

TOWN OF ERIE
BOARD OF TRUSTEES REGULAR MEETING ¹
Tuesday, August 26, 2014
6:30 p.m.
Board Room, Erie Town Hall, 645 Holbrook Street, Erie, CO 80516

STUDY SESSION 5:45 P.M. COMMUNITY ROOM

I. CALL MEETING TO ORDER

II. PLEDGE OF ALLEGIANCE AND ROLL CALL

III. APPROVAL OF THE AGENDA

IV. CONSENT AGENDA (The consent agenda is intended to contain items that are prepared to be decided without discussion. Any Board member may request removal of any item they do not want to consider without discussion or wish to vote no on, without jeopardizing the approval of other items on the consent agenda. Items removed will be placed under IX. General Business, a. in the order they appear on the Agenda.) (This should be done prior to the motion to approve.)

- a. Approval of the August 12, 2014 Meeting Minutes
- b. Approval of the August 14, 2014 Special Meeting Minutes
- c. Resolution 14-91; A Resolution Authorizing the Town of Erie to Transfer and Advance Funds to the Erie Housing Authority to Facilitate the Refinancing of Its Mortgage Loan with Summit Bank and Trust.
- d. Resolution 14-95; A Resolution Authorizing the Approval for Daybreak Filing No. 1A, 1st Amendment Development Agreement and Minor Subdivision Plat
- e. Resolution 14-96; A Resolution for the CDOT Agreement for Weld County Road 5 Bridge Repair
- f. Resolution 14-97; A Resolution Awarding a Design Contract to JVA Inc. for the Erie Lake By-Pass Design
- g. Resolution 14-99; A Resolution Awarding a Street Striping Service Contract to Road Safe Traffic Systems
- h. Resolution 14-98; A Resolution Of The Town Of Erie, Colorado, Consenting To Erie Farm Metropolitan District's Use Of The Power Of Eminent Domain In Accordance With The Terms Of The Erie Farm Metropolitan District Amended And Restated Service Plan
- i. Ordinance 29-2014; An Ordinance of the Town of Erie, Colorado to Vacate a Portion of Weld County Road 3 in Colliers Hill Subdivision; and Setting Forth Details in Relation Thereto (SECOND READING)

¹ FOR MORE INFORMATION ON THE AGENDA ITEMS LISTED OR FOR INDIVIDUALS WITH DISABILITIES NEEDING AUXILIARY AIDS OR TO REQUEST ASSISTANCE, PLEASE CONTACT THE TOWN CLERK'S OFFICE AT 645 HOLBROOK STREET, P.O. BOX 750, 303-926-2731.

- V. **PUBLIC COMMENT** (This agenda item provides the public an opportunity to discuss items other than ordinances on second reading, public hearings and consent agenda items that are not on the agenda. The Board of Trustees is not prepared to decide on matters brought up at this time, but if warranted, will place them on a future agenda.)
- VI. **PROCLAMATIONS AND PRESENTATIONS** (This agenda item is intended to contain Presentations to the Board that do not require any Board action. Presentations are limited to fifteen (15) minutes.)
- a. Certification of Appreciation to Kailer Johns for Serenity Garden Eagle Scout Project at Mount Pleasant Cemetery
- VII. **RESOLUTIONS** (This agenda item is for all matters that should be decided by resolutions.)
- a. Resolution 14-85; A Resolution of the Town of Erie, Colorado Awarding a Contract to GMP Construction for the Public Safety Facility
- b. Resolution 14-100; A Resolution Authorizing the Town of Erie, Colorado, to Enter Into a Purchase and Sale Agreement for the Purchase of Real Property From the Mary Jane Strieby Revocable Trust.
- VIII. **ORDINANCES** (To adopt an Ordinance of the First Reading, a Motion/Second/Approval is required to suspend Resolution 02-44 and adopt the Ordinance on the First Reading.)
- a. Ordinance 30-2014; An Ordinance of the Town Of Erie, Colorado Approving the Transfer of Certain Real Property to the Erie Housing Authority; And Declaring An Emergency **(SECOND READING)**
- IX. **GENERAL BUSINESS** (This agenda item is reserved for matters that are ready for Board action, and do not fit into other categories, i.e. resolutions, ordinances...)
- NONE SCHEDULED
- X. **STAFF REPORTS** (This agenda item is reserved for specific items from Staff requiring Board direction or just relaying important information.)
- Staff Reports Included in Agenda Packet
- XI. **BOARD OF TRUSTEES REPORTS & APPOINTMENTS** (This agenda item is for all Board of Trustees reports, Board & Commission Appointment, and items of information as well as Board discussion items, not listed on the agenda.)
- a. BOT Reports
- XII. **ADJOURNMENT** (The Board'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.)

THE TOWN BOARD WILL ADJOURN TO A MEETING OF THE TOWN OF ERIE HOUSING AUTHORITY

TOWN OF ERIE
BOARD OF TRUSTEES REGULAR MEETING 1
Tuesday, August 12, 2014
6:30 p.m.
Board Room, Erie Town Hall, 645 Holbrook, Erie, CO 80516

I. CALL MEETING TO ORDER

Mayor Harris called the August 12, 2014 Regular Meeting of the Board of Trustees to order at 6:30 p.m.

II. PLEDGE OF ALLEGIANCE AND ROLL CALL

Roll Call:	Trustee Kramer	Present
	Trustee Schutt	Present
	Mayor Pro Tem Gruber	Present
	Trustee Moore	Present
	Trustee Charles	Present
	Trustee Woog	Present
	Mayor Harris	Present

III. APPROVAL OF THE AGENDA

Action: Trustee Schutt moved to approve the August 12, 2014 Agenda; the motion was seconded by Trustee Charles. The motion carried with all present voting in favor thereof.

IV. CONSENT AGENDA

- a. Approval of the July 22, 2014 Meeting Minutes
- b. Ordinance 29-2014; An Ordinance of the Town of Erie, Colorado to Vacate a Portion of Weld County Road 3 in Colliers Hill Subdivision; and Setting Forth Details in Relation Thereto (FIRST READING)
- c. Resolution 14-83; A Resolution Supporting the Issuance of a Request for Qualifications (RFQ) for the Historic Downtown Erie Public Art Project
- d. Resolution 14-84; A Resolution of the Town of Erie, Colorado Authorizing the Purchase of a Tool Cat from Bobcat of the Rockies
- e. Resolution 14-93; A Resolution Authorizing The Town of Erie To Enter Into An Agreement With First Southwest Company for The Provision Of Debt Advisory Services

CONSENT AGENDA (continued)

Action: Trustee Kramer moved to approve the August 12, 2014 Consent Agenda as amended; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with the following roll call vote:

Roll Call:	Mayor Pro Tem Gruber	Yes
	Trustee Schutt	Yes
	Trustee Kramer	Yes
	Trustee Moore	Yes
	Trustee Woog	Yes
	Trustee Charles	Yes
	Mayor Harris	Yes

V. PUBLIC COMMENT

Gary Wetzberger, 1969 Seidler Court, Erie, CO. provided the Board with an update of the Arts Coalition of Erie update of activities.

Darrel Rankin, 2134 Alpine, Drive, Erie, Co. spoke on behalf of the Arts Coalition of Erie.

VI. RESOLUTIONS (This agenda items is for all matters that should be decided by resolutions.)

Action: Prior to the Public Hearing Mayor Harris made the following statement to the audience:

- The Board of Trustees would like to proactively address the oil and gas operations issues being considered during the public hearing this evening by defining our authority, and proposing a better way forward.
- First off, I'd like you all to know that the entire Board of Trustees and I value your opinions and look forward to hearing your concerns this evening. We understand it is frustrating to be told that the Board of Trustees cannot discuss any particular application with you, as it is a part of the quasi-judicial process. By law, all applications whether they involve a residential or commercial development or an oil and gas site, go through the same process and are subject to the same laws. Beyond the sketch plan phase of the application process, the Board of Trustees cannot engage in any discussions about pending applications until they review an application in the scheduled public hearing. By law, we must act like judges, coming into these hearings open minded and uninfluenced; there to listen to the facts and judge applications based solely on the ability to meet the approval criteria as laid out in our unified development code. There can be no predispositions or personal beliefs brought into this process.

RESOLUTIONS (continued)

- As municipal representatives, there are some issues in which we have authority and others where we do not. According to the Colorado State Constitution, oil & gas operations are regulated by the state. The State issues oil and gas permits. There are only four criteria with which the town is allowed to regulate. The four criteria are:

1. Evaluating whether the setbacks to existing structures as set by the State, currently at 500 feet are met.
2. The access roads
3. The fencing and
4. The color of the operational facilities

Through the public hearing process as we are doing tonight, the town is required to assess applications based on these four criteria alone.

- As such, the scope of tonight's public hearing is limited to our authority on this issue. The Board will consider EnCana's applications based solely on whether or not the applications meet the four criteria as set forth in our Code.

PUBLIC HEARING

- a. Resolution 14-86; A Resolution of the Town of Erie, Colorado for Consideration of the Special Review Use for the EnCana Pratt Wells
- b. Resolution 14-87; A Resolution of the Town of Erie, Colorado for Consideration of the Site Plan for the EnCana Pratt Wells
- c. Resolution 14-88; A Resolution of the Town of Erie, Colorado for Consideration of the Special Review Use for the EnCana Waste Connections Wells
- d. Resolution 14-89; A Resolution of the Town of Erie, Colorado for the Consideration of the Site Plan for the EnCana Waste Connections Wells

Action: Mayor Harris opened the Public Hearing for Resolution 14-86; Resolution 14-87; Resolution 14-88 and Resolution 14-89 at 7:44 p.m.

Marty Ostholthoff, Director of Community Development presented staff recommendations for the approval of Resolution 14-86; Resolution 14-87; Resolution 14-88 and Resolution 14-89. Staff finds the Special Review Use application and the Site Plan application for the Pratt 4B-29H-P168, 4C-29H-P168, 4D-29H-P168, 4E-29H-P168, 4F-29H-P168, 4G-29H-P168 Well Site in compliance with the Approval Criteria and recommends the Board of Trustees approve the application by adopting Resolution No. 14-86 and Resolution 14-87 with the following conditions:

- a. Prior to construction a Grading and Stormwater Quality Permit shall be obtained from the Town.
- b. Prior to construction a Right of Way Permit shall be obtained from the Town.
- c. A burrowing owl survey will be required if prairie dogs are euthanized or colonies are disturbed by proposed pad development or drilling between March 15th and October 31st. The applicant shall use the

RESOLUTIONS/PUBLIC HEARING (continued)

recommended Survey Protocol and Actions in Protecting Nesting burrowing owls from Colorado Parks and Wildlife.

d. Abandoned flow lines shall be removed, by the operator, at the Town's discretion.

Staff finds the Special Review Use application and the Site Plan application for the for the Waste Connections 3A-29H-M168, 3B-29H-M168, 3C-29H-M168, 3D-29H-M168, 3E-29H-M168, 3F-29H-M168, 3G-29H-M168 Well Site in compliance with the Approval Criteria and recommends the Board of Trustees approve the application by adopting Resolution No. 14-88 with the following conditions:

a. Prior to construction a Grading and Stormwater Quality Permit shall be obtained from the Town.

b. Prior to construction a Right of Way Permit shall be obtained from the Town.

c. A burrowing owl survey will be required if prairie dogs are euthanized or colonies are disturbed by proposed pad development or drilling between March 15th and October 31st. The applicant shall use the recommended Survey Protocol and Actions in Protecting Nesting burrowing owls from Colorado Parks and Wildlife.

d. Abandoned flow lines shall be removed, by the operator, at the Town's discretion.

Action: Mayor Harris gave the following oath to persons wishing to address the Board of Trustees on this matter: Do you swear or affirm that the evidence and testimony that you are about to give is true?"

Applicant Presentation:

Miracle Pfister of EnCana Oil & Gas (USA) Inc. 370 17th Street, Suite 1700, Denver, CO 80202. Provided a Power Point Presentation on this agenda item and answered questions from the Board of Trustees.

PUBLIC COMMENT

Speaking Against the Proposed Wells:

Joseph Zintel, 1761 Crestview Lane, Erie, CO.

Kelly O'Neil, 1315 Catalpa Place, Erie, CO.

Parker McManes, 1662 Crestview Lane, Erie, CO.

Sacha Mace, 1402 Catalpa Place, Erie, CO.

Angela Waldrop, 1751 Crestview Lane, Erie, CO.

Dalton Waldrop, 1751 Crestview Lane, Erie, CO.

Mike Martinez, 2463 Reserve St., Erie, CO.

Melissa Jaure, 2463 Reserve St., Erie, CO.

