within the period of performance of this Subaward Agreement.
- 2. Reimbursement requests must be within the limits of Section D., Allowable Costs, of this Subaward Agreement. Town of Erie will be reimbursed based on the ratio of Federal Funds share and Local Funds share set forth in the Project Budget above.
- 3. Town of Erie shall submit the final request for reimbursement within sixty (60) calendar days of June 30, 2026, and submit a Grant Closeout and Liquidation (GCL) Form in COTRAMS within fifteen (15) days of issuance of the final reimbursement payment.

F. Training

In an effort to enhance transit safety, Town of Erie and any subrecipients and subcontractors shall make a good faith effort to ensure that appropriate training of agency and contracted personnel is occurring and that personnel are up to date in appropriate certifications. In particular, Town of Erie shall ensure that driving personnel are provided professional training in defensive driving and training on the handling of mobility devices and transporting older adults and individuals with disabilities.

G. Restrictions on Lobbying

Town of Erie is certifying that it complies with 2 CFR 200.450 by entering into this Subaward Agreement.

H. Special Conditions

- 1. Town of Erie shall comply with all requirements imposed by CDOT on Town of Erie so that the federal award is used in accordance with federal statutes, regulations, and the terms and conditions of the federal award.
- 2. Town of Erie shall permit CDOT and their auditors to have access to Town of Erie's records and financial statements as necessary, with reasonable advance notice.
- 3. Town of Erie shall comply with the record retention requirements outlined in 2 CFR 200.334 and FTA C 5010.1.
- 4. Town of Erie shall not request reimbursement for costs on this project from more than one Federal Awarding Agency or other federal awards (i.e., no duplicate billing).

- 5. Town of Erie shall advertise its service as available to the general public and shall not explicitly limit service by trip purpose or client type.
- 6. Town of Erie shall comply with FTA Drug and Alcohol Regulations, to include on time submission to FTA's Drug and Alcohol Management Information System (DAMIS).
- 7. Town of Erie shall ensure subcontractors and subrecipients (if any) comply with FTA Drug and Alcohol Regulations.
- 8. Town of Erie shall ensure that it does not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color, national origin, sex, age or disability in accordance with Title VI of the Civil Rights Act of 1964.
- 9. Town of Erie shall seek to ensure non-discrimination in its programs and activities by developing and maintaining a Title VI Program in accordance with the "Requirements for FTA Subrecipients" in CDOT's Title VI Program Plan and FTA Circular 4702.1, "Title VI Requirements and Guidelines for FTA Recipients." Town of Erie shall also facilitate FTA's compliance with Executive Order 12898 and DOT Order 5610.2(a) by incorporating the principles of environmental justice in planning, project development and public outreach in accordance with FTA Circular 4703.1 "Environmental Justice Policy Guidance for Federal Transit Administration Recipients."
- 10. Town of Erie shall provide transportation services to persons with disabilities in accordance with the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12101 et seq.
- 11. Town of Erie shall ensure that it does or will comply with the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, FTA guidance, and any other federal, state, and/or local laws, rules and/or regulations. In any contract utilizing federal funds, land, or other federal aid, Town of Erie shall require its subrecipients and/or contractors to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.
- 12. Town of Erie shall develop and maintain an Americans with Disabilities Act (ADA) Program in accordance with 28 CFR Part 35, Nondiscrimination on the Basis of Disability in State and Local Government Services, FTA Circular 4710.1, and any additional requirements established by CDOT for FTA subrecipients.
- 13. Town of Erie shall agree to maintain documentation that supports compliance with the ADA and produce said documentation to CDOT upon request.
- 14. Town of Erie will adopt a Transit Asset Management Plan that complies with regulations implementing 49 U.S.C. § 5326(d). Town of Erie shall maintain and report annually all information required by NTD and any other financial, fleet, or service data.
- 15. Town of Erie shall include nondiscrimination language and the Disadvantaged Business Enterprise (DBE) assurance in all contracts and solicitations in accordance with DBE regulations, 49 CFR part 26 and CDOT's DBE program.
- 16. Town of Erie agrees that any incidental use (e.g. meal or package delivery) shall not reduce the quality or availability of its regular public transportation service.

EXHIBIT B, SAMPLE OPTION LETTER

| State Agency Department of Transportation | Option Letter Number Insert the Option Number (e.g. "1" for the first option) | | |
|--|---|--|--|
| Subrecipient Insert Subrecipient's Full Legal Name, includi "LLC", etc | Original Agreement Number Insert CMS number or Other Contract Number of the Original Contract | | |
| Subaward Agreement Amount Federal Funds Maximum Amount (%) | \$0.00 | Option Agreement Number Insert CMS number or Other Contract Number of this Option | |
| Local Funds Local Match Amount (%) | \$0.00 | Agreement Performance Beginning Date The later of the Effective Date or Month, Day, Year | |
| Agreement Total | \$0.00 | Current Agreement Expiration Date Month, Day, Year | |

1. **OPTIONS:**

A. Option to extend for an Extension Term or End of Term Extension.

2. **REQUIRED PROVISIONS:**

A. <u>For use with Option 1(A):</u> In accordance with Section(s) 2.B/2.C of the Original Agreement referenced above, the State hereby exercises its option for an additional term/end of term extension, beginning Insert start date and ending on the current agreement expiration date shown above, at the rates stated in the Original Agreement, as amended.

3. OPTION EFFECTIVE DATE:

A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

| STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director | In accordance with §24-30-202, C.R.S., this Option Letter is not valid until signed and dated below by the State Controller or an authorized delegate. STATE CONTROLLER Robert Jaros, CPA, MBA, JD |
|--|--|
| By: Name: | By: Department of Transportation |
| Title: Date: | Option Letter Effective Date: |

EXHIBIT C, FEDERAL PROVISIONS

1. APPLICABILITY OF PROVISIONS

- 1.1. The Grant to which these Federal Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Federal Provisions, the Special Provisions, the body of the Grant, or any attachments or exhibits incorporated into and made a part of the Grant, the provisions of these Federal Provisions shall control.
- 1.2. The State of Colorado is accountable to Treasury for oversight of their subrecipients, including ensuring their subrecipients comply with federal statutes, Award Terms and Conditions, Treasury's Final Rule, and reporting requirements, as applicable.
- 1.3. Additionally, any subrecipient that issues a subaward to another entity (2nd tier subrecipient), must hold the 2nd tier subrecipient accountable to these provisions and adhere to reporting requirements.
- 1.4. These Federal Provisions are subject to the Award as defined in §2 of these Federal Provisions, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institutions of higher education.

2. **DEFINITIONS.**

- 2.1. For the purposes of these Federal Provisions, the following terms shall have the meanings ascribed to them below.
 - 2.1.1. "Award" means an award of Federal financial assistance, and the Grant setting forth the terms and conditions of that financial assistance, that a non-Federal Entity receives or administers.
 - 2.1.2. "Entity" means:
 - 2.1.2.1. a Non-Federal Entity;
 - 2.1.2.2. a foreign public entity;
 - 2.1.2.3. a foreign organization;
 - 2.1.2.4. a non-profit organization;
 - 2.1.2.5. a domestic for-profit organization (for 2 CFR parts 25 and 170 only);
 - 2.1.2.6. a foreign non-profit organization (only for 2 CFR part 170) only);
 - 2.1.2.7. a Federal agency, but only as a Subrecipient under an Award or Subaward to a non-Federal entity (or 2 CFR 200.1); or
 - 2.1.2.8. a foreign for-profit organization (for 2 CFR part 170 only).
 - 2.1.3. "Executive" means an officer, managing partner or any other employee in a management position.
 - 2.1.4. "Expenditure Category (EC)" means the category of eligible uses as defined by the US Department of Treasury in "Appendix 1 of the Compliance and Reporting Guidance, State and Local Fiscal Recovery Funds" report available at www.treasury.gov.
 - 2.1.5. "Federal Awarding Agency" means a Federal agency providing a Federal Award to a Recipient as described in 2 CFR 200.1

- 2.1.6. "Grant" means the Grant to which these Federal Provisions are attached.
- 2.1.7. "Grantee" means the party or parties identified as such in the Grant to which these Federal Provisions are attached.
- 2.1.8. "Non-Federal Entity means a State, local government, Indian tribe, institution of higher education, or nonprofit organization that carries out a Federal Award as a Recipient or a Subrecipient.
- 2.1.9. "Nonprofit Organization" means any corporation, trust, association, cooperative, or other organization, not including IHEs, that:
 - 2.1.9.1. Is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest;
 - 2.1.9.2. Is not organized primarily for profit; and
 - 2.1.9.3. Uses net proceeds to maintain, improve, or expand the operations of the organization.
- 2.1.10. "OMB" means the Executive Office of the President, Office of Management and Budget.
- 2.1.11. "Pass-through Entity" means a non-Federal Entity that provides a Subaward to a Subrecipient to carry out part of a Federal program.
- 2.1.12. "Prime Recipient" means the Colorado State agency or institution of higher education identified as the Grantor in the Grant to which these Federal Provisions are attached.
- 2.1.13. "Subaward" means an award by a Prime Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Subaward unless the terms and conditions of the Federal Award specifically indicate otherwise in accordance with 2 CFR 200.101. The term does not include payments to a Contractor or payments to an individual that is a beneficiary of a Federal program.
- 2.1.14. "Subrecipient" or "Subgrantee" means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term does not include an individual who is a beneficiary of a federal program. For SLFRF Grants, a subrecipient relationship continues to exist for Expenditure Category 6.1 Revenue Replacement.
- 2.1.15. "System for Award Management (SAM)" means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <u>http://www.sam.gov</u>. "Total Compensation" means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year (see 48 CFR 52.204-10, as prescribed in 48 CFR 4.1403(a)) and includes the following:
 - 2.1.15.1. Salary and bonus;
 - 2.1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with

respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;

- 2.1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
- 2.1.15.4. Change in present value of defined benefit and actuarial pension plans;
- 2.1.15.5. Above-market earnings on deferred compensation which is not taxqualified;
- 2.1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g., severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 2.1.16. "Transparency Act" means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
- 2.1.17. "Uniform Guidance" means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
 - 2.1.18. "Unique Entity ID Number" means the Unique Entity ID established by the federal government for a Grantee at https://sam.gov/content/home

3. COMPLIANCE.

- 3.1. Grantee shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, all provisions of the Uniform Guidance, and all applicable Federal Laws and regulations required by this Federal Award. Any revisions to such provisions or regulations shall automatically become a part of these Federal Provisions, without the necessity of either party executing any further instrument. The State of Colorado, at its discretion, may provide written notification to Grantee of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
- 3.2. Per US Treasury Final Award requirements, grantee programs or services must not include terms or conditions that undermine efforts to stop COVID-19 or discourage compliance with recommendations and CDC guidelines.

4. SYSTEM FOR AWARD MANAGEMENT (SAM) AND UNIQUE ENTITY ID SYSTEM (UEI) REQUIREMENTS.

- 4.1. SAM. Grantee shall maintain the currency of its information in SAM until the Grantee submits the final financial report required under the Award or receives final payment, whichever is later. Grantee shall review and update SAM information at least annually.
- 4.2. UEI. Grantee shall provide its Unique Entity ID to its Prime Recipient, and shall update Grantee's information in SAM.gov at least annually.

5. TOTAL COMPENSATION.

- 5.1. Grantee shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 5.1.1. The total Federal funding authorized to date under the Award is \$30,000 or more; and
 - 5.1.2. In the preceding fiscal year, Grantee received:
 - 5.1.2.1. 80% or more of its annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.2. \$30,000,000 or more in annual gross revenues from Federal procurement Agreements and Subcontractors and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 5.1.2.3 The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 780(d) or § 6104 of the Internal Revenue Code of 1986.

6. **Reporting**.

6.1. If Grantee is a Subrecipient of the Award pursuant to the Transparency Act, Grantee shall report data elements to SAM and to the Prime Recipient as required in this Exhibit. No direct payment shall be made to Grantee for providing any reports required under these Federal Provisions and the cost of producing such reports shall be included in the Grant price. The reporting requirements in this Exhibit are based on guidance from the OMB, and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Grant and shall become part of Grantee's obligations under this Grant.

7. EFFECTIVE DATE AND DOLLAR THRESHOLD FOR FEDERAL REPORTING.

- 7.1. Reporting requirements in §8 below apply to new Awards as of October 1, 2010, if the initial award is \$30,000 or more. If the initial Award is below \$30,000 but subsequent Award modifications result in a total Award of \$30,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$30,000. If the initial Award is \$30,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$30,000, the Award shall continue to be subject to the reporting requirements. If the total award is below \$30,000 no reporting required; if more than \$30,000 and less than \$50,000 then FFATA reporting is required; and, \$50,000 and above SLFRF reporting is required.
- 7.2. The procurement standards in §9 below are applicable to new Awards made by Prime Recipient as of December 26, 2015. The standards set forth in §11 below are applicable to audits of fiscal years beginning on or after December 26, 2014.

8. SUBRECIPIENT REPORTING REQUIREMENTS. [INTENTIONALLY DELETED]

9. PROCUREMENT STANDARDS.

- 9.1. Procurement Procedures. A Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and applicable regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, 2 CFR 200.318 through 200.327 thereof.
- 9.2. Domestic preference for procurements (2 CFR 200.322). As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all Agreements and purchase orders for work or products under this award.
- 9.3. Procurement of Recovered Materials. If a Subrecipient is a State Agency or an agency of a political subdivision of the State, its Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247, that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

10. ACCESS TO RECORDS.

10.1. A Subrecipient shall permit Prime Recipient and its auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of 2 CFR 200.332 (Requirements for pass-through entities), 2 CFR 200.300 (Statutory and national policy requirements) through 2 CFR 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance.

11. SINGLE AUDIT REQUIREMENTS.

- 11.1. If a Subrecipient expends \$750,000 or more in Federal Awards during the Subrecipient's fiscal year, the Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR 200.501.
 - 11.1.1. Election. A Subrecipient shall have a single audit conducted in accordance with Uniform Guidance 2 CFR 200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with 2 CFR 200.507 (Program-specific audits). The Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Prime Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.

- 11.1.2. Exemption. If a Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, the Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR 200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
- 11.1.3. Subrecipient Compliance Responsibility. A Subrecipient shall procure or otherwise arrange for the audit required by Subpart F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with 2 CFR 200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Subpart F-Audit Requirements.

12. GRANT PROVISIONS FOR SUBRECIPIENT AGREEMENTS.

- 12.1. In addition to other provisions required by the Federal Awarding Agency or the Prime Recipient, Grantees that are Subrecipients shall comply with the following provisions. Subrecipients shall include all of the following applicable provisions in all Subcontractors entered into by it pursuant to this Grant.
 - 12.1.1. [Applicable to federally assisted construction Agreements.] Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all Agreements that meet the definition of "federally assisted construction Agreement" in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, Office of Federal Agreement Compliance Programs, Equal Employment Opportunity, Department of Labor.
 - 12.1.2. [Applicable to on-site employees working on government-funded construction, alteration and repair projects.] Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).
 - 12.1.3. Rights to Inventions Made Under a grant or agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR 401.2 (a) and the Prime Recipient or Subrecipient wishes to enter into an Agreement with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Prime Recipient or Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Agreements and Cooperative Agreements," and any implementing regulations issued by the Federal Awarding Agency.

- 12.1.4. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Agreements and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal awardees to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal Awarding Agency and the Regional Office of the Environmental Protection Agency (EPA).
- 12.1.5. Debarment and Suspension (Executive Orders 12549 and 12689). A Agreement award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in SAM, in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- 12.1.6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal Agreement, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- 12.1.7. Never Contract with the Enemy (2 CFR 200.215). Federal awarding agencies and recipients are subject to the regulations implementing "Never Contract with the Enemy" in 2 CFR part 183. The regulations in 2 CFR part 183 affect covered Agreements, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- 12.1.8. Prohibition on certain telecommunications and video surveillance services or equipment (2 CFR 200.216). Grantee is prohibited from obligating or expending loan or grant funds on certain telecommunications and video surveillance services or equipment pursuant to 2 CFR 200.216.

12.1.9. Title VI of the Civil Rights Act. The Subgrantee, Contractor, Subcontractor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this Agreement (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S. C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CRF Part 22, and herein incorporated by reference and made part of this Agreement of this Agreement.

13. CERTIFICATIONS.

- 13.1. Subrecipient Certification. Subrecipient shall sign a "State of Colorado Agreement with Recipient of Federal Recovery Funds" Certification Form in Exhibit E and submit to State Agency with signed grant agreement.
- 13.2. Unless prohibited by Federal statutes or regulations, Prime Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR 200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR 200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

14. EXEMPTIONS.

- 14.1. These Federal Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.
- 14.2. A Grantee with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

15. EVENT OF DEFAULT AND TERMINATION.

- 15.1. Failure to comply with these Federal Provisions shall constitute an event of default under the Grant and the State of Colorado may terminate the Grant upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30-day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.
- 15.2. Termination (2 CFR 200.340). The Federal Award may be terminated in whole or in part as follows:
 - 15.2.1. By the Federal Awarding Agency or Pass-through Entity, if a Non-Federal Entity fails to comply with the terms and conditions of a Federal Award;
 - 15.2.2. By the Federal awarding agency or Pass-through Entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;

- 15.2.3. By the Federal awarding agency or Pass-through Entity with the consent of the Non-Federal Entity, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated;
- 15.2.4. By the Non-Federal Entity upon sending to the Federal Awarding Agency or Passthrough Entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal Awarding Agency or Pass-through Entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or Subaward will not accomplish the purposes for which the Federal Award was made, the Federal Awarding Agency or Pass-through Entity may terminate the Federal Award in its entirety; or
- 15.2.5. By the Federal Awarding Agency or Pass-through Entity pursuant to termination provisions included in the Federal Award.

EXHIBIT D, REQUIRED FEDERAL CONTRACT/AGREEMENT CLAUSES

Section 3(1) – No Federal government obligations to third-parties by use of a disclaimer

No Federal/State Government Commitment or Liability to Third Parties. Except as the Federal Government or CDOT expressly consents in writing, the Subrecipient agrees that:

- (1) The Federal Government or CDOT does not and shall not have any commitment or liability related to the Underlying Agreement, to any Third party Participant at any tier, or to any other person or entity that is not a party (FTA, CDOT or the Subrecipient) to the underlying Agreement, and
- (2) Notwithstanding that the Federal Government or CDOT may have concurred in or approved any Solicitation or Third party Agreement at any tier that may affect the underlying Agreement, the Federal Government and CDOT does not and shall not have any commitment or liability to any Third Party Participant or other entity or person that is not a party (FTA, CDOT, or the Subrecipient) to the underlying Agreement.

Section 4(f) – Program fraud and false or fraudulent statements and related acts

False or Fraudulent Statements or Claims.

- (1) Civil Fraud. The Subrecipient acknowledges and agrees that:
 - (a) Federal laws, regulations, and requirements apply to itself and its Agreement, including the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR part 31.
 - (b) By executing the Agreement, the Subrecipient certifies and affirms to the Federal Government the truthfulness and accuracy of any claim, statement, submission, certification, assurance, affirmation, or representation that the Subrecipient provides to the Federal Government and CDOT.
 - (c) The Federal Government and CDOT may impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, and other applicable penalties if the Subrecipient presents, submits, or makes available any false, fictitious, or fraudulent information.
- (2) Criminal Fraud. The Subrecipient acknowledges that 49 U.S.C. § 5323(*l*)(1) authorizes the Federal Government to impose the penalties under 18 U.S.C. § 1001 if the Subrecipient provides a false, fictitious, or fraudulent claim, statement, submission, certification, assurance, or representation in connection with a federal public transportation program under 49 U.S.C. chapter 53 or any other applicable federal law.

Section 9. Record Retention and Access to Sites of Performance.

- (a) Types of Records. The Subrecipient agrees that it will retain, and will require its Third party Participants to retain, complete and readily accessible records related in whole or in part to the underlying Agreement, including, but not limited to, data, documents, reports, statistics, subagreements, leases, third party contracts, arrangements, other third party agreements of any type, and supporting materials related to those records.
- (b). Retention Period. The Subrecipient agrees to comply with the record retention requirements in the applicable U.S. OT Common Rule. Records pertaining to its Award, the accompanying underlyingAgreement, and any Amendments thereto must be retained from the day the underlying Agreement was signed by the authorized FTA (or State) official through the course of the Award, the accompanying Agreement, and any Amendments thereto until three years after the Subrecipient has submitted its last or final expenditure report, and other pending matters are closed.
- (c) Access to Recipient and Third party Participant Records. The Subrecipient agrees and assures that each Subrecipient, if any, will agree to:
 - (1) Provide, and require its Third Party Participants at each tier to provide, sufficient access to inspect and audit records and information related to its Award, the accompanying Agreement, and any Amendments thereto to the U.S. Secretary of Transportation or the Secretary's duly authorized representatives, to the Comptroller General of the United States, and the Comptroller General's duly authorized representatives, and to the Subrecipient and each of its Subrecipients,
 - (2) Permit those individuals listed above to inspect all work and materials related to its Award, and to audit any information related to its Award under the control of the Subrecipient or Third party Participant within books, records, accounts, or other locations, and
 - (3) Otherwise comply with 49 U.S.C. § 5325(g), and federal access to records requirements as set forth in the applicable U.S. DOT Common Rules.
- (d) Access to the Sites of Performance. The Subrecipient agrees to permit, and to require its Third party Participants to permit, FTA and CDOT to have access to the sites of performance of its Award, the accompanying Agreement, and any Amendments thereto, and to make site visits as needed in compliance with State and the U.S. DOT Common Rules.
- (e) Closeout. Closeout of the Award does not alter the record retention or access requirements of this section of the Master Agreement.

3(G) – Federal Changes

Application of Federal, State, and Local Laws, Regulations, Requirements, and Guidance.

The Subrecipient agrees to comply with all applicable federal requirements and federal guidance. All standards or limits are minimum requirements when those standards or limits are included in the Recipient's Agreement or this Master Agreement. At the time the FTA Authorized Official (or CDOT) awards federal assistance to the Subrecipient in support of the Agreement, the federal requirements and guidance that apply then may be modified from time to time and will apply to the Subrecipient or the accompanying Agreement, except as FTA determines otherwise in writing.

12 - Civil Rights

- (c) Nondiscrimination Title VI of the Civil Rights Act. The Subrecipient agrees to, and assures that each Third party Participant, will:
 - (1) Prohibit discrimination on the basis of race, color, or national origin,
 - (2) Comply with:
 - (i) Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d et seq.;
 - (ii) U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation – Effectuation of Title VI of the Civil Rights Act of 1964," 49 CFR part 21; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332; and
 - (3) Follow:
 - (i) The most recent edition of FTA Circular 4702.1, "Title VI Requirements and Guidelines for Federal Transit Administration Recipients," to the extent consistent with applicable federal laws, regulations, requirements, and guidance;
 - (ii) U.S. DOJ, "Guidelines for the enforcement of Title VI, Civil Rights Act of 1964," 28 CFR § 50.3; and
 - (iii) All other applicable federal guidance that may be issued.
- (d) Equal Employment Opportunity.
 - (1) Federal Requirements and Guidance. The Subrecipient agrees to, and assures that each Third Party Participant will prohibit discrimination on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin, and:
 - (i) Comply with Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.;
 - (ii) Comply with Title I of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. §§ 12101, et seq.;
 - (iii) Facilitate compliance with Executive Order No. 11246, "Equal Employment Opportunity" September 24, 1965 (42 U.S.C. § 2000e note), as amended by any later Executive Order that amends or supersedes it in part and is applicable to federal assistance programs;
 - (iv) Comply with federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of the Master Agreement;
 - (v) FTA Circular 4704.1 "Equal Employment Opportunity (EEO) Requirements and Guidelines for Federal Transit Administration Recipients;" and
 - (vi) Follow other federal guidance pertaining to EEO laws, regulations, and requirements.
 - (2). Specifics. The Subrecipient agrees to, and assures that each Third Party Participant will:
 - (i) Affirmative Action. Take affirmative action that includes, but is not limited to:
 - (A) Recruitment advertising, recruitment, and employment;
 - (B) Rates of pay and other forms of compensation;
 - (C) Selection for training, including apprenticeship, and upgrading; and
 - (D) Transfers, demotions, layoffs, and terminations; but
 - (ii) Indian Tribe. Recognize that Title VII of the Civil Rights Act of 1964, as amended, exempts Indian Tribes under the definition of "Employer," and
 - (3) Equal Employment Opportunity Requirements for Construction Activities. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:
 - (i) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60; and
 - (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note, as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.
- (h) Nondiscrimination on the Basis of Disability. The Subrecipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability:
 - (1) Federal laws, including:

- Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities;
- (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:
 - (A) For FTA Recipients generally, Titles I, II, and III of the ADA apply; but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
- (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
- (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
- (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.
- (2) Federal regulations and guidance, including:
 - U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37;
 - U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27;
 - Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR part 1192 and 49 CFR part 38;
 - (iv) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 CFR part 39;
 - U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR part 35;
 - (vi) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR part 36;
 - (vii) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR part 1630;
 - (viii) U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR part 64, Subpart F;
 - (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR part 1194;
 - (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR part 609;
 - (x) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
 - (xi) Other applicable federal civil rights and nondiscrimination regulations and guidance.

Incorporation of FTA Terms – 16.a.

- (a) Federal Laws, Regulations, Requirements, and Guidance. The Subrecipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

Energy Conservation – 26.j

(a) Energy Conservation. The Subrecipient agrees to, and assures that its Subrecipients, will comply with the mandatory energy standards and policies of its state energy conservation plans under the Energy Policy and Conservation Act, as amended, 42 U.S.C. § 6321 et seq., and perform an energy assessment for any building constructed, reconstructed, or modified with federal assistance required under FTA regulations, "Requirements for Energy Assessments," 49 CFR part 622, subpart C.

Applicable to Awards exceeding \$10,000

Section 11. Right of the Federal Government to Terminate.

