

Intergovernmental Agreement

This Intergovernmental Agreement (the "Agreement") is made and entered into this ____ day of _____, 2023 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "Town"), and the City of Lafayette, a Colorado home rule municipality with an address of 1290 S. Public Road, Lafayette, CO 80026 (the "City") (each a "Party" and collectively the "Parties").

Whereas, intergovernmental agreements between political subdivisions to provide functions and services including the sharing of costs of such services or functions are specifically authorized by C.R.S. § 29-1-203(1);

Whereas, the Parties desire to complete a plan and initial design (the "Design Phase") for improvements to the intersection of North 111th Street and Arapahoe Road, which is on the shared boundary of the Parties' jurisdictions, and to arrange for construction of the improvements (the "Construction Phase");

Whereas, the Design Phase and the Construction Phase together constitute the "Project", which shall consist of design and construction to improve the intersection of North 111th Street and Arapahoe Road with new left turn lanes, traffic signal pole relocation, and traffic signal timing, and optional items including improved pedestrian access, and storm drain construction; and

Whereas, the Parties desire to confirm their intent to undertake the Project, to identify the Parties' responsibilities with respect to the design and construction of the Project, and to set forth the allocation of costs and cost sharing for the Project.

Now, therefore, in consideration of the foregoing recitals, and the following terms and conditions, the Parties hereby agree as follows:

1. Responsibilities of the Town.

a. *Design Phase.* The Town will oversee the completion of the design phase of the Project, and will be the lead agency with respect to contracting and communicating with design consultants. The Town will advise the City of the timeline for the Design Phase, will provide the City a copy of Town's agreement with the consultant engaged to complete the design, will provide updates of progress on the Design Phase upon request, and will provide the City copies of all design drawings, plans and other materials prepared by the consultant for the Design Phase. The City's Public Works Director or designee must provide written approval of the conceptual design plans before the consultant may proceed with final design plans. The City's Public Works Director or designee must provide written approval of the final design plans and the construction cost estimate before the Town advertises the Project for construction.

b. *Construction Phase.* The Town, in consultation with the design consultant, will advertise the Project for construction, and will contract with the responsible low-bid contractor. The Town will be responsible to oversee the completion of the construction of the Project including without limitation new left turn lanes, traffic signal pole relocation, traffic signal timing, improved pedestrian access, and storm drain construction, to ensure compliance with the design plans approved by the Parties, and shall be solely responsible for all contracting, supervisory and administrative matters related to the completion of the Construction Phase of the Project. The Town shall ensure the Project construction is completed no later than May 27, 2024. The foregoing notwithstanding, the Town shall advise the City when construction has reached substantial completion or is otherwise ready for final payment, whichever is earlier, so that the City may promptly inspect all Project improvements located within the City's jurisdiction, and, further, the Town agrees that no certificate of substantial completion or initial acceptance shall be issued and final payment shall not be made to the contractor until the City has inspected and provided the Town with written approval of all Project improvements within the City's jurisdiction.

2. Project Costs.

a. The Parties have estimated the Design Phase to cost \$96,063.00 and the Construction Phase to cost \$292,000.00, for a total Project cost of \$ 388,063.00. The Parties agree to share the design and construction costs as follows:

i. The City shall be responsible for 25% of the design costs or \$12,500, whichever is less, and the Town shall be responsible for the remainder of the design costs, provided, however, that if the Lafayette City Council appropriates additional funds for the Project design in the current or future fiscal years, the City Administrator and the Town Administrator are hereby authorized by their respective governing bodies to execute an amendment to this Agreement to increase the City's responsibility for design costs to up to the City's total appropriated amount for design costs or 25% of the design costs, whichever is less.

ii. The City shall be responsible for 25% of the construction costs or \$73,000, whichever is less, and the Town shall be responsible for the remainder of the construction costs.

b. Design costs shall include funding the design and construction support services consultant through the end of construction, including: bid support including response to bidder questions, addendum preparation, bid evaluation, and issued for construction documents; construction support including without limitation providing engineering, construction inspection, and construction materials testing services during construction, and the completion of as-built drawings during and after completion of construction.

c. Construction costs shall include the cost of the construction contract to be awarded by the Town, as may be modified by construction change orders.

3. Reimbursement of Design Costs. Upon execution of this Agreement, the City will make a payment of \$12,500.00 to the Town to serve as an initial deposit towards the City's share of the design costs. The Town shall send the City an invoice for the design costs incurred by the Town, including copies of invoices and pay applications received from the design consultant. The Town's invoices shall include the amount of the City's deposit applied towards the design costs and the remaining balance of the City's deposit until the City's deposit is drawn down to \$0.00. Thereafter, the City agrees to reimburse the Town for the City's portion of the design costs within 30 days of receipt of each invoice up to, but not exceeding, the City's total responsibility for design costs set forth in Section 2.a.i. The Parties agree that no design costs in excess of the estimate for Design Phase cost set forth in Section 2.a. shall be incurred for the Project without prior written approval of both Parties.

4. Reimbursement of Construction Costs. The Town shall send the City an invoice for construction costs incurred by the Town, including copies of invoices and pay applications received from the contractor. The City agrees to reimburse the Town for the City's portion of the construction costs within 30 days of receipt of each invoice up to, but not exceeding, the City's total responsibility for construction costs set forth in Section 2.a.ii. The Parties agree that no construction costs in excess of the estimate for Construction Phase cost set forth in Section 2.a. shall be incurred for the Project without prior written approval of both Parties.

5. Term. This Agreement shall remain in effect through completion of the Project, unless terminated sooner upon mutual, written agreement by the Parties.

6. Insurance. Each Party shall provide its own insurance coverage for claims arising from this Agreement.

7. Miscellaneous.

a. *Assignment.* This Agreement shall not be assigned by either Party in whole or in part without the prior written consent of the other Party.

b. *Governing Law and Venue.* The laws of the State of Colorado shall govern this Agreement, and the exclusive venue for any legal proceeding arising out of this Agreement shall be in Boulder County, Colorado.

c. *No Third-Party Beneficiaries.* There are no intended third-party beneficiaries to this Agreement.

d. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

e. *Governmental Immunity.* Nothing herein shall be construed as a waiver of any 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. *Integration.* This Agreement, together with all exhibits attached hereto (if any), 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.

g. *Subject to Annual Appropriation.* Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of either Party not performed during the current fiscal year are subject to annual appropriation, and thus any obligations of either Party hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, or liability beyond the current fiscal year.

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


Town of Erie, Colorado

Justin Brooks, Mayor

Attest:


Debbie Stamp, Town Clerk

City of Lafayette, Colorado

DocuSigned by:


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Jaideep Mangat, Mayor

Attest:

DocuSigned by:


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Lynnette Beck, City Clerk