Christine Emerson, 1600 Alpine Drive, Erie, CO.

Liz Fischer, 635 Moffat Street, Erie, CO.

Katy D'Arcy, 2804 Primrose Lane, Erie, CO.

Geri Nelson, 1371 Catalpa Place, Erie, CO.

Pat Taylor, 2839 Prince Circle, Erie, CO.

Steve Berg, 900 Taylor Lane, Erie, CO.

Tim Kennedy, 1465 Hickory Court, Erie, CO.

Jennifer Fick, 1778 Parkdale Circle N., Erie, CO.

Marcos Martinez, 2265 Dogwood Circle, Erie, CO.

RESOLUTIONS/PUBLIC HEARING (continued)

Spoke on Behalf of the Proposed Wells:

Al Linton, 6060 Foxhill Drive, Longmont, CO.

Action: Mayor Harris called for a break at 8:07 p.m. and reconvened the meeting at 8:25 p.m.

Action: Following Board discussion and questions the Board directed staff to add condition e. to the Site Plan Resolutions:

To the maximum extent practicable, EnCana Oil & Gas USA, Inc. shall minimize truck traffic on the Erie Parkway to WCR 5 haul route between the hours of 6:30am to 8:30am and between the hours of 2:00pm and 4:00pm during the school year.

Action: Mayor Harris closed the Public Hearing for Resolution 14-86; Resolution 14-87; Resolution 14-88 and Resolution 14-89 at 9:44 p.m.

Action: Trustee Moore moved to approve Resolution 14-86 as amended; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with all present voting in favor thereof.

Action: Trustee Charles moved to approve Resolution 14-87; the motion was seconded by Trustee Kramer. The motion carried with all present voting in favor thereof.

Action: Mayor Pro Tem Gruber moved to approve Resolution 14-88 as amended; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with all present voting in favor thereof.

Action: Trustee Moore moved to approve Resolution 14-89; the motion was seconded by Schutt. The motion carried with all present voting in favor thereof.

Action: Mayor Harris read the following directive to Staff:

- Two years ago the Town successfully negotiated with oil & gas operators and the State to achieve the first Memorandums of Understanding or MOU in Colorado. Those MOUs include requirements which at the time of their creation exceeded state rules and regulations and addressed concerns regarding public health and safety impacts. We were the first! The fact that the State incorporated the key element of our MOU's, requiring Vapor Recovery Units or VRUs that significantly reduce gas production emissions into the revised 2013 regulations, added to Erie's recognition as a leader in addressing concerns on all sides of this debate.
- During the same time period, the BOT was instrumental in getting the CDPHE, the Colorado Department of Health & Environment to conduct air quality testing & analysis, downwind from an active drilling and fracking operation in Erie. The findings and independent analysis of that study are enlightening and relevant to tonight's proceedings, and are published for your use on the Town's website.

RESOLUTIONS/PUBLIC HEARING (continued)

- I believe the Town got it right in 2012 when we worked with oil and gas operators to establish MOU's that exceeded state standards. Erie's approach is one that:
 - ✓ is protective of human health and the environment;
 - ✓ takes into consideration private property rights;
 - ✓ does not seek to preempt the state's regulatory authority;
 - ✓ does not support the distribution of false information; and
 - ✓ does not advocate for any specific industry or issues-based organization.

- Since the time the MOUs were originally negotiated the regulatory landscape has changed. As a result this Board considers it the right time to bring the oil and gas operators back to the table, to discuss improvements to the MOU's regarding existing state rules and regulations and public health and safety impacts in Erie, and specifically address the process by which gas well locations are chosen within the Town of Erie. Therefore speaking on behalf of the Board of Trustees, we direct staff to open said negotiations as quickly as possible and report the results back to us in not more than 90 days from today.

- In closing, The Board will continue to hold the oil and gas operators accountable to the conditions of the current MOU's while discussions to amend and update them are ongoing. At the end of this process it is our expectation to deliver to you, our friends, neighbors and residents, a greater degree of environmental protection and safety, and in the future, enhanced gas well setbacks from Erie homes.

Action: Mayor Harris called for a break at 10:00 p.m. and reconvened the meeting at 10:05 p.m.

- e. Resolution 14-90; A Resolution of the Town of Erie, Colorado for Consideration of the Special Review Use for Erie Convair

Todd Bjerkaas, Senior Planner presented staff recommendations for the approval of Resolution 14-90. The applicant is requesting approval of a light industrial use in an existing 2,500 square foot hangar at 3000 Airport Drive. The business, CML RW Security, would use the unit to store, test and assemble electronic components they use in their custom security systems. The hangar would also be used to store a plane of one of the business's executives during visits. Some employee work stations are anticipated within the hangar. All uses would be located entirely within the unit. Title 10; Table 3-1 'Table of Permitted Uses' of the Municipal Code indicates that a Light Industrial use is a Special Review Use in the Airport zone district. A Light Industrial Use is defined in the UDC as "A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment, packaging, incidental storage, sales, and distribution of such products, but excluding basic industrial processing."

Action: Mayor Harris opened the Public Hearing for Resolution 14-90 at 10:07 p.m.

RESOLUTIONS/PUBLIC HEARING (continued)

Action: Mayor Harris gave the following oath to persons wishing to address the Board of Trustees on this matter: Do you swear or affirm that the evidence and testimony that you are about to give is true?"

Public Comment

Ed Byrne 250 Arapahoe Road, Boulder, Colorado, spoke on behalf of the applicant in favor of approval of Resolution 14-90.

Action: Hearing no one else wishing to make public comment Mayor Harris closed the public hearing for Resolution 14-90 at 10:53 p.m.

Action: Mayor Pro Tem Gruber moved to approve Resolution 14-90; the motion was seconded by Trustee Charles. The motion carried with all present voting in favor thereof.

- f. Resolution 14-91; A Resolution Authorizing the Town of Erie, Colorado To Enter Into A Purchase and Sale Agreement for the Purchase of Real Property Located at 325 Wells Street, Erie, Colorado and Authorizing and Directing the Appropriate Town Officers to Sign Said Purchase and Sale Agreement; And, Setting Forth Details In Relation Thereto

A.J. Krieger, Town Administrator, presented staff recommendations for the approval of Resolution 14-91. The Town recently concluded negotiations with the owner of the property located at 325 Wells Street, Erie, Colorado for potential acquisition of the property. The purchase price of the property is \$255,000.00. This price was determined to be within an acceptable range relative to comparable sales. Approval of the Agreement will allow the Town to proceed with expansion of the municipal campus - specifically, creating additional parking for staff and visitors to Town Hall and Historic Downtown Erie.

Action: Following Board discussion Mayor Harris moved to approve Resolution 14-91; the motion was seconded by Mayor Pro Tem Gruber. The motion failed with the following roll call vote:

Mayor Pro Tem Gruber	Yes
Trustee Schutt	Yes
Trustee Kramer	No
Trustee Moore	No
Trustee Woog	No
Trustee Charles	No
Mayor Harris	Yes

RESOLUTIONS/PUBLIC HEARING (continued)

Action: Mayor Harris opened the Public Hearing for Resolution 14-92 at 10:45 p.m.

- g. Resolution 14-92: A Resolution Providing for the Supplemental Appropriation of Money to Various Funds In The Amounts and for the Purposes Set Forth Below, for the Town of Erie, Colorado, for the 2014 Budget Year**

Steve Felten, Director of Finance presented Staff recommendations for the approval of Resolution 14-92. The Town of Erie adopted the 2014 Budget on December 10, 2013. At least twice yearly, staff reviews the adopted budget and year-to-date actual revenues and expenditures. Based on these reviews, staff requests supplemental appropriations to update the budget to reflect actual revenues and expenditures of the prior and current year, year-to-date Board of Trustee actions, and projected revenues and expenditures for the remaining fiscal year. The 2014 Supplemental Appropriation Request for August represents staffs conservative and prudent estimates for providing on-going, quality services to customers for 2014. Although some data is presented as the total of all funds, each fund is independent of the other funds. Fund Balances: We do not anticipate any negative fund balances in the requested 2014 Supplemental Appropriation Request for August. The beginning fund balances of the Supplemental Appropriation have been updated to reflect the actual ending fund balances (working capital in the case of enterprise (funds) from 2013. Revenues: This Supplemental Appropriation includes total revenues amounting to \$48.4 million, an increase of \$8.8 million over the 2014 Adopted Budget. Accounting for the majority of this increase are proceeds from the bonds issued to construct the public safety facility of \$6.5 million and reimbursements of \$1.5 million, mostly arising from flood-related funds from FEMA and the State of Colorado. Additional information on these revenue changes can be found in the attached memorandum and detail of changes. Expenditures: The Supplemental Appropriation includes expenditures amounting to \$64.1 million in all funds (of which \$33.5 million are for capital expenditures). This represents an increase of \$14.6 million in expenditures over the 2014 Adopted Budget, of which \$14.1 million are for capital expenditures. This increase reflects additional appropriation requests amounting to \$7.1 million. (including \$6.3 million related to the new public safety facility), rollovers from 2013 of \$5.8 million and \$1.6 million in additional requests already approved by the Board (of which \$1.0 million is related to flood repairs and \$0.2 million for bond issuance costs).

Action: Mayor Harris opened the public hearing for Resolution 14-92 at 10:45 p.m., hearing no one wishing to make public comment Mayor Harris closed the public hearing at 10:53 p.m.

Action: Following Board discussion Trustee Schutt moved to approve Resolution 14-92; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with the following roll call vote:

Mayor Pro Tem Gruber	Yes
Trustee Schutt	Yes
Trustee Kramer	Yes
Trustee Moore	Yes
Trustee Woog	Yes
Trustee Charles	Yes
Mayor Harris	Yes

VII. ORDINANCES

- a. **Ordinance 30-2014; An Ordinance Authorizing The Town To Quitclaim And Transfer Certain Real Property To The Housing Authority Of The Town Of Erie; Setting Forth Details In Relation Thereto;**

Steve Felten, Director of Finance presented Staff recommendations for the approval of Ordinance 30-2014. The Town of Erie Housing Authority originally obtained financing for construction of the current living units through the issuance of a bond in 2001. This bond was subsequently refinanced with a mortgage loan from Great Western Bank in 2004. The mortgage loan carries a rate of 4.50% and provides for monthly payments of \$4,398.05 (based on a 30 year amortization period), but requires a balloon payment of approximately \$685,000 on September 4, 2014, the maturity date of the mortgage loan. At the April 8th Board meeting the Board approved the staffs request to authorize staff to enter into a six-month loan extension with Great Western Bank. At that time the terms of the loan extension were not known. In June 2014 the Town received the extension terms from the bank, which required a loan payment of approximately \$200,000 in September. This was the first time there had been any indication from the bank that a partial pay down would be required for the extension. As a result, staff contacted Summit Bank and Trust to see if they could offer more favorable terms to refinance the loan. While the final details are still pending a completion of an appraisal, Summit has offered a two year refinancing period, with no pay-down on the loan. As proposed there would be two loans. One would be a real estate loan secured by the property, with the amount to be lent equal to 80% of the appraised value. This loan, with an estimated principal balance of \$320,000 (pending the final appraisal), would carry the same rate as the current mortgage loan (4.50%) and be amortized over the same period. The second loan would be a cash-secured loan with a current estimated principal balance of \$365,000 and carry an interest rate of 3.25%. Interest only payments would be required during the 2-year term. Total debt service on the two loans would be approximately \$1,300 less than under the current mortgage. Summit's offer also gives the Town a full two years to accomplish the transfer of the property to Brothers Redevelopment. Great Western's offer will require yet another extension discussion in six months, as the length of their initial extension offer does not allow enough time to effect any transfer. In addition, while more cash will have to be transferred to the Housing Authority pursuant to Summit's extension offer, all the funds will stay within the Authority and be available in the future. As just stated, the Summit offer does require the Town's General Fund to advance/transfer approximately \$365,000 to the Housing Authority, which is \$165,000 more than the amount required to be paid to Great Western under their offer. But the difference of \$165,000 would be returned to the Town upon transfer of the property to Brothers. The remaining \$200,000 would be applied to the then outstanding loan balances to bring them down to an amount equal to the price Brothers will purchase the property pursuant to the option agreement approved by the Board on February 25, 2014. To minimize the amount of cash required to be transferred to the Authority to serve as collateral for the cash secured loan, through this ordinance staff is recommending the transfer of the underlying land currently owned by the Town to the Housing Authority. At the time of construction of the apartments in 1999-2000, the underlying land was owned by the Town and leased to the Authority for \$1.00. By transferring the land to the Authority it will be able to pledge the land as collateral on the loan with Summit. Staff recommends that the Board of Trustees approve Ordinance 30-2014, authorizing the transfer of the land, as described in the ordinance, from the Town to the Housing Authority. This is the first reading of the ordinance so no action is required at this time. At the ordinance's second reading staff will request that it be passed by emergency to allow for closing of the loans prior to September 4, 2014, when the Great Western loan matures. In addition, at the August 26th Board meeting staff will also bring a resolution to the Board and the Commissioners of the housing authority for approval of final terms of the loan refinancing with Summit Bank & Trust.