- (a) Justification. After providing written notice to the Subrecipient, the Subrecipient agrees that the Federal Government may suspend, suspend then terminate, or terminate all or any part of the federal assistance for the Award if:
 - (1) The Subrecipient has failed to make reasonable progress implementing the Award;
 - (2) The Federal Government determines that continuing to provide federal assistance to support the Award does not adequately serve the purposes of the law authorizing the Award; or
 - (3) The Subrecipient has violated the terms of the Agreement, especially if that violation would endanger substantial performance of the Agreement.
- (b) Financial Implications. In general, termination of federal assistance for the Award will not invalidate obligations properly incurred before the termination date to the extent that the obligations cannot be canceled. The Federal Government may recover the federal assistance it has provided for the Award, including the federal assistance for obligations properly incurred before the termination date, if it determines that the Subrecipient has misused its federal assistance by failing to make adequate progress, failing to make appropriate use of the Project property, or failing to comply with the Agreement, and require the Subrecipient to refund the entire amount or a lesser amount, as the Federal Government may determine including obligations properly incurred before the termination date.
- (c) Expiration of the Period of Performance. Except for a Full Funding Grant Agreement, expiration of any period of performance established for the Award does not, by itself, constitute an expiration or termination of the Award; FTA may extend the period of performance to assure that each Formula Project or related activities and each Project or related activities funded with "no year" funds can receive FTA assistance to the extent FTA deems appropriate.

Applicable to Awards exceeding \$25,000

From Section 4. Ethics.

- (a) Debarment and Suspension. The Subrecipient agrees to the following:
 - (1) It will comply with the following requirements of 2 CFR part 180, subpart C, as adopted and supplemented by U.S. DOT regulations at 2 CFR part 1200.
 - (2) It will not enter into any "covered transaction" (as that phrase is defined at 2 CFR §§ 180.220 and 1200.220) with any Third Party Participant that is, or whose principal is, suspended, debarred, or otherwise excluded from participating in covered transactions, except as authorized by-
 - (i) U.S. DOT regulations, "Nonprocurement Suspension and Debarment," 2 CFR part 1200;
 - (ii) U.S. OMB regulatory guidance, "Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement)," 2 CFR part 180; and
 - (iii) Other applicable federal laws, regulations, or requirements regarding participation with debarred or suspended Subrecipients or Third Party Participants.
 - (3) It will review the U.S. GSA "System for Award Management Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," if required by U.S. DOT regulations, 2 CFR part 1200.
 - (4) It will that its Third Party Agreements contain provisions necessary to flow down these suspension and debarment provisions to all lower tier covered transactions.
 - (5) If the Subrecipient suspends, debars, or takes any similar action against a Third Party Participant or individual, the Subrecipient will provide immediate written notice to the:
 - (i) FTA Regional Counsel for the Region in which the Subrecipient is located or implements the underlying Agreement,
 - (ii) FTA Headquarters Manager that administers the Grant or Cooperative Agreement, or
 - (iii) FTA Chief Counsel.

Applicable to Awards exceeding the simplified acquisition threshold (\$100,000-see Note)

Note: Applicable when tangible property or construction will be acquired

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Subrecipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR part 661, to the extent consistent with 49 U.S.C. § 5323(j).

Section 39. Disputes, Breaches, Defaults, and Litigation.

- (a) FTA Interest. FTA has a vested interest in the settlement of any violation of federal law, regulation, or disagreement involving the Award, the accompanying underlying Agreement, and any Amendments thereto including, but not limited to, a default, breach, major dispute, or litigation, and FTA reserves the right to concur in any settlement or compromise.
- (b) Notification to FTA; *Flow Down Requirement*. If a current or prospective legal matter that may affect the Federal Government emerges, the Subrecipient must promptly notify the FTA Chief Counseland FTA Regional Counsel for the Region in which the Subrecipient is located. The Subrecipient must include a similar notification requirement in its Third Party Agreements and must require each Third Party Participant to include an equivalent provision in its subagreements at every tier, for any agreement that is a "covered transaction" according to 2 C.F.R. §§ 180.220 and 1200.220.
 - (1) The types of legal matters that require notification include, but are not limited to, a major dispute, breach, default, litigation, or naming the Federal Government as a party to litigation or a legal disagreement in any forum for any reason.
 - (2) Matters that may affect the Federal Government include, but are not limited to, the Federal Government's interests in the Award, the accompanying Underlying Agreement, and any Amendments thereto, or the Federal Government's administration or enforcement of federal laws, regulations, and requirements.
 - (3) Additional Notice to U.S. DOT Inspector General. The Subrecipient must promptly notify the U.S. DOT Inspector General in addition to the FTA Chief Counsel or Regional Counsel for the Region in which the Subrecipient is located, if the Subrecipient has knowledge of potential fraud, waste, or abuse occurring on a Project receiving assistance from FTA. The notification provision applies if a person has or may have submitted a false claim under the False Claims Act, 31 U.S.C. § 3729, et seq., or has or may have committed a criminal or civil violation of law pertaining to such matters as fraud, conflict of interest, bid rigging, misappropriation or embezzlement, bribery, gratuity, or similar misconduct involving federal assistance. This responsibility occurs whether the Project is subject to this Agreement or another agreement between the Subrecipient and FTA, or an agreement involving a principal, officer, employee, agent, or Third Party Participant of the Subrecipient. It also applies to subcontractors at any tier. Knowledge, as used in this paragraph, includes, but is not limited to, knowledge of a criminal or civil investigation by a Federal, state, or local law enforcement or other investigative agency, a criminal indictment or civil complaint, or probable cause that could support a criminal indictment, or any other credible information in the possession of the Subrecipient. In this paragraph, "promptly" means to refer information without delay and without change. This notification provision applies to all divisions of the Subrecipient, including divisions tasked with law enforcement or investigatory functions.
- (c) Federal Interest in Recovery. The Federal Government retains the right to a proportionate share of any proceeds recovered from any third party, based on the percentage of the federal share for the Agreement. Notwithstanding the preceding sentence, the Subrecipient may return all liquidated damages it receives to its Award Budget for its Agreement rather than return the federal share of those liquidated damages to the Federal Government, provided that the Subrecipient receives FTA's prior written concurrence.
- (d) Enforcement. The Subrecipient must pursue its legal rights and remedies available under any third party agreement, or any federal, state, or local law or regulation.

Applicable to Awards exceeding \$100,000 by Statute

From Section 4. Ethics.

- a. Lobbying Restrictions. The Subrecipient agrees that neither it nor any Third Party Participant will use federal assistance to influence any officer or employee of a federal agency, member of Congress or an employee of a member of Congress, or officer or employee of Congress on matters that involve the underlying Agreement, including any extension or modification, according to the following:
 - (1) Laws, Regulations, Requirements, and Guidance. This includes:
 - (i) The Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended;
 - (ii) U.S. DOT regulations, "New Restrictions on Lobbying," 49 CFR part 20, to the extent consistent with 31 U.S.C. § 1352, as amended; and
 - (iii) Other applicable federal laws, regulations, requirements, and guidance prohibiting the use of federal assistance for any activity concerning legislation or appropriations designed to influence the U.S. Congress or a state legislature; and
 - (2) Exception. If permitted by applicable federal law, regulations, requirements, or guidance, such lobbying activities described above may be undertaken through the Subrecipient's or Subrecipient's proper official channels.

Section 26. Environmental Protections - Clean Air and Clean Water

(d) Other Environmental Federal Laws. The Subrecipient agrees to comply or facilitate compliance, and assures that its Third Party Participants will comply or facilitate compliance, with all applicable federal laws, regulations, and requirements, and will follow applicable guidance, including, but not limited to, the Clean Air Act, Clean Water Act, Wild and Scenic Rivers Act of 1968, Coastal Zone Management Act of 1972, the Endangered Species Act of 1973, Magnuson Stevens Fishery Conservation and Management Act, Resource Conservation and Recovery Act, Comprehensive Environmental Response, Compensation, and Liability Act, Executive Order No. 11990 relating to "Protection of Wetlands," and Executive Order No. 11988, as amended, "Floodplain Management."

Applicable with the Transfer of Property or Persons

Section 15. Preference for United States Products and Services.

Except as the Federal Government determines otherwise in writing, the Subrecipient agrees to comply with FTA's U.S. domestic preference requirements and follow federal guidance, including:

- (a) Buy America. The domestic preference procurement requirements of 49 U.S.C. § 5323(j), and FTA regulations, "Buy America Requirements," 49 CFR part 661, to the extent consistent with 49 U.S.C. § 5323(j);
- (c) Cargo Preference. Preference Use of United States-Flag Vessels. The shipping requirements of 46 U.S.C. § 55305, and U.S. Maritime Administration regulations, "Cargo Preference – U.S.-Flag Vessels," 46 CFR part 381; and
- (d) Fly America. The air transportation requirements of Section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and U.S. General Services Administration (U.S. GSA) regulations, "Use of United States Flag Air Carriers," 41 CFR §§ 301-10.131 – 301-10.143.

Applicable to Construction Activities

Section 24. Employee Protections.

- a. Awards Involving Construction. The Subrecipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing protections for construction employees involved in each Project or related activities with federal assistance provided through the underlying Agreement, including the:
 - (1) Prevailing Wage Requirements of:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5333(a), (FTA's "Davis-Bacon Related Act");
 - (ii) The Davis-Bacon Act, 40 U.S.C. §§ 3141 3144, 3146, and 3147; and
 - (iii) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
 - (2) Wage and Hour Requirements of:
 - (i) Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq.; and
 - (ii) U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.
 - (3) "Anti-Kickback" Prohibitions of:
 - (i) Section 1 of the Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874;
 - (ii) Section 2 of the Copeland "Anti-Kickback" Act, as amended, 40 U.S.C. § 3145; and
 - (iii) U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States," 29 CFR part 3.
 - (4) Construction Site Safety of:
 - (i) Section 107 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3704, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq.; and
 - (ii) U.S. DOL regulations, "Recording and Reporting Occupational Injuries and Illnesses," 29 CFR part 1904; "Occupational Safety and Health Standards," 29 CFR part 1910; and "Safety and Health Regulations for Construction," 29 CFR part 1926.

From Section 16

- (n) Bonding. The Subrecipient agrees to comply with the following bonding requirements and restrictions as provided in federal regulations and guidance:
 - (1) Construction. As provided in federal regulations and modified by FTA guidance, for each Project or related activities implementing the Agreement that involve construction, it will provide bid guarantee bonds, contract performance bonds, and payment bonds.
 - (2) Activities Not Involving Construction. For each Project or related activities implementing the Agreement not involving construction, the Subrecipient will not impose excessive bonding and will follow FTA guidance.

From Section 23

(b) Seismic Safety. The Subrecipient agrees to comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S.C. § 7701 et seq., and U.S. DOT regulations, "Seismic Safety," 49 CFR part 41, specifically, 49 CFR § 41.117.

Section 12 Civil Rights D(3)

- <u>Equal Employment Opportunity Requirements for Construction Activities</u>. Comply, when undertaking "construction" as recognized by the U.S. Department of Labor (U.S. DOL), with:
- (i.) U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 CFR chapter 60, and
- (ii) Executive Order No. 11246, "Equal Employment Opportunity in Federal Employment," September 24, 1965, 42 U.S.C. § 2000e note (30 Fed. Reg. 12319, 12935), as amended by any later Executive Order that amends or supersedes it, referenced in 42 U.S.C. § 2000e note.

Applicable to Nonconstruction Activities

From Section 24. Employee Protections

(b) Awards Not Involving Construction. The Subrecipient agrees to comply and assures that each Third Party Participant will comply with all federal laws, regulations, and requirements providing wage and hour protections for nonconstruction employees, including Section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. § 3702, and other relevant parts of that Act, 40 U.S.C. § 3701 et seq., and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 CFR part 5.

Applicable to Transit Operations

- a. Public Transportation Employee Protective Arrangements. As a condition of award of federal assistance appropriated or made available for FTA programs involving public transportation operations, the Subrecipient agrees to comply and assures that each Third Party Participant will comply with the following employee protective arrangements of 49 U.S.C. § 5333(b):
 - (1) U.S. DOL Certification. When its Awarded, the accompanying Agreement, or any Amendments thereto involve public transportation operations and are supported with federal assistance appropriated or made available for 49 U.S.C. §§ 5307 5312, 5316, 5318, 5323(a)(1), 5323(b), 5323(d), 5328, 5337, 5338(b), or 5339, or former 49 U.S.C. §§ 5308, 5309, 5312, or other provisions of law as required by the Federal Government, U.S. DOL must provide a certification of employee protective arrangements before FTA may provide federal assistance for that Award. The Subrecipient agrees that the certification issued by U.S. DOL is a condition of the underlying Agreement and that the Subrecipient must comply with its terms and conditions.
 - (2) Special Warranty. When its Agreement involves public transportation operations and is supported with federal assistance appropriated or made available for 49 U.S.C. § 5311, U.S. DOL will provide a Special Warranty for its Award, including its Award of federal assistance under the Tribal Transit Program. The Subrecipient agrees that its U.S. DOL Special Warranty is a condition of the underlying Agreement and the Subrecipient must comply with its terms and conditions.
 - (3) Special Arrangements for Agreements for Federal Assistance Authorized under 49 U.S.C. § 5310. The Subrecipient agrees, and assures that any Third Party Participant providing public transportation operations will agree, that although pursuant to 49 U.S.C. § 5310, and former 49 U.S.C. § 5310 or 5317, FTA has determined that it was not "necessary or appropriate" to apply the conditions of 49 U.S.C. § 5333(b) to any Subagreement participating in the program to provide public transportation for seniors (elderly individuals) and individuals with disabilities, FTA reserves the right to make case-by- case determinations of the applicability of 49 U.S.C. § 5333(b) for all transfers of funding authorized under title 23, United States Code (flex funds), and make other exceptions as it deems appropriate.

Section 28. Charter Service.

- (a) Prohibitions. The Recipient agrees that neither it nor any Third Party Participant involved in the Award will engage in charter service, except as permitted under federal transit laws, specifically 49 U.S.C. § 5323(d), (g), and (r), FTA regulations, "Charter Service," 49 CFR part 604, any other Federal Charter Service regulations, federal requirements, or federal guidance.
- (b) Exceptions. Apart from exceptions to the Charter Service restrictions in FTA's Charter Service regulations, FTA has established the following additional exceptions to those restrictions:
 - (1) FTA's Charter Service restrictions do not apply to equipment or facilities supported with federal assistance appropriated or made available for 49 U.S.C. § 5307 to support a Job Access and Reverse Commute (JARC)-type Project or related activities that would have been eligible for assistance under repealed 49 U.S.C. § 5316 in effect in Fiscal Year 2012 or a previous fiscal year, provided that the Subrecipient uses that federal assistance for FTA program purposes only, and
 - (2) FTA's Charter Service restrictions do not apply to equipment or facilities supported with the federal assistance appropriated or made available for 49 U.S.C. § 5310 to support a New Freedom-type Project or related activities that would have been eligible for federal assistance under repealed 49 U.S.C. § 5317 in effect in Fiscal Year 2012 or a previous fiscal year, provided the Subrecipient uses that federal assistance for program purposes only.
- (c) Violations. If it or any Third Party Participant engages in a pattern of violations of FTA's Charter Service regulations, FTA may require corrective measures and remedies, including withholding an amount of federal assistance as provided in FTA's Charter Service regulations, 49 CFR part 604, appendix D, or barring it or the Third Party Participant from receiving federal assistance provided in 49 U.S.C. chapter 53, 23 U.S.C. § 133, or 23 U.S.C. § 142.

Section 29. School Bus Operations.

- (a) Prohibitions. The Subrecipient agrees that neither it nor any Third Party Participant that is participating in its Award will engage in school bus operations exclusively for the transportation of students or school personnel in competition with private school bus operators, except as permitted by federal transit laws, 49 U.S.C. § 5323(f) or (g), FTA regulations, "School Bus Operations," 49 CFR part 605, and any other applicable federal "School Bus Operations" laws, regulations, federal requirements, or applicable federal guidance.
- (b) Violations. If a Subrecipient or any Third Party Participant has operated school bus service in violation of FTA's School Bus laws, regulations, or requirements, FTA may require the Subrecipient or Third Party Participant to take such remedial measures as FTA considers appropriate, or bar the Subrecipient or Third Party Participant from receiving federal transit assistance.

From Section 35 Substance Abuse

c. Alcohol Misuse and Prohibited Drug Use.

- (1) Requirements. The Subrecipient agrees to comply and assures that its Third Party Participants will comply with:
 - (i) Federal transit laws, specifically 49 U.S.C. § 5331;
 - (ii) FTA regulations, "Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations," 49 CFR part 655; and
 - (iii) Applicable provisions of U.S. DOT regulations, "Procedures for Transportation Workplace Drug and Alcohol Testing Programs," 49 CFR part 40.
- (2) Remedies for Non-Compliance. The Subrecipient agrees that if FTA determines that the Subrecipient or a Third Party Participant receiving federal assistance under 49 U.S.C. chapter 53 is not in compliance with 49 CFR part 655, the Federal Transit Administrator may bar that Subrecipient or Third Party Participant from receiving all or a portion of the federal transit assistance for public transportation it would otherwise receive.

Applicable to Planning, Research, Development, and Documentation Projects

Section 17. Patent Rights.

- a. General. The Subrecipient agrees that:
 - (1) Depending on the nature of the Agreement, the Federal Government may acquire patent rights when the Subrecipient or Third Party Participant produces a patented or patentable invention, improvement, or discovery;
 - (2) The Federal Government's rights arise when the patent or patentable information is conceived or reduced to practice with federal assistance provided through the underlying Agreement; or
 - (3) When a patent is issued or patented information becomes available as described in the preceding section 17(a)(2) of this Master Agreement, the Subrecipient will notify FTA immediately and provide a detailed report satisfactory to FTA.

- b. Federal Rights. The Subrecipient agrees that:
 - (1) Its rights and responsibilities, and each Third Party Participant's rights and responsibilities, in that federally assisted invention, improvement, or discovery will be determined as provided in applicable federal laws, regulations, requirements, and guidance, including any waiver thereof, and
 - (2) Unless the Federal Government determines otherwise in writing, irrespective of its status or the status of any Third Party Participant as a large business, small business, state government, state instrumentality, local government, Indian tribe, nonprofit organization, institution of higher education, or individual, the Subrecipient will transmit the Federal Government's patent rights to FTA, as specified in 35 U.S.C. § 200 et seq., and U.S. Department of Commerce regulations, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," 37 CFR part 401.
- c. License Fees and Royalties. Consistent with the applicable U.S. DOT Common Rules, the Subrecipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income and must be used in compliance with applicable federal requirements.

Section 18. Rights in Data and Copyrights.

- (a) Definition of "Subject Data." As used in this section, "subject data" means recorded information whether or not copyrighted, and that is delivered or specified to be delivered as required by the Agreement. Examples of "subject data" include, but are not limited to computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information, but do not include financial reports, cost analyses, or other similar information used for performance or administration of the underlying Agreement.
- (b) *General Federal Restrictions*. The following restrictions apply to all subject data first produced in the performance of the Agreement:
 - (1) *Prohibitions*. The Subrecipient may not publish or reproduce any subject data, in whole, in part, or in any manner or form, or permit others to do so.
 - (2) *Exceptions*. The prohibitions do not apply to publications or reproductions for the Subrecipient's own internal use, an institution of higher learning, the portion of subject data that the Federal Government has previously released or approved for release to the public, or the portion of data that has the Federal Government's prior written consent for release.
- (c) Federal Rights in Data and Copyrights. The Subrecipient agrees that:
 - (1) *General*. It must provide a license to its "subject data" to the Federal Government that is royalty-free, nonexclusive, and irrevocable. The Federal Government's license must permit the Federal Government to reproduce, publish, or otherwise use the subject data or permit other entities or individuals to use the subject data provided those actions are taken for Federal Government purposes, and
 - (2) U.S. DOT Public Access Plan Copyright License. The Subrecipient grants to U.S. DOT a worldwide, non-exclusive, non-transferable, paid-up, royalty-free copyright license, including all rights under copyright, to any and all Publications and Digital Data Sets as such terms are defined in the U.S. DOT Public Access plan, resulting from scientific research funded either fully or partially by this funding agreement. The Subrecipient herein acknowledges that the above copyright license grant is first in time to any and all other grants of a copyright license to such Publications and/or Digital Data Sets, and that U.S. DOT shall have priority over any other claim of exclusive copyright to the same.
- (d) Special Federal Rights in Data for Research, Development, Demonstration, Deployment, Technical Assistance, and Special Studies Programs. In general, FTA's purpose in providing federal assistance for a research, development, demonstration, deployment, technical assistance, or special studies program is to increase transportation knowledge, rather than limit the benefits of the Award to the Subrecipient and its Third Party Participants. Therefore, the Subrecipient agrees that:
 - (1) *Publicly Available Report*. When an Award providing federal assistance for any of the programs described above is completed, it must provide a report of the Agreement that FTA may publish or make available for publication on the Internet.
 - (2) Other Reports. It must provide other reports related to the Award that FTA may request.
 - (3) Availability of Subject Data. FTA may make available its copyright license to the subject data, and a copy of the subject data to any FTA Recipient or any Third Party Participant at any tier, except as the Federal Government determines otherwise in writing.
 - (4) *Identification of Information*. It must identify clearly any specific confidential, privileged, or proprietary information submitted to FTA.

Contract Number: 25-HTR-ZL-00204 / PO: 491003911

- (5) *Incomplete*. If the Award is not completed for any reason whatsoever, all data developed with federal assistance for the Award becomes "subject data" and must be delivered as the Federal Government may direct.
- (6) *Exception*. This section does not apply to an adaptation of any automatic data processing equipment or program that is both for the Subrecipient's use and acquired with FTA capital program assistance.
- (e) *License Fees and Royalties*. Consistent with the applicable U.S. DOT Common Rules, the Subrecipient agrees that license fees and royalties for patents, patent applications, and inventions produced with federal assistance provided through the Agreement are program income and must be used in compliance with federal applicable requirements.
- (f) Hold Harmless. Upon request by the Federal Government, the Subrecipient agrees that if it intentionally violates any proprietary rights, copyrights, or right of privacy, and if its violation under the preceding section occurs from any of the publication, translation, reproduction, delivery, use or disposition of subject data, then it will indemnify, save, and hold harmless against any liability, including costs and expenses of the Federal Government's officers, employees, and agents acting within the scope of their official duties. The Subrecipient will not be required to indemnify the Federal Government for any liability described in the preceding sentence, if the violation is caused by the wrongful acts of federal officers, employees or agents, or if indemnification is prohibited or limited by applicable state law.
- (g) *Restrictions on Access to Patent Rights*. Nothing in this section of this Master Agreement (FTA MA(23)) pertaining to rights in data either implies a license to the Federal Government under any patent, or may be construed to affect the scope of any license or other right otherwise granted to the Federal Government under any patent.
- (h) Data Developed Without Federal Assistance or Support. The Subrecipient agrees that in certain circumstances it may need to provide to FTA data developed without any federal assistance or support. Nevertheless, this section generally does not apply to data developed without federal assistance, even though that data may have been used in connection with the Award. The Subrecipient agrees that the Federal Government will not be able to protect data developed without federal assistance from unauthorized disclosure unless that data is clearly marked "Proprietary," or "Confidential."
- (i) *Requirements to Release Data*. The Subrecipient understands and agrees that the Federal Government may be required to release data and information the Subrecipient submits to the Federal Government as required under:
 - (1). The Freedom of Information Act (FOIA), 5 U.S.C. § 552,
 - (2) The U.S. DOT Common Rules,
 - (3) U.S. DOT Public Access Plan, which provides that the Subrecipient agrees to satisfy the reporting and compliance requirements as set forth in the U.S. DOT Public Access plan, including, but not limited to, the submission and approval of a Data Management Plan, the use of Open Researcher and Contributor ID (ORCID) numbers, the creation and maintenance of a Research Project record in the Transportation Research Board's (TRB) Research in Progress (RiP) database, and the timely and complete submission of all required publications and associated digital data sets as such terms are defined in the DOT Public Access plan. Additional information about how to comply with the requirements can be found at: http://ntl.bts.gov/publicaccess/howtocomply.html, or
 - (4) Other federal laws, regulations, requirements, and guidance concerning access to records pertaining to the Award, the accompanying Agreement, and any Amendments thereto.

Miscellaneous Special Requirements

From Section 12. Civil Rights.

- (e) *Disadvantaged Business Enterprise*. To the extent authorized by applicable federal laws, regulations, or requirements, the Subrecipient agrees to facilitate, and assures that each Third Party Participant will facilitate, participation by small business concerns owned and controlled by socially and economically disadvantaged individuals, also referred to as "Disadvantaged Business Enterprises" (DBEs), in the Agreement as follows:
 - (1) Statutory and Regulatory Requirements. The Subrecipient agrees to comply with:
 - (i) Section 11101(e) of IIJA;
 - (ii) U.S. DOT regulations, "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs," 49 CFR part 26; and
 - (iii) Federal transit law, specifically 49 U.S.C. § 5332, as provided in section 12 of this Master Agreement.
 - (2) *DBE Program Requirements*. A Subrecipient that receives planning, capital and/or operating assistance and that will award prime third party contracts exceeding \$250,000 the requirements of 49 CFR part 26.
 - (3) Special Requirements for a Transit Vehicle Manufacturer (TVM). The Subrecipient agrees that:
 - (i) *TVM Certification*. Each TVM, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, must certify that it has complied with the requirements of 49 CFR part 26; and

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- (ii) Reporting TVM Awards. Within 30 days of any third party contract award for a vehicle purchase, the Subrecipient must submit to FTA the name of the TVM contractor and the total dollar value of the third party contract, and notify FTA that this information has been attached to FTA's electronic award management system. The Subrecipient must also submit additional notifications if options are exercised in subsequent years to ensure that the TVM is still in good standing.
- (4) Assurance. As required by 49 CFR § 26.13(a):
 - (i) *Recipient Assurance*. The Subrecipient agrees and assures that:
 - (A) It must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted contract, or in the administration of its DBE program or the requirements of 49 CFR part 26;
 - (B) It must take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts;
 - (C) Its DBE program, as required under 49 CFR part 26 and as approved by U.S. DOT, is incorporated by reference and made part of the Underlying Agreement; and
 - (D) Implementation of its DBE program approved by U.S. DOT is a legal obligation and failure to carry out its terms shall be treated as a violation of this Master Agreement.
 - (ii) Subrecipient/Third Party Contractor/Third Party Subcontractor Assurance. The Subrecipient agrees and assures that it will include the following assurance in each subagreement and third party contract it signs with a Subrecipient or Third Party Contractor and agrees to obtain the agreement of each of its Subrecipients, Third Party Contractors, and Third Party Subcontractors to include the following assurance in every subagreement and third party contract it signs:
 - (A) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the award and performance of any FTA or U.S. DOT-assisted subagreement, third party contract, and third party subcontract, as applicable, and the administration of its DBE program or the requirements of 49 CFR part 26;
 - (B) The Subrecipient, each Third Party Contractor, and each Third Party Subcontractor must take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted subagreements, third party contracts, and third party subcontracts, as applicable;
 - (C) Failure by the Subrecipient and any of its Third Party Contractors or Third Party Subcontractors to carry out the requirements of subparagraph 12.e(4)(b) (of FTA MA(23)) is a material breach of their subagreement, third party contract, or third party subcontract, as applicable; and
 - (D) The following remedies, or such other remedy as the Subrecipient deems appropriate, include, but are not limited to, withholding monthly progress payments; assessing sanctions; liquidated damages; and/or disqualifying the Subrecipient, Third Party Contractor, or Third Party Subcontractor from future bidding as non-responsible.
- (5) Remedies. Upon notification to the Subrecipient of its failure to carry out its approved program, FTA or U.S. DOT may impose sanctions as provided for under 49 CFR part 26, and, in appropriate cases, refer the matter for enforcement under either or both 18 U.S.C. § 1001, and/or the Program Fraud Civil Remedies Act of 1986, 31 U.S.C. § 3801 et seq.

