

Maintenance Agreement

This Maintenance Agreement (the "Agreement") is made and entered into this ____ day of _____, 2025 (the "Effective Date"), by and among 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"), Erie Four Corners, LLC a Colorado limited liability company with an address of 6640 Gunpark Drive, #103, Boulder, CO 80301 ("Developer"), and the Four Corners Business Improvement District, a Colorado business improvement district with an address of 191 University Boulevard, Suite 358, Denver, CO 80206 (the "BID") (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 will be conveying ownership of the Property to the BID;

Whereas, pursuant to the Development Agreement dated August 23, 2022 and recorded in Boulder County at Reception No. 03978314, Developer remains responsible for maintenance of all of the improvements on the Property unless the Town agrees otherwise by agreement; and

Whereas, pursuant to the BID's 2025 Operating Plan, the BID authorized to provide and maintain storm drainage improvements; and

Whereas, Developer wishes to transfer to the BID the maintenance obligation for all improvements listed in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Improvements").

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

1. **Maintenance Responsibilities.**

a. As of the Effective Date, the BID shall be solely responsible for maintaining the Improvements in good condition and working order, in compliance with all applicable Town standards and regulations and other applicable law. For purposes of this Agreement, maintenance includes regular inspections, scheduled maintenance tasks to catch problems before they occur, and replacement of like kind at such time that the Improvements have reached the end of their useful life, or have been damaged beyond repair.

b. If the BID fails to adequately maintain the Improvements, and within 14 days after the date of written notice from Town, fails to correct the maintenance problem, then the Town may, but is under no obligation to, perform any required maintenance and obtain reimbursement from the BID for all associated costs. The BID

agrees that the Town may pursue all remedies available at law or in equity to collect such reimbursement if not timely paid.

2. Term and Termination. This Agreement shall commence on the Effective Date and shall continue in perpetuity, provided that the Town may terminate this Agreement at any time.

3. Warranty. The BID warrants that it has the full right and legal authority to enter into this Agreement.

4. Indemnification. To the extent permitted by law, the BID agrees to indemnify and hold harmless the Town and its officers, insurers, volunteers, representative, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including 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 the BID, any subcontractor of the BID, or any officer, employee, representative, or agent of the BID.

5. Waiver. As a part of the consideration received for this Agreement, Developer and the BID hereby waive any and all claims that they now have or may or might hereafter have or acquire against the Town for loss or damage to the Improvements.

6. Inspections. The BID shall conduct annual inspections of the water quality facilities in accordance with the Town-approved drainage report. Copies of the associated inspection reports shall be submitted to the Town on or before October 1st of each year.

7. Insurance.

a. The BID 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 the BID pursuant to this Agreement. At a minimum, the BID 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.

i. Workers' Compensation insurance as required by law.

ii. 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 cancelled, 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 the BID. The BID shall be solely responsible for any deductible losses under any policy.

c. The BID 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.

9. Binding Effect. This Agreement shall be recorded in Boulder County, Colorado and shall run with the Property.

10. Miscellaneous.

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

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

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

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

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

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

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

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

i. *Governmental Immunity.* The Town and the BID and their respective 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, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town or the BID and their respective officers, attorneys, or employees.

j. *Annual Appropriation.* The BID's obligations under this Agreement shall be subject to annual appropriation by the BID's board of directors and shall not comprise a multiple-fiscal year financial obligation of the BID.

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

Town of Erie, Colorado

Malcolm Fleming, Town Administration


Attest:

Debbie Stamp, Town Clerk

**Four Corners
Business Improvement District**

By: _____

President



Secretary

Erie Four Corners, LLC

WALTER POUNDS

By:

Walter Pounds 3/20/25

State of Colorado

)

County of BOULDER

) ss.

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 20 day of MARCH, 2025, by WALTER POUNDS as MANAGER of Erie Four Corners, LLC.

My commission expires: JUNE 11, 2028



Zachary S. Schenck

Notary Public

Exhibit A
Legal Description

Lot 2, Block 6, Erie Four Corners Subdivision Filing No. 1 recorded 8/24/22 under reception number 03978307, Town of Erie, County of Boulder, State of Colorado.

Exhibit B
Improvements

Erie Town Center - Lot 2, Block 6, Erie Four Corners Subdivision Filing No. 1 - Storm Sewer Improvements.

The improvements consist of the on-site storm sewer collection system that collect and convey the storm events for the mixed-use center. Below is a more detailed listing:

- 1.) Underground Detention Facility
- 2.) Outlet Structure with 93 lf 36" RCP and 24 lf 42" RCP Outfall Storm Line
- 3.) (2) – 15' Type R Inlets
- 4.) (2) – 10' Type R Inlets
- 5.) (3) – 5' Type R Inlets
- 6.) (16) – Area Drains
- 7.) (6) - Manholes
- 8.) 342 lf – 48" RCP
- 9.) 253 lf – 24" RCP
- 10.) 105 lf – 18" RCP
- 11.) 811 lf – 15" HDPE