ORDINANCES (continued)

Action: This was the first reading of Ordinance 30-2014 and it will be brought back for Board action at the August 26, 2014 Regular Meeting of the Board of Trustees.

IX. BOARD OF TRUSTEES REPORTS

Trustee Schutt commented on the monthly building permits and that the Town had met its goal for July.

Trustee Moore noted that the Erie Community Center was starting yearly maintenance and would reopen Monday August 25th.

Trustee Charles noted the success of the recent Erie Air Fair.

Mayor Pro Tem Gruber asked about the bike lanes on Road 5 and was told by staff they had been completed. Mayor Pro Tem also noted a recent meeting with Open Space and Trails Board and the Erie Single Track.

X. EXECUTIVE SESSION

- a. EXECUTIVE SESSION For discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; specifically, to discuss the position of Municipal Judge.

Action: Mayor Pro Tem Gruber moved to go into Executive Session for discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; specifically, to discuss the position of Municipal Judge. The motion was seconded by Trustee Kramer. The motion carried with all present voting in favor thereof.

Mayor Harris announced it's Tuesday, August 12, 2014, and the time is 11:05 p.m. For the record, I am the presiding officer, Mayor Tina Harris. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session were the following persons:

Mayor Tina Harris; Mayor Pro Tem Mark Gruber; Trustees Jennifer Kramer, Scott Charles, Dan Woog, Janice Moore and Waylon Schutt and; Town Attorney Mark Shapiro;

This was an executive session for the following purpose:

For discussion of a personnel matter under C.R.S. Section 24-6-402(4)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies

EXECUTIVE SESSION (continued)

that do not require the discussion of matters personal to particular employees; specifically, to discuss the position of Municipal Judge.

Upon completion of the Executive Session, Mayor Harris announced that the time is now 11:15 p.m. and the executive session has been concluded. The participants in the executive session were:

Mayor Tina Harris; Mayor Pro Tem Mark Gruber; Trustees Jennifer Kramer, Scott Charles, Dan Woog, Janice Moore and Waylon Schutt and; Town Attorney Mark Shapiro;

For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record.

Hearing none, Mayor Harris moved to the next agenda item.

XI. ADJOURNMENT

Action: Trustee Schutt moved to adjourn the August 12, 2014 Regular Meeting of the Town of Erie Board of Trustees; the motion was seconded by Mayor Pro Tem Gruber. The motion carried with all present voting in favor thereof.

Action: Mayor Harris adjourned the August 12, 2014 Regular Meeting of the Town of Erie Board of Trustees at 11:16 p.m.

Respectfully Submitted,

Nancy J. Parker, CMC, Town Clerk

Tina Harris, Mayor

TOWN OF ERIE
BOARD OF TRUSTEES SPECIAL MEETING
Monday, August 14, 2014
5:30 p.m.
Board Room, Erie Town Hall, 645 Holbrook, Erie, CO 80516

I. CALL MEETING TO ORDER

Mayor Harris called the August 14, 2014 Special Meeting of the Board of Trustees to order at 5:34 p.m.

II. PLEDGE OF ALLEGIANCE AND ROLL CALL

Roll Call: Trustee Kramer – present
Mayor Pro Tem Gruber – present
Trustee Charles – present
Trustee Moore – late/present
Trustee Woog – present
Trustee Schutt – present
Mayor Harris – present

Trustee Moore arrived at 5:36 p.m.

III. APPROVAL OF THE AGENDA

- a. **Action:** Trustee Charles moved to approve the August 14, 2014 agenda with an amendment to move Consent Agenda Item A. Resolution 14-94 to Resolutions and to remove General Business Item A. from the agenda.

Action: The motion, seconded by Trustee Schutt, carried with all voting unanimous in favor.

IV. RESOLUTIONS

- b. **Resolution 14-94; A Resolution Authorizing Award Of A Construction Contract To Hirschfeld Backhoe and Pipeline, Inc.**

Gary Behlen, Director of Public Works presented Resolution 14-94 to the Board. Resolution 14-94 is a Resolution Awarding a Contract to Hirschfeld Backhoe and Pipeline, Inc. for an emergency temporary repair on the metal pipe located underneath Erie Parkway east of 111th Street.

Action: Trustee Moore moved to approve Resolution 14-94; the motion was seconded by Mayor Pro Tem Gruber. The motion was unanimous in favor with the following roll call vote:

Roll Call: Trustee Kramer - Yes
Mayor Pro Tem Gruber - Yes
Trustee Charles - Yes
Trustee Moore - Yes
Trustee Woog – Yes
Trustee Schutt - Yes
Mayor Harris – Yes

V. EXECUTIVE SESSION

Action: Trustee Charles moved to go into Executive Session for a conference with the Town Water Attorney and the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); specifically, to receive legal advice concerning Town water storage matters; and, for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); and, specifically, to discuss negotiation of new Memorandums of Understanding with the oil and gas companies. The motion, seconded by Trustee Kramer, carried with all voting unanimous in favor.

Mayor Harris announced, it's Thursday, August 14, 2014, and the time is 5:40 p.m. For the record, I am the presiding officer, Mayor Tina Harris. As required by the Open Meetings Law, this executive session is being electronically recorded.

Also present at this executive session are the following persons:

Mayor Pro Tem Mark Gruber; Trustees Janice Moore, Dan Woog, Scott Charles, Jennifer Kramer, and Waylon Schutt; Town Administrator A.J. Krieger; Public Works Director Gary Behlen; Economic Development Coordinator Paula Mehle; Assistant to the Town Administrator Fred Diehl; Town Water Attorney Eugene Reardon; and, Town Attorney Mark Shapiro.

This is an executive session for the following purpose:

For a conference with the Town Water Attorney and the Town Attorney for the purpose of receiving legal advice on specific legal questions under C.R.S. Section 24-6-402(4)(b); specifically, to receive legal advice concerning Town water storage matters; and, for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators, under C.R.S. Section 24-6-402(4)(e); and, specifically, to discuss negotiation of new Memorandums of Understanding with the oil and gas companies.

Upon completion of the Executive Session, Mayor Harris announced that the time is now 8:43 p.m., and the executive session has been concluded. The participants in the executive session were:

Mayor Tina Harris; Mayor Pro Tem Mark Gruber; Trustees Janice Moore, Dan Woog, Scott Charles, Jennifer Kramer, and Waylon Schutt; Town Administrator A.J. Krieger; Public Works Director Gary

Behlen; Economic Development Coordinator Paula Mehle; Assistant to the Town Administrator Fred Diehl; Town Water Attorney Eugene Reardon; and, Town Attorney Mark Shapiro.

For the record, if any person who participated in the executive session believes that any substantial discussion of any matters not included in the motion to go into the executive session occurred during the executive session, or that any improper action occurred during the executive session in violation of the Open Meetings Law, I would ask that you state your concerns for the record.

Seeing none, the next agenda item is adjournment.

VI. ADJOURNMENT

Action: Trustee Charles moved to adjourn the August 14, 2014 Town of Erie Board of Trustees Special Meeting; the motion was seconded by Trustee Schutt. The motion carried with all voting unanimous in favor.

Action: Mayor Harris adjourned the August 14, 2014 Town of Erie Board of Trustee Special Meeting at 8:44 p.m.

Respectfully Submitted,

Melinda Helmer, Deputy Town Clerk

Tina Harris, Mayor

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM
Board Meeting Date: August 26, 2014

SUBJECT: **RESOLUTION**
Resolution 14-91: A Resolution Authorizing The Town Of Erie To Allocate and Transfer \$200,000 And Advance as a Loan \$170,000 To The Town Of Erie Housing Authority To Facilitate The Refinancing Of Its Mortgage Loan With Summit Bank & Trust; And, Setting Forth Details In Relation Thereto.

DEPARTMENT: Finance

PRESENTER: **Steve Felten**
Finance Director

FISCAL	Cost as Recommended:	\$200,000.00 (plus \$170,000 advance)
INFORMATION:	Balance Available:	\$0.00
	Budget Line Item Number:	100 . 80 . 110 . 800810 . 000000
	New Appropriation Required:	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

STAFF RECOMMENDATION: **Staff recommends the Board of Trustees approve the request to transfer/advance funds to the housing authority to facilitate the refinancing of its mortgage loan.**

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Town of Erie Housing Authority originally obtained financing for construction of the current living units through the issuance of a bond in 2001. This bond was subsequently refinanced with a mortgage loan from Great Western Bank in 2004. The mortgage loan carries a rate of 4.50% and provides for monthly payments of \$4,398.05 (based on a 30 year amortization period), but requires a balloon payment of approximately \$685,000 on September 4, 2014, the maturity date of the mortgage loan.

At the April 8th Board meeting the Board approved the staff's request to authorize staff to enter into a six-month loan extension with Great Western Bank. At that time the terms of the loan extension were not known. In June 2014 the Town received the extension terms from the bank, which required a loan payment of approximately \$200,000 in September. This was the first time there had been any indication from the bank that a partial pay-down would be required for the extension.

As a result, staff contacted Summit Bank and Trust to see if they could offer more favorable terms to refinance the loan. While the final details are still pending a completion of an appraisal, Summit has offered a two year refinancing period, with no pay-down on the loan. As proposed there would be two loans. One would be a real estate loan secured by the property, with the amount to be lent equal to 80% of the appraised value. This loan, with an estimated principal balance of \$320,000 (pending the final appraisal), would carry the same rate as the current mortgage loan (4.50%) and be amortized over the same period.

The second loan would be a cash-secured loan with a current estimated principal balance of \$370,000 and carry an interest rate of 3.25%. Interest only payments would be required during the 2-year term. Total debt service on the two loans would be approximately \$1,300 less than under the current mortgage. Summit's offer also gives the Town a full two years to accomplish the transfer of the property to Brothers Redevelopment. Great

Western's offer will require yet another extension discussion in six months, as the length of their initial extension offer does not allow enough time to effect any transfer. In addition, while more cash will have to be transferred to the Housing Authority pursuant to Summit's extension offer, all the funds will stay within the Authority and be available in the future.

As just stated, the Summit offer does require the Town's General Fund to advance/transfer approximately \$365,000 to the Housing Authority, which is \$170,000 more than the amount required to be paid to Great Western under their offer. But the difference of \$170,000 would be returned to the Town upon transfer of the property to Brothers. The remaining \$200,000 would be applied to the then outstanding loan balances to bring them down to an amount equal to the price Brothers will purchase the property pursuant to the option agreement approved by the Board on February 25, 2014.

To minimize the amount of cash required to be transferred to the Authority to serve as collateral for the cash-secured loan, through a separate Town of Erie ordinance staff is recommending the transfer of the underlying land currently owned by the Town to the Housing Authority. At the time of construction of the apartments in 1999-2000, the underlying land was owned by the Town and leased to the Authority for \$1.00. By transferring the land to the Authority it will be able to pledge the land as collateral on the loan with Summit.

Staff recommends that the Commissioners approve Resolution 14-91, authorizing the transfer of \$200,000 and the advance of \$170,000 to the Town of Erie Housing Authority to facilitate the refinancing of its mortgage loan maturing September 4, 2014.

Staff Review:

- _____ Town Attorney
- _____ Town Clerk
- _____ Community Development Director
- _____ Finance Director
- _____ Police Chief
- _____ Parks and Recreation Director
- _____ Public Works Director

Approved by:



A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-91
- b. Summit Bank & Trust Term Sheet

RESOLUTION NO. 14-91

A RESOLUTION AUTHORIZING THE TOWN OF ERIE TO ALLOCATE AND TRANSFER \$200,000 AND ADVANCE AS A LOAN, \$170,000 TO THE TOWN OF ERIE HOUSING AUTHORITY TO FACILITATE THE REFINANCING OF ITS MORTGAGE LOAN WITH SUMMIT BANK & TRUST; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town of Erie, Colorado, established the Erie Housing Authority (EHA) in 1999, and built a 12 unit senior housing complex in 2001; and

WHEREAS, the EHA obtained a mortgage on this complex which currently has a balloon payment due on September 4, 2014 and Staff is recommending refinancing of the current loan to obtain more favorable terms; and

WHEREAS, the property carries a mortgage balance which is more than the appraised value and the EHA is subsidized by the Town; and

WHEREAS, on February 25, 2014 the Town of Erie Board of Trustees approved an option agreement to transfer all properties to Brothers Redevelopment, Inc. for the appraised value; and

WHEREAS, \$170,000 is required as part of the refinancing and will be repaid to the Town upon the completion of the sale of the property; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to refinance this loan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees of the Town of Erie hereby approves an allocation and transfer from the General Fund in the amount of \$200,000.00 to the Erie Housing Authority to supplement the discrepancy in the loan amount versus the appraised value.