From Section 12. Civil Rights.

- (h) Nondiscrimination on the Basis of Disability. The Subrecipient agrees to comply with the following federal prohibitions against discrimination on the basis of disability:
 - (1) Federal laws, including:
 - Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of disability in the administration of federally assisted Programs, Projects, or activities;
 - (ii) The Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. § 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities:(A) For FTA Recipients generally, Titles I, II, and III of the ADA apply,;but
 - (B) For Indian Tribes, Titles II and III of the ADA apply, but Title I of the ADA does not apply because it exempts Indian Tribes from the definition of "employer;"
 - (iii) The Architectural Barriers Act of 1968, as amended, 42 U.S.C. § 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities;
 - (iv) Federal transit law, specifically 49 U.S.C. § 5332, which now includes disability as a prohibited basis for discrimination; and
 - (v) Other applicable federal laws, regulations, and requirements pertaining to access for seniors or individuals with disabilities.

- (2) Federal regulations and guidance, including:
 - (i) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 CFR part 37;
 - (ii) U.S. DOT regulations, "Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 CFR part 27;
 - (iii) Joint U.S. Architectural and Transportation Barriers Compliance Board (U.S. ATBCB) and U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications for Transportation Vehicles," 36 CFR part 1192 and 49 CFR part 38;
 - (iv) U.S. DOT regulations, "Transportation for Individuals with Disabilities: Passenger Vessels," 49 CFR part 39;
 - (v) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 CFR part 35;
 - (vi) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 CFR part 36;
 - (vii)U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR part 1630;
 - U.S. Federal Communications Commission regulations, "Telecommunications Relay Services and Related Customer Premises Equipment for Persons with Disabilities," 47 CFR part 64, Subpart F;
 - (ix) U.S. ATBCB regulations, "Electronic and Information Technology Accessibility Standards," 36 CFR part 1194;
 - (x) FTA regulations, "Transportation for Elderly and Handicapped Persons," 49 CFR part 609,
 - (xi) FTA Circular 4710.1, "Americans with Disabilities Act: Guidance;" and
 - (xii)Other applicable federal civil rights and nondiscrimination regulations and guidance.

Section 16. Procurement.

- (a) Federal Laws, Regulations, Requirements, and Guidance. The Subrecipient agrees:
 - (1) To comply with the requirements of 49 U.S.C. chapter 53 and other applicable federal laws, regulations, and requirements in effect now or later that affect its third party procurements;
 - (2) To comply with the applicable U.S. DOT Common Rules; and
 - (3) To follow the most recent edition and any revisions of FTA Circular 4220.1, "Third Party Contracting Guidance," to the extent consistent with applicable federal laws, regulations, requirements, and guidance.

State Requirements

Section 37. Special Notification Requirements for States.

- (a) *Types of Information*. To the extent required under federal law, the State, agrees to provide the following information about federal assistance awarded for its State Program, Project, or related activities:
 - (1) The Identification of FTA as the federal agency providing the federal assistance for a State Program or Project;
 - (2) The Catalog of Federal Domestic Assistance Number of the program from which the federal assistance for a State Program or Project is authorized; and
 - (3) The amount of federal assistance FTA has provided for a State Program or Project.
 - (b) *Documents*. The State agrees to provide the information required under this provision in the following documents: (1) applications for federal assistance, (2) requests for proposals, or solicitations, (3) forms, (4) notifications, (5) press releases, and (6) other publications.

EXHIBIT E, VERIFICATION OF PAYMENT

This checklist is to assist the Subrecipient in preparation of its billing packets to State. This checklist is provided as guidance and is subject to change by State. State shall provide notice of any such changes to Subrecipient. All items may not apply to your particular entity. State's goal is to reimburse Subrecipients as quickly as possible and a well organized and complete billing packet helps to expedite payment.

□ Verification of Payment –

✓ General Ledger Report must have the following:

- Identify check number or EFT number;
- If no check number is available, submit Accounts Payable Distribution report with the General Ledger;
- In-Kind (must be pre-approved by State) and/or cash match;
- Date of the report;
- Accounting period;
- Current period transactions; and
- Account coding for all incurred expenditures.
- ✓ If no General Ledger Report, all of the following are acceptable:
 - copies of checks;
 - check registers; and
 - paycheck stub showing payment number, the amount paid, the check number or electronic funds transfer (EFT), and the date paid.
- ✓ State needs to ensure that expenditures incurred by the local agencies have been paid by Party *before* State is invoiced by Party.
- ✓ Payment amounts should match the amount requested on the reimbursement. Additional explanation and documentation is required for any variances.

☐ In-Kind or Cash Match – If an entity wishes to use these types of match, they must be approved by State prior to any Work taking place.

- ✓ If in-kind or cash match is being used for the Local Match, the in-kind or cash match portion of the project must be included in the project application and the statement of work attached to the Agreement or purchase order. FTA does not require pre-approval of in-kind or cash match, but State does.
- ✓ General ledger must also show the in-kind and/or cash match.

☐ Indirect costs – If an entity wishes to use indirect costs, the rate must be approved by State prior to applying it to the reimbursements.

✓ If indirect costs are being requested, an approved indirect letter from State or your cognizant agency for indirect costs, as defined in 2 CCR §200. 19, must be provided. The letter must state what indirect costs are allowed, the approved rate and the time period for the approval. The indirect cost plan must be reconciled annually and an updated letter submitted each year thereafter.

Fringe Benefits- Considered part of the Indirect Cost Rate and must be reviewed and approved prior to including these costs in the reimbursements.

- ✓ Submit an approval letter from the cognizant agency for indirect costs, as defined in 2 CCR §200. 19, that verifies fringe benefit, or
- ✓ Submit the following fringe benefit rate proposal package to State Audit Division:
 - Copy of Financial Statement;
 - Personnel Cost Worksheet;
 - State of Employee Benefits; and
 - Cost Policy Statement.



Transportation Update CDOT Subaward Agreement – Erie Flex Ride

Town Council

Miguel Aguilar, Principal Transportation Planner John Firouzi, Transportation & Mobility Manager June 10, 2025



CDOT Subaward Agreement – Erie Flex Ride

How We Got Here

Council agenda included expanding transit service
 Staff applied to DRCOG TIP grant in 2023 for flex ride transit service
 Town awarded grant to operate flex ride transit service
 Staff developed a Service Operations Plan for flex ride
 Council approved Service Operations Plan in August 2024
 CDOT delivered contract and is ready for approval



CDOT Subaward Agreement – Erie Flex Ride

Flex Ride

Similar service to rideshare
 Curb to curb transit service
 Van sized capacity
 Reserve a trip online, phone, or app

Ride Free Lafayette

Operations

Monday – Friday
6 a.m. to 8 p.m.
Free for All
Defined Service Area



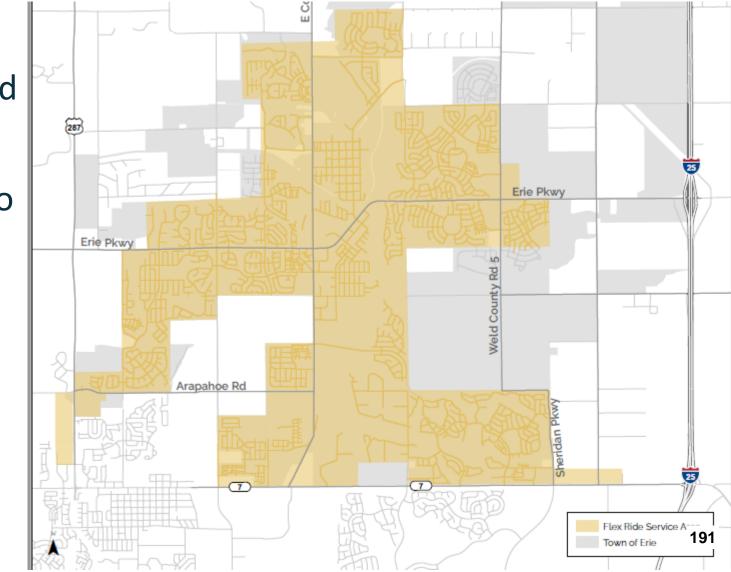


CDOT Subaward Agreement – Erie Flex Ride

Service Area Map

- May change based on demand
- Transit provider toprovide data onservice









Town Council

Board Meeting Date: 6/24/2025

File #: 25-31, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving a Professional Services Agreement with Boulder A.I.R. LLC for Air Quality Monitoring

DEPARTMENT: Environmental Services

PRESENTER(S): David Frank, Director of Environmental Services

TIME ESTIMATE: 15 minutes

For time estimate: please put 0 for Consent items.

FISCAL SUMMARY:

| Cost as Recommended (18-month contract): | \$443,459 |
|--|--------------------------|
| Cost as Recommended (42-month contract): | \$1,070,899 |
| Balance Available: | \$93,000 |
| Fund | General Fund |
| Line Item Number: | 100-25-115-560100-000000 |
| New Appropriation Required: | Yes (\$50,459 in 2025) |

POLICY ISSUES:

The two proposals reflect the direction received from Town Council at the May 20, 2025, Special Meeting to continue the live monitoring by Boulder AIR at the Erie Community Center (ECC) Station while continuing as much of the Triggered SUMMA Canister Monitoring Stations as possible.

Local Air Quality Monitoring serves both residents and staff in identifying potential emission sources and general air quality in the Town. These proposals will maximize the Town's financial commitment to ensuring continued monitoring of our local air quality.

STAFF RECOMMENDATION:

Staff recommends a longer-term (42-month) commitment contract with Boulder AIR to operate the real-time station at the Erie Community Center as well as 5 SGS SmartSense solar powered air monitoring stations with battery backup through the end of 2028. Rates for 2027 and 2028 factor in

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a 3% increase per year to adjust for the anticipated rate of inflation. This longer-term contract assists the contractor to mitigate financial risk associated with the purchase and operational expenses incurred from the deployment of newly acquired equipment for the SGS SmartSense solar powered air monitoring stations. Staff are also providing a shorter duration (18-month) contract for Council consideration which includes 4 SGS SmartSense solar powered air monitoring stations in addition to the continued operations of the ECC real-time station. While the scope of services is slightly reduced, this proposal would allow the Town to reevaluate the program at the end of 2026 rather than committing to a 3½ year contract for air quality monitoring services.

SUMMARY/KEY POINTS

Two potential contracts are offered for the Council's consideration:

 A Resolution of the Town Council of the Town of Erie Approving a Professional Services Agreement with Boulder A.I.R. LLC for Air Quality Monitoring covering a period of 18 months (July 2025 through December 2026), including real-time monitoring at the ECC Station and deployment of 4 SGS SmartSense solar powered air monitoring stations.

OR

2. A Resolution of the Town Council of the Town of Erie Approving a Professional Services Agreement with Boulder A.I.R. LLC for Air Quality Monitoring covering a period of 42 months (July 2025 through December 2028), including real-time monitoring at the ECC Station and deployment of 5 SGS SmartSense solar powered air monitoring stations.

This reflects the direction provided to staff by Council at the May 20 Special Meeting to continue the monitoring at the Erie Community Center ballfields and to continue as many of the PID-triggered SUMMA canister monitoring stations as possible.

BACKGROUND OF SUBJECT MATTER:

In May 2021, the Board approved funding for and deployment of Air Quality Monitoring stations to be operated by Boulder AIR and Ajax/CSU which would gather data regarding air quality in Erie. This monitoring is intended to compliment and coordinate with air quality monitoring programs conducted by the City and County of Broomfield, City of Longmont, and Boulder County. The initial contracts included monitoring through the calendar year 2023. Contracts were subsequently renewed through June 2025 with no significant changes.

Following four years of data collection, staff recommends scaling back the program to better fit Town Council priorities.

The existing program for Erie using both contractors consist of the following elements:

 An Anchor Site operated by Boulder A.I.R. providing reference grade continuous monitoring of Ozone, specific VOCs, Methane, particulates, and meteorological variables. View reporting from Boulder A.I.R.'s AirLive Combined Northern Colorado Front Range website and includes data from the Erie Community Center station:

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https://www.bouldair.com/NoCoFrontRange.htm

Ten apis https://www.apis-aq.com/product-information/ sensors operated by Ajax/CSU deployed at locations shown in the attached illustrations, with sensors located west of Kenosha Farms, two north of the Colliers Hill neighborhood near the Mae J/Papa Jo/Yellowhammer pads, three around the Front Range Landfill and near the Coyote well pad, and near Red Hawk Elementary School. These monitors provide continuous monitoring of total VOCs and auto-triggered canister sampling if total VOCs exceed specified levels. These stations also provide continuous monitoring of particulates and NO/NO2. Ajax/CSU also operates a mobile plume tracking vehicle that can be deployed up to 12 times each year to identify and track specific emission plumes. Finally, Ajax/CSU also supplies the Town with up to two grab canisters per month to deploy in other locations and analysis of samples taken with those canisters. The Ajax data are available at https://www.ajax-analytics.com/erie with quarterly reports available by clicking the Quarterly Reports tab and selecting Erie Community Monitoring in the upper right.

The apis TVOC sensors detect increases and decreases of a group of more than 900 volatile organic compounds. This indicator measurement does not identify which compounds are in the air, nor exactly how many parts per billion (ppb) are in the air at any given point. What these sensors do show are how VOC levels change on a minute-by-minute basis during different types of activities happening in an area. If the TOVC Indicator detects total VOCs above certain levels, it triggers a sample that is then analyzed for specific compounds at the ppb level.

The proposals presented reduce the number of triggered canister stations from 10 to 4 stations operated for 18-months, or 5 stations operated for 42-months. All stations would be operated by BoulderAIR and the number of VOCs analyzed per sample collected would be reduced from 47 species to 25 individual species of VOC.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- ⊠ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- \boxtimes Safe and Healthy Community
- \Box Effective Governance
- ⊠ Environmentally Sustainable
- \boxtimes Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution 25-115
- 2. 18-month contract for services

File #: 25-31, Version: 1

- 18-month Scope of Work and Proposal
 Resolution 25-116
- 5. 42-month contract for services
- 6. 42-month Scope of Work and Proposal

Town of Erie Resolution No. 25-115

A Resolution of the Town Council of the Town of Erie Approving a Professional Services Agreement with Boulder A.I.R. LLC for Air Quality Monitoring

Whereas, the Town Council finds that it is in the best interest of the Town and the public health, safety and welfare to enter into a Professional Services Agreement with Boulder A.I.R. LLC for air quality monitoring covering a period of 18 months (July 2025 through December 2026) totaling \$443,459.

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

Section 1. The Professional Services Agreement with Boulder A.I.R. LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Agreement on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

1

Agreement for Services

This Agreement for Services (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 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and Boulder A.I.R. LLC, a Colorado limited liability company with a principal place of business at 2820 Lafayette Drive, Boulder, CO 80305 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires services; and

Whereas, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required 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 \$ <u>71,729.50</u> on or before September 30, 2025, \$ <u>71,729.50</u> on or before December 31, 2025, and \$ <u>300,000</u> in 2026 (in installments of \$ <u>75,000</u>, or 25%, every three months, with the first payment of 2026 due on or before March 31, 2026). 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. 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 licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other contractors in the same or similar type of work in the applicable community.

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. Contractor shall at all times comply with all applicable law, including without limitation all 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; 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 Federal Water Pollution Control Act; and the Occupational Safety and Health Act.

D. Contractor shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts Incurred by the Town in relation to Contractor's noncompliance with such accessibility standards.

V. Ownership

All monitoring data collected and all drawings, analyses, plans, tests, maps, surveys, electronic files and written material generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall be property of the Town. 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. Notwithstanding the foregoing, Contractor shall be authorized to use any of the monitoring data or documents described above and shall own any data or other documents derived therefrom beyond the scope of this Agreement. Contractor retains ownership of equipment, software, data processing and analytics algorithms. Contractor's use or analysis of the data or documents generated pursuant to this Agreement beyond the scope of this Agreement is not and shall not be represented as the determination, opinion, or position of the Town in any form.

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.

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

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 Agreement if such injury, loss, or damage is caused in whole or in part by, 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 which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

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 obligations 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.

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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 Is 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

5

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Contractor

By:

Dethis

State of Colorado)) ss. County of _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this ______ day of _______, 2025, by _______ as of Boulder A.I.R. LLC.

My commission expires:

(Seal)

Notary Public

Exhibit A Scope of Services

Contractor shall perform the following services:

A. Contractor shall conduct air quality monitoring at the Erie Community Center (the "ECC"), including monitoring of all variables and pollutants, with real-time data reporting.

B. Contractor shall monitor ozone and Particulate Matter ("PM"), following regulatory-grade protocols and quality requirements, and adhering to the instrument configuration, calibration, and maintenance protocols as mandated by the EPA and followed by the Colorado Department of Public Health and Environment ("CDPHE").

C. Contractor shall monitor volatile organic compounds ("VOCs") by operation of a gas chromatography-flame ionization instrument, which provides sensitive and VOCspecific monitoring of a series of primary oil and natural gas hydrocarbons. Contractor shall report a minimum of 25 species of the most prominent VOCs observed in ambient air, with quantification following the protocol and being based on the calibration scale of the World Meteorological Organization Global Atmospheric Watch program with calibration standards from the U.K. National Physics Laboratory.

D. Contractor shall include automated data processing and reporting to the Town project web portal that is maintained by Contractor (<u>https://www.bouldair.com/erie.htm</u>). Contractor shall include data from the Town monitoring in the AirLive Combined Northern Colorado Front Range website (<u>https://www.bouldair.com/NoCoFrontRange.htm</u>).

E. Contractor shall submit fully quality-controlled VOC data to the EPA Ambient Monitoring Archive for Hazardous Air Pollutants ("AMTIC") (<u>https://www.epa.gov/amtic/amtic-amblent-monitoring-archivehaps</u>). Contractor shall submit data for all other chemical measurements to the NILU EBAS archive (https://ebas.nilu.no/).

F. Contractor shall acquire, install and operate 4 SGS SmartSense solar powered air monitoring stations with battery backup (https://www.sgsgalson.com/smart-sense-home/). Monitored variables shall include wind speed, wind direction, air temperature, particulate matter (PM1, PM2.5, PM10) and total VOCs by photoionization detection ("PID"). Each station shall be equipped with a sampling trigger mechanism and air sampling canister to collect whole air samples when elevated VOC signals are detected by the PID. Contractor shall install an additional station at the ECC in parallel to the real time methane, VOCs, and PM2.5 monitoring at the ECC, to provide comparison between the two methods and additional quality control of the SmartSense air sampling.

G. Contractor shall analyze 15 trigger canister samples collected by the SmartSense stations for methane and VOCs, following regulatory-grade protocols and guality requirements.

H. Contractor shall conduct real-time reporting of the SmartSense data to the public SGS LiveView data portal (<u>https://www.sgsgalson.com/sgs-liveview/</u>).

 Contractor shall prepare and analyze a maximum of 9 grab sampling Summa canisters.

 Contractor shall prepare pollution event analyses and event reports, with one annual report and presentation to the Town Council.

K. Contractor shall conduct all monitoring listed herein at ≥ 95% uptimes.



Boulder A.I.R. L.L.C; 2820 Lafayette Dr., Boulder, CO 80305, U.S.A.; dh.bouldair@gmail.com

May 29, 2025

To: Town of Erie 645 Holbrook Street Erie, CO 80516

Attn: David Frank

Year 2025-2026 18-month Cost Proposal for Continuing the Operation of the Erie Community Center (ECC) Air Quality Monitoring Station and the Implementation and Operation of a Dispersed Sampling Network

Dear Mr. Frank,

Thank you for your inquiry about a cost estimate for providing air quality monitoring to the Town of Erie. Please find below a cost proposal for an 18-month contract spanning July 1, 2025, to December 31, 2026. The following work is included:

A. Continuation of the air quality monitoring at the Erie Community Center (ECC) that is currently under contracted to Boulder AIR by the Town of Erie. The proposed work will continue the monitoring of all variables and pollutants, with the same real-time data reporting that was implemented at the beginning of the program in the summer of 2021. We have again quoted the monitoring of ozone and Particulate Matter (PM) following 'regulatory-grade' protocols. This entails adhering to the instrument configuration, calibration, and maintenance protocols as mandated by the EPA, and followed by the Colorado Department of Public Health and Environment (CDPHE). Both measurements have been audited by CDPHE and were found to fully meet regulatory quality requirements. The monitoring of volatile organic compounds (VOCs) relies on operation of a gas chromatography-flame ionization instrument. This will provide sensitive and VOC-specific monitoring of a series of primary oil and natural gas hydrocarbons. A minimum of twenty-five species of the most prominent VOCs observed in ambient will be reported. Quantification of VOCs will follow the protocol and be based on the calibration scale of the World Meteorological Organization Global Atmospheric Watch program with calibration standards from the U.K. National Physics Laboratory.

This bid includes automated data processing and reporting to the Erie project web portal that was implemented and is maintained by Boulder AIR (https://www.bouldair.com/erie.htm). In addition, data from the Erie monitoring will be included in the AirLive Combined Northern Colorado Front Range website (https://www.bouldair.com/NoCoFrontRange.htm). All historical data can be viewed and analyzed at the Boulder AIR Interactive Data Analysis Tool (https://bouldairtools.com/interactive/). Final, fully quality-controlled VOCs data will be submitted to AMTIC, the EPA Ambient Monitoring Archive for Hazardous Air Pollutants (https://www.epa.gov/amtic/amtic-ambient-monitoring-archive-haps); data for all other chemical measurements will be submitted to the EBAS (https://ebas.nilu.no/) archive.

The cost for all monitoring and associated services for July 1, 2025 – December 31, 2025, will be the same as for the current January 1 – June 30, 2025, contract. Rates for 2026 will increase by 3% to adjust for inflation. However, Boulder AIR will drop the rate for methane monitoring by 20% starting January 1, 2026. Furthermore, we have eliminated the charge for the security system operation and maintenance. Consequently, the January 1 – December 31, 2026, budget at \$224,631 comes in 3% lower than 2025 charges. The total cost for an 18-month contract for the ECC operation spanning July 1, 2025 to December 31, 2026, is \$337,259.

- B. Acquisition, installation, and operation of four SGS SmartSense solar powered (with battery backup) air monitoring stations (https://www.sgsgalson.com/smart-sense-home/). Monitored variables will include wind speed, wind direction, air temperature, particulate matter (PM1, PM2.5, PM10) and total VOCs by photoionization detection (PID). Each station will be equipped with a sampling trigger mechanism and air sampling canister to collect whole air samples when elevated VOC signals are detected by the PID. In case the current contract for continuous air quality monitoring with Boulder AIR at ECC is renewed, then, at no cost to Erie, one additional station will be installed at ECC in parallel to the real time methane, VOCs, and PM2.5 monitoring at ECC to provide comparison between the two methods and additional quality control of the SmartSense air sampling.
- C. Analysis of 15 trigger canister samples collected by the SmartSense stations (B) for methane and VOCs, using the same instrumentation and quality assurance as under A. In the case that more than 15 trigger events (and samples) occur during the 18-month project, additional trigger canister deployments and analyses will be charged an additional \$400 per sample.
- D. Real-time reporting of the SmartSense data to the public SGS LiveView data portal (https://www.sgsgalson.com/sgs-liveview/).
- E. Preparation and analysis of a maximum of nice grab sampling Summa canisters. Additional grab sampling canister deployments and analyses will be charged \$400 per sample.
- F. Pollution event analyses and event reports, one annual report and presentation to the Town of Erie Council.
- G. Boulder AIR commits to conduct all monitoring listed above at \geq 95% uptimes.

A cost breakup of these line items and a summary budget are provided below. Total cost for the dispersed sampling network deployment and operation will be \$139,200. A discount of \$33,000 will be granted if both the ECC continuous station monitoring and the dispersed sampling program are contracted to Boulder AIR. The resulting total cost for an 18-months contract covering the above detailed components is **\$443,459**.

We appreciate this opportunity to provide air quality monitoring for the Town of Erie.