Section 2. The Board of Trustees of the Town of Erie hereby approves the advance of \$170,000 in the form of a loan to the Erie Housing Authority as part of the refinancing, with said loan to be repaid upon the sale of the property.

Section 3. That authorizing allocation and transfer of \$200,000 and advance as a loan, in the amount \$170,000 to the town of Erie Housing authority to facilitate the refinancing of its mortgage loan is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, Town Clerk

July 25, 2014

Erie Housing Authority
Attn: Steve Felten
645 Holbrook Street
P.O. Box 750
Erie, CO 80516

RE: Approved Loan Terms; Real Estate Refinance

Dear Steve:

On behalf of Summit Bank & Trust (herein referred to as 'Bank'), I am pleased to provide the following approved loan terms for your financing needs. This letter shall serve as the approval and commitment of a commercial real estate loan with the below terms:

#1 CREDIT FACILITY – COMMERCIAL REAL ESTATE LOAN

Type: Commercial Real Estate Loan

Borrower: Erie Housing Authority

Guarantor(s): N/A

Amount: \$320,000 (80% maximum Loan-to-Value based on bank-ordered and reviewed appraisal)

Application of Loan Proceeds: Refinance existing loan currently held with Great Western Bank

Collateral: 1) First real estate mortgage on the subject property located at 800 High Street, Erie, CO
2) Assignment of Rents on subject property

Flood Certification: Prior to disbursing any loan proceeds, the Bank shall receive a flood certification satisfactory to the Bank.

Term: 2 years

Amortization: 20 years

Interest Rate: Fixed at 4.50%

Interest Method: The interest rate shall be computed on an actual/360 day basis.

Origination Fee: \$2,000

Documentation Fee: N/A

Prepayment Fee: None

Payments: Principal and interest payments due monthly (estimated monthly payment of \$2,037)

#2 CREDIT FACILITY – CASH SECURED TERM LOAN

Type: Commercial Loan

Borrower: Erie Housing Authority

Guarantor(s): N/A

Amount: \$370,000

Application of Loan Proceeds: Payoff real estate secured loan currently held at Great Western Bank

Collateral: Assignment of Summit Bank & Trust Savings Account with a balance of no less than \$370,000

Term: 2 years

Amortization: N/A

Interest Rate: Fixed at 3.25%

Interest Method: The interest rate shall be computed on an actual/360 day basis.

Documentation Fee: None

Prepayment Fee: N/A

Payments: Interest only due monthly

Covenant: Borrower shall provide annual company prepared financial statements and shall provide a copy of rent roll on an annual basis

Expenses: The Borrower shall be responsible to pay any expenses (including, but not limited to, title, legal and flood fees) incurred by the Bank in connection with this financing.

Insurance: The Borrower shall provide the Bank with evidence of insurance listing the Bank as loss payee covering the collateral against loss by fire and/or any other casualty losses in amounts satisfactory to the Bank. Insurance will include a loss of income rider. An acceptable insurance loss payee certificate shall be presented to the Bank. The Borrower shall continuously maintain acceptable insurance coverage on the collateral so long as the loan is outstanding. The insurance company shall notify the Bank 30 days prior to any cancellation.

Financial Reporting: Annually, the Bank shall be provided with year-end financial statements on The Erie Housing Authority within 45 days of fiscal year-end.

Annually, the Bank shall be provided with an updated rent roll for the collateral property.

The Borrower shall provide any additional financial information within a timely manner as reasonably requested by the Bank.

Closing: The closing of this loan shall be at a mutually agreed upon time.

Expiration of Commitment: The terms and condition presented herein will expire on August 15, 2014 if not accepted by you prior to that date.

I appreciate this opportunity to provide you with the approved loan terms, and look forward to working with you. Should you have any questions, feel free to give me a call at 303-460-4702.

Sincerely,

Kurt M Sava
Senior Business Banker, V.P.
Summit Bank and Trust

ACCEPTED:

This _____ day of _____, 2013

Steve Felten

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM
Board Meeting Date: August 26, 2014

SUBJECT:

RESOLUTIONS: CONSENT:

CONSIDERATION OF RESOLUTION 14-95: A Resolution By The Board Of Trustees Of The Town Of Erie, Colorado Accepting Dedications As Shown On The Daybreak Filing No. 1A, 1st Amendment Minor Subdivision Plat; Authorizing The Appropriate Town Official To Sign The Daybreak Filing No. 1A, 1st Amendment Development Agreement; Adopting Certain Findings Of Fact And Conclusions Favorable To The Acceptance Of The Dedications and the Development Agreement; And, Setting Forth Details In Relation Thereto.

CODE REVIEW:

Erie Municipal Code, Title 10

PURPOSE:

Board of Trustees to consider the acceptance of dedications on the Daybreak Filing No. 1A, 1st Amendment Minor Subdivision Plat; and authorization to sign the Daybreak Filing No. 1A, 1st Amendment Development Agreement.

DEPARTMENT:

Community Development

PRESENTER:

Todd Bjerkaas, Senior Planner

FISCAL

INFORMATION:

Cost as Recommended: na
Balance Available: na
Budget Line Item Number: 000 . 00 . 000 . 000000 . 000000
New Appropriation Required: Yes No

STAFF

RECOMMENDATION:

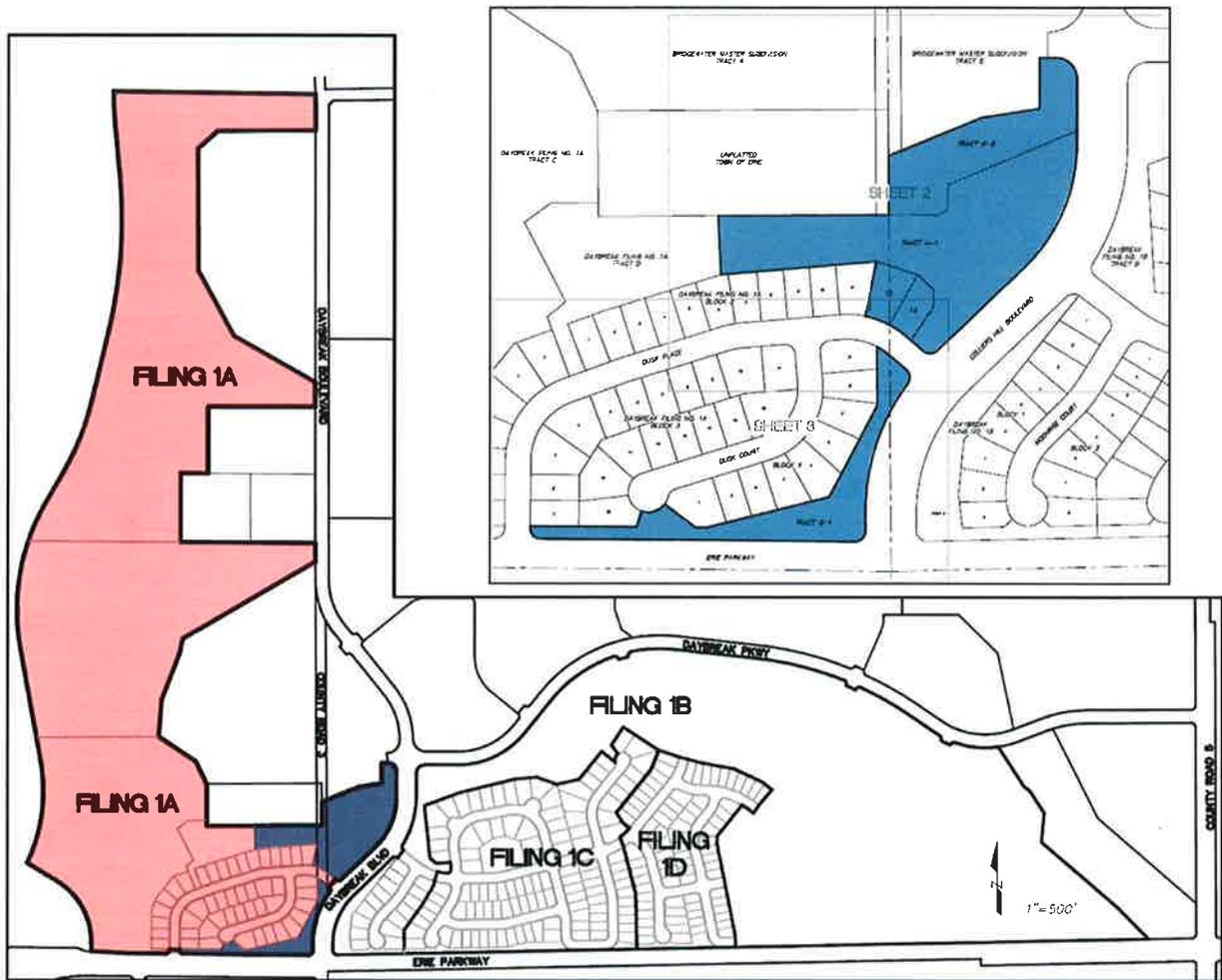
Staff recommends the Board of Trustees authorize the Mayor to accept the dedications and authorize signature of the Development Agreement by approving Resolution 14-95.

PLANNING COMMISSION n/a
RECOMMENDATION:

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Applicant: Community Development Group of Erie, Inc.
Attn: Charles Bellock
2500 Arapahoe Road, Suite 220
Boulder, CO 80302

Location: Portion of Daybreak Filing No. 1A, north of Erie Parkway and west of Colliers Hill Boulevard. Filing 1A is highlighted below in red. Daybreak Filing No. 1A, 1st Amendment is highlighted in the inset map in blue.



Summary:

The Resolution, provided for consideration by the Board of Trustees, accepts dedications and authorizes the appropriate town official to sign the Daybreak Filing No. 1A Development Agreement which outlines obligations of the Town and the Owners for the Daybreak Filing No. 1A, 1st Amendment Minor Subdivision Plat.

Project Description:

The Daybreak Filing No. 1A, 1st Amendment minor subdivision plat creates 2 single family lots and 3 landscape/open space tracts on 7.22 acres. Portions of the two lots and three tracts were previously in Weld County Road 3 right-of-way. Upon the Board of Trustees approval of the vacation of a part of Weld County Road 3 through this filing, the vacated ROW is available for platting of lots and tracts as shown in the approved Bridgewater Preliminary Plat.

Project Process:

The Community Development Director and Public Works Director have conditionally approved the Daybreak Filing No. 1, 1st Amendment Minor Subdivision Plat, contingent upon the acceptance of the

dedications and development agreement by the Board of Trustees and the filing of appropriate documents with Town staff.

Public Notice:

Public Notice is not required.

Staff Recommendation:

Staff recommends the Board of Trustees authorize the Mayor to accept the dedications and authorize signature of the Development Agreement by approving Resolution 14-95.

Staff Review:

____ Town Attorney
____ Town Clerk
 Community Development Director
____ Finance Director
____ Police Chief
____ Public Works Director

Approved by:



A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-95
- b. Daybreak Filing No. 1A, 1st Amendment Final Plat
- c. Daybreak Filing No. 1A, 1st Amendment Development Agreement

ATTACHMENT A

RESOLUTION NO. 14-95

A RESOLUTION BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO ACCEPTING DEDICATIONS AS SHOWN ON THE DAYBREAK FILING NO. 1A, 1ST MINOR SUBDIVISION PLAT; AUTHORIZING THE APPROPRIATE TOWN OFFICIAL TO SIGN THE DAYBREAK FILING NO. 1A, 1ST AMENDMENT DEVELOPMENT AGREEMENT; ADOPTING CERTAIN FINDINGS OF FACT AND CONCLUSIONS FAVORABLE TO THE MINOR SUBDIVISION PLAT AND ACCEPTANCE OF THE DEDICATIONS AND DEVELOPMENT AGREEMENT; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Board of Trustees of the Town of Erie, Colorado, considered the acceptance of dedications and the development agreement on August 26, 2014, on the application of Community Development Group of Erie, Inc., 2500 Arapahoe Road, Suite 220, Boulder, CO 80302, for the Daybreak Filing No. 1A, 1st Amendment Minor Subdivision Plat, Town of Erie, County of Weld, State of Colorado; and,

WHEREAS, the Board of Trustees of the Town of Erie, desires to accept the dedications from Community Development Group of Erie, Inc.; and,

WHEREAS, the Board of Trustees of the Town of Erie, believes it is in the best interest of the Town and its citizens to accept the Daybreak Filing No. 1A, 1st Amendment Development Agreement and to accept financial guarantees for improvements to be constructed by the Owner or assignee.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. The Board of Trustees of the Town of Erie hereby accepts the dedications as set forth on the Daybreak Filing No. 1A, 1st Amendment Minor Subdivision Plat.

Section 2. The Board of Trustees of the Town of Erie hereby approves the Daybreak Filing No. 1A, 1st Amendment Development Agreement for the Daybreak Filing No. 1A, 1st Amendment Minor Subdivision Plat, and authorizes the appropriate Town Official to sign and bind the Town to the Development Agreement.

INTRODUCED, READ, SIGNED AND APPROVED this 26th day of August 2014.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy J. Parker, CMC, Town Clerk

ATTACHMENT B

ATTACHMENT C

**DAYBREAK FILING NO. 1A, 1ST AMENDMENT
DEVELOPMENT AGREEMENT**

THIS DEVELOPMENT AGREEMENT (“Agreement”) is made and entered into this _____ day of _____ 2014, by and between the **TOWN OF ERIE, a Colorado municipal corporation**, PO Box 750, Erie, Colorado, 80516, hereinafter referred to as “Erie” or “Town,” and **COMMUNITY DEVELOPMENT GROUP OF ERIE, INC., a Colorado corporation**, 2500 Arapahoe, Suite 220, Boulder, Co. 80302, hereinafter referred to as “Owner;” and

WHEREAS, Owner has submitted a Final Plat for the Daybreak Filing No. 1A, 1ST Amendment (“Development”) attached hereto as “Exhibit A” and incorporated herein by reference. Said Final Plat has been approved by Erie; and

WHEREAS, The Town has reviewed its Water Supply Plan, which addresses the Town's existing water obligations and its present and future water supplies. The Town has also reviewed its Conservation Plan and its Municipal Code regarding water dedications, and has determined, at its sole discretion, that it will be able to provide an adequate water supply to serve the Properties water needs at full build out pursuant to Section 29-20-301 C.R.S. et seq. As a term and condition of providing said water, the Developer hereby agrees to comply with the Town's Municipal Code regarding water dedications and cash in lieu of water dedications; and

WHEREAS, the regulations of Erie require that the Owner enter into an Agreement with Erie relative to improvements related to the development; and

WHEREAS, this standard agreement has been modified by the parties as indicated by the addition of certain special provisions, if any, in Section IX.

NOW, THEREFORE, in consideration of the foregoing, the parties hereto promise, covenant and agree as follows:

I. TOWN ADMINISTRATIVE OFFICIAL

For the purposes of this Agreement, “Town Administrative Official” shall be defined as the Town Administrator or his or her designee.

II. DEVELOPMENT OBLIGATION AND COORDINATION

Owner shall be responsible for performance of the covenants set forth herein. Unless specifically provided in this Agreement to the contrary, all submittals to Erie and acceptances required of Erie in connection with this Agreement shall be submitted to, or rendered by, the Town Administrative Official, who shall have general responsibility for coordinating development with Owner.

III. PUBLIC USE DEDICATION

Owner shall convey to Erie certain lands as described as open space and park in “Exhibit A” attached hereto and incorporated herein by reference. Conveyance of these lands shall be by Warranty Deed in form and substance acceptable to Erie. If not already conveyed, conveyance shall

be made within thirty (30) days of the date of this Agreement. Owner shall also furnish at the time of conveyance, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to acceptance by the Town of Erie. The property shall be free and clear of liens, taxes and encumbrances except for ad valorem real property taxes up to the date of dedication to the Town, but subject to all easements, rights-of-way, reservations, restrictions or other title burdens of record.

IV. PUBLIC AND COMMON FACILITIES IMPROVEMENTS

Owner agrees to design, construct and install according to Town accepted plans, all public improvements and common facilities specifically regulated necessary for the Development including, but not limited to, street, alley, curb, gutter, sidewalks, landscaping, irrigation, fencing, street lights, water, waste water, storm sewer and drainage improvements, trails and park improvements on and off of the Development (hereinafter, "Public Improvements" and "Common Facilities") and as described in "Exhibit B" attached hereto and made part hereof. Owner agrees to dedicate said improvements to Erie, or others for the common facilities, and give a two (2) year guarantee for all improvements constructed.

A. Construction Standards

Owner shall construct all improvements required by this Agreement, and any other improvements constructed in relation to the Development, in accordance with plans and specifications accepted in writing by Erie, and in full conformity with Erie's "Standards and Specifications for Design and Construction of Public Improvements," ordinances and regulations.

B. Engineering and Consulting Services

Owner agrees to furnish, at its expense, all necessary engineering and consulting services relating to the design and construction of the Development, including but not limited to, street, alleys, curb, gutter, sidewalks, landscaping, irrigation, fencing, street lights, signage, water, waste water, storm sewer and drainage improvements, trails and park improvements. Said engineering and consulting services shall conform to the standards and criteria for Public Improvements as established and accepted by Erie. These services shall be performed by or under the supervision of a Registered Professional Engineer and/or Registered Land Surveyor, or other professionals as appropriate, licensed by the State of Colorado, and in accordance with applicable Colorado law. The design services shall include inspection services deemed necessary by Erie.

C. Plan Submission and Acceptance

Owner shall furnish to the Town Administrative Official the required fees and complete plans for all improvements and development phases. Erie shall issue its written acceptance or rejection of said plans as expeditiously as reasonably possible. Said acceptance or rejection shall be based upon the standards and criteria for Public Improvements as established by Erie, and Erie shall notify Owner of all deficiencies which must be corrected prior to acceptance. All deficiencies shall be corrected and said plans shall be resubmitted to and accepted by Erie prior to construction. All acceptances required hereunder from Erie shall be made by the Town Administrative Official.

D. Public Improvement Permits ("PIP")

Before the construction or installation of any improvements, Owner shall obtain a PIP from

Erie as provided in the Code. The PIP application, fees, plans, specifications and any other data filed by Owner will be reviewed by Erie. If found to be complete and in accordance with Erie's "Standards and Specifications for Design and Construction of Public Improvements" and other pertinent requirements, Erie will issue Owner the PIP. Owner shall reimburse Erie for any additional expenses incurred by Erie for the review of plans or inspection of construction work by consultants engaged by Erie for that purpose. The Developer shall also apply and pay for a PIP for all common facilities.

E. Testing and Inspection

Testing and inspection of the construction and materials shall be in accordance with Erie's "Standards and Specifications for Design and Construction of Public Improvements." In addition, Owner shall employ, at its own expense, a licensed and registered testing company, to perform all testing of materials or construction that may be reasonably required by Erie. Owner shall furnish copies of test results to the Town Administrative Official on a timely basis for review and acceptance prior to commencement or continuation of that particular phase of construction. At all times during said construction, Erie shall have access to inspect the materials and workmanship of said construction and all materials and work not conforming to the accepted plans and specifications shall be repaired or removed and replaced at Owner's expense so as to conform to the accepted plans and specifications.

All work shown on the accepted Public Improvements improvement plans requires inspection by the Public Works Department, Engineering Division. Except Town of Erie holidays, inspection services are provided Monday through Friday, from 7:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of 24 hours in advance with the Engineering Division. Requests for inspection services beyond the hours listed above shall be submitted a minimum of 48 hours in advance in writing to the Director of Public Works for acceptance. Owner shall reimburse the Town for all direct costs of the after hours inspection services. If the request is denied, the work shall not proceed before or after the hours listed above.

Common Facilities shall have inspections performed by a professional consulting service acceptable to Erie. At all times Erie shall have access to inspect the materials and workmanship of the Common Facilities if deemed necessary by Erie. Inspection services for landscaping will also include the selection and tagging of plant materials prior to delivery to the site. Landscape and irrigation inspection services shall conform to the Erie's "Standards and Specifications for Design and Construction of Public Improvements."

F. Rights-of-way, Easements and Permits

Prior to commencement of construction of Public Improvements that require additional rights-of-way to be acquired, Owner shall acquire at its own expense and convey to Erie, all necessary land, rights-of-way and easements required by Erie for the construction of the proposed improvements related to the Development. Owner is only obligated to acquire that portion of land, rights-of-way and easements necessary for the construction of Public Improvements, roads and utilities required by this Agreement.

All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be

by Special Warranty Deed or easement in a form and substance acceptable to Erie. All title documents shall be recorded by Erie at Owner's expense. Owner shall also furnish, at its own expense, an ALTA title insurance policy for all interest(s) so conveyed, subject to acceptance by Erie.

Owner shall be responsible for obtaining the following to the extent applicable:

1. All permits as required by the United States Corps of Engineers.
2. Colorado Department of Health and Environment ("CDPHE") "General Permit for Stormwater Discharges Associated with Construction Activity", required during construction.
3. Town of Erie "Grading and Stormwater Quality Permit" per Erie "Standards and Specifications for Design and Construction of Public Improvements."
4. Air Quality Permit.

G. Street Improvements

Owner shall furnish and install, at its own expense, the street improvements in conformance with the drawings, plans and specifications accepted by Erie and in accordance with the PIP.

H. Sidewalk Improvements

Owner shall furnish and install, at its own expense, all sidewalk improvements in conformance with the drawings, plans and specifications accepted by Erie. To minimize construction damage, detached sidewalk construction may be delayed until Certificates of Occupancy are issued for 80% of the properties facing a specific street on which sidewalks are to be constructed. Erie may require earlier construction if it determines that such sidewalks are needed for the safe passage of residents.

I. Street Signs, Traffic Signs, and Striping

Owner will furnish and install at Owners expense street name signs, striping, stop signs, speed limit and other signs on all streets, in accordance with the Manual of Uniform Traffic Control Devices, as from time to time amended, and other applicable legal requirements.

J. Street Lights

Owner shall furnish complete plans for street lighting to be reviewed and accepted by Erie. The total cost of street light installation shall be Owner's obligation. Owner shall cause, at its own expense, United Power to install all required street lighting pursuant to United Power plans and specifications as submitted to and accepted in writing by the Town Administrative Official. Said street lights shall be installed concurrently with the streets on which they are located. The type of street lights shall be accepted by Erie.

K. Water Improvements

Owner shall furnish and install all water mains, lines, and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

L. Wastewater Improvements

Owner shall furnish and install all sewer lines and appurtenances in conformance with the drawings, plans and specifications accepted by Erie.

M. Drainage Improvements

1. Drainage improvements for the Development shall be constructed by Owner in accordance with drawings, plans and specifications accepted by Erie. Unless otherwise approved by Town, over lot grading shall not be initiated by Owner until Erie approves drainage improvement plans by the issuance of the PIP. Owner shall provide temporary erosion control during and after over lot grading until the site is stabilized.
2. Drainage improvements for the Development shall be constructed by the Owner in accordance with accepted construction plans.
3. Owner shall be responsible for obtaining a CDPHE “General Permit for Stormwater Discharges Associated with Construction Activity” required during construction. A copy of this permit shall be submitted to Erie.
4. Owner shall be responsible for obtaining a Town of Erie “Grading and Stormwater Quality Permit” per Erie’s “Standards and Specifications for Design and Construction of Public Improvements.”
5. All drainage improvements not located on Town owned property shall be maintained by the Owner, Colliers Hill Master Association, Inc. (“HOA”), maintenance district, or final property owner (the “Obligated Entity”). Drainage improvements may include, but are not limited to: landscaping, open areas, grass, shrubs, trees, retaining walls, sidewalks, ponds, pipes, underdrains, swales, drain pans, and inlet grates.
6. Owner shall include the Obligated Entity in the final inspection procedures for the drainage improvements and shall provide Erie with the Obligated Entity’s written acceptance of the maintenance responsibility for the drainage improvements.

N. Landscape Improvements

For public lands, common facilities, and rights-of-way, Owner shall furnish Erie complete final landscape and irrigation plans for each phase and obtain acceptance by Erie prior to commencement of construction. Owner shall construct landscape improvements as required in the landscape plan before the constructed improvements are accepted by Erie. Landscape plans need not be provided for private landscaping on single-family residential lots. For all development and Common Facilities other than single-family detached development, Owner shall furnish final landscape and irrigation plans to the Town Administrative Official for acceptance prior to installation of landscape improvements.

O. Utility Coordination and Installation

Owner shall be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other such utilities. All utilities shall be placed underground as required by the Erie Municipal Code (“Code”).