Thank you,

Detlew Hel

Detlev Helmig, PhD Boulder A.I.R. LLC

Erie Community Center (ECC) Air Monitoring Station:

| Item | Variable | 2025 rate, | 2025, July 1 - | | Total July 1, |
|-------|--|----------------|----------------|-------------------|------------------------------|
| | | full year US\$ | Dec 31, US\$ | full year US\$ | 2025 - Dec 31, 2026, US\$ |
| 1 | Ozone, TEI_49, regulatory-grade | 17,918 | 8,959 | 18,456 | 27,415 |
| 2 | Volatile Organic Compounds (including ethane, ethene, acetylene, propane, propene, i-butane, n- butane, i-pentane, n-pentane, cyclopentane, isoprene, n-hexane, cyclohexane, benzene, n- heptane, toluene, n-octane, o-xylene, ethylbenzene, o-xylene, m-xylene, p-xylene); WMO-grade by gas chromatography - flame ionization detection | 105,665 | 52,833 | 108,835 | 161,667 |
| 3 | Methane, PICARRO G2301, WMO-grade | 35,837 | 17,919 | 29,530 | 47,448 |
| 4 | PM_2.5, regulatory-grade, PM_10, GRIMM EDM180 | 30,102 | 15,051 | 31,005 | 46,056 |
| 5 | Meteorological variables (wind speed, wind direction, temperature, relative humidity, radiation), research- | 3,584 | 1,792 | 3,692 | 5,484 |
| 6 | Webcam for public website images | 2,150 | 1,075 | 2,215 | 3,290 |
| 7 | Website data reporting, data management, data archiving, event reports | 30,000 | 15,000 | 30,900 | 45,900 |
| otal: | | 225,256 | 112,628 | 224,631 | 337,259 |

Town of Erie Community Center (ECC) Air Quality Monitoring Proposal, 2025-2026

Four SGS Dispersed Air Monitoring Stations:

Four Meteorology/PID/VOCs Trigger Canister Sampling Stations; July 2025 through December 2026 Budget

| Item | Variable | Cost per Unit | Number of Sites | Months | Total Number of Samples | 2025 - 2026 Rate (US\$) |
|------|--|------------------|--------------------|--------|----------------------------|-------------------------------|
| 1 | Acquisition, installation, and operation of SGS PID/trigger solar powered canister sampling stations with meteorology, PM1, PM2.5, PM10, total VOCs | 1450 | 4 | 18 | | 104,400 |
| 2 | Trigger canister analyis by gas chromatography for methane and minimum of 30 Volatile Organic Compounds (including ethane, ethene, acetylene, propane, propene, i-butane, n-butane, i-pentane, n-pentane, isoprene, n-hexane, benzene, toluene, o-xylene, ethylbenzene, o-xylene, m-xylene, p-xylene); custom-gas chromatograph with flame ionization detection (FID), 15 canisters per year | 400 | | | 15 | 6,000 |
| 3 | Weekly site visits, trigger canister preparation, setup, and collection | 200 | 4 | 18 | | 14,400 |
| 4 | Reporting, website maintenance, event analyses | 800 | | 18 | | 14,400 |
| | Total | | | | | |

Summary Budget:

ECC and Dispersed Sampling Network 2025 - 2026 Summary Budget

| Program component | Cost US\$ |
|---|-----------|
| Town of Erie Community Center (ECC) continuous air quality monitoring, July 1, 2025 - Dec. 31, 2026 | 337,259 |
| Four meteorology, PM, PID/VOCs trigger canister sampling stations; July 1, 2025 - Dec. 31, 2026 | 139,200 |
| Grab sampling Summa canisters, preparation and GC/FID sample analysis, up to 9 total | 0 |
| ECC - Dispersed network bundle discount | 33,000 |
| Total | 443,459 |

Town of Erie Resolution No. 25-116

A Resolution of the Town Council of the Town of Erie Approving a Professional Services Agreement with Boulder A.I.R. LLC for Air Quality Monitoring

Whereas, the Town Council finds that it is in the best interest of the Town and the public health, safety and welfare to enter into a Professional Services Agreement with Boulder A.I.R. LLC for air quality monitoring covering a period of 42 months (July 2025 through December 2028) totaling \$1,070,899.

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

Section 1. The Professional Services Agreement with Boulder A.I.R. LLC is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Agreement on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

1

Agreement for Services

This Agreement for Services (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 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and Boulder A.I.R. LLC, a Colorado limited liability company with a principal place of business at 2820 Lafayette Drive, Boulder, CO 80305 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, the Town requires services; and

Whereas, Contractor has held itself out to the Town as having the requisite expertise and experience to perform the required 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 \$ 71,814 on or before September 30, 2025, \$ 71,814 on or before December 31, 2025, \$ 300,000 in 2026 (in installments of \$ 75,000 , or 25%, every three months, with the first payment of 2026 due on or before March 31, 2026), \$ 309,000 in 2027 (in installments of \$ 77,250 , or 25%, every three months, with the first payment of 2026 due on or before March 31, 2026), \$ 309,000 in 2027 (ue on or before March 31, 2027), and \$ 318,271 in 2028 (in installments of \$ 79,567.75 , or 25%, every three months, with the first payment of 2028 due on or before March 31, 2028). 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. 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 licenses in good standing, required by law. The work performed by Contractor shall be in accordance with generally accepted practices and the level of competency presently maintained by other contractors in the same or similar type of work in the applicable community.

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. Contractor shall at all times comply with all applicable law, including without limitation all 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; 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 Federal Water Pollution Control Act; and the Occupational Safety and Health Act.

D. Contractor shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts

incurred by the Town in relation to Contractor's noncompliance with such accessibility standards.

V. <u>Ownership</u>

All monitoring data collected and all drawings, analyses, plans, tests, maps, surveys, electronic files and written material generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall be property of the Town. 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. Notwithstanding the foregoing, Contractor shall be authorized to use any of the monitoring data or documents described above and shall own any data or other documents derived therefrom beyond the scope of this Agreement. Contractor retains ownership of equipment, software, data processing and analytics algorithms. Contractor's use or analysis of the data or documents generated pursuant to this Agreement beyond the scope of this Agreement is not and shall not be represented as the determination, opinion, or position of the Town in any form.

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.

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

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 Agreement if such injury, loss, or damage is caused in whole or in part by, 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 which arise out of a worker's compensation claim of any employee of Contractor or of any employee of any subcontractor of Contractor.

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 obligations 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.

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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 walve 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 is 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

Attest:

Andrew J. Moore, Mayor

Debbie Stamp, Town Clerk

Contractor

By: Detta 6

State of Colorado

)) ss. County of

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ______, 2025, by _______ as _____ as ______

My commission expires:

(Seal)

Notary Public

6/16/2025 C: USERS DETLEV APPDATA LOCAL TEMP PID-10380 BOULDER AIR 42 MONTH-A061025 REV. DOCK

6

Exhibit A Scope of Services

Contractor shall perform the following services:

A. Contractor shall conduct air quality monitoring at the Erie Community Center (the "ECC"), including monitoring of all variables and pollutants, with real-time data reporting.

B. Contractor shall monitor ozone and Particulate Matter ("PM"), following regulatory-grade protocols and quality requirements, and adhering to the instrument configuration, calibration, and maintenance protocols as mandated by the EPA and followed by the Colorado Department of Public Health and Environment ("CDPHE").

C. Contractor shall monitor volatile organic compounds ("VOCs") by operation of a gas chromatography-flame ionization instrument, which provides sensitive and VOCspecific monitoring of a series of primary oil and natural gas hydrocarbons. Contractor shall report a minimum of 25 species of the most prominent VOCs observed in ambient air, with quantification following the protocol and being based on the calibration scale of the World Meteorological Organization Global Atmospheric Watch program with calibration standards from the U.K. National Physics Laboratory.

D. Contractor shall include automated data processing and reporting to the Town project web portal that is maintained by Contractor (https://www.bouldair.com/erie.htm). Contractor shall include data from the Town monitoring in the AirLive Combined Northern Colorado Front Range website (https://www.bouldair.com/NoCoFrontRange.htm).

E. Contractor shall submit fully quality-controlled VOC data to the EPA Ambient Monitoring Archive for Hazardous Air Pollutants ("AMTIC") (https://www.epa.gov/amtic/amtic-ambient-monitoring-archivehaps). Contractor shall submit data for all other chemical measurements to the NILU EBAS archive (https://ebas.nilu.no/).

F. Contractor shall acquire, install and operate 5 SGS SmartSense solar powered air monitoring stations with battery backup (https://www.sgsgalson.com/smart-sense-home/). Monitored variables shall include wind speed, wind direction, air temperature, particulate matter (PM1, PM2.5, PM10) and total VOCs by photoionization detection ("PID"). Each station shall be equipped with a sampling trigger mechanism and air sampling canister to collect whole air samples when elevated VOC signals are detected by the PID. Contractor shall install an additional station at the ECC in parallel to the real time methane, VOCs, and PM2.5 monitoring at the ECC, to provide comparison between the two methods and additional quality control of the SmartSense air sampling.

G. Contractor shall analyze 15 trigger canister samples collected by the SmartSense stations for methane and VOCs, following regulatory-grade protocols and quality requirements.

H. Contractor shall conduct real-time reporting of the SmartSense data to the public SGS LiveView data portal (<u>https://www.sgsgalson.com/sgs-liveview/</u>).

 Contractor shall prepare and analyze a maximum of 9 grab sampling Summa canisters.

J. Contractor shall prepare pollution event analyses and event reports, with one annual report and presentation to the Town Council.

K. Contractor shall conduct all monitoring listed herein at ≥ 95% uptimes.



Boulder A.I.R. L.L.C; 2820 Lafayette Dr., Boulder, CO 80305, U.S.A.; dh.bouldair@gmail.com

May 29, 2025

To: Town of Erie 645 Holbrook Street Erie, CO 80516

Attn: David Frank

Year 2025-2028 3.5-years Cost Proposal for Continuing the Operation of the Erie Community Center (ECC) Air Quality Monitoring Station and the Implementation and Operation of a Dispersed Sampling Network

Dear Mr. Frank,

Thank you for your inquiry about a cost estimate for providing air quality monitoring to the Town of Erie. Please find below a cost proposal for a 3.5-years contract spanning July 1, 2025, to December 31, 2028. The following work is included:

A. Continuation of the air quality monitoring at the Erie Community Center (ECC) that is currently under contract with the Town of Erie. The proposed work will continue the monitoring of all variables and pollutants, with the same real-time data reporting that was implemented at the beginning of the program in the summer of 2021. We have again quoted the monitoring of ozone and particulate matter (PM) following 'regulatory-grade' protocols. This entails adhering to instrument configuration, calibration, and maintenance protocols as mandated by the EPA, and followed by the Colorado Department of Public Health and Environment (CDPHE). Both measurements have been audited by CDPHE and were found to fully meet regulatory quality requirements. The monitoring of volatile organic compounds (VOCs) relies on operation of a gas chromatography-flame ionization instrument. This will provide sensitive and VOC-specific monitoring of a series of primary oil and natural gas hydrocarbons. A minimum of twenty-five species of the most prominent VOCs observed in ambient will be reported. Quantification of VOCs will follow the protocol and be based on the calibration scale of the World Meteorological Organization Global Atmospheric Watch program with calibration standards from the U.K. National Physics Laboratory.

This bid includes automated data processing and reporting to the Erie project web portal that was implemented and is maintained by Boulder AIR (https://www.bouldair.com/erie.htm). In addition, data from the Erie monitoring will be included in the AirLive Combined Northern Colorado Front Range website (https://www.bouldair.com/NoCoFrontRange.htm). All historical data can be viewed and analyzed at the Boulder AIR Interactive Data Analysis Tool (https://bouldairtools.com/interactive/). Final, fully quality-controlled VOCs data will be submitted to AMTIC, the EPA Ambient Monitoring Archive for Hazardous Air Pollutants (https://www.epa.gov/amtic/amtic-ambient-monitoring-archive-haps); data for all other chemical measurements will be submitted to the EBAS (https://ebas.nilu.no/) archive.

The cost for all monitoring and associated services for July 1, 2025 – December 31, 2025, will be the same as for the current January 1 – June 30, 2025, contract (\$113,600). Rates for 2026 will increase by 3% to adjust for inflation. However, Boulder AIR will drop the rate for methane monitoring by 20% effective January 1, 2026. Furthermore, we have eliminated the charge for the security system operation and maintenance. With these reduced charges, the January 1 – December 31, 2026, budget comes in at \$224,631, which is 3% lower than 2025 charges. Rates for 2027 and 2028 factor in a 3% increase per year to adjust for the anticipated rate of inflation.

- B. Acquisition, installation, and operation of five SGS SmartSense solar powered (with battery backup) air monitoring stations (https://www.sgsgalson.com/smart-sense-home/). Monitored variables will include wind speed, wind direction, air temperature, particulate matter (PM1, PM2.5, PM10) and total VOCs by photoionization detection (PID). Each station will be equipped with a sampling trigger mechanism and air sampling canister to collect whole air samples when elevated VOC signals are detected by the PID. In case the current contract for continuous air quality monitoring with Boulder AIR at ECC is renewed, then, at no cost to Erie, one additional station will be installed at ECC in parallel to the real time methane, VOCs, and PM2.5 monitoring to provide comparison between the two methods and additional quality control of the SmartSense air sampling.
- C. Analysis of up to 15 trigger canister samples per year collected by the SmartSense stations (B) for methane and VOCs, using the same instrumentation and quality assurance as under A. In the case that more than 15 trigger events (and samples) are collected, additional trigger canister deployments and analyses will be charged \$400 per sample.
- D. Real-time reporting of the SmartSense data to the public SGS LiveView data portal (https://www.sgsgalson.com/sgs-liveview/).
- E. Preparation and analysis of a maximum of ten grab sampling Summa canisters per year. Additional grab sampling canister deployments and analyses will be charged \$400 per sample.
- F. Pollution event analyses and event reports, one annual report, presentation to the Town of Erie Council.
- G. Boulder AIR commits to conduct all monitoring listed above at \geq 95% uptimes.

A cost breakup of these line items and a summary budget detailing the 6-months costs for July 1 – December 31, 2025, and then the annual costs for years 2026, 2027, 2028 is provided below. For each year, the total cost considers a discount if both the ECC continuous station monitoring and the dispersed sampling program are contracted to Boulder AIR.

We appreciate this opportunity to provide air quality monitoring for the Town of Erie.

Thank you,

Detlew He

Detlev Helmig, PhD Boulder A.I.R. LLC

Erie Community Center (ECC) Air Monitoring Station:

| Item | Variable | 2025 rate, full year US\$ | 2025, July 1 - Dec 31, US\$ | 2026, full year US\$ | 2027, full year US\$ | 2028, full year US\$ |
|--------|--|------------------------------|--------------------------------|-------------------------|-------------------------|-------------------------|
| 1 | Ozone, TEI_49, regulatory-grade | 17,918 | 8,959 | 18,456 | 19,009 | 19,579 |
| 2 | Volatile Organic Compounds (including ethane, ethene, acetylene, propane, propene, i-butane, n- butane, i-pentane, n-pentane, cyclopentane, isoprene, n-hexane, cyclohexane, benzene, n- heptane, toluene, n-octane, o-xylene, ethylbenzene, o-xylene, m-xylene, p-xylene); WMO-grade by gas chromatography - flame ionization detection | 105,665 | 52,833 | 108,835 | 112,100 | 115,463 |
| 3 | Methane, PICARRO G2301, WMO-grade | 35,837 | 17,919 | 29,530 | 30,416 | 31,328 |
| 4 | PM_2.5, regulatory-grade, PM_10, GRIMM EDM180 | 30,102 | 15,051 | 31,005 | 31,935 | 32,893 |
| 5 | Meteorological variables (wind speed, wind direction, temperature, relative humidity, radiation), research- | 3,584 | 1,792 | 3,692 | 3,802 | 3,916 |
| 6 | Webcam for public website images | 2,150 | 1,075 | 2,215 | 2,281 | 2,349 |
| 7 | Website data reporting, data management, data archiving, event reports | 30,000 | 15,000 | 30,900 | 31,827 | 32,782 |
| Total: | | 225,256 | 112,628 | 224,631 | 231,370 | 238,311 |

Town of Erie Community Center (ECC) Air Quality Monitoring, 2025-2028

Five SGS Dispersed Air Monitoring Stations for Six Months:

Five Meteorology/PID/VOCs Trigger Canister Sampling Stations; July 2025 through December 2025 Budget

| Item | Variable | Cost per Unit | Number of Sites | Months | Total Number of Samples | 2025 rate (US\$) |
|------|--|------------------|--------------------|--------|----------------------------|---------------------|
| 1 | Acquisition, installation, and operation of SGS PID/trigger solar powered canister sampling stations with meteorology, PM1, PM2.5, PM10, total VOCs | 1450 | 5 | б | | 43,500 |
| 2 | Trigger canister analyis by gas chromatography for methane and minimum of 30 Volatile Organic Compounds (including ethane, ethene, acetylene, propane, propene, i-butane, n-butane, i-pentane, n-pentane, isoprene, n-hexane, benzene, toluene, o-xylene, ethylbenzene, o-xylene, m-xylene, p-xylene); custom-gas chromatograph with flame ionization detection (FID), 15 canisters per year | 400 | | | 7.5 | 3,000 |
| 3 | Weekly site visits, trigger canister preparation, setup, and collection | 250 | 5 | 6 | | 7,500 |
| 4 | Reporting, website maintenance, event analyses | 1000 | | 6 | | 6,000 |
| | Total | | | | | 60,000 |

Summary Budget:

ECC and Dispersed Sampling Network 2025 - 2028 Summary Budget

| Program component | July 1, 2025 - Dec. 31, 2025 | Jan. 1, 2026 - Dec. 31, 2026 | Jan. 1, 2027 - Dec. 31, 2027 | Jan. 1, 2028 - Dec. 31, 2028 |
|--|---------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Town of Erie Community Center (ECC) continuous air quality monitoring | 112,628 | 224,631 | 231,370 | 238,311 |
| Five meteorology, PM, PID/VOCs SGS trigger canister sampling stations | 60,000 | 123,600 | 127,308 | 131,127 |
| Grab sampling Summa canisters, preparation and GC/FID sample analysis, up to 10 per year | 0 | 0 | 0 | 0 |
| ECC - Dispersed network bundle discount | 29,000 | 48,231 | 49,678 | 51,168 |
| Total requested funds | 143,628 | 300,000 | 309,000 | 318,271 |



Town Council

Board Meeting Date: 6/24/2025

File #: 25-391, Version: 1

SUBJECT:

2025 Erie Balloon Festival/Balloon Glow Update with the Erie Chamber of Commerce

DEPARTMENT: Economic Development

PRESENTER(S): Julian Jacquin, Director of Economic Development & TOEURA Pat Vero, Executive Director, Erie Chamber of Commerce

TIME ESTIMATE: 15 minutes

FISCAL SUMMARY:

The 2025 Budget includes \$30,000 to support the Erie Balloon Festival/Balloon Glow.

POLICY ISSUES:

This issue has minimal policy implications.

STAFF RECOMMENDATION:

Listen to the information and participate in the discussion with the Erie Chamber.

SUMMARY/KEY POINTS

- The 2025 Erie Balloon Festival/Balloon Glow is changing from past years, with a new Balloonmeister and new logo, website, and social media presence.
- This presentation will highlight the changes planned for this year's event.

BACKGROUND OF SUBJECT MATTER:

The 2025 Erie Balloon Festival/Balloon Glow is scheduled for July 11-13, from 6 - 7:30 a.m. at WCR 5/Colliers Parkway, just west of Erie High School.

The Erie Chamber of Commerce hosts this annual event, in partnership with the Town of Erie. The 2025 Budget, approved by Town Council, includes \$30,000 to support this event, formalized by a Sponsorship Agreement approved annually between the Erie Chamber and Town staff.

For 2025, the Erie Chamber has attracted a new Balloonmeister, who has changed some of the event logistics from past years. The Chamber would like to present an informational update to the Town

File #: 25-391, Version: 1

Council regarding these changes.

From the Erie Chamber:

Our Balloonmeister, Tamlyn Grace, has been a hot air balloon pilot for more than 10 years, and a commercial pilot for the last 3 years. As a pilot and event organizer, Tamlyn and her team have created a strong identity for the Erie Balloon Festival, with their new logo, website, and social media presence. They created partnerships in the community that will serve the festival in years to come. She is working to create an exciting weekend, strengthening their relationships with pilots and sponsors, and hosting an event that draws our community together.

New Balloon Festival Website - <<u>https://erieballoonfestival.com></u> New Balloon Festival Facebook page - <u><<u>https://www.facebook.com/ErieBalloonFestival/></u></u>

Pat Vero, Executive Director of the Erie Chamber of Commerce, will attend the June 24 Town Council meeting to highlight these planned updates for the 2025 event.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- ⊠ Attractive Community Amenities
- \boxtimes Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- Small Town Feel
- \boxtimes Safe and Healthy Community
- □ Effective Governance
- □ Environmentally Sustainable
- □ Fiscally Responsible

ATTACHMENT(S):

None





Town Council

Board Meeting Date: 6/24/2025

File #: 25-255, Version: 1

SUBJECT:

A Resolution of the Town Council of the Town of Erie Approving the First Amendment to the Energy Performance Contract with Iconergy, Ltd. for the Erie North Water Reclamation Facility Floating Solar Project

DEPARTMENT: Public Works

PRESENTER(S): David Pasic, Public Works Director Chad Alexander, Facilities Manager

TIME ESTIMATE: 30 minutes

FISCAL SUMMARY:

| Cost as Recommended: | \$4,276,673 |
|-----------------------------|--------------------------|
| Balance Available: | \$5,000,000 |
| Fund | Wastewater Fund |
| Line Item Number: | 510-75-110-605000-247013 |
| New Appropriation Required: | No |

POLICY ISSUES:

The policy issue here is whether the overall benefits of this project are worth the costs. If we consider the total project cost *without* additional grants or credits, the payback period for this NWRF floating solar project is 24.9 years. This is longer than staff would normally accept to proceed with a project. However, with regular maintenance, staff expects the equipment to last longer than 25 years and continue to contribute multiple benefits, including offsetting costs for electricity, reduced greenhouse gas emissions, cooler effluent in the Town's reuse water reservoir, and experience/information that will help determine whether additional floating solar panels should be added to completely offset the NWRF's electricity demand. Further, this project is already partially Grant funded with a \$900,000 grant from DOLA. Finally, unless Congress changes current law, this project is eligible for a \$1.3 million reimbursement credit through the Federal Inflation Reduction Act/Investment Tax Credit (ITC) program. This would reduce the payback period to 17 years when considering the Town's net investment.

STAFF RECOMMENDATION:

Approve the resolution

SUMMARY/KEY POINTS

- As noted above, this project has multiple benefits for the Town, which are covered in more detail in the attached presentation and which staff will review during the Council meeting.
- The Town was awarded a \$900,000 Energy and Mineral Impact Fund (EIAF) Grant from the Department of Local Affairs (DOLA) on March 18, 2025, after the Jan. 21, 2025, study session where this capital project was discussed with Council.
- The current federal budget bill includes provisions that will require projects to be started within 60 days of the passage of the bill AND will sunset the ITC at the end of 2028, 4 years sooner than originally legislated. The budget bill provisions also stipulate that projects must be complete by the end of 2028. The budget bill could be passed as early as the 1st week in July. If Council approves proceeding at this meeting, staff can procure 5% of the materials prior to the 60 days, which qualifies as starting the project. Further, we can complete the project in 2026. Thus, barring other changes to the IRA/ITC, the project qualifies for the ITC reimbursement of \$1.3 million. The Town would apply for this funding after the project is completed and producing electricity.
- Finally, the Town requested just over \$4.5 million from FY 26' Congressionally Directed Spending (CDS) grants for a second phase (1.9MW to achieve 100% offset of the admin and process buildings) since the project is scalable. Due to submission limits set by the Congressional Committee, each Senate office could only advance a limited number of proposals. The Town's request was included by Senators Hickenlooper and Bennet in their CDS requests. The CDS process is contingent on the passage of the federal budget, and thus funding through that process is uncertain, but the Senators including this project in their requests demonstrates their support for the project.
- The Contract Amendment currently before the Council exceeds \$100,000, and thus requires Council approval to proceed

BACKGROUND OF SUBJECT MATTER:

On Oct. 26, 2021, the Town executed a Consultant Agreement with Iconergy, Ltd., pre-qualified by the Colorado Energy Office as an Energy Service Company (ESCO), to conduct technical assessments, energy audits and preliminary design for facility energy efficiency improvements, solar PV, and infrastructure improvements for Town facilities. Iconergy's analysis produced a list of projects and cost estimates.

Based on that initial work, on May 23, 2023, the Board of Trustees approved the award of an Agreement with Iconergy, Ltd. for an Energy Performance Contract to implement utility cost savings measures, operation and maintenance cost saving measures, and facility improvement measures for multiple Town of Erie Facilities.

File #: 25-255, Version: 1

Reflecting additional facilities, new technologies, and cost reductions in equipment, the Town approved amendments to the Agreement with Iconergy, Ltd. to study additional utility cost savings measures, operation and maintenance cost saving measures, and facility improvement measures for Town facilities. Based on and using information from that review, Town staff submitted the Energy Impact Assistance Fund grant application, and in March 2025 was awarded a \$900,000 grant. The overall cost of the project is just under \$4.3 million. The Town needs to budget the full amount of the project and then submit Progress Reports to DOLA quarterly, with proof of payment for contractor invoices during that quarter, for reimbursement up to the \$900K that was awarded.

The Inflation Reduction Act included provisions that allow local governments to get the equivalent of tax credits as direct reimbursements of eligible project costs. As noted above, barring other changes to the IRA/ITC, the project qualifies for the ITC reimbursement of \$1.3 million. The Town would apply for this funding after the project is completed and producing electricity. Considering the \$900,000 EIAF grant and the \$1.3 million federal reimbursements, the Town's net cost for this \$4.3 million project would be \$2.1 million. The electricity generated by this solar PV system would reduce the Town's cost for electricity at the NWRF so the project would pay for itself in 17 years. After that, the project will continue to generate savings.

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\$900,000 EIAF grant and the \$1.3 million federal reimbursements, the Town's net cost for this \$4.3 million project would be \$2.1 million. The electricity generated by this solar PV system would reduce the Town's cost for electricity at the NWRF so the project would pay for itself in 17 years. After that, the project will continue to generate savings.

In addition to the cost savings and reducing green house gas (GHG) emissions associated with fossil fuel generated electricity shading a portion of the Town's reuse water reservoir will reduce light reaching this nutrient rich water body, which reduces the propensity for algae development in the reservoir that would adversely affect operations and require control measures. Many utilities use various floating systems (balls, small panels) to create shade in effluent reservoirs for this reason. Additionally, while the Town is not currently required to monitor temperature for discharge into Boulder Creek, Town staff will likely be required to report this data at some point. New permits generally have temperature limits, which can be very hard to meet. The shade created by these, and future, panels will help reduce water temperature in the reservoir. This solar array will have a relatively small footprint, but it would be installed near the reservoir outfall, which is helpful. If the Town is awarded the requested CDS funding and are able to expand the system over time the reservoir will achieve cooler temperatures which will help with future permitting.

Additional electrical utility savings and reduction of GHG emissions will be realized if this floating solar system is expanded in the future to offset electrical usage of the North Water Treatment Facility, which is currently under design. The Town's water and wastewater facilities are the largest electrical consumers in the Town of Erie. The Town has a history of looking for ways to reduce those costs including projects like the hydro-turbine at the Lynn R Morgan Water Treatment Facility and managing pumping schemes to avoid peaking factors. These efforts also benefit residents by offsetting costs on utility bills.