P. Underdrains

The Owner may choose to install foundation underdrains and a site wide underdrain collection system under the Town owned sanitary sewer system. The Town grants the use of Town owned right-of-way for these facilities but the Town assumes no maintenance responsibility for the facilities. These underdrain systems shall be maintained by the Owner, HOA, or maintenance district.

The Owner shall install a curb underdrain system pursuant to the Towns “Standards and Specifications for Design and Construction of Public Improvements” and as shown on the Town accepted construction plans. This system shall be maintained by the Town.

Q. Maintenance Definition

Maintenance is the process of preserving capital improvements, structures, development, or systems to meet its function or original intent of the facility. This is the preservation, conservation, keeping in good conditions, operating safely, operating efficiently, testing, inspection, servicing, repairing, grading, cleaning, picking up trash and debris, pest control, painting, mowing, pruning, and prolonging of these facilities. Maintenance also includes the provision of financial support to maintain the facilities. Facilities include but are not limited to: landscaping, open areas, grass, shrubs, trees, playgrounds, site furniture and fixtures, retaining walls, signs, sidewalks, drainage structures such as ponds, swales, drain pans, inlets, and outlet structures.

Maintenance may involve many different number and types of companies, services, individuals to look after the facility and the ability to coordinate these efforts. Maintenance includes both routinely scheduled activities, as well as non-routine repairs that may be required.

A maintenance plan should be prepared and submitted as part of the development review/approval process and be provided to the HOA or District responsible for maintenance activities.

V. IMPROVEMENT ACCEPTANCE

A. Construction Acceptance

No later than ten (10) days after Public Improvements and/or Common Facilities are substantially complete, Owner shall request of the Town Administrative Official an inspection by Erie. If Owner does not request this inspection within ten (10) days of completion of the Public Improvements and/or Common Facilities, Erie may conduct the inspection without the approval of Owner. Owner shall provide Erie with complete “as-built” drawings in a form as defined in the Town of Erie Construction Standards and Specifications. If Owner has not completed appropriate Public Improvements and/or

Common Facilities as provided for in this Agreement, Erie may exercise its right to secure performance as provided in Section X.C of this Agreement. If Public Improvements and/or Common Facilities completed by Owner are satisfactory, the Town Administrative Official shall grant "Construction Acceptance," which shall be subject to "Final Acceptance" as set forth herein. If Public Improvements and/or Common Facilities are not satisfactory, the Town Administrative Official shall provide written notice to Owner of the repairs, replacements, construction or other work required to receive Construction Acceptance. Owner shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After Owner completes the repairs, replacements, construction or other work required, Owner shall request of the Town Administrative Official a re-inspection of such work to determine if Construction Acceptance can be granted, and Erie shall provide written notice to Owner of the acceptability or unacceptability of such work prior to proceeding to complete any such work at Owner's expense. If Owner does not complete the repairs, replacements, or other work required within thirty (30) days of said notice, Erie may exercise its rights to secure performance as provided in Section X.C. of this Agreement. Erie reserves the right to schedule re-inspections. No "Certificate of Occupancy" will be issued by Erie prior to Construction Acceptance.

Additionally, for Common Facilities, the Owner shall include the HOA, maintenance district, or final property owner in the final inspection procedures and provide Erie with written acceptance of the Common Facilities for maintenance from this final owner.

B. Maintenance of Improvements

1. **Warranty**

Owner shall provide Erie with a minimum two (2) year warranty, from the date of Construction Acceptance, on all Public Improvements and shall provide a two (2) year warranty to the final owner for the Common Facilities.

2. **Maintenance of Improvements**

For a two (2) year period from the date of Construction Acceptance of any Public Improvements related to the Development, Owner shall, at its own expense, take all actions necessary to maintain said Public Improvements and make all needed repairs or replacements which, in the reasonable opinion of Erie, shall become necessary, except that Erie shall be responsible for snow removal on public streets. If within thirty (30) days after Owner's receipt of written notice from Erie requesting such repairs or replacements, Owner has not completed such repairs, Erie may exercise its rights to secure performance as provided in Section X.C of this Agreement.

C. Final Acceptance

At least thirty (30) days before two (2) years has elapsed from the issuance of Construction Acceptance, or as soon thereafter as weather permits, Owner shall request a Final Acceptance inspection in writing. The request shall be made to the Town Administrative Official. The Town Administrative Official shall inspect the Public Improvements and shall notify Owner in writing of all deficiencies and necessary repairs. After Owner has corrected

all deficiencies and made all necessary repairs identified in said written notice, the Town Administrative Official shall issue to Owner a letter of Final Acceptance , as soon as reasonably possible thereafter. If Owner does not correct all deficiencies and make repairs identified in said inspection to Erie's satisfaction within thirty (30) days after receipt of said notice, weather permitting, Erie may exercise its rights to secure performance as is provided in Section X.C of this Agreement. If any mechanic's liens have been filed with respect to the Public Improvements, Erie may retain all or a portion of the Improvement Guarantee up to the amount of such liens. If Owner fails to have Public Improvements finally accepted within two (2) years of the date of the issuance of construction acceptance or any Public Improvements are found not to conform to this Agreement, and applicable Town "Standards and Specifications for Design and Construction of Public Improvements," then the Owner shall be in default of the Agreement and Erie may exercise its rights under Section X.C of this Agreement.

D. Reimbursement to Erie

In the event it becomes necessary for Erie to complete the Public Improvements and/or Common Facility improvements due to the failure of Owner to complete said Public Improvements and/or Common Facility improvements, Erie may complete construction, repairs, replacements, or other work with funds other than the Improvement Guarantee, in which event Owner shall reimburse Erie within sixty (60) days after receipt of written demand and supporting documentation from the Town Administrative Official. If Owner fails to so reimburse Erie, then Owner shall be in default of this Agreement and Erie may exercise its rights under Section X.C of this Agreement.

VI. IMPROVEMENT GUARANTEE

A. Public Improvement and Common Facilities Schedule

Owner has submitted the certified Public Improvement and Common Facilities Schedule shown as "Exhibit B" attached hereto and incorporated herein by reference. Said exhibit generally identifies those Public Improvements to be furnished, installed or constructed relative to the Development. Omission of any improvement from "Exhibit B" does not relieve Owner from responsibility for furnishing, installing or constructing such improvement. The Owner shall list all Common Facilities separately and subtotal separately on "Exhibit B."

B. Improvement Guarantee

Owner shall submit to Town Administrative Official an Improvement Guarantee for all Public Improvements for the Final Plat. Said guarantee may be in cash or a letter of credit in form and substance.

1. Said guarantee, if a letter of credit, shall not expire during the winter season (November 1 - March 1). Said Improvement Guarantee shall include, but not be limited to, street, curb, gutter, sidewalks, landscaping, fencing, street lights, water, sewer, storm sewer and drainage improvements, trails and park improvements on or off the Development.

2. The total amount of the guarantee for the Development shall be calculated as a percentage of the total estimated cost including labor and materials of all Public Improvements to be constructed in the Development as described on "Exhibit B." The total minimum amounts are as follows:
 - a) Prior to commencement of construction of Public Improvements and Common Facilities improvements: 115% of the amount(s) shown on "Exhibit B." The guarantees will be provided on a phased basis as shown on "Exhibit B."
 - b) Upon Construction Acceptance of the Public Improvements in each phase through Final Acceptance: 25% of the amount(s) shown on "Exhibit B." The Town will release the guarantees for the wet utilities separate from the roadway improvements on a phased basis as shown on "Exhibit B."
 - c) Upon Construction Acceptance of Common Facilities: 0%.
 - d) After Final Acceptance of Public Improvements: 0%.
3. In addition to any other remedies it may have, Erie may, at any time prior to Final Acceptance, draw on any letter of credit or Improvement Guarantee received pursuant to this Agreement.

In the event that, a) the Owner fails to extend or replace the letter of credit at least sixty (60) days prior to expiration of such letter of credit, b) the letter of credit is set to expire, c) Erie receives notice that the letter of credit will not be renewed, d) the entity issuing the letter of credit becomes non-qualifying, or e) the letter of credit, in the sole determination of Erie, is at risk of being lost as a guarantee, then, in any of these events, the Owner shall be in default of this Agreement and Erie may immediately draw on the letter of credit for the full amount of the letter of credit. In such event as identified herein, no notice or prior notice shall be required prior to drawing on the letter of credit.

The Town may hold the funds obtained from the letter of credit until the Public Improvements and Common Facilities as set forth on "Exhibit B" are completed and accepted by the Town. In the event the Public Improvements and Common Facilities are not completed by the Owner within the time period set forth in this Agreement or in the manner as required by this Agreement, the Town may, at its sole discretion, use any or all of the funds to complete some or all of the Public Improvements and Common Facilities. In any event, the Town shall have no obligation to complete any or all of the Public Improvements and Common Facilities. Owner is further subject to the provisions of Section X.C of this Agreement, as well as the suspension of development activities by Erie including, but not limited to, the withholding of building permits and certificates of occupancy.

In the event that the cost of the Public Improvements and Common Facilities and construction is reasonably determined by Erie to be greater than the amount of the security guarantee provided by the Owner to the Town, then Erie shall furnish written notice to Owner of the condition, and within thirty (30) days of receipt of such notice Owner shall provide Erie with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance. If Owner fails to provide Erie with a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance, then Owner is in default of this Agreement, without further notice, and is subject to the provisions of Section X.C of this Agreement, as well as the suspension of development activities by Erie including, but not limited to, the withholding of building permits and certificates of occupancy.

4. If Erie draws on the letter of credit to correct deficiencies or complete Public Improvements and Common Facilities, any portion of said guarantee not utilized in correcting the deficiencies and/or completing improvements shall be returned to Owner within thirty (30) days after Final Acceptance of said Public Improvements and Common Facilities

C. Phasing

Owner's Phasing Plan is detailed on "Exhibit D." The completion of each phase of Development, including Public Improvements, Common Facilities, and private improvements, shall be in accordance with said plan and completion schedules or Erie approved modifications thereof. All modifications shall be in writing and signed by the Town Administrative Official.

VII. OVERSIZING AND REIMBURSEMENT

Erie may require Owner to build utility lines and other infrastructure large enough to serve property other than Owner's (oversizing). Erie may also require Owner to construct or participate in the construction of certain off-site Public Improvements. Certain such improvements qualify for reimbursement pursuant to the policies of Erie.

A. Reimbursement due to Owner for Qualifying Public Improvements Constructed by Owner

Owner is entitled to reimbursement for the oversize part of utilities and other infrastructure and/or a pro-rata portion of the cost of off-site Public Improvements. At the time of final approval of a subdivision plat or other development plan for properties that use these utilities or Public Improvements, Erie will require as a condition of approval, a proportional reimbursement to Owner as described in "Exhibit C," attached hereto and incorporated herein by this reference. Nothing contained in this Agreement shall operate to create an obligation on the part of Erie to pay or reimburse any costs to Owner in the event such costs are not recovered by Erie as contemplated herein, for any reason, from the properties or property owners that use the utilities or Public Improvements, so long as Erie has made a good faith effort to recover such costs.

B. Reimbursement due from Owner for Qualifying Public Improvements Constructed by Others

Owner will be required to reimburse Erie or others who have constructed oversized utilities and other infrastructure that will be utilized by Owner's property. The amount of the reimbursement due, if any, is described in "Exhibit C."

VIII. MISCELLANEOUS CONSTRUCTION STANDARDS

A. Trash, Debris, Mud

Owner agrees that during construction of the Development and improvements described herein, Owner will take appropriate steps necessary to control trash, debris and wind or water erosion in the Development. If Erie determines that said trash, debris or wind or water erosion causes substantial damage or injury or creates a major nuisance, Owner agrees to abate said nuisance and/or to correct or commence to correct within 24 hours, any damage or injury, and complete within five (5) working days after notification by Erie. If Owner does not abate said nuisance, Erie may abate the nuisance and/or correct any drainage or injury without notice to Owner, at Owner's expense. Owner also agrees to take any and all reasonable steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by Erie. If Owner does not abate, or if an emergency exists, Erie may abate at Owner's expense.

B. Operation of Construction Equipment

The operation of construction equipment outside an enclosed structure shall be prohibited on weekdays between the hours of 7:00 p.m. and 7:00 a.m. On weekend days and legal holidays the operation of such equipment outside an enclosed structure shall be prohibited between the hours of 4:00 p.m. and 8:00 a.m. The Town Administrative Official may alter the hours of operation for good cause.

IX. SPECIAL PROVISIONS

A. Transportation

1. Erie Parkway and Daybreak Boulevard are the responsibility of the Bridgewater Metropolitan District No. 1 ("District") under the Daybreak Metropolitan District Development Agreement No. 1 ("District Agreement").
2. Vertical curb shall be constructed on the streets indicated within the Daybreak Filing No. 1A Development Agreement.

B. Maintenance of Vacant Lots

Owner shall be responsible for maintenance, including weed control, on all lots within the Development until such time the lots are conveyed to a homeowner.

C. Fencing

Fencing within the Development shall be installed in accordance with Bridgewater PUD

Overlay and the Code. Fencing installed adjacent to parks and open spaces shall be limited to low (4 foot high) open (50 percent) fencing. The finished side of the fence shall face the open space.

D. Sanitary Sewer – Coal Creek Interceptor

The Town is due cost recovery at a rate of \$ 55.00 for each Single Family Equivalent (“SFE”). The reimbursement is outlined in “Exhibit C.”

E. Building Permit Allocation

Owner and Town shall follow the Building Permit Program as outlined in the Third Amendment To The Bridgewater Annexation Agreement, as it may be amended.

F. Disclosure Statements

1. The Oil and Gas Well Disclosure is evidenced by the recordation of the existing Surface Use Agreements and various Letter Agreements with the Oil and Gas companies. A statement indicating the existence of such documents (“Exhibit G”) shall be signed by the property owner with the execution of the sales contract for the property.
2. An Airport Disclosure statement indicating the existence of an Avigation Easement (“Exhibit H”) shall be signed by the property owner with the execution of the sales contract for the property.
3. An Undermining Disclosure statement indicating that undermining exists in the area (“Exhibit I”) shall be signed by the property owner with the execution of the sales contract for the property.
4. A Landfill Disclosure statement indicating that Landfills exist in the area (“Exhibit J”) shall be signed by the property owner with the execution of the sales contract for the property.

X. MISCELLANEOUS TERMS

A. Vested Rights

Erie agrees that the Final Subdivision Plat for the Daybreak Filing No. 1A, 1ST Amendment constitutes a “site specific development plan” pursuant to C.R.S. 24-68-101 et. Seq. (the “Vested Rights Act”) for that portion so platted, and in addition, that the rights which vest pursuant to the Vested Rights Act shall vest for a period of three (3) years. This Development Agreement shall be deemed to be a “development agreement” pursuant to the Vested Rights Act.

B. Ground Water Dedication

As provided by Erie ordinances, all tributary and not non-tributary ground water rights not already transferred to Erie shall be dedicated to Erie at the time of Final Plat recordation. Transfer of the water rights shall be by Special Warranty Deed tendered to Erie prior to signatures being affixed to this agreement.

C. Default

If Owner fails to fulfill the terms and conditions of this Agreement, Erie, in its sole discretion, may declare Owner in default and may call the security and draw on the letter of credit provided for in Section VI, and may further exercise all remedies available to Erie in law and equity. Erie may also, withhold any additional building permits, certificates of occupancy, or provision of new utilities fixtures or services until the completion of the Public Improvements and Common Facilities and/or the default has been cured by Owner. Any costs incurred by Erie, including, but not limited to, reasonable administrative costs and reasonable attorney's fees, in pursuit of any remedies due to the breach by Owner shall be paid by Owner. Erie may deduct these costs from the Improvement Guarantee. Erie shall have the right to enforce the Owner's obligations hereunder by an action for any equitable remedy, including injunction or specific performance, or an action to recover damages. No remedy or election hereunder shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

If Owner fails to fulfill the terms and conditions of Section VI of this Agreement, or any other monetary, security or surety default, Erie, in its sole discretion, may declare Owner in default and may immediately call the security due and draw on the letter of credit provided for in Section VI without notice to Owner, and may further exercise all remedies available to Erie in law and equity and as provided for herein.

D. Insurance and Safety

Owner shall, through contract requirements and other normal means, guarantee and furnish to Erie proof thereof that all employees and contractors engaged in the construction of improvements are covered by adequate Workman's Compensation Insurance and Public Liability Insurance, and shall require the faithful compliance with all provisions of the Federal Occupational Safety and Health Act (OSHA).

E. Indemnification and Release of Liability

Owner agrees to indemnify and hold harmless Erie, its officers, employees, agents, or servants, and to pay any and all judgments rendered against said persons on account of any suit, action, or claim caused by arising from, or on account of acts or omissions by Owner, its officers, employees, agents, consultants, contractors, and subcontractors, and/or suit, action, or claim resulting from mineral right disputes and/or Owner's failure to abide by the terms of this Agreement, and to pay to Erie and said persons their reasonable expenses, including but not limited to, reasonable attorney's fees and reasonable expert witness fees, incurred in defending any such suit, action or claim. Owner's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents, or servants of Erie or conformance with requirements imposed by Erie, said obligation of Owner shall be limited to suits, actions, or claims based upon conduct prior to Final Acceptance by Erie of the construction work. Owner acknowledges that Erie's review and acceptance of plans for development of the Development is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and no specific relationship with or duty of care to, Owner or third parties is assigned by such review acceptance.

F. Recording Agreement

Erie shall record this Agreement at Owner’s expense in the office of the Clerk and Recorder, County of Weld, State of Colorado, and Erie shall retain the recorded Agreement.

G. Binding Effect of Agreement

This Agreement shall be binding upon and inure to the benefit of the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the Property, and shall constitute covenants running with the land. Owner shall not be released from its obligations hereunder until written notice to the Erie Administrative Official of the assignment of said obligations to a successor, accompanied by written acceptance of such obligations by the successor, have been received by Erie and consent to such assignment by Erie as required by Paragraph X.H has been granted. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at Owner’s expense. Subject to the conditions precedent herein, this Agreement may be enforced in any court of competent jurisdiction.

H. Assignment, Delegation and Notice

Owner shall provide to the Erie Administrative Official, for consent, written notice of: 1) any proposed transfer of title to all or any portion of the Development, 2) arrangements for delegation or transfer of the Improvement obligations hereunder to any successor, and 3) successor’s written acceptance of such Improvement obligations. Notwithstanding the forgoing, Owner may sell developed lots or all of the multi-family tracts without Erie’s consent, provided that the purchaser deposits with Erie all guaranties, security and sureties required under this Agreement. Until the Erie Administrative Official provides written consent to the assignment, Owner and Owner’s successors and assigns shall be jointly and severally liable for the assigned Improvement obligations. Erie will not unreasonably withhold, delay or condition its consent to assignment. Erie may withhold its consent in the event it reasonably determines that the Improvement obligations or any constituent element of this Agreement may not be fulfilled through assignment or that the benefit of Erie’s bargain under this Agreement may be materially and adversely impaired by such assignment.

I. Modification and Waiver

No modification of the terms of this Agreement shall be valid unless in writing and executed with the same formality as this Agreement, and no waiver of the breach of the provisions of any sections of this Agreement shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

J. Addresses for Notice

Any notice or communication required or permitted thereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage, prepaid, registered or certified mail, return receipt requested, addressed as follows:

Erie:

Owner:

Community Development Group of

Town of Erie
Town Administrator
P.O. Box 750
Erie, Colorado 80516-0750

Erie, Inc.
Chuck Bellock
2500 Arapahoe, Suite 220
Boulder, Co. 80302

Mark Shapiro
Mark R. Shapiro, PC

1650 38th Street, Suite 103
Boulder, CO 80301-2624

Jim Johnson
Otten Johnson Robinson Neff and
Ragonetti
950 Seventeenth Street, Suite 1600
Denver, CO 80202

With a copy to such other address or the attention of such other person(s) as hereafter designated in writing by the applicable parties in conformance with this procedure. Notices shall be effective upon mailing or personal delivery in compliance with this paragraph.

K. Force Majeure

Whenever Owner is required to complete construction, maintenance, repair, or replacement of improvements by an agreed upon deadline, Erie shall grant a reasonable extension of time if the performance cannot, as a practical matter, be completed in a timely manner due to Acts of God or other circumstances constituting force majeure or beyond the reasonable control of Owner.

L. Approvals

Whenever approval or acceptance of a matter is required or requested of Erie pursuant to any provisions of the Agreement, Erie shall act reasonably in responding to such matter.

M. Previous Agreements

All previous written agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation, Pre-Annexation Agreement, or Development Agreement shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this Agreement, then this Agreement controls.

N. Title and Authority

Owner warrants to Erie that Community Development Group of Erie, Inc. is the record owner for the property within the Development. The undersigned further warrant having full power and authority to enter into this Agreement.

O. Severability

If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have ratified this Agreement including each part, section, subsection, sentence, clause or phrase thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

P. Legal Fees; Venue

In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this agreement, the defaulting party shall pay the other's reasonable attorney's fees and costs incurred in enforcing the provisions of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Weld, State of Colorado.

Q. Agreement Status After Final Acceptance

Upon Final Acceptance by Erie of all improvements and compliance by Owner with all terms and conditions of this Agreement, and provided that no litigation or claim is pending relating to this Agreement, this Agreement shall terminate and no longer be in effect.

R. Enforceability

This Agreement is made only between the Owner and Erie, or their successors and assigns, and is not intended to benefit, and may not be enforced by, any third parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

TOWN OF ERIE:

OWNER:
COMMUNITY DEVELOPMENT GROUP
OF ERIE, INC

Tina Harris, Mayor

By: _____

ATTEST:

Nancy J. Parker, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF _____)

Subscribed and sworn to before me this ____ day of _____, 20__, by
_____ as _____ of Community Development Group of
Erie, Inc.

Witness my hand and official seal.
My Commission expires _____.

Notary Public

EXHIBITS LIST

EXHIBIT A – DAYBREAK FILING NO. 1A, 1ST AMENDMENT FINAL PLAT

EXHIBIT B – PUBLIC IMPROVEMENT SCHEDULE

EXHIBIT C – PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

EXHIBIT D – PHASING PLAN

EXHIBIT E – VERTICAL CURB LOCATION MAP

EXHIBIT F – LANDSCAPE MAINTENANCE MAP

EXHIBIT G – OIL AND GAS WELL DISCLOSURE

EXHIBIT H – AIRPORT DISCLOSURE

EXHIBIT I – UNDERMINING DISCLOSURE

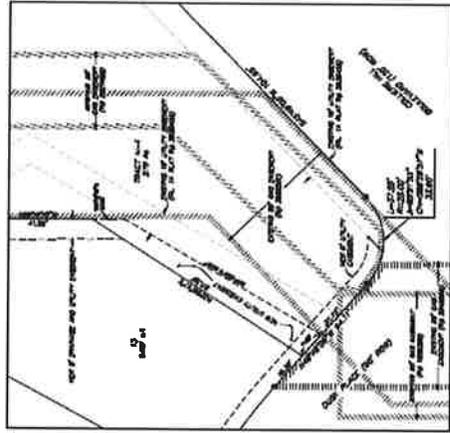
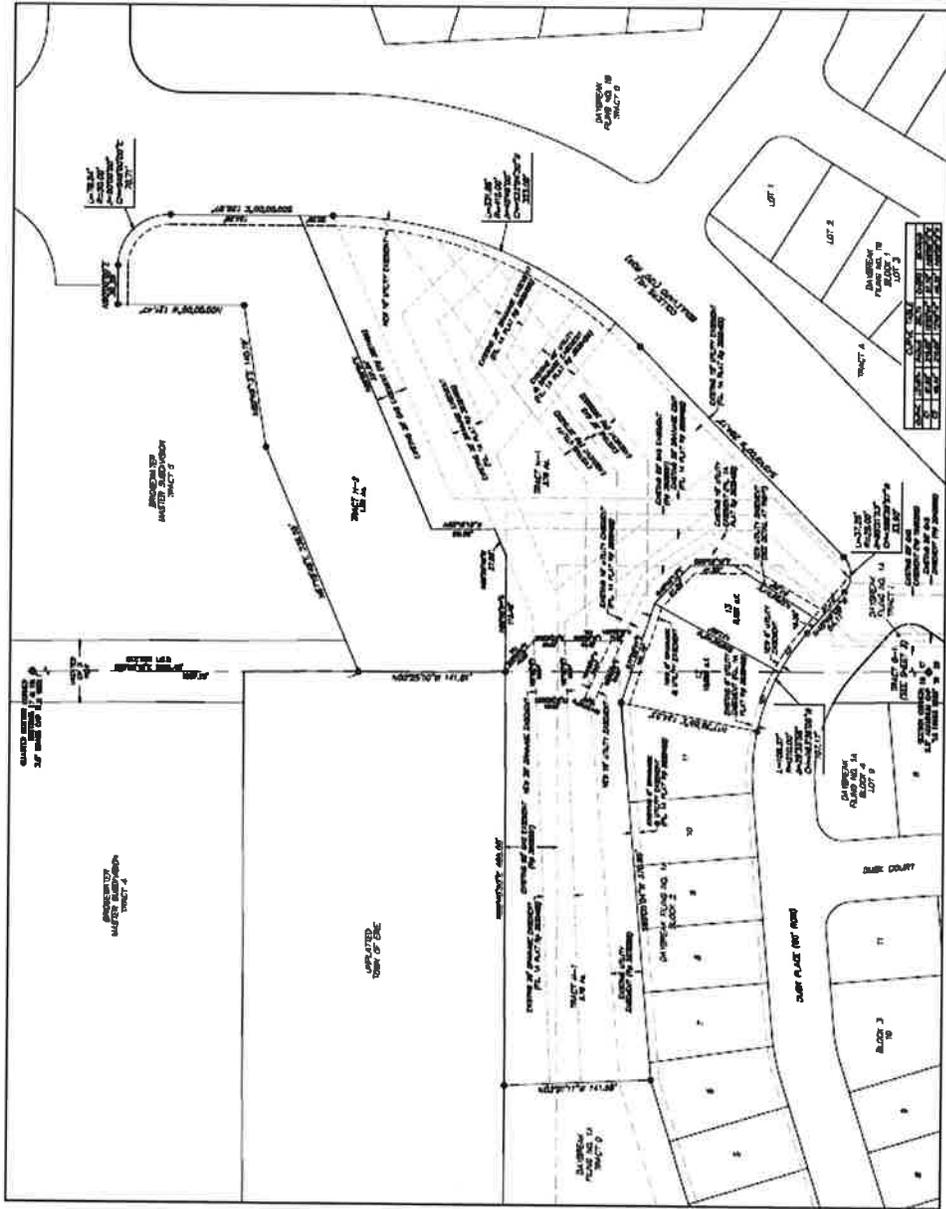
EXHIBIT J – LANDFILL DISCLOSURE