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- □ Attractive Community Amenities
- □ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- \boxtimes Safe and Healthy Community
- \boxtimes Effective Governance
- ⊠ Environmentally Sustainable
- \boxtimes Fiscally Responsible

ATTACHMENT(S):

- 1. Resolution 25-119
- 2. First Amendment

File #: 25-255, Version: 1

3. Presentation

Town of Erie Resolution No. 25-119

A Resolution of the Town Council of the Town of Erie Approving the Colorado Energy Office Energy Performance Contract Amendment

Whereas, on May 23, 2023, the Town entered into a Colorado Energy Office Energy Performance Contract with Iconergy Ltd.; and

Whereas, the Town and Iconergy wish to amend the Contract.

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

Section 1. The Colorado Energy Office Energy Performance Contract Amendment is hereby approved in substantially the form attached hereto, subject to final approval by the Town Attorney. Upon such approval, the Mayor is authorized to execute the Amendment on behalf of the Town.

Adopted this 24th day of June, 2025.

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

1

COLORADO ENERGY OFFICE ENERGY PERFORMANCE CONTRACT AMENDMENT

| Amendment No: <u>1 - E</u> | PC Contract ID No.: |
|----------------------------|---|
| Contractor: Iconergy | , Ltd |
| Institution or Agency: | Town of Erie |
| Project No./Name: | Town of Erie Energy and Renewables Performance Contract |

PARTIES. THIS AMENDMENT is entered into by and between the Town of Erie, Principal Representative and Iconergy, Ltd located at 1905 Sherman Street, Denver Colorado hereinafter referred to as the Contractor.

FACTUAL RECITALS

NOW THEREFORE, it is hereby agreed that

- 1. Consideration for this Amendment consists of the payments, which shall be made pursuant to this Amendment and the promises, and agreements herein set forth.
- 2. It is expressly agreed by the parties that this Amendment 1-EPC is supplemental to the Town of Erie Energy and Renewables Performance Contract which is, by this reference incorporated herein, that all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this Amendment as though they were expressly re-written, incorporated, and included herein.
- 3. It is agreed the original contract is and shall be modified, altered, and changed in the following respects only: Amendment 1-EPC adds the scope of work for the implementation of a 1.2MW Floating Solar system at the North Water Reclamation Facility (NWRF) as a Phase II measure of the EPC project. This measure was identified in the Phase II IGA under Amendment 1.

To incorporate the additional scope and reflect the Contract changes for this measure, the following sections of the Contract are added as indicated and included in this Amendment.

2B. Contract Term

Contractor shall complete the Work and its other obligations as described herein on or before June 30, 2029. The contract term includes three years of annual measurement and verification services.

The Political Subdivision shall not be liable to compensate Contractor for any Work performed prior to the Effective Date or after the termination of this Contract. The term of this Contract ("Contract Term") shall be divided into three (3) separate components:

- i. The "Planning Term," shall commence on the Effective Date and upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Design Phase under Article 4(H) and terminate upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase for the last improvement per the Construction and Installation Article 6(B)
- ii. The "Construction Term," shall commence upon delivery by the Principal Representative to Contractor of a Notice to Proceed to Commence Construction Phase for this Phase II under **Article 6(E)**, and terminate no more than
 - 365 DAYS

after the Construction Commencement Date, unless sooner terminated as provided in this

 iii. The M&V Term shall begin on the M&V Commencement Date and continue for a minimum term of three years per statute (§29-12.5-101(3)(c), C.R.S.) and no greater than the Finance Agreement Term. The M&V Term shall terminate pursuant to Schedule D.1 unless sooner terminated as provided in this Contract.

3. FUNDING

A. Source of Funds

The Political Subdivision intends to obtain

\$0

in funds for the MCP required under this Contract by entering into a personal property annually renewable lease purchase financing arrangement with a Third-Party or in such other manner as the Governing Body of the Political Subdivision, in its sole discretion, shall deem authorized by resolution or ordinance pursuant to and within the limitations of applicable constitutional, statutory (which may include **§29-12.5- 101(3)(b)**, **C.R.S.**) and code provisions pertaining to the Political Subdivision. The Political Subdivision has received **\$900,000** in approved funding from the Colorado Department of Local Affairs Energy Impact Assistance Fund (EIAF) Grant. The total amount of funds that the Governing Body of the Political Subdivision will seek to acquire from Third-Party sources is **\$900,000**.

If Political Subdivision is unable to obtain funds in any manner for the entire amount of the MCP, the Governing Body of the Political Subdivision and the Contractor may negotiate a reasonable reduction in the Project scope, price, and Guarantee in a manner consistent with any available funds or the Governing Body of the Political Subdivision may unilaterally terminate this Contract, in the sole discretion of the Governing Body of the Political Subdivision. If the Political Subdivision is unable to obtain financing for the entire amount of the MCP and the Parties are unable to revise the Project scope to obtain available funds within sixty (60) days of the Effective Date, either Party may terminate this Contract upon 10 days written notice to the other Party and such termination shall not be a default under this Contract. Upon termination, neither Party shall have any obligation to the other Party under this Contract, except for those provisions which by their terms survive any such termination, as provided herein.

B. Political Subdivision Funds

The Political Subdivision will provide all or a portion of the moneys for the MCP required under this Contract in the amount of *\$3,361,218* from existing appropriations specifically budgeted, appropriated and encumbered for this purpose as full or partial compensation for the cost of the Project as described in **Schedule B.1** and indicated on **Schedule G.1** to be paid to Contractor as reimbursement pursuant to **Schedule A**.

4. COMPENSATION

Upon authorization by the Governing Body of the Political Subdivision, the Principal Representative will, or will direct any Escrow Fund Custodian to, in accordance with the provisions of this **Article 4**, pay Contractor in the amounts and using the methods set forthbelow:

A. Maximum Contract Price

| The MCP from Schedule G.1 is: | \$4,276,673 |
|--------------------------------------|-------------|
|--------------------------------------|-------------|

The MCP reflects the maximum amount of compensation payable to Contractor pursuant to this contract. The MCP may include, without limitation,

| The cost of the IGA in the amount of: | Paid from Phase I funds |
|---|-------------------------|
| The Fixed Limit of Construction Cost of: | \$3,995,211 |
| The M&V Fees in an amount not to exceed: | \$15,455 |
| And all Contingency Funds in the amount of: | \$266,007 |

If any Political Subdivision funds are used pursuant to **Article 3(B)** of this Contract, the maximum amount of the MCP available for payment by the Political Subdivision during any Fiscal Year of the Contract term shall be as

(Match this schedule with **Schedule G.1** and **Schedule B.1**, but do not use if amount in Political Subdivision provided capital contribution is zero)

| \$2,016,731 in fiscal year 2025, ending December 31, 2025 |
|--|
| \$1,344,487 in fiscal year 2026, ending December 31, 2026 |
| \$5,000 in fiscal year 2027, ending December 31, 2027 (Year 1 M&V) |
| \$5,150 in fiscal year 2028, ending December 31, 2028 (Year 2 M&V) |
| \$5,305 in fiscal year 2029, ending December 31, 2029 (Year 3 M&V) |

Solar Equipment Tariff Impact

Solar Equipment cost increases or schedule delays caused by Solar Equipment import tariffs occurring after the effective date of this Amendment 1-EPC are not included in the Fixed Limit of Construction Cost. Contractor shall be entitled to an equitable adjustment to the fixed Limit of Construction Costs (FLCC) and project term if Solar Equipment Tariffs are added after the effective date of Amendment 1-EPC. Contractor shall submit a contingency spend proposal to the Town's Principal Representative with a detailed explanation of the specific tariff(s) applied to solar equipment and an itemized cost breakdown of the specific equipment impacted by tariffs, displaying the equipment cost before and after tariffs, as justification for the aforementioned equitable adjustment to the FLCC. Contingency shall only be paid to Contractor upon the Town's preceding approval of Contractor contingency spend proposal. If Tariff increases exceed the project contingency funds other means such as scope adjustments may be negotiated to minimize impact to either party and preserve the intent of the project outcome.

14. GUARANTEE

A. Guarantee

The Guarantee for the first year of the Guarantee Period is:

\$125,000

as indicated on **Schedule C**.1. Contractor hereby warrants and guarantees that during the Guarantee Period, the Project shall result in annual cost savings equal to or greater than the Guaranteed Annual Cost Savings presented in **Schedule C.1** which shall be equal to or greater than the Political Subdivision's annual and aggregate payments used to repay the project funding, as provided in **Schedule C.1** and as set forth in **§29-12.5-101(3)**, **C.R.S**. Failure to meet Guaranteed Annual Cost Savings in any year during the Guarantee Period shall be as defined in **Article 1**. Cost savings in excess of the Guaranteed Annual Cost Savings shall be solely retained by the Political Subdivision.

To facilitate the additional scope for this measure, the following Schedules are added as indicated and included in this Amendment.

Schedule A – No Change Schedule B.1 – Scope of work for the additional measure Schedule C.1 – Guarantee for the additional measure Schedule D.1 – M&V plan for the additional measure Schedule E.1 – Code requirements for the additional measure Schedule F.1 - Detail of Schedule of Values for the additional measure Schedule G.1 – Financial Cost and Cash Flow for the additional measure Schedule H.1 – Cost Weighted Average Service Life for the additional measure Schedule I.1 – Record of Reviews for the additional measure Schedule J. – Omitted Schedule K.1 – Insurance Certificate for the additional measure Schedules L.1&M.1 – Bonds for the additional measure Schedule O – No Change

| Schedule P – No Change |
|---|
| Schedule Q.1 - System Start up and Commissioning for the additional measure |
| Schedule R - No Change |
| Schedule S - No Change |
| Schedule T.1 - Notice of Substantial Completion for the additional measure |
| Schedule U.1 - Notice of Final Completion for the additional measure |

THE PARTIES HERETO HAVE EXECUTED THIS CONTRACT AMENDMENT

Persons signing for Contractor/Consultant hereby swear and affirm that they are authorized to act on Contractor's behalf and acknowledge that the State is relying on their representations to that effect.

| Project Name/Number: Contract ID No.: | Town of Erie Energ | gy and Renew | vables Performance Contract |
|--|--------------------|--------------|-----------------------------|
| THE CONTRACTOR/CONSULTANT: | | TOWN | OF ERIE COLORADO, |
| | | By: | |
| Iconergy, Ltd | | | Title: Mayor |
| Douclas K Harg *Signature | rane | Date: | |
| By Douglas R Hargrave | President | | |
| Date: <u>6/18/25</u> | | | |

EPC SCHEDULE B.1

ENERGY PERFORMANCE CONTRACT DESCRIPTION OF WORK

This schedule is included as part of the Phase II scope of work as an amendment to the previously executed Energy Performance Contract. It is not intended to replace the existing Energy Performance Contract, Schedules, Exhibits, or Tables.

Executive Summary

Iconergy LTD will install a floating solar photovoltaic (PV) system on a reclaimed water reservoir at the North Wastewater Reclamation Facility (NWRF). Output from this solar array will be divided between the electrical services at the Solids Building and the Pump Station. The electrical rooms in both of those buildings will each have an interconnect. The project will generate approximately 95% of the electricity consumed at those two buildings - close to 2 million kWh annually. Desired results include implementation of a renewable energy measure and cost savings to water users. Additional benefits accrue from the proportion of surface area shaded by the array, and include slightly decreased evaporation from the reservoir, and lower temperature of the effluent released into Boulder Creek.

Construction costs will be offset by a Department of Local Affairs (DOLA) grant of \$900,000 which has been approved. An estimated 30% direct-pay Investment Tax Credit of \$1,278,365 is not guaranteed by this contract or included in the maximum contract price, but the project is currently eligible and the Town plans to separately apply. The Town of Erie plans to self-fund \$3,361,218 which is the cost of the project without the Investment Tax Credit. The ITC credit can only be applied for once the array is installed and operational. The following table lists the energy and economic benefits of the project:

| Measure Description | Electrical Energy Savings (kWh/yr) | GHG Reduction (tons / yr) | Total Energy Savings (MMBtu/ yr) | Total Cost Savings (\$/yr) | DOLA Grant (\$) | Cost \$ | Simple Payback (yr) |
|--|--|---------------------------------|--|----------------------------------|--------------------|---------------|---------------------------|
| Phase II - NWRF Floating Solar 1.2 MW | 1,785,700 | 1,035 | 6,093 | \$125,000 | \$900,000 | \$3,095,211 | 24.9 |
| Project Contingency - C | wner Contro | olled | | | | \$266,007 | |
| Measurement and Veril | Measurement and Verification (annual cost x three years) | | | | | | |
| Total Amount to be fun | ded via capit | al contributio | on (excludes | M&V) | | \$3,361,218 | |
| Investment Tax Credit (| Investment Tax Credit (Town of Erie responsibility) | | | | | (\$1,278,365) | |
| Total (net after ITC) | 1,785,700 | 1,035 | 6,093 | \$125,000 | \$900,000 | \$2,082,853 | 17.0 |
| Baseline Utility Bills | 1,887,000 | 1,093 | 6,438 | \$128,600 | | | |
| Percent Savings | 95% | 95% | 95% | 97% | | | |

Table B1.1 contains total cost savings and total energy savings

Project Location:

This project is located at the Erie North Wastewater Reclamation Facility (NWRF), 501 State Highway 52, Erie, CO 80516. It is in Weld County, approximately 5.1 miles from Erie Town Hall at 645 Holbrook St. The project latitude is 40.098624N and longitude is -105.043879. The reclaimed water reservoir at the NWRF where the floating solar PV will be installed is adjacent to and discharges effluent into Boulder Creek.



Technical Description

The Town of Erie partnered with Iconergy Ltd. in March of 2024 to complete an Investment Grade Audit (IGA) report for an additional phase of the Energy Performance Contract program. The Phase II IGA report, in coordination with the Town of Erie, identified several goals, including:

- Develop solar and resiliency opportunities to support renewable initiatives
- Implement measures that provide value and enhanced reliability to the overall operation and sustainability

Several renewable energy and sustainability measures (ECMs) were recommended, including this Floating solar PV at the North Water Reclamation Facility. Performance of the system will be verified through commissioning and annually each year for three years to ensure system performance.

The North Water Reclamation Facility is a multi-building complex (17,606 SF total) providing wastewater treatment for the Town of Erie residents. The buildings are conditioned by a combination of RTUs and unit heaters controlled by local thermostats. All RTUs have gas heating. The administration building and main pump building have DX cooling. A facility expansion to add wastewater treatment capacity was completed in 2024. Lighting was updated in 2024 as part of lconergy's Phase I EPC.

There are three United Power electrical meters at the NWRF site: the Administration and Processing Buildings; the Solids Building; and the Pump Station building. The scope of this floating solar PV project is to provide Solar PV energy to offset most of the energy currently provided by United Power to the Pumps and the Solids Buildings. The floating photovoltaic (PV) system will be installed on the existing reclaimed water pond at the NWRF site. Installation of a floating PV system realizes all significant benefits of on-site renewable energy generation system without reducing land available for future expansion of the NWRF, which will likely be needed to continue to serve the wastewater needs of a rapidly growing Town. A critical advantage of the planned floating Solar PV system as the NWRF site electrical energy consumption increases. Made from recyclable HDPE, this environmentally-friendly floating PV system supports PV modules above water while withstanding long-term environmental hazards, such as wind, rain, and snow.

The **MAIN FLOAT**, designed to support the PV panel. The float is slightly narrower than the PV panel. A T-profile is created during the manufacturing process, on which the workers install mounting rails designed to attach the PV panel by its frame.

The **SECONDARY FLOAT**, designed to link the primary floats together. This maintains the distance between rows of PV panels (59 inches) and can also be used for maintenance.

Standards & Conditions

The solar island has been designed to guarantee the load resistance for the following conditions (determined through wind tunnel tests and calculations):

- Water velocity: no more than 2.3 mph.
- Waves: up to 3.3 ft.
- Temperature: between -4 °F and 122 °F
- Snow load: limited to 50lbs PSF
- Wind velocity: Can be designed to 160+ mph winds

Pricing for this solar PV system at the NWRF was obtained by Iconergy from multiple contractors and multiple configurations were evaluated. Due to restrictions on land availability due to future growth, the floating solar system option was chosen and the system described above was vetted and shown to provide the best value for the Town. To hold the array in place, either sunken ballast or shore anchors can be employed. Iconergy plans to employ a shore anchored system, as it offers slightly reduced cost and quicker installation.

Output from the array will be apportioned to two buildings: 1.02 MW_{DC} at the Solids Processing building and 180 kW_{DC} at the pumps building. Total annual energy production will provide \sim 95% of the electrical energy for the two buildings.

Solar PV systems produce more energy in summer months than in winter months. In order to offset almost all annual consumption, the generation will exceed consumption during the summer, and lag consumption during the winter. United Power's net metering program will be leveraged to take full advantage of annual generation. In high-generation months, excess generation will be stored in Town of Erie's net metering balance; in lower-generation months, that net metering balance will be used to bridge the gap between generation and consumption. At the end of March each year, United Power will pay for any excess generation credits remaining in the customer's account. Settling the account in March allows summer generation to offset winter consumption. However, as stated above, this array is sized to supply 95% of the annual average historical energy (kWh) usage, so it is not anticipated that there will be excess annual generation.

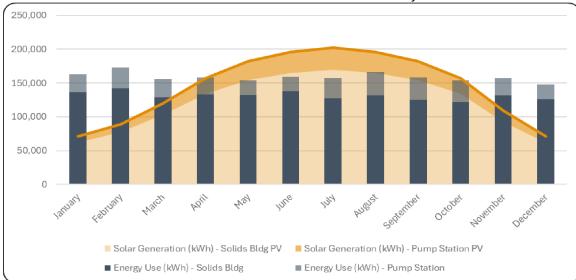
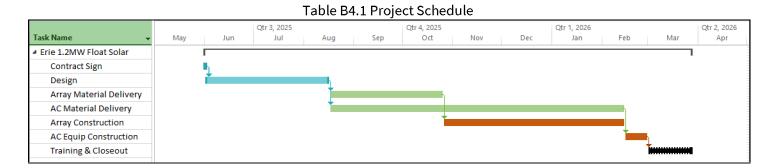


Table B3.1 Production by month

Proposed Project Schedule

The preliminary construction schedule is provided below which will be refined and developed in cooperation with the subcontractors, vendors, and the Town of Erie to complete the EPC work as required. This will be expanded upon and updated after contract execution to further plan and monitor construction activities.



The project is projected to be substantially complete by March 2, 2026, with a final acceptance of completion of the construction work by April 1, 2026. Once final completion is accepted, annual measurement and verification will commence with annual reporting for three years.

Measurement & Verification

IPMVP Option B – Total Energy Measurement – is proposed. Savings and energy production will be reported as 'avoided use' meaning actual production values will depend on weather conditions. The measurement boundary is the PV system in total. Demand reductions are expected to be minimal and were not factored into the savings calculation. Demand savings are not being guaranteed.

A detailed description is provided in Schedule D: Measurement & Verification Services Plan.

Warranty

Iconergy warrants the design and installation for one year following acceptance. The Hydrelio floating rack system has a 10-year warranty. Products for the array will not be selected until detailed design work has occurred, but standard inverter warranty is 5-year, and standard module warranty is 25-year.

Scope of Work

1 Project Location

| | Project Information | | | | | | | |
|---|---------------------|---|-------|-------|---|----------------|--|--|
| Project # Project Name Project Address Qty of Modules Project Size (kW dc) Estimated Phases Project Typ | | | | | | Project Type | | |
| 1 | Erie NWRF | 501 State Hwy 52 Erie, Colorado, 80516 | 1,820 | 1,200 | 1 | Floating Solar | | |

2 General Scope

- Provide all labor, supervision, and equipment; materials, consumables, tools, and all necessary transportation and rigging to produce mechanically/electrically complete and commercially functional Floating PV Solar System per the IFC drawings.
- Install all mechanical and electrical items that may be necessary to produce a complete and functioning system. These items may include but are not limited to: Hydrelio floating PV system, modules, inverters, DC combiner boxes, DAS placards and stickers, AC and DC wiring, AC and DC disconnects, circuit breakers, conduit, communications wiring, monitoring and metering wiring, DC wiring and associated connectors for PV modules to inverters, grounding lugs per construction drawings, Utility, and AHJ requirements.
- Locations and mechanical/electrical installation of the system shall be based on the Construction Drawings. The array will be located in the NE section of the pond and anchored to the shoreline.
- Physically verify site conditions to ensure final layout and placement of Hydrelio floating PV system, anchoring system, conduit raceways, equipment, clearances, proposed bore/trench paths, and any additional project detailing that does not otherwise disrupt original design intent of occupied space unless given written approval.
- Scope includes receiving, offloading, hoisting, and storage of all material and equipment related to install.
- All drive and walking surfaces to be brought back to original condition after construction is complete. During construction, ensure drive and walking surfaces are dirt and debris free to not cause injury or accident to personnel outside construction zone.
- Test all cabling, switchgear, and electrical distribution equipment as outlined in Table 1. Commissioning Documentation to be delivered upon completion of electrical Scope of Work.
- Perform a 'System On Test' to identify that all equipment is working properly before the solar installation is given Permission to Operate (PTO) from the local utility. All Commissioning Activities are part of the 'System On Test'.

Clarifications & Exclusions

The following exclusions and clarifications apply to all scopes of work included in this proposal. General

Town of Erie EPC Schedule B.1

- 1. Correction of deficiencies not explicitly listed in the scope of work are not included; if existing equipment or components are reused, repairs to existing equipment or components are not included unless specifically noted in the scopes of work.
- 2. Prevailing wage rates are not included.
- 3. Consequential damages are excluded.
- 4. Any liquidated damages are excluded.
- 5. Abatement or testing of hazardous materials is excluded from all scope items listed in the report.
- 6. The anticipated construction schedule has been built around a one (1) week turn-around time between the Owner receiving and responding to each submittal.
- 7. It is assumed that Iconergy will have access to the site and buildings seven days a week to perform the Work.
- 8. Temporary power is excluded from all scope items. Iconergy will coordinate with the Owner to limit disruptions during construction, start-up, and commissioning activities.
- 9. Moving of any facility equipment is excluded.
- 10. Pricing based on tax-exempt from State and Federal. No other taxes are included.
- 11. Permits will be obtained from Town of Erie. Cost of permits is excluded.
- 12. The Inflation Reduction Act laid out guidelines to allow some tax-exempt organizations that were unable to monetize tax credits in the past to elect to receive a direct payment of the 30% Federal Investment Tax Credit for solar installations. The cost of the project has not been reduced in this contract to account for this as this will be reimbursed when received, after project completion. The ITC will need to be filed by the Owner, where Iconergy can be a resource to assist as needed. Iconergy cannot guarantee the actual amount of the ITC received.
- 13. Contractor will provide a Performance Bond and Payment Bond in the form as provided in Schedule L and Schedule M each in the sum of 100% of the Maximum Contract Price. The Performance Bond Shall strictly apply to the construction and performance of the Work. The Payment Bond shall strictly apply to those providing labor, materials, equipment, supplies, and services in connection with the performance of the Work. The surety's liability under the Performance Bond and Payment Bond shall be fully exonerated as of the final completion of the construction work per Schedule B. The guarantees extended pursuant to these bonds are limited to the construction obligations only, and for the first year of warranty against defective materials and workmanship. These bonds specifically exclude any guarantee of the performance or payment obligations of those sections of the contract related to extended maintenance services, annual reviews and/or guaranteed energy savings.

EPC SCHEDULE C.1 GUARANTEE

This schedule is included as part of the Phase II scope of work as an amendment to the previously executed Energy Performance Contract. It is not intended to replace the existing Energy Performance Contract, Schedules, Exhibits, or Tables.

Year 1 savings are based on projected generation of 1,785,700 kWh at the Year 1 rate of \$0.07/kWh which escalates at 3% annually. The PV system was assumed to decrease output by 0.5% annually so the subsequent years are adjusted accordingly. Guarantee is only for the first three years.

| Year | Phase II Year | Utility Savings Phase 2 | Guaranteed Savings |
|------|------------------|-------------------------|--------------------|
| 2026 | 1 | \$125,000 | \$125,000 |
| 2027 | 2 | \$128,100 | \$128,100 |
| 2028 | 3 | \$131,300 | \$131,300 |
| 2029 | 4 | \$134,600 | |
| 2030 | 5 | \$137,900 | |
| 2031 | 6 | \$141,400 | |
| 2032 | 7 | \$144,900 | |
| 2033 | 8 | \$148,500 | |
| 2034 | 9 | \$152,200 | |
| 2035 | 10 | \$155,900 | |
| 2036 | 11 | \$159,800 | |
| 2037 | 12 | \$163,800 | |
| 2038 | 13 | \$167,900 | |
| 2039 | 14 | \$172,000 | |
| 2040 | 15 | \$176,300 | |

| Table C 1 1 | : Guaranteed | Δnnual | Cost Savings |
|-------------|--------------|--------|--------------|
| | Uuaraniteeu | Amuai | CUST Savings |

United Power published their most current ISD1 rate of \$0.066/kWh effective June 2024. This published rate was escalated at 3% annually to \$0.07/kWh for 2026.

| | United Power | · ISD1 | | | | |
|---------------------------|--------------|---------|--|--|--|--|
| | kWh | kW | | | | |
| Base Rate Phase II (2026) | \$0.070 | \$21.22 | | | | |
| Years 1-15 Escalation | 3% | 3% | | | | |

Table C.1.2: Baseline Rates and Annual Escalation Rates

EPC SCHEDULE C.1 GUARANTEE

Table C.1.3: Proposed Unit Savings and Guaranteed Annual Cost Savings for Project

for Year 1

| Measure Description | Electrical Energy Savings (kWh/yr) | Electrical Demand Savings (kW/yr)* | GHG Reduction (tons/ yr) | Total Energy Savings (MMBtu/ yr) | Electrical Use Cost Savings (\$/yr) | Electrical Demand Cost Savings (\$/yr) | Utility Cost Savings (\$/yr) | O&M Cost Savings (\$/yr) | Total Cost Savings (\$/yr) |
|---|---|---|--------------------------------|--|--|--|---------------------------------------|-----------------------------------|----------------------------------|
| Phase II - NWRF Floating Solar 1.2 MW | 1,785,700 | 0 | 1,035 | 6,093 | \$125,000 | - | \$125,000 | - | \$125,000 |
| Total | 1,785,700 | 0 | 1,035 | 6,093 | \$125,000 | - | \$125,000 | - | \$125,000 |

*Demand savings are not included in the project guarantee.

EPC SCHEDULE D.1 MEASUREMENT AND VERIFICATION SERVICES PLAN

Preliminary Measurement & Verification Plan

The following section describes the ECM-specific measurement & verification plan for each of the proposed ECMs. The M&V plan follows the guidance of the International Performance Measurement & Verification Protocol Core Concepts (IPMVP, March 2022).

Solar Photovoltaic Systems

ECM Description

Iconergy proposes installing a floating PV system with a total output of 1.2 MW_{DC} to provide renewable electricity to the Pumps building and Solids building. The system will be separately connected to each building's electrical system and net-metered. Produced renewable energy will displace energy purchased from United Power.

IPMVP Option

IPMVP Option B – Total Energy Measurement – is proposed. Savings and energy production will be reported as 'avoided use' meaning actual production values will depend on weather conditions.

The measurement boundary is the PV system in total. No interactive effects are expected. Demand reductions are expected to be minimal and will be ignored.

Metering Hardware

All proposed inverters measure electricity production with revenue-grade accuracy and can provide readings on a 15-minute or hourly basis as desired. Additionally, Iconergy proposes to install an aggregate production meter that will measure the power & energy delivered to the grid as well as consumption of the two buildings.

Both the inverters and the aggregate production / consumption meters can be read remotely via the local internet connection or a cellular modem. Data can be read directly from the inverters and production meter and will also be archived for review and analysis on the SkySpark platform.

Additionally, a plane-of-array pyranometer will be installed to track irradiance and insolation at the site. This provides information on local weather conditions and allows for adjustments to produced energy in the event of excessive snowfall or cloudy conditions.

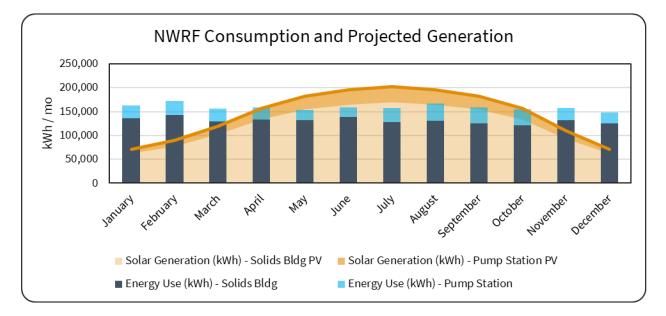
Baseline Definition

There are currently no photovoltaic systems at either facility so there is no equipment-specific baseline. The two buildings have baseline energy consumption that will be offset by the PV systems. The systems are designed to provide approximately 100% of the current annual electricity required (approach net zero) which will offset approximately 100% of the current energy cost component of the electric bill. Solar PV systems normally have minimal impact on the demand charges so it is unlikely that the Town will see cost reductions from demand charges on the utility bills. Savings calculations are based on energy component cost savings only.

| Building | Meter # | Baseline kWh Consumption | Baseline Cost @ 2026 Rate. | PV MW _{DC} | Generation, kWh | Solar Fraction | Savings @ 2026 Rate | Cost Fraction |
|--------------|---------|-----------------------------|-------------------------------------|------------------------|--------------------|-------------------|---------------------------|------------------|
| Solids | 1624435 | 1,573,000 | \$106,800 | 1.020 | 1,517,800 | 96% | \$106,300 | 100% |
| Pump Station | 1524241 | 314,000 | \$21,800 | 0.180 | 267,900 | 85% | \$18,800 | 86% |
| Total | Total | 1,887,000 | \$128,600 | 1.200 | 1,785,700 | 95 % | \$125,100 | 97 % |

Savings Calculations

Initial production estimates were based on a Helioscope model using the proposed equipment and layout along with local climatic conditions. The model resulted in the following monthly energy production:



Photovoltaic systems provide little to no peak demand reduction and so were not included in the cost savings estimates. For both initial projections and performance period, cost savings will be calculated as:

Cost Savings,
$$\frac{y}{r} = \frac{(kWh)(kWh/yr)}{r}$$

For purposes of projecting future generation and economic benefits, the solar system is assumed to degrade at 0.5% annually. This is not a factor in the M&V calculations.

Utility Rates & Rate Escalation

The utility rate for United Power ISD1 is defined in the original IGA which was published in May 2023. United Power updated their rate to \$0.066/kWh in June 2024. The floating PV system would not be expected to begin operation until 2026 two years after the 2024 rate was published. Applying the 3% escalation rate to the 2024 rate for two years yields a rate of \$0.07/kWh. The escalated utility rate for the next 20 years is as follows:

| Year | Phase 2 Year | UP ISD1 \$/kWh |
|------|----------------|----------------|
| 2023 | | |
| 2024 | Published Rate | \$0.06600 |
| 2025 | | \$0.06798 |
| 2026 | 1 | \$0.07002 |
| 2027 | 2 | \$0.07212 |
| 2028 | 3 | \$0.07428 |
| 2029 | 4 | \$0.07651 |
| 2030 | 5 | \$0.07881 |
| 2031 | 6 | \$0.08117 |
| 2032 | 7 | \$0.08361 |
| 2033 | 8 | \$0.08612 |
| 2034 | 9 | \$0.08870 |
| 2035 | 10 | \$0.09136 |
| 2036 | 11 | \$0.09410 |
| 2037 | 12 | \$0.09692 |
| 2038 | 13 | \$0.09983 |
| 2039 | 14 | \$0.10283 |
| 2040 | 15 | \$0.10591 |
| 2041 | 16 | \$0.10909 |
| 2042 | 17 | \$0.11236 |
| 2043 | 18 | \$0.11573 |
| 2044 | 19 | \$0.11920 |
| 2045 | 20 | \$0.12278 |

Reporting Period Activities

The inverter and pyranometer will be connected to SkySpark for data collection, archiving, and analysis of hourly data. Production and insolation data for each month can be calculated and reported.

If production values deviate from expected values, the hourly kW values can be compared to the hourly irradiance values to determine whether low production is the result of weather or atmospheric conditions or signifies a technical problem with the array or inverter.

Baseline Adjustments / Adjustments to Savings

The Option B method proposed should not require any adjustments to the measured production. However, in the event of excessively cloudy, snowy, or smoky conditions, low insolation can cause reduced energy production. In such an event, the PV production can be adjusted as if the affected period were providing the expected solar radiation.

$$kWh_{Adj} = kWh_{Measured} \left(\frac{Insolation_{TMY}}{Insolation_{Measured}} \right)$$

Operations & Maintenance Savings

As there was no photovoltaic system before, there will be no O&M maintenance savings. There may be a small increase in O&M cost or efforts depending on what O&M and warranty services are purchased with the system.

Uncertainty

Revenue-grade meters meet ANSI C.12 requirements which have accuracy specifications of 0.5% of true value or better. The inverter and aggregate production meters have an accuracy of 0.5% of true value; the United Power production meter is considered "perfect" as it is owned by the utility company. However, there are cases where the utility company has incorrectly calculated the net energy consumption which was not a result of meter inaccuracy. Having independent production meters allows Iconergy to identify and rectify such situations.

M&V Budget

The M&V budget was built up from defined tasks and estimated hours to accomplish each tasks. As remote monitoring via internet-connected inverters and meters will be used, site visits should not be required except for troubleshooting and diagnostics. The following annual tasks have been identified:

- Collect interval data from all inverters, aggregate meter, and irradiance sensor each month.
- Review data to perform QA/QC, aggregate into annual data file.
- Calculate total energy production & consumption from annual data. Determine cost savings using defined utility rates.
- Write M&V report.

Iconergy estimates that 80 person-hours will be required to conduct the required M&V for the first three years at a cost of \$15,455. To levelize the cash flow, Iconergy will include this cost into the project price rather than issue annual invoices for the first three years.

EPC SCHEDULE E.1 CODE COMPLIANCE REQUIREMENTS

This schedule is included as part of the Phase II scope of work as an amendment to the previously executed Energy Performance Contract. It is not intended to replace the existing Energy Performance Contract, Schedules, Exhibits, or Tables.

Code Compliance Requirement

The table below is created to illustrate that code compliance requirements and cost are included in this Phase II contract amendment. The total cost is illustrated on **EPC Schedule F**.1.

| # | Measure Description | Code Compliance (Y/N) | Documentation review cost (\$) | Field inspection / permit cost (\$) |
|---|----------------------------|-----------------------------|-----------------------------------|---|
| 1 | NWRF Floating Solar 1.2 MW | Y | Included in ECM Cost | Included in ECM Cost |
| | Total cost | | Included in ECM Cost | Included in ECM Cost |

Town of Erie EPC Schedule E.1

Page 1 of 1

| | | | Detail of Sch | edule of Values | 3 | - | Totals of Work | Completed and | Stored to Date |
|-----------|---------------------------------------|-------------|--------------------|-----------------|--|----------|--------------------|--------------------------------|----------------------------|
| (A) |) (В) | (C) | (D) | (E) | (F) | (G) | (H) | (1) | (J) |
| Measure # | Description of Work | Material | Labor and Other | Totals | Materials onsite, but not in place | WO | RK IN PLACE | Total Amount Due to Date | % Complete and in Place |
| | | | | (C + D) | | Material | Labor and Other | (F+G+H) | (I / E) |
| | | | | | | | | | |
| 1 | Phase II - NWRF Floating Solar 1.2 MW | \$2,070,046 | \$1,925,165 | \$3,995,211 | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | | | | | | | | | |
| | FIXED LIMIT OF CONSTRUCTION | \$2,070,046 | \$1,925,165 | \$3,995,211 | | | | | |
| | CONTIGENCY | | | \$266,007 | | | | | |
| | IGA Audit Fee | | | \$0 | | | | | |
| | M&V Fee YR 1 | | | \$5,000 | | | | | |
| | M&V Fee YR 2 | | | \$5,150 | | | | | |
| | M&V Fee YR 3 | | | \$5,305 | | | | | |
| | AMENDMENTS/CHANGE ORDER | | | \$0 | | | | | |
| | AMENDMENTS/CHANGE ORDER ADDITIONS | | | \$0 | | | | | |
| | PRESENT CONTRACT TOTALS (MCP) | \$2,070,046 | \$1,925,165 | \$4,276,673 | | | | | |

EPC Schedule G.1: Proposed Financial Cost and Cash Flow Analysis

This schedule is included as part of the Phase II scope of work as an amendment to the previously executed Energy Performance Contract. It is not intended to replace the existing Energy Performance Contract, Schedules, Exhibits, or Tables.

| Projected Financial Performance | | |
|--|---------------|---|
| Investment Grade Audit (IGA) | \$0 | Fee paid from Phase I Contingency funds |
| Fixed Limit of Construction | \$3,995,211 | Schedule |
| Measurement & Verification Fee | \$15,455 | Schedule D.1 |
| Contingency | \$266,007 | `Schedule B.1 |
| Maximum Contract Price (MCP) (total of items above) | \$4,276,673 | |
| Rebates (minimum amount guaranteed by ESCO) | \$0 | Schedule B.1 |
| Erie Cash Contribution (one time, not annual) | \$3,361,218 | Schedule F.1 |
| Measurement & Verification Fee (Same as above, M&V is not Financed) | \$15,455 | Paid from Customer future Operatior Funds, EPC Article 3(B) |
| Other Political Subdivision Funds (gifts, grants, donations, etc.), | (\$900,000) | DOLA Grant Schedule F.1 |
| Investment Tax Credit - Direct Pay to Town of Erie | (\$1,278,365) | Town of Erie will apply for and receive. Iconergy cannot guarantee amount. |
| NET Erie Contribution after Tax Credit | \$2,082,853 | Erie contribution reduced by ITC funding amount. |
| Total Amount Financed (MCP minus items above) | \$0 | |

| Financial Term in Years | N/A | |
|-------------------------|-----|--|
| Projected Interest Rate | N/A | |
| Other items | N/A | |

Proforma

| Measure Description | Utility Cost Savings (\$/yr) | O&M Cost Savings (\$/yr) | Total Cost Savings (\$/yr) | Rebates/ Incentives (\$) | Net Implementation Costs (\$) | Simple Payback (yr) |
|--|---------------------------------------|--------------------------------|----------------------------------|--------------------------------|-------------------------------------|------------------------|
| Investment Grade Audit - Phase II | | | | | \$0 | |
| Phase II - NWRF Floating Solar 1.2 MW | \$125,000 | \$0 | \$125,000 | \$900,000 | \$3,095,211 | 24.8 |
| Project Contingency - Owner Contro | lled | | | | \$266,007 | |
| Investment Tax Credit (Town of Erie | responsibility) | | | | (\$1,283,002) | |
| Total | 1,785,700 | 1,035 | 6,093 | \$125,000 | \$2,082,852 | 16.7 |
| Baseline Utility Bills | 1,887,000 | 1,093 | 6,438 | \$128,600 | | |
| Percent Savings | 95% | 95% | 95% | 97% | | |

| | Phase II | Savings | | M&V | Annual Net | Cumulative Cash Flow |
|----------------------|----------|-----------------------|---------------|---------------|------------|-------------------------|
| Year | Year | Utility | Total | | Cash Flow | |
| 2026 | 1 | \$125,000 | \$125,000 | (\$5,000) | \$120,000 | \$120,000 |
| 2027 | 2 | \$128,100 | \$128,100 | (\$5,150) | \$122,950 | \$242,950 |
| 2028 | 3 | \$131,300 | \$131,300 | (\$5,305) | \$125,996 | \$368,946 |
| 2029 | 4 | \$134,600 | \$134,600 | \$0 | \$134,600 | \$503,546 |
| 2030 | 5 | \$137,900 | \$137,900 | \$0 | \$137,900 | \$641,446 |
| 2031 | 6 | \$141,400 | \$141,400 | \$0 | \$141,400 | \$782,846 |
| 2032 | 7 | \$144,900 | \$144,900 | \$0 | \$144,900 | \$927,746 |
| 2033 | 8 | \$148,500 | \$148,500 | \$0 | \$148,500 | \$1,076,246 |
| 2034 | 9 | \$152,200 | \$152,200 | \$0 | \$152,200 | \$1,228,446 |
| 2035 | 10 | \$155,900 | \$155,900 | \$0 | \$155,900 | \$1,384,346 |
| 2036 | 11 | \$159,800 | \$159,800 | \$0 | \$159,800 | \$1,544,146 |
| 2037 | 12 | \$163,800 | \$163,800 | \$0 | \$163,800 | \$1,707,946 |
| 2038 | 13 | \$167,900 | \$167,900 | \$0 | \$167,900 | \$1,875,846 |
| 2039 | 14 | \$172,000 | \$172,000 | \$0 | \$172,000 | \$2,047,846 |
| 2040 | 15 | \$176,300 | \$176,300 | \$0 | \$176,300 | \$2,224,146 |
| | | roject Cost (2025) | | \$4,261,218 | Inflation | |
| | | OLA Grant | (\$900,000) | -Utility | 3% | |
| | | C (30% of constructio | (\$1,278,365) | | | |
| Capital Contribution | | | | (\$2,082,853) | | |
| Loan Amount | | | | \$0 | | |
| L | | | | | | |

CEO Cost Table

| | 101 0 | A short fire at the A | | | | | |
|-----------------------------------|---------------|-----------------------|----------------|--------------|--------------|---|--|
| | | Actual Final IGA | | | | | |
| | Maximum % of | | | | | | |
| | Total Project | Total Project | Actual | | | | |
| Project Costing Categories | Cost | Cost | Final IGA Cost | Sub-Totals | Totals | Notes | |
| Investment Grade Audit (IGA) | | | | | | | |
| Total Facility Area | - | | \$0.00 | | | Unique for each project | |
| \$ / Sq Ft | #DIV/0! | | #DIV/0! | | | See Standard IGA Pricing Table tab. | |
| Investment Grade Audit Total Cost | | | | ş - | | G4 = F2*F3 | |
| | | | | | | | |
| Implementation Costs | | | | | | | |
| Pre-Construction Costs* | | | | | | | |
| Design and Other Engineering | 2-8% | 3.06% | \$ 113,100 | | | % in column E is calculated from estimated project amount | |
| Pre-Construction Services | 1-4% | 2.50% | \$ 92,600 | | | % in column E is calculated from estimated project amount | |
| Other Pre-Construction Costs | 1-3% | 1.25% | \$ 46,300 | | | % in column E is calculated from estimated project amount | |
| Pre-Construction Cost Subtotal | | 6.81% | | \$ 252,000 | | G11 = sum (F8:F10) | |
| Construction Costs* | | | | | | | |
| Trade Subcontracts | | 0.00% | \$ - | | | % in column E is calculated from estimated project amount | |
| Design/Build Subcontracts | | 77.96% | \$ 2,883,900 | | | % in column E is calculated from estimated project amount | |
| Direct Purchase Equipment | | 0.15% | \$ 5,400 | | | % in column E is calculated from estimated project amount | |
| Construction Management | 4-7% | 5.33% | \$ 197,200 | | | % in column E is calculated from estimated project amount | |
| Project Engineering | 2-4% | 1.40% | \$ 51,800 | | | % in column E is calculated from estimated project amount | |
| General Conditions | 1-2% | 1.44% | \$ 53,200 | | | % in column E is calculated from estimated project amount | |
| Construction Completion | 3-7% | 4.01% | \$ 148,200 | | | % in column E is calculated from estimated project amount | |
| Other Construction Costs | 2-6% | 2.91% | \$ 107,569 | | | % in column E is calculated from estimated project amount | |
| Construction Cost Subtotal | | 93.19% | | \$ 3,447,269 | | G 21 = SU M(F13:F20) | |
| Implementation Costs Subtotal* | | | | | \$ 3,699,269 | H22 = SUM(G11+G21) | |
| | | | | | | | |
| Profit* | 5-8% | 8% | | | \$ 295,942 | Value in column H is calculated from estimated project amount | |
| | | | | | | | |
| Estimated Project Amount* | | | | | \$ 3,995,211 | H26 = SUM(H22 + H24) | |
| | | | | | | | |
| Contingency* | 4-7% | 7% | | | \$ 266,007 | Value in column H is calculated from estimated project amount | |
| M&V | | | | | \$ 15,455 | | |
| | | | | | | | |
| Total Funded Amount* | | | | | \$ 4,276,673 | H30 = SUM(G4+H26+H28) | |

EPC SCHEDULE H.1 Certification that Cost-weighted Average Service Life of Equipment Exceeds Financing Term

This schedule is included as part of the Phase II scope of work as an amendment to the previously executed Energy Performance Contract. It is not intended to replace the existing Energy Performance Contract, Schedules, Exhibits, or Tables.

| Measure Description | Construction Cost (note 2) | Service Life (note 3) | Source of Service Life Value (note 4) | Weighted Service Life Value (note 5) |
|---|-------------------------------|--------------------------|---|---|
| Phase II - NWRF Floating Solar 1.2 MW | \$3,995,211 | 25 | Manufacturer | 25 |
| Subtotal Cost | \$3,995,211 | | | |
| IGA Cost | \$0 | | | |
| Contingency | \$266,007 | | | |
| Measurement & Verification | \$15,455 | | | |
| Total Contract Cost (note 6) | \$4,276,673 | | | |
| Cost-Weighted Average Service of all ECM/FIMs (note 7) | | | | 25 |
| Financing Agreement Term (note 8) | N/A | | | 0 |

| Notes |
|---|
| (1) Final Accepted List of Improvements |
| (2) Construction Cost as defined on the CEO Cost Estimating Tool |
| (3) Service Life (indicate source of service life by ECM on the following table) |
| (4) Provide an abbreviation of the source, then below this table the source full name, date of publication, and any additional information necessary to confirm the value |
| (5) Formula: Cost of Improvement multiplied by Service Life then divided by Total Construction Cost |
| (6) Total Construction Cost per CEO Cost Estimating Tool |
| (7) Total of ECM/FIM Individual Average Service Life Values |
| Formula: Cost-Weighted Average Service Life = \sum each ECM \div total construction cost × service life |
| (8) Financing Agreement Term from final Principal Representative financing documents |
| (Section 24-30-2001(1)(d), C.R.S. states that the maximum term of the payments shall be less than the Cost- |
| Weighted Average Useful (service) Life of utility cost-savings equipment for which the contract is made, not |
| to exceed 25 years) |

EPC SCHEDULE I.1 RECORD OF REVIEWS (LOCAL GOVERNMENTS)

This review process is required for all Energy Performance Contracting (EPC) work with any state agencies or Political Subdivisions participating in the Colorado Energy Performance Contracting Program (CEPCP). This document outlines and tracks selected items reviewed by the Colorado Energy Office and/or its Consultants, of the Investment Grade Audit (IGA) and EPC Project Proposal contract, the IGA Audit Report and EPC Project Proposal, and the EPC documents. These reviews are not legal reviews of the documents and do not replace the Political Subdivision's legal review.

INVESTMENT GRADE AUDIT CONTRACT Amendments I & 2 (this review shall be completed by a CEPCP member, the Principal Representative of the Governing Body of the Political Subdivision, prior to the ESCO signing the IGA contract)

The IGA Contract review establishes:

- Confirmation that the CEPCP-provided IGA contract and exhibits are being used;
- Scope of Work (IGA Exhibit A) if modified, was only modified within the generally historically allowed changes with approval of the client, the CEPCP reviewer, and OSA as applicable;
- ESCO cost and pricing elements are within the boundaries of the EPC base agreement contract with CEPCP program; and
- No additions, subtractions, or changes have been made to the IGA contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, and OSA as applicable.

Charlie Stevens

PHASE II INVESTMENT GRADE AUDIT REPORT AND PROJECT PROPOSAL (This review shall be completed by a CEPCP member, the Principal Representative, and, as necessary, OSA, prior to finalizing the EPC Project Proposal for an EPC contract)

IGA report review addressed the following:

- IGA has met the minimum requirements as outlined in the CEPCP IGA Exhibit A, Scope of Work;
- Verifies compliance with all applicable legislation for state governments;
- Reviews existing operational assumptions and adds notes as necessary to the Principal Representative and ESCO verifying assumptions are confirmed by the Principal Representative;
- Confirms that adequate technical details follow appropriate methodologies and assumptions used to calculate savings (utility usage reduction) for each Utility Cost Savings Measure or FIM;
- Confirms costs document: engineering/design costs, contractor/vendor estimates, fees, estimated code compliance cost, etc.
- Principal Representative confirms that any operation and/or maintenance (O&M) savings proposed by the ESCO are acceptable. The sufficiency of O&M savings are not reviewed by the CEPCP;
 - Principal Representative Signature _____
 - Date:
- Principal Representative confirms that presented operations, schedules, set points, etc. are acceptable.
 Principal Representative Signature ______
 - Date:
- Principal Representative confirms commissioning, M&V plans, and any non-verified calculated savings, are in compliance with the CEPCP and that the Principal Representative understands and accepts these items and schedules.

EPC SCHEDULE I.1 RECORD OF REVIEWS (LOCAL

GOVERNMENTS)

- Principal Representative Signature _
- Date: _____
- Principal Representative confirms, when applicable, the Principal Representative's annual or one-time monetary contributions are included in the financial performance schedule. The sufficiency of such contributions is not reviewed by the CEPCP.
 - Principal Representative Signature _____
 - Date: _____
- Principal Representative confirms acceptance of presented annual utility and inflation escalation rates.
 Principal Representative Signature ______
 - Date:

ENERGY PERFORMANCE CONTRACT AMENDMENT 1-EPC (this shall be completed by a CEPCP member, and the Principal Representative, prior to the ESCO signing the contract)

The EPC review establishes the following:

- Confirms that the CEPCP provided EPC contract and schedules are being used;
- ESCO cost and pricing elements are within the boundaries of their EPC base agreement contract with CEPCP;
- No additions, subtractions, or changes have been made to the contract without notifying and receiving approval from the Principal Representative, the CEPCP reviewer, a Principal Representative legal review, and Principal Representative Controller (or equivalent);
- If modified, all modifications, updates, additions to the schedules and exhibits are within the generally historically allowed changes. All changes are tracked until accepted by CEPCP reviewer and OSA as applicable; and
- Confirms the pro-forma schedule includes all known Principal Representative funds, utility rebates, other grant funds, and all potential cost through the length of the loan.

Charlie Stevens

Charlie Stevens

EPC SCHEDULE K.1: CERTIFICATE OF INSURANCE

To be provided under separate cover at the time of Contract signature.



PERFORMANCE BOND

| Institution/Agency: | _ |
|---------------------|---|
| Project No./Name: | _ |

BONDING COMPANY: DO NOT MAKE ANY CHANGES TO THE LANGUAGE IN THIS BOND.

KNOW ALL PERSONS BY THESE PRESENTS:

That the Contractor

as Principal and hereinafter called "Principal,"

and

as Surety and hereinafter called "Surety," a corporation organized and existing under the laws of ______ are held and firmly bound unto **the STATE OF COLORADO**

acting by and through_____ (AGENCY OR INSTITUTION) hereinafter called the "Principal Representative", in the sum of ______ _____Dollars (\$______)

for the payment whereof the Principal and Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, hereinafter called "Contract," dated _______, 20_____, for the construction of a PROJECT described as

which Contract is hereby by reference made a part hereof;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION, is such that, if the Principal shall promptly, fully and faithfully perform all the undertakings, covenants, terms, conditions and agreements of said Contract during the original term of said Contract any extensions thereof that may be granted by the Principal Representative with or without notice to the Surety, and during the life of any guaranty required under the Contract, and shall also well and truly perform and fulfill all undertakings, covenants, terms, conditions and agreements of any and all duly authorized modifications of said Contract that may hereafter be made, notice of which modifications to the Surety being hereby waived, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

AND THE SAID SURETY, for value received hereby stipulates and agrees that whenever the Principal shall be, and declared by the Principal Representative to be in default under said Contract, the State of Colorado having performed its obligations thereunder, the Surety may promptly remedy the default or shall promptly (1) Complete the Contract in accordance with its terms and conditions, or (2) Obtain a bid or bids for submittal to the Principal Representative for completing the Contract in accordance with its terms and conditions, and upon determination by the Principal Representative and Surety of the lowest responsible bidder, arrange for a contract between such bidder and the State of Colorado acting by and through the Principal Representative and make available as work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion, less the balance of the contract price but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount hereinbefore set forth. The term "balance of the contract and any amendments thereto, less the amount properly paid by the State of Colorado to the Contract.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the State of Colorado.

| IN WITNESS WHEREOF said Principal and of , A.D.,20 | Surety have executed this Bond, this day |
|--|---|
| (Corporate Seal) | THE PRINCIPAL |
| ATTEST: | By: |
| Secretary | Title: |
| (Corporate Seal) | SURETY |
| | |
| | By:Attorney-in-fact |
| THIS BOND MUST BE ACCOMPANIE | D BY POWER OF ATTORNEY, EFFECTIVELY DATED |
| | |

Note: This bond is issued simultaneously with another bond conditioned for the full and faithful payment for all labor and material of the contract.



STATE OF COLORADO OFFICE OF THE STATE ARCHITECT STATE BUILDINGS PROGRAM

LABOR AND MATERIAL BOND

Institution/Agency: _____ Project No./Name:

BONDING COMPANY: DO NOT MAKE ANY CHANGES TO THE LANGUAGE IN THIS BOND.

KNOW ALL PERSONS BY THESE PRESENTS:

That the Contractor

as Principal and hereinafter called "Principal,"

and

as Surety and hereinafter called "Surety," a corporation organized and existing under the laws of ______ are held and firmly bound unto the STATE OF COLORADO

acting by and through _____

(agency or institution)

together with interest at the rate of eight per cent (8%) per annum on all payments becoming due in accordance with said Contract, from the time such payments shall become due until such payment shall be made, for the payment of which, well and truly made to the Obligees, the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal and the State of Colorado acting by and through the Principal Representative have entered into a certain Contract, hereinafter called "Contract," dated ______, 20____ for the construction of a PROJECT described as

which Contract is hereby by reference made a part hereof;

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal and the Surety shall fully indemnify and save harmless the State of Colorado and the Principal Representative from and against any and all costs and damages, including patent infringements, which either may suffer by reason of any failure or failures of the Principal promptly and faithfully to perform all terms and conditions of said Contract and shall fully reimburse and repay the State of Colorado and the Principal Representative all outlay and expense which the State of Colorado and the Principal Representative may incur in making good any such failure or failures, and further, if the Principal and his subcontractors shall duly and promptly pay for any and all labor, materials, team hire, sustenance, provisions, provender, rental machinery, tools, or equipment and other supplies which have been or shall be used or consumed by said Principal or his subcontractors in the performance of the work of said Contract, and it said Principal shall duly and promptly pay all his subcontractors the sums due them for any and all materials, rental machinery, tools, or equipment and labor that have been or shall be furnished, supplied, performed or used in connection with performance of said Contract, and shall also fully indemnify and save harmless the State of Colorado and the Principal Representative to the extent of any and all expenditures which either or both of them may be required to make by reason of any failures or defaults by the Principal or any subcontractor in connection with such payments; then this obligation shall be null and void, otherwise it shall remain in full force and effect.

It is expressly understood and agreed that any alterations which may be made in the terms of said Contract or in the work to be done under said Contract, or any extension(s) of time for the performance of the Contract, or any forebearance on the part of either the State of Colorado or the Principal to any of the others, shall not in any way release the Principal and the Surety, or either of them, their heirs, executors, administrators, successors or assigns from their liability hereunder, notice to the Surety of any such alteration, extension or forbearance being hereby waived.

| IN WITNESS WH , A.D., 20 | · · · · | have executed this Bond, this day of |
|-----------------------------|----------------------------|--------------------------------------|
| (Co | orporate Seal) | THE PRINCIPAL |
| ATTEST: | | Ву: |
| | Secretary | Title: |
| (Corporate Seal) | orporate Seal) | SURETY |
| | | Ву: |
| THIS BOND I | MUST BE ACCOMPANIED BY POW | Attorney-in-fact |

Note: This bond is issued simultaneously with another bond conditioned for the full and faithful performance of the contract.

SCHEDULE N.1: STANDARDS OF COMFORT

This schedule is not applicable to the Solar PV measure.

SCHEDULE Q.1: SYSTEMS START-UP AND COMMISSIONING

This schedule is included as part of the Phase II scope of work as an amendment to the previously executed Energy Performance Contract. It is not intended to replace the existing Energy Performance Contract, Schedules, Exhibits, or Tables.

For all ECMs below the commissioning agent shall be an Iconergy employee. The final commissioning plan will be developed during project construction and completed prior to the commencement of commissioning.

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1 Revision Schedule

| Revision Version | Description | Issue Date | |
|-------------------------|--------------------------|------------|--|
| V1 | Draft Commissioning Plan | 4/15/25 | |

2 Overview

2.1 Abbreviations and Definitions

The following are common abbreviations used in this document.

| CxA | Commissioning Authority | MC | Mechanical Contractor |
|-----|-----------------------------|------|---------------------------|
| CC | Controls Contractor | M&E | Mech & Elec Engineers |
| Сх | Commissioning | Mfr | Manufacturer |
| EC | Electrical Contractor | PFC | Pre-Functional Checklist |
| FPT | Functional Performance Test | PM | Owner's Project Manager |
| GC | General Contractor | SC | Solar Contractor |
| | | Subs | Subcontractors to General |

2.2 Purpose of Commissioning

- 1. Document design intent.
- 2. Ensure project is built to meet design intent, through construction observations and functional testing.

2.3 Purpose of Commissioning Plan

This plan provides a basic explanation of the requirements and testing procedures to be performed by the commissioning team as required by project scope.

2.4 Commissioning Scope

The following spreadsheet identifies the commissioning scope for each measure.

| ECM Description | Submittal Review | # Site observatios | Cx PFCs Created | Cx Test Plans Created | Functional Testing | Seasonal Testing |
|----------------------------------|------------------|--------------------|-----------------|--------------------------|--------------------|------------------|
| ECM S1: Solar - PV Commissioning | - | 1 | - | Y | Y | - |

2.5 Online Commissioning Documentation

Iconergy employs the use of an online tool for managing commissioning documentation and communications. Access to this system is done on a project basis per user request.

| Team Member | Company | Contact Names | Office, Fax, Mobile, Email |
|-------------------|---------------------------|---------------|------------------------------|
| Owner | Town of Erie | Chris Holland | Phone: 305-591-4164 |
| | 150Bonnell Ave. | | Email: cholland@erieco.gov |
| | Erie, CO 80516 | | |
| Project Manager / | Iconergy Ltd. | John Sellers | Phone: 303-324-9471 |
| Construction | 1905 Sherman St, STE 1040 | | Email: jsellers@iconergy.com |
| Manager | Denver, CO 80203 | | |
| Commissioning | Iconergy Ltd. | John Barnard | Phone: 303-746-4388 |
| Authority | 5277 Manhattan Cr. #160 | | Email: jbarnard@iconergy.com |
| | Boulder, CO 80303 | | |
| | | | |
| | | | |
| | | | |
| Energy Engineer | Iconergy Ltd. | Mark Stetz | Phone: 303-882-4295 |
| | 1905 Sherman St, STE 1040 | | Email: mstetz@iconergy.com |
| | Denver, CO 80203 | | |
| | | | |

3 Commissioning Team Contact Information

4 The Commissioning Process

4.1 General Management Plan

Iconergy coordinates the commissioning activities and will report to the PM. The Cx process will require the coordinated effort of all members of the Cx Team in order to meet the objectives of the Owner's Project Requirements and the Contract Documents.

4.2 General Protocols

| Торіс | Protocol | | |
|--|---|--|--|
| For requests for information (RFI) or formal documentation requests: | The CxA goes first: ☑ Through the PM, □ Direct to the Sub or SC | | |
| For notifying contractors of deficiencies: | Iconergy documents deficiencies through the PM, but may discuss deficiency issues with subcontractors prior to notifying the PM. | | |
| | Iconergy notifies the project team of an updated issues log through email. | | |
| | Contractor acknowledges issue resolution by marking issue "pending" and including a comment: ☑ using CxAlloy □ email | | |
| For scheduling commissioning meetings: | The CxA selects the date and schedules through the: ☑ PM □ The CxA schedules and notifies attendees directly | | |
| For making a request for significant changes: | The CxA has no authority to issue change orders. Requests will be made through the PM and SC. | | |
| Scheduling commissioning witnessed construction events. | CxA to inform PM of equipment and events in commissioning scope at commissioning meeting. | | |
| | PM to notify commissioning agent of equipment startups, equipment testing, scheduling of functional testing, and other requested events: 2 weeks prior to event 1 week prior to event | | |
| For making minor changes in specified sequences of operations: | All necessary changes in sequences of operations must be approved by the M&E or SC. Iconergy may recommend changes in sequences of operation to correct operational deficiencies and/or to improve efficiency or control. Recommended changes will be submitted to the Design team via RFI. | | |
| Subcontractors disagreeing with requests or interpretations by Iconergy shall: | Attempt to resolve issues with Subs first, then with PM if necessary. Issues may require input from the SC. | | |

4.3 Commissioning Tasks and Team Member Responsibilities

| P = Primary, S = Secondar | ,, n nei | | | r | · · · · · · |
|--|----------|-------|---|----|-------------|
| | СхА | Owner | M | MC | EC |
| Task Description | | | | | |
| Construction Phase | | | | | |
| Develop the Commissioning Plan. | Р | R | R | | |
| Review material and controls submittals | R | S | S | | |
| Attend a commissioning scoping meeting. | Р | R | S | R | R |
| Perform site visits to observe component and system installations. | Р | S | R | R | R |
| Develop the prefunctional checklists for all necessary commissioned systems. | Р | | R | R | R |
| Complete the prefunctional checklists and manufacturer start-up forms for all commissioned systems. | R | | S | Р | Р |
| Observe systems start-up by reviewing start-up documentation and checklist execution. Witness startup of specific mechanical and electrical equipment. | Р | S | | | |
| Acceptance Phase | | | | | |
| Write the functional performance test procedures for equipment and systems to be commissioned. | Ρ | R | | R | R |
| Coordinate, execute, and document mechanical and plumbing functional performance tests. | Р | R | S | S | S |
| Maintain a master issues and resolution log. | Р | R | S | R | R |
| Retest areas of non-compliance. | Р | | R | S | S |
| Develop the final commissioning report. | Р | R | R | | |
| Perform seasonal testing through remote access of the building automation system to check performance of the new systems during the heating or cooling season. | Ρ | R | R | R | R |

P = Primary, S = Secondary, R = Reviewer

4.4 Major Commissioning Task Descriptions

4.4.1 Meetings

- 1. Cx Internal Scoping Meeting
 - a. Review the commissioning tasks for each measure
 - b. Work with the PM to incorporate Cx activities in the project schedule
- 2. Construction/Acceptance Phase
 - a. Attend remote progress meetings beginning before equipment startup and lasting through functional testing and issues resolution.
 - b. Discuss construction and commissioning schedule, including equipment startup, PFCs, FPTs and any additional M&E coordination or commissioning-related issues.
 - c. Perform seasonal testing of equipment tested during the opposite season

4.4.2 Jobsite Observations

- 1. CxA will coordinate a total of one (1) site observation and walk the project between the mechanical rough-in and start-up period.
 - a. Review install of Solar Array and initial performance
- 2. The PM is expected to review observation reports from CxA with Subs and to submit a formal response in a timely manner.
 - 4.4.3 Start-Up Processes Documentation
- 1. The PM is responsible for developing a startup/checkout schedule, to coordinate the following activities: Equipment startup, PFC completion, Functional testing.
- 2. The team will meet to review the schedule prior to startup activities.
- 3. The PM shall notify the commissioning agent prior for the following startup activities:
 - a. Solar Array

4.4.4 Functional Performance Tests

- 1. The CxA schedules FPT through the PM and affected Subs.
- The following tasks must be complete prior to functional testing depending on the measure:
 a. Start-up for all systems is complete.
- 3. The CxA works with the Subs to execute FPT of all equipment and systems according to the Cx Plan.
- 4. Testing proceeds from components to subsystems to systems, and finally to interlocks and connections between systems.
 - a. The majority of testing will require the assistance of the SC only.
- 5. The CxA documents the results of each test. Any minor deficiencies are corrected during the testing process. Deficiencies that cannot be corrected during testing are added to the Issues Log.
- 6. Retesting: Retesting shall be completed by Iconergy and the installing contractor. The cost for any retesting beyond one retest shall be borne by the contractor. All tests must be retested until acceptable results are achieved.

4.4.5 Required Documentation

- 1. The CxA requires the following:
 - a. COBs, ASIs, RFIs related to Cx scope of work. (M&E)
 - b. Contractor equipment submittals relating to Cx scope of work. (M&E, PM)
 - c. Equipment manufacturer's start-up forms. (SC, PM)
 - d. As-built controls drawings, concurrent with SC review. (PM)
 - e. Training schedule and outlines for review, 1-2 weeks prior to first training session. (PM)

4.4.6 Facility Staff Participation

- 1. The Owner's facilities operating staff are encouraged to attend and participate in the testing process.
 - a. The CxA will notify the PM, who will then notify the facility staff when the commissioning events will occur.
 - b. Iconergy will work with the PM to ensure that adequate notice is given to the owner so that all stakeholders may be present at training.

4.4.7 Final Report

Iconergy will compile a Commissioning Summary Report, which shall include:

- a. An overview of the commissioning and testing scope
- b. A description of testing and verification methods
- c. Commissioning plan
- d. Completed functional testing
- e. Final issues log

| Task / Activity | Notify Cx Agent | Duration |
|--|-----------------|----------|
| Cx Scoping Meeting | - | 1 day |
| Jobsite Observation | 1 wk prior | 1 day |
| CxA witnesses start-up activities | 1 wk prior | 1 days |
| Functional Testing, Issues Resolution | 2 wks prior | 1 days |
| Owner Training | 1 wk prior | 1-3 days |
| Submission and Review of Final Cx Report | - | 1-3 days |
| Seasonal Testing | - | 1 days |

5 Commissioning Activities Expected Durations

Schedule T.1 Notice of Substantial Completion

Notice of Substantial Completion (per ECM / FIM)

Date of Notice _____

Local Government Entity: _____

Contractor: _____

Contract Name / #: _____

Notice is hereby given that the Town of Erie accepts the installed equipment for ECM / FIM ______ and establishes a warranty period start date of ______.

Town of Erie

Ву _____

Title _____

Date _____

When completely executed, this form is to be sent by certified mail to the Contractor by Town of Erie.

Schedule U.1

Notice of Final Acceptance

| Notice of Final Acceptance | |
|--|---|
| Date of Notice | |
| Local Government Entity: | |
| Contractor: | |
| Contract Name / #: | - |
| Notice is hereby given that Town of Erie Commencement Date of | accepts the Project and establishes a Performance |
| Town of Erie | |
| Ву | |
| Title | |
| Date | |

When completely executed, this form is to be sent by certified mail to the Contractor by Town of Erie.



First Amendment to Energy Performance Contract (EPC) with Iconergy, Ltd. for NWRF Floating Solar PV Project Chad Alexander – Town Facilities Manager Carl Hurst – Iconergy Director June 24, 2025







- Pre-qualified by the Colorado Energy Office as an Energy Service Company (ESCO)
- Partnered with the Town of Erie to complete an Investment Grade Audit (IGA) in 2021. Energy efficiency and renewable energy measures were identified in the final IGA report, and this scope was completed as a capital project using the Colorado Energy Office Performance Contracting Program (CEPCP)
- Completed project scope will be measured and verified over the next three years.
- Utilized programs and rebates from utility companies, and a grant from DOLA (EIAF) to support energy efficiency, water use reduction, and renewable energy measures.

EPC Phase I Efficiency Improvements – Completed

Matrix of Buildings where Measures are Implemented

| | In the second seco | AND CE TO ANH A FRANK | | DLO | | | inter le Service Me De Man B | a centre | et Louis Constantion for the second of the s |
|---|--|-----------------------|---|-----|---|---|---------------------------------------|---|--|
| # | Measure Description | System | | | | | | | Comments |
| 1 | Lighting - LED Installation | Lighting | x | х | x | x | x | | |
| 1 | Lighting - Exterior LED Installation | Lighting | | X | | X | | | |
| 1 | Lighting - LED Specialty and Dimming | Lighting | X | | | | | | |
| 2 | Building Automation System Replacement | Controls | X | X | X | | | | |
| 3 | Solar PV Rooftop Installation | Solar | | | X | | | | |
| 4 | Lab Hood Vacancy Sensor | Controls | | | | | X | | |
| 5 | On Site HypoChlorite Generation | Mechanical | X | | | | | | |
| 6 | Low Flow Faucets/Fixtures | Mechanical | X | X | X | X | X | | |
| 7 | Pool - 2VFDs and TDS Control | Mechanical | X | | | | | | |
| | | | | | | | | | |

Additional Studied IGA Measure : NWRF Floating Solar PV System

- Re-use water pond can accommodate a floating solar photovoltaic (PV) system tied into one, two or all three electrical meters
- Evaluated 100% offset of electrical consumption for site – requires a 3.1MW total solar PV array
- Preserves the existing land for future use
- System will reduce evaporation rate on the pond and cool effluent water temperature that is released into Boulder Creek







Proposed EPC Measure: 1.2 MW NWRF Floating Solar Array

Due to current funding available, the system has been scaled to 1.2MW for this phase.

Floating Solar Array will be completed by Iconergy if Council approves Amendment 1-EPC to the current Energy Performance Contract with the Town

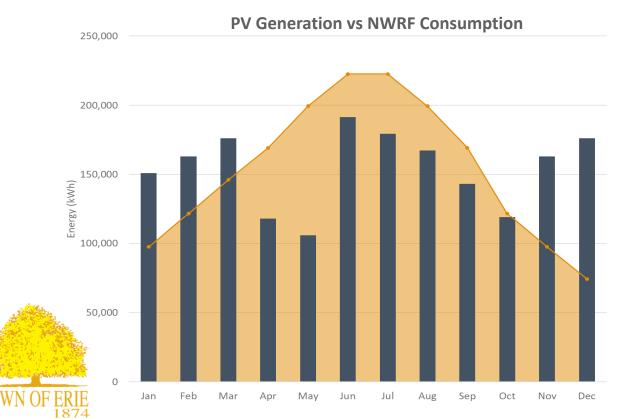
- DOLA EIAF Matching Grant was awarded to the Town for the 1.2MW system -\$900k
- Project scope is scalable and additional PV can be installed as funding becomes available
- Program outcome is guaranteed
- Colorado Energy Office (CEO) provides project oversight through implementation
- Results are tracked yearly via required 3-year measurement and verification





PROJECT OVERVIEW

- Town of Erie will install a 1.2 MW floating solar PV system to offset 100% of the electrical energy consumption of their Solids Building and Re-Use Pump Station
- The Solids Building and Re-Use Pump Station account for nearly **40%** of electrical energy consumption at the North Water Reclamation Facility (NWRF)





The floating solar PV system will be placed on the pond close to the Solids Building and Re-Use Pump Station – placing the system close to the buildings will help reduce cost and losses.



Funding

- 21% of the project costs will be reimbursed by the \$900k DOLA EIAF Grant

 Payback period with energy savings alone would be 25 years. The EIAF grant
 supports the Solar PV by reducing the payback period to 17 years.
- 30% of the project currently qualifies for a Federal credit via the Direct Pay provision of the Inflation Reduction Act.
- 49% of the project is funded by Erie with ROI supported by the Colorado Energy Office (CEO) Energy Performance Contract.

| Building | Capacity | Generation | Util Rate | Savings | Cost | Gross Cost | DOLA Grant | Cost w/DOLA | IRA Direct Pay | Net Cost | SPB |
|----------|-----------|------------|------------|-----------|---------------|-------------|-------------------|-------------|-----------------------|-------------|---------|
| Duituing | (kW - DC) | (kWh) | (\$ / kWh) | (\$) | (\$ / W) | (\$) | (\$) | (\$) | (\$) | (\$) | (years) |
| Solids | 1,020 | 1,517,800 | | \$106,280 | \$3.33 | \$3,395,929 | (\$765,000) | \$2,630,929 | (\$1,086,610) | \$1,544,319 | |
| Pump | 180 | 267,900 | | \$18,760 | \$3.33 | \$599,282 | (\$135,000) | \$464,282 | (\$191,755) | \$272,527 | |
| | | | \$0.070 | | Contingency | \$266,007 | | \$266,007 | | \$266,007 | 17 |
| | | | | | M&V (3 years) | \$15,455 | | | | | |
| Total | 1,200 | 1,785,700 | | \$125,000 | \$3.56 | \$4,276,673 | (\$900,000) | \$3,361,218 | (\$1,278,365) | \$2,082,853 | |

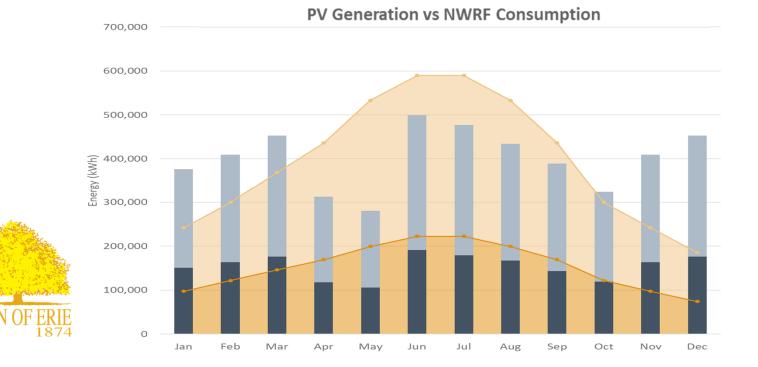


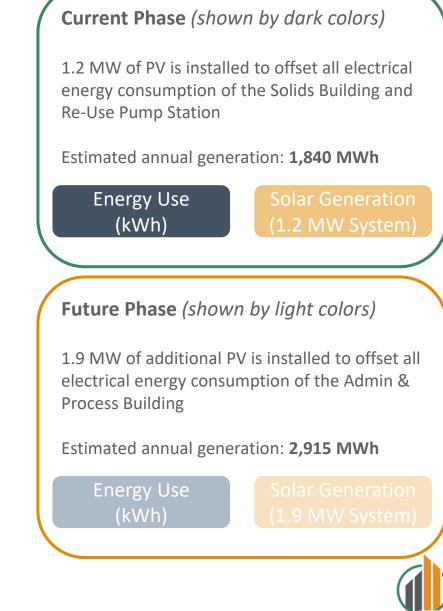


FUTURE WORK

The NWRF Float Solar PV project is scalable: Goal is 100% Electrical offset of all (3) NWRF meters

- Current Phase 1.2 MW system to offset Solids and Re-Use Pump meters
- Future Phase 1.9 MW system for the Admin & Process Building meter.
- FY26 Congressionally Directed Spending application submitted decision expected November 2025





icon 277 *i*

NWRF Floating Solar PV Project Timeline

- June 24, 2025 Approve EPC Amendment (1-EPC) for 1.2 MW PV System
- July Sept. 2025: Finalize PV array design and order equipment
- Sept. 2025 Jan. 2026: Installation of PV system and interconnection
- Jan. 2026 Mar. 2026: Start up and commissioning
- Mar. 2026 Feb. 2029: Measure and verify system performance





What this project will do for carbon dioxide reduction is equivalent to:

- 334 gas-powered passenger cars driven in one year
- 3,644,363 miles driven by the average car
- 1,589,679 pounds of coal consumed
- 18.9 tanker trucks of gas
- 155 homes' energy use for one year
- 65,743 home BBQ propane cylinders
- 96,990,970 smart phones charged







Town Council

Board Meeting Date: 6/24/2025

File #: 25-398, Version: 1

SUBJECT:

EXECUTIVE SESSION: (1) 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); all regarding the Erie Town Center; (2) 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)(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); all for which a topic cannot be disclosed without compromising the purpose of the executive session; and (3) 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); and to determine positions relative to matters that may be subject to negotiations, develop a strategy for negotiators, pursuant to C.R.S. § 24-6-402(4)(b); 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)(c); all regarding revenue sharing with the City of Lafayette;

DEPARTMENT: Administrative Operations

PRESENTER(S): NA

TIME ESTIMATE: 75 minutes For time estimate: please put 0 for Consent items.

FISCAL SUMMARY: NA

POLICY ISSUES: NA

STAFF RECOMMENDATION: NA SUMMARY/KEY POINTS NA

BACKGROUND OF SUBJECT MATTER:

NA

TOWN COUNCIL PRIORITY(S) ADDRESSED:

- \Box Attractive Community Amenities
- $\hfill\square$ Engaged and Diverse Community
- □ Prosperous Economy
- □ Well-Maintained Transportation Infrastructure
- □ Small Town Feel
- □ Safe and Healthy Community
- □ Effective Governance
- □ Environmentally Sustainable
- □ Fiscally Responsible

ATTACHMENT(S):

NA

First Amendment to Agreement for Professional Services (Boulder Creek Diversion Structure and Pipeline P23-097)

This First Amendment to Agreement for Professional Services (the "First Amendment") 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 Civil Resources, LLC, an independent contractor with a principal place of business at 8308 Colorado Blvd., Suite 200, Firestone Colorado 80504 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, on October 3, 2023, the Parties entered into an Agreement for Professional Services (the "Agreement"); and

Whereas, the Parties wish to amend the Agreement as set forth herein.

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

1. <u>Scope of Work</u>. **Exhibit A** to the Agreement is hereby amended by the inclusion of the additional items set forth in **Exhibit A-1**, attached hereto and incorporated herein by this reference.

2. <u>Compensation</u>. The compensation amount in Section III of the Agreement is hereby amended to increase the maximum amount of compensation to \$183,712, which includes a base amount of \$163,300 and a contingency of \$20,412.

3. Accessibility. Section IV of the Agreement is hereby amended to include the following new subsection E:

E. *Accessibility*. Contractor shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Contractor's noncompliance with such accessibility standards.

4. <u>Remainder of Agreement</u>. Except as expressly modified herein, the Agreement shall remain in full force and effect.

6/11/2025

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

Town of Erie, Colorado

Attest:

Andrew J. Moore, Mayor

Debbie Stamp, Town Clerk

Contractor

BC45D3FD23F94BD

State of Colorado)) ss. County of _____)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ______, 2025, by ______ as _____ of Civil Resources, LLC.

My commission expires:

(Seal)

Notary Public

Exhibit A-1 Scope of Services

Contractor's Duties:

During the term of this agreement Contractor shall provide the following Services at the North Water Treatment Facility:

Project Management:

Contractor shall coordinate with Town and other Town consultants to ensure the completed design meets project goals and the design of the North Water Treatment Facility.

Final Design:

Contractor shall conduct geotechnical investigation including aquifer pumping tests to more accurately estimate the aquifer parameters and resulting likely yield of the proposed underdrains. Contractor shall summarize the detailed design analyses, calculations and assumptions in a design basis memorandum, which shall explain the system component sizing and also present the results of the hydrogeology investigation. Contractor shall provide an Opinion of Construction Cost at 90% design.

Field Investigation:

Contractor shall subcontract with Authentic Drilling, LLC or other qualified drilling company to install monitoring and pumping wells and conduct aquifer pumping tests. The field investigation shall include 18 borings with 4 completed as observation wells (1.5 to 2" diameter) and 3 converted to pumping wells (4- to 6" diameter).

Contractor's Deliverables:

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

- Geotechnical investigation including boring logs, aquifer pumping tests report, aquifer conductivity and estimate of yield of the underdrains system.
- Basis of design memorandum
- Opinion of Construction Cost estimate at 90% design completion

Schedule:

Contractor shall complete this Scope of Services within 16 weeks from the Effective Date.

3

6/11/2025

docusign

| | Certificate | Of | Completion |
|--|-------------|----|------------|
|--|-------------|----|------------|

| Envelope Id: E102275B-747E-407B-8CD6-E0868E5B04D3 | | | | | |
|---|---------------|--|--|--|--|
| Subject: Complete with Docusign: Final - Civil Resources 1st Amend-A051525 - 5-21-25.docx | | | | | |
| Source Envelope: | | | | | |
| Document Pages: 3 | Signatures: 1 | | | | |
| Certificate Pages: 5 | Initials: 0 | | | | |
| AutoNav: Enabled | | | | | |
| Envelopeld Stamping: Enabled | | | | | |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | | | | | |

Record Tracking

Status: Original 6/11/2025 11:05:24 AM

Signer Events Brad Hagen brad@civilresources.com

Member Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure: Accepted: 6/13/2025 11:57:35 AM ID: 8cbe77ca-bfe6-4fb7-8a0c-77aa5726fea8

In Person Signer Events Editor Delivery Events Agent Delivery Events Intermediary Delivery Events Certified Delivery Events Carbon Copy Events

Zachary Ahinga

zahinga@erieco.gov

Security Level: Email, Account Authentication (None)

Electronic Record and Signature Disclosure: Accepted: 1/21/2021 8:37:15 AM ID: 4929dc91-03c6-4879-95ae-23b1a958ad37

- - --

Notary Events

Envelope Summary Events Envelope Sent Certified Delivered Signing Complete Completed Signature

BC45D3ED23E94BD

Signature

Status

Status

Status

Status

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Signature

Signature

Hashed/Encrypted

Security Checked Security Checked

Security Checked

Status

COPIED

Holder: Lyndsy Willette

Signature Adoption: Drawn on Device Using IP Address: 174.237.3.232 Signed using mobile

lwillette@erieco.gov

Status: Completed

Envelope Originator: Lyndsy Willette 645 Holbrook Street P.O. Box 750 Erie, CO 80516 Iwillette@erieco.gov IP Address: 73.78.40.90

Location: DocuSign

Timestamp

Sent: 6/11/2025 11:08:18 AM Resent: 6/13/2025 11:29:37 AM Viewed: 6/13/2025 11:57:35 AM Signed: 6/13/2025 11:58:00 AM

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| Sent: 6/13/2025 11:58:02 AM |
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Viewed: 6/13/2025 12:32:59 PM

Timestamp

| Timestamp |
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| 6/13/2025 11:58:00 AM |
| 6/13/2025 11:58:02 AM |

| Payment Events | Status | Timestamps |
|--|--------|------------|
| Electronic Record and Signature Discle | | |

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Town of Erie (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Town of Erie:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows: To contact us by email send messages to: docusign@erieco.gov

To advise Town of Erie of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@erieco.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Town of Erie

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to townclerk@erieco.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Town of Erie

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to docusign@erieco.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <u>https://support.docusign.com/guides/signer-guide-signing-system-requirements</u>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Town of Erie as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Town of Erie during the course of your relationship with Town of Erie.

<u>Fifth Amendment to Agreement for Professional Services</u> (Weld County Road 3 Bridge Replacement Project P22-076)

This Fifth Amendment to Agreement for Professional Services (the "Fifth Amendment") 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 RockSol Consulting Group, Inc., an independent contractor with a principal place of business at 12076 Grant Street, Thornton, CO 80214 ("Contractor") (each a "Party" and collectively the "Parties").

Whereas, on May 13, 2022, the Parties entered into an Agreement for Professional Services (the "Agreement");

Whereas, on March 1, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "First Amendment");

Whereas, on March 28, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Second Amendment");

Whereas, on November 14, 2023, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Third Amendment");

Whereas, on January 17, 2025, the Parties amended the Agreement to add additional services and change the amount of compensation (the "Fourth Amendment"); and

Whereas, the Parties wish to amend the Agreement again as set forth herein.

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

1. <u>Scope of Work</u>. **Exhibit A** to the Agreement is hereby amended by the inclusion of the additional items set forth in **Exhibit A-1**, attached hereto and incorporated herein by this reference.

2. <u>Compensation</u>. The compensation amount in Section III of the Agreement is hereby amended to increase the maximum amount of compensation to \$202,662, which includes a base amount of \$200,820 and a contingency of \$1,842.

3. <u>Term</u>. The term of the Agreement is hereby extended through July 31, 2025.

4. <u>Accessibility</u>. Section IV of the Agreement is hereby amended to include the following new subsection E:

E. Accessibility. Contractor shall comply with the accessibility standards for an individual with a disability adopted by the State Office of Information Technology pursuant to C.R.S. § 24-85-103, and shall indemnify, hold harmless and assume liability on behalf of the Town and its officers, employees, agents and attorneys for all costs, expenses, claims, damages, liabilities, court awards, attorney fees and related costs, and any other amounts incurred by the Town in relation to Contractor's noncompliance with such accessibility standards.

5. <u>Remainder of Agreement</u>. Except as expressly modified herein, the Agreement, as modified by the First Amendment, Second Amendment, Third Amendment and Fourth Amendment shall remain in full force and effect.

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

Town of Erie, Colorado

Andrew J. Moore, Mayor

Attest:

Debbie Stamp, Town Clerk

Contractor

Signed by: 4C62D458CC1B4CF.

State of Colorado)

) ss. (County of ______)

The foregoing instrument was subscribed, sworn to and acknowledged before me this _____ day of ______, 2025, by ______ as _____ of RockSol Consulting Group, Inc.

My commission expires:

(Seal)

Notary Public

6/11/2025 P:\CAPITAL IMPROVEMENT PROJECTS (CIPS)\2022\WCR3 BRIDGE REHABILITATION PROJECT (P22-076)\ROCKSOL PSA\PSA CONTRACT DOCS\FIFTH AMENDMENT BOT DOCS\FINAL - ROCKSOL 5TH AMENDMENT - 5-27-25.DOCX

Exhibit A-1 Scope of Services

Contractor's Duties:

During the term of this agreement Contractor shall provide the following Post Design Services:

Contractor shall respond to construction contractor requests for information, and provide design and coordination with the Town and CDOT to address construction issues for the bridge rail and bridge rail transitions specifically to address the following items:

- Reviewing and responding to RFI 7 in regards to incorrectly installed bridge rail.
- Reviewing and responding to RFI 9 in regards to incorrectly installed bridge rail transitions.
- Reviewing and responding to RFI 11 in regards to rework pertaining to the bridge rail.
- Additional coordination with CDOT to provide concurrence for lowered bridge height and development of "Evaluation of As Constructed Bridge Rail Adequacy Memo".
- Additional coordination with the Town to review traffic control for remedial work.
- Additional site visits to review issues in the field and verify rework prior to completion.

Contractor's Deliverables:

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

• Final design construction change documentation.

Schedule:

Contractor shall complete this Scope of Services within 8 weeks from the Effective Date.

3

docusign

Certificate Of Completion

| Envelope Id: 5DC32B1E-F04C-4B5A-BE0D-D19 | 65FCAAF57 | |
|--|---------------|--|
| Subject: Complete with Docusign: Final - RockSol 5th Amendment - 5-27-25.pdf | | |
| Source Envelope: | | |
| Document Pages: 3 | Signatures: 1 | |
| Certificate Pages: 5 | Initials: 0 | |
| AutoNav: Enabled | | |
| EnvelopeId Stamping: Enabled | | |
| Time Zone: (UTC-07:00) Mountain Time (US & Canada) | | |

Record Tracking

Signer Events

saeb@rocksol.com

Saeid Saeb, President

RockSol Consulting Group, Inc.

Security Level: Email, Account Authentication

Electronic Record and Signature Disclosure: Accepted: 6/12/2025 2:02:58 PM

ID: 37663c34-a41b-4b90-b1d6-3328c0dfc06e

Saeid Saeb

(None)

Status: Original 6/12/2025 12:33:11 PM Holder: Lyndsy Willette lwillette@erieco.gov

Signature Adoption: Drawn on Device

Using IP Address: 174.218.169.133

Signature

S.S.S.

C62D458CC1B4CF

Signed using mobile

Status: Completed

Envelope Originator: Lyndsy Willette 645 Holbrook Street P.O. Box 750 Erie, CO 80516 Iwillette@erieco.gov IP Address: 50.206.104.130

Location: DocuSign

Timestamp

Sent: 6/12/2025 12:33:40 PM Viewed: 6/12/2025 2:02:58 PM Signed: 6/12/2025 2:07:03 PM

| In Person Signer Events | Signature | Timestamp |
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| Editor Delivery Events | Status | Timestamp |
| Agent Delivery Events | Status | Timestamp |
| Intermediary Delivery Events | Status | Timestamp |
| Certified Delivery Events | Status | Timestamp |
| Carbon Copy Events | Status | Timestamp |
| Zachary Ahinga zahinga@erieco.gov | COPIED | Sent: 6/12/2025 2:07:07 PM Viewed: 6/13/2025 10:43:56 AM |
| Security Level: Email, Account Authentication (None) | | |
| Electronic Record and Signature Disclosure: | | |

Accepted: 1/21/2021 8:37:15 AM ID: 4929dc91-03c6-4879-95ae-23b1a958ad37

| Witness Events | Signature | Timestamp |
|-------------------------|------------------|-----------------------|
| Notary Events | Signature | Timestamp |
| Envelope Summary Events | Status | Timestamps |
| Envelope Sent | Hashed/Encrypted | 6/12/2025 12:33:40 PM |
| Certified Delivered | Security Checked | 6/12/2025 2:02:58 PM |
| Signing Complete | Security Checked | 6/12/2025 2:07:03 PM |
| Completed | Security Checked | 6/12/2025 2:07:07 PM |

| Payment Events | Status | Timestamps |
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| Electronic Record and Signature Discle | osure | |

ELECTRONIC RECORD AND SIGNATURE DISCLOSURE

From time to time, Town of Erie (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

Getting paper copies

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

Withdrawing your consent

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

Consequences of changing your mind

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

All notices and disclosures will be sent to you electronically

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

How to contact Town of Erie:

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows: To contact us by email send messages to: docusign@erieco.gov

To advise Town of Erie of your new email address

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at docusign@erieco.gov and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

To request paper copies from Town of Erie

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to townclerk@erieco.gov and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

To withdraw your consent with Town of Erie

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;

ii. send us an email to docusign@erieco.gov and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process.

Required hardware and software

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <u>https://support.docusign.com/guides/signer-guide-signing-system-requirements</u>.

Acknowledging your access and consent to receive and sign documents electronically

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Town of Erie as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Town of Erie during the course of your relationship with Town of Erie.

AGREEMENT REGARDING VEGETATION ESTABLISHMENT OF DEVELOPMENT IMPROVEMENT PROJECT DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR PRINCE LAKE NO. 2 DRAINAGE AT FLATIRON MEADOWS

Agreement No. 25-05.06 Project No. 110474

THIS AGREEMENT, by and between URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT (hereinafter called "DISTRICT") and TOWN OF ERIE (hereinafter called "TOWN") and collectively known as "PARTIES";

WITNESSETH:

WHEREAS, DISTRICT, in a policy statement previously adopted (Resolution No. 14, Series of 1970 and Resolution No. 11, Series of 1973) expressed an intent to assist public bodies which have heretofore enacted floodplain regulation measures; and

WHEREAS, PARTIES desire to participate in a joint effort to establish vegetation from the drainage improvements associated with the civil plan set titled "Flatiron Meadows-Phase II Regional Drainage Improvements" by Calibre Engineering Inc, dated August 8, 2016 (hereinafter called "PLAN"); and

WHEREAS, TOWN (is the owner of certain real property consisting of 14 acres, as shown on Exhibit A (hereinafter called "PROPERTY")

WHEREAS, Hines has applied to TOWN for approval of Residential; and

WHEREAS, as a condition of DEVELOPMENT, TOWN required Hines to implement drainage improvements identified in PLAN as shown in Exhibit A. Hines has implemented drainage improvements.

WHEREAS, TOWN now desire the DISTRICT to manage vegetation establishment of drainage and flood control improvements constructed by Hines as shown in Exhibit A (hereinafter called "PROJECT"); and

WHEREAS, TOWN and DISTRICT agree to a Development Improvement Project improvements options whereas DISTRICT shall manage vegetation establishment of PROJECT and Hines shall pay for the services.

WHEREAS, the TOWN Council by appropriation or resolution, have authorized all of PROJECT costs from DEVELOPER. Hines has conveyed the funding for the PROJECT to the TOWN.

NOW, THEREFORE, in consideration of the mutual promises contained herein, PARTIES hereto agree as follows:

1. <u>SCOPE OF THIS AGREEMENT</u>

This Agreement defines the responsibilities and financial commitments of PARTIES with respect to PROJECT.

2. <u>SCOPE OF PROJECT</u>

A. <u>Project Limits</u>. PROJECT limits are approximately Prince Lake No. 2 Drainage of Prince Lake Tributary at Flatiron Meadows, as shown on Exhibit A.

3. <u>PUBLIC NECESSITY</u>

PARTIES agree that the work performed pursuant to this Agreement is necessary for the health, safety, comfort, convenience, and welfare of all the people of the State, and is of particular benefit to the inhabitants of PARTIES and to their property therein.

4. PROJECT COSTS AND ALLOCATION OF COSTS

- A. PARTIES agree that for the purposes of this Agreement PROJECT costs shall consist of and be limited to the following Project Costs:
 - 1. Vegetation Establishment
- B. It is understood that PROJECT costs as defined above are not to exceed \$90,000 without amendment to this Agreement.

PROJECT costs for the various elements of the effort are estimated as follows:

| | PROJECT ITEM | <u>AMOUNT</u> |
|----|--------------------------|---------------|
| 1. | Vegetation Establishment | \$ 90,000 |
| | Grand Total | \$ 90,000 |

5. <u>MANAGEMENT OF FINANCES</u>

As set forth in DISTRICT policy (Resolution No. 11, Series of 1973, Resolution No. 49, Series of 1977, and Resolution No. 37, Series of 2009), the funding of a local body's share may come from its own revenue sources or from funds received from state, federal, or other sources of funding without limitation and without prior DISTRICT approval.

Project Payment by TOWN of \$90,000 shall be made to DISTRICT subsequent to execution of this Agreement and within 30 days of request for payment by DISTRICT. The project payment shall be held by DISTRICT in a special fund to pay for increments of PROJECT as authorized by PARTIES, and as defined herein. DISTRICT shall provide a periodic accounting of PROJECT funds as well as a periodic notification to TOWN of any unpaid obligations. Any interest earned by the monies contributed by PARTIES shall be accrued to the special fund established by DISTRICT for PROJECT and such interest shall be used only for PROJECT upon approval by the contracting officers (Paragraph 13).

6. <u>MANAGEMENT OF WORK</u>

<u>Vegetation Establishment</u>. Vegetation establishment services shall consist of, but not be limited to, the following:

- 1. <u>Costs</u>. Vegetation establishment costs shall consist of those costs as incurred by the most qualified contractor(s) including licenses and permits.
- 2. <u>Management and Payment</u>
 - a. DISTRICT, with the concurrence of TOWN, shall administer and coordinate the related work.
 - b. DISTRICT, with concurrence of TOWN, shall select and award contract(s).

- c. DISTRICT shall require the contractor to provide adequate liability insurance that includes TOWN. The contractor shall be required to indemnify TOWN. Copies of the insurance coverage shall be provided to TOWN upon request.
- d. PARTIES shall have access to the site during at all times to observe the progress of work and conformance to workplan.
- g. DISTRICT shall review and approve contractor billings. DISTRICT shall remit payment to contractor based on billings.

7. <u>RIGHT OF WAY OR NON-REVOCABLE EASEMENT</u>

TOWN shall own the property either in fee or non-revocable easement and shall be responsible for same. It is specifically understood that the right-of-way is being used for drainage and flood control purposes. The properties upon which PROJECT is constructed shall not be used for any purpose that will diminish or preclude its use for drainage and flood control purposes. TOWN may not dispose of or change the use of the properties without approval of DISTRICT. If, in the future, TOWN disposes of any portion of or all of the properties acquired upon which PROJECT is constructed pursuant to this Agreement; changes the use of any portion or all of the properties upon which PROJECT is constructed pursuant to this Agreement; or modifies any of the improvements located on any portion of the properties upon which PROJECT is constructed pursuant to this Agreement; and TOWN has not obtained the written approval of DISTRICT prior to such action, TOWN shall take any and all action necessary within their legal authority to reverse said unauthorized activity and return the properties and improvements thereon, acquired and constructed pursuant to this Agreement, to the ownership and condition they were in immediately prior to the unauthorized activity at no expense to DISTRICT.

8. <u>MAINTENANCE</u>

PARTIES agree that TOWN shall own and be responsible for maintenance of the completed and accepted PROJECT. PARTIES further agree that DISTRICT, at TOWN's request, shall assist TOWN with the maintenance of all facilities constructed or modified by virtue of this Agreement to the extent possible depending on availability of DISTRICT funds. Such maintenance assistance shall be limited to drainage and flood control features of PROJECT. Maintenance assistance may include activities such as keeping flow areas free and clear of debris and silt, keeping culverts free of debris and sediment, repairing drainage and flood control structures such as drop structures and energy dissipaters, and clean-up measures after periods of heavy runoff. The specific nature of the maintenance assistance shall be set forth in a memorandum of understanding from DISTRICT to TOWN, upon acceptance of DISTRICT's annual Maintenance Work Program.

DISTRICT shall have right-of-access to right-of-way and storm drainage improvements at all times for observation of flood control facility conditions and for maintenance when funds are available.

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9. FLOODPLAIN REGULATION

TOWN agrees to regulate and control the floodplain of Prince Lake Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum.

PARTIES understand and agree, however, that TOWN cannot obligate itself by contract to exercise its police powers. If TOWN fails to regulate the floodplain of Prince Lake Tributary within TOWN in the manner prescribed by the National Flood Insurance Program and prescribed regulations thereto as a minimum, DISTRICT may exercise its power to do so and TOWN shall cooperate fully.

10. TERM OF AGREEMENT

The term of this Agreement shall commence upon execution and shall terminate three (3) years after the final payment is made to the construction contractor and the final accounting of funds on deposit at DISTRICT is provided to all PARTIES pursuant to Paragraph 5 herein, except for Paragraph 9. <u>FLOODPLAIN REGULATION</u>, Paragraph 7.B. <u>Ownership of Property and Limitation of Use</u>, and Paragraph 8. <u>MAINTENANCE</u>, which shall run in perpetuity.

11. <u>LIABILITY</u>

Each party hereto shall be responsible for any suits, demands, costs, or actions at law resulting from its own acts or omissions and may insure against such possibilities as appropriate.

12. CONTRACTING OFFICERS

- A. The contracting officer for TOWN shall be Town Administrator, 645 Holbrook Street, Erie, Colorado 80516.
- B. The contracting officer for DISTRICT shall be the Executive Director, 12575 West Bayaud Avenue Lakewood, CO 80228.
- C. The contracting officers for PARTIES each agree to designate and assign a PROJECT representative to act on the behalf of said PARTIES in all matters related to PROJECT undertaken pursuant to this Agreement. Each representative shall coordinate all PROJECT-related issues between PARTIES, shall attend all progress meetings, and shall be responsible for providing all available PROJECT-related file information to the engineer upon request by DISTRICT or TOWN. Said representatives shall have the authority for all approvals, authorizations, notices or concurrences required under this Agreement. However, in regard to any amendments or addenda to this Agreement, said representative shall be responsible to promptly obtain the approval of the proper authority.

13. <u>RESPONSIBILITIES OF PARTIES</u>

DISTRICT shall be responsible for coordinating with TOWN the information developed by the various consultants hired by DISTRICT and for obtaining all concurrences from TOWN needed to complete PROJECT in a timely manner. TOWN agrees to review all concept plans, preliminary design plans, and final plans and specifications; and to provide comments within 21 calendar days after the drafts have been provided by DISTRICT to TOWN.

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14. <u>AMENDMENTS</u>

This Agreement contains all of the terms agreed upon by and among PARTIES. Any amendments to this Agreement shall be in writing and executed by PARTIES hereto to be valid and binding.

15. <u>SEVERABILITY</u>

If any clause or provision herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

16. <u>APPLICABLE LAWS</u>

This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. Jurisdiction for any and all legal actions regarding this Agreement shall be in the State of Colorado and venue for the same shall lie in the TOWN where PROJECT is located.

17. ASSIGNABILITY

No party to this Agreement shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the nonassigning party or parties to this Agreement.

18. <u>BINDING EFFECT</u>

The provisions of this Agreement shall bind and shall inure to the benefit of PARTIES hereto and to their respective successors and permitted assigns.

19. ENFORCEABILITY

PARTIES hereto agree and acknowledge that this Agreement may be enforced in law or in equity, by decree of specific performance or damages, or such other legal or equitable relief as may be available subject to the provisions of the laws of the State of Colorado.

20. TERMINATION OF AGREEMENT

This Agreement may be terminated upon thirty (30) days' written notice by any party to this Agreement, but only if there are no contingent, outstanding contracts. If there are contingent, outstanding contracts, this Agreement may only be terminated upon the cancellation of all contingent, outstanding contracts. All costs associated with the cancellation of the contingent contracts shall be shared between PARTIES in the same ratio(s) as were their contributions.

21. PUBLIC RELATIONS

It shall be at TOWN's sole discretion to initiate and to carry out any public relations program to inform the residents in PROJECT area as to the purpose of PROJECT and what impact it may have on them. Technical information shall be presented to the public by the selected engineer. In any event DISTRICT shall have no responsibility for a public relations program, but shall assist TOWN as needed and appropriate.

22. NO DISCRIMINATION IN EMPLOYMENT

In connection with the performance of work under this Agreement, PARTIES agree not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified because of race, color, ancestry, creed, religion, national origin, gender,

age, military status, sexual orientation, gender identity, marital status, or physical or mental disability and further agree to insert the foregoing provision in all subcontracts hereunder.

23. <u>APPROPRIATIONS</u>

Notwithstanding any other term, condition, or provision herein, each and every obligation of TOWN and/or DISTRICT stated in this Agreement is subject to the requirement of a prior appropriation of funds therefore by the appropriate governing body of TOWN and/or DISTRICT.

24. <u>NO THIRD PARTY BENEFICIARIES</u>

It is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to PARTIES, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreement. It is the express intention of PARTIES that any person or party other than any one of PARTIES receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

25 <u>GOVERNMENTAL IMMUNITIES</u>

PARTIES hereto intend that nothing herein shall be deemed or construed as a waiver by any party of any rights, limitations, or protections afforded to them under the Colorado Governmental Immunity Act (§ 24-10-101, *et seq.*, C.R.S.) as now or hereafter amended or otherwise available at law or equity.

26. INTENT OF AGREEMENT

Except as otherwise stated herein, this Agreement is intended to describe the rights and responsibilities of and between PARTIES and is not intended to and shall not be deemed to confer rights upon any person or entities not named as PARTIES, nor to limit in any way the powers and responsibilities of TOWN, DISTRICT, or any other entity not a party hereto.

27. <u>EXECUTION IN COUNTERPARTS – ELECTRONIC SIGNATURES</u>

This Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement, may be executed in two or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. PARTIES approve the use of electronic signatures for execution of this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement. Only the following two forms of electronic signatures shall be permitted to bind PARTIES to this Agreement, and all subsequent documents requiring the signatures of PARTIES to this Agreement.

A. Electronic or facsimile delivery of a fully executed copy of a signature page; or

B. The image of the signature of an authorized signer inserted onto PDF format documents. Documents requiring notarization may also be notarized by electronic signature, as provided above. All use of electronic signatures shall be governed by the Uniform Electronic Transactions Act, CRS §§ 24-71.3-101 to -121.

WHEREFORE, PARTIES hereto have caused this instrument to be executed by properly authorized signatories as of the date and year written below.

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URBAN DRAINAGE AND FLOOD CONTROL DISTRICT D/B/A MILE HIGH FLOOD DISTRICT

-DS Ы Checked By

| | DocuSigned by: |
|----------|-----------------|
| | |
| | |
| Bv | |
| <i>J</i> | A51B5ED3FB99401 |

Name Laura A. Kroeger

Title Executive Director

18 June 2025 Date_____

TOWN

By_____

Name

Title_____

Date_____

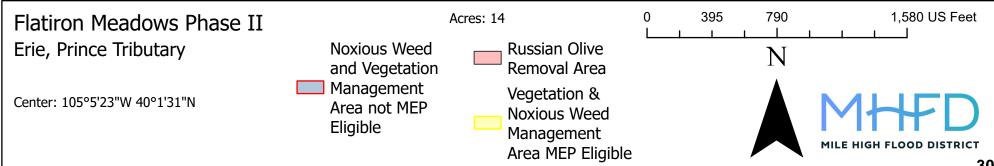
AGREEMENT REGARDING VEGETATION ESTABLISHMENT OF DEVELOPMENT IMPROVEMENT PROJECT DRAINAGE AND FLOOD CONTROL IMPROVEMENTS FOR PRINCE LAKE NO. 2 DRAINAGE AT FLATIRON MEADOWS

Agreement No. 25-05.06 Project No. 110474

Exhibit A

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