EXHIBIT A

DAYBREAK FILING NO. 1A, 1ST AMENDMENT FINAL PLAT

DAYBREAK FILING NO. 1A, 1ST AMENDMENT
 MINOR SUBDIVISION

MS-13-00057
 SHEET 2 OF 3



DETAIL (1"=20')

DAYBREAK FILING NO. 1A
 MINOR SUBDIVISION
 ETRR, COLORADO

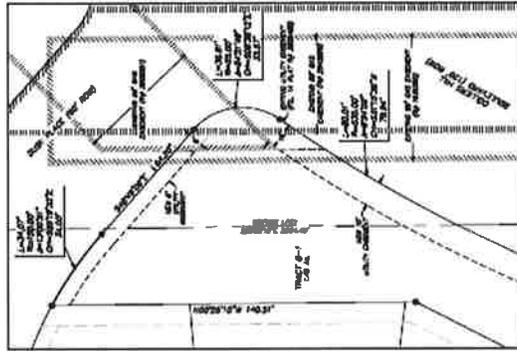
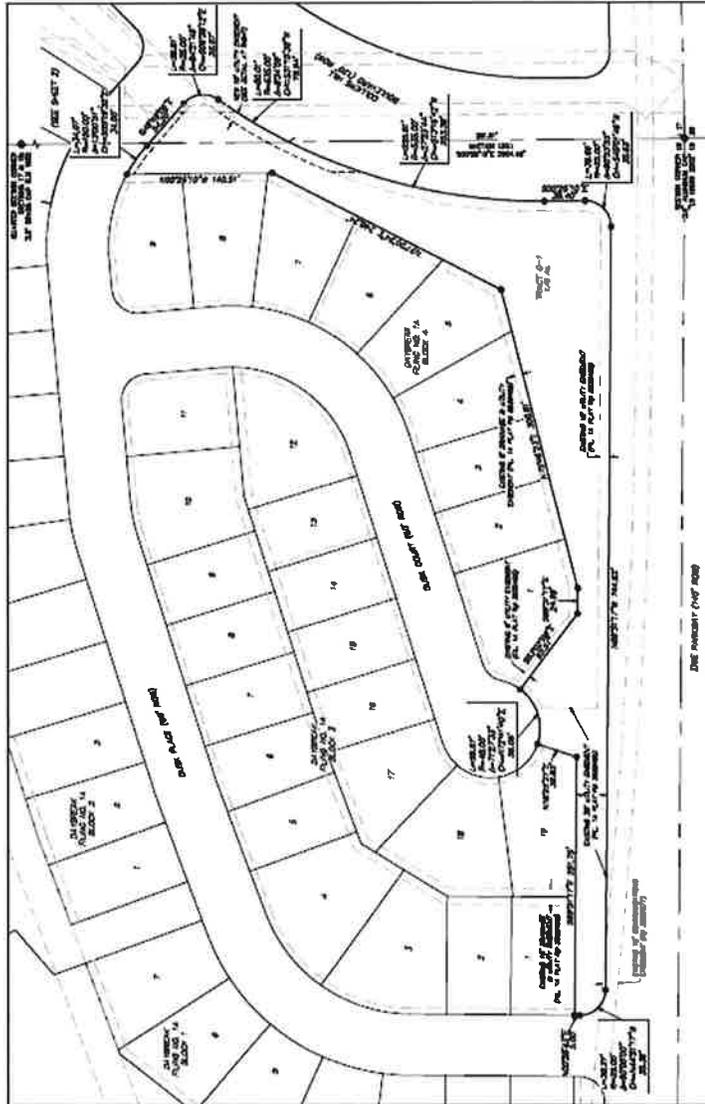
NO.	DATE	DESCRIPTION
1	10/15/13	FILED FOR RECORD
2	10/15/13	FILED FOR RECORD
3	10/15/13	FILED FOR RECORD
4	10/15/13	FILED FOR RECORD
5	10/15/13	FILED FOR RECORD
6	10/15/13	FILED FOR RECORD
7	10/15/13	FILED FOR RECORD
8	10/15/13	FILED FOR RECORD
9	10/15/13	FILED FOR RECORD
10	10/15/13	FILED FOR RECORD
11	10/15/13	FILED FOR RECORD
12	10/15/13	FILED FOR RECORD
13	10/15/13	FILED FOR RECORD
14	10/15/13	FILED FOR RECORD



NORTH PORTION

DAYBREAK FILING NO. 1A, 1ST AMENDMENT
 MINOR SUBDIVISION

#S-13-00057
 SHEET 3 OF 3



DAYBREAK FILING NO. 1A
 1ST AMENDMENT
 MINOR SUBDIVISION
 ZONE, COLORADO

DATE	11/11/13
BY	DAVID J. HARRIS
CHECKED BY	DAVID J. HARRIS
SCALE	AS SHOWN
PROJECT NO.	13-00057
SHEET NO.	3 OF 3



SOUTH PORTION

EXHIBIT B

PUBLIC IMPROVEMENT SCHEDULE

Improvement Guarantees for Public Improvements and Common Facilities are covered under the Daybreak Filing No. 1A Development Agreement.

EXHIBIT C

PUBLIC IMPROVEMENT REIMBURSEMENT SCHEDULE

Reimbursements due Owner: None

Reimbursements due Erie:

1. The Town shall collect from Owner, prior to recordation of this Agreement, one-hundred ten & No/100 Dollars (\$ 110.00) as reimbursement for 2 lots (\$ 55.00 per lot) within the Daybreak Filing No. 1A, 1ST AMENDMENT subdivision connecting to the Coal Creek Sanitary Sewer Interceptor line that the Town constructed.

Reimbursements due Others: None

EXHIBIT D

PHASING PLAN

The development shall be constructed in one phase.

EXHIBIT E

VERTICAL CURB LOCATION MAP

Vertical curb locations are shown in the Daybreak Filing No.1 Development Agreement.

EXHIBIT F

LANDSCAPE MAINTENANCE MAP

None.

EXHIBIT G

OIL AND GAS DISCLOSURE

The undersigned, being the purchaser(s) identified in that certain _____ (“Purchase Contract”) dated _____, 20____, between _____, a _____, as seller, and the undersigned, as purchaser, with respect to Block _____, Lot _____, Daybreak Filing No. 1A, 1ST Amendment, Town of Erie, County of Weld, State of Colorado (the “Lot”) do hereby acknowledge and agree as follows, which acknowledgements and agreements are given in consideration of and as a condition of Seller’s agreement to sell the undersigned the Lot and the home to be constructed thereon:

The undersigned hereby acknowledges the current existence of oil and gas wells and related well facilities (and the possibility of additional future wells and facilities) located within the real property encompassed by the Daybreak subdivision plat(s) (“Plat”). The locations of the current and possible future oil and gas wells and related well facilities are identified on the Bridgewater Master Subdivision Final Plat, as amended from time to time. In addition to the foregoing, other oil and gas interests affecting the property may exist which may or may not be recorded in the real property records. The oil and gas leases and other interests generally permit certain surface activity on the premises which activity may include drill sites, gathering pipelines, production sites and facilities, and access roads, all as further described in the oil and gas leases and other documents affecting the premises.

The undersigned acknowledge that neither they nor Seller will own any interest in the oil and gas or mineral estate underlying the property comprising Daybreak Filing No. 1A, 1ST Amendment. There may be ongoing oil and gas operation and production of oil and gas within Daybreak Filing No. 1A, 1ST Amendment including in the vicinity of the Lots, as well as the existence of pipeline easements and access routes across portions of Daybreak Filing No. 1A, 1ST Amendment. Additional oil and gas wells may be drilled, and oil and gas operations and production will likely take place within Daybreak Filing No. 1A, 1ST Amendment, including in the vicinity of the Lots, which oil and gas production will affect portions of the surface of the real property comprising Daybreak Filing No. 1A, 1ST Amendment. Heavy drilling equipment will be used in connection with the operation and drilling of oil and gas wells within Daybreak Filing No. 1A, 1ST Amendment and in conjunction with any production obtained from successor wells. Such operations may be conducted on a 24 hour/seven days a week basis. Owners of real property within Daybreak Filing No. 1A, 1ST Amendment will be bound by the terms and provisions of surface use agreements entered into between the surface owners or developer of the land and certain oil and gas owners and/or operators. These surface use agreements contain waivers, including a waiver of surface damage payments, a waiver of setback and waivers of other requirements contained in the Rules and Regulations of the Colorado Oil and Gas Conservation Commission, as well as a waiver of the right by an owner of any portion of the surface of the real property within Daybreak Filing No. 1A, 1ST Amendment to object in any forum to the use by oil and gas companies of a portion of the surface of the real property within Daybreak Filing No. 1A, 1ST Amendment.

The undersigned acknowledges and recognizes the existence of such oil and gas leases and other interests, and the surface activity associated with such oil and gas leases, and the undersigned,

to the extent it owns or becomes the owner of real property in Daybreak Filing No. 1A, 1ST Amendment, assume the risk of owning property near or adjacent to an oil and gas well operation. Such risks include, without limitation, injury or damage to person and/or property arising out of, or resulting from the drilling, operation and maintenance of an oil and gas well; noise associated with an oil and gas well operation; explosion and fire; leakage of oil and/or gas from drilling or production facilities; vehicles servicing the oil and gas site.

IN WITNESS WHEREOF, the undersigned has/have executed this Oil and Gas Well disclosure the ____ day of _____, 20 ____.

Purchaser

Purchaser

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.

My Commission expires _____.

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.

Witness my hand and official seal.

My Commission expires _____.

Notary Public

EXHIBIT H

AIRPORT DISCLOSURE

The undersigned, being the purchasers identified in that certain _____ (“Purchase Contract”) dated _____, 20____, between _____, a _____, as seller, and the undersigned, as purchaser, with respect to Block ____, Lot ____, Daybreak Filing No. 1A, 1ST Amendment, Town of Erie, County of Weld, State of Colorado (the “Lot”) do hereby acknowledge and agree as follows, which acknowledgments and agreements are given in consideration of and as a condition to Seller’s agreement to sell to the undersigned the Lot and the home to be constructed thereon:

Purchaser acknowledges that the Lot being purchased is located in close proximity to the Erie Municipal Tri-County Airport; the Parkland Estates private landing strip. Purchaser further acknowledges that the home is encumbered by an Avigation Easement and will be subject to over flights by aircraft to and from the Airport. Purchaser is advised to review the Avigation Easement document, a copy of which is attached hereto. Purchaser acknowledges that the Town of Erie and the Seller will have no responsibility of liability for any claims or causes of action, either in law or in equity, resulting from any noise or damage to a person or property occurring from over flights to and from the Airport or the rights and obligations described in the Avigation Easement.

IN WITNESS WHEREOF, the undersigned has/have executed this Airport Disclosure this ____ day of _____, 20____.

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20____, by _____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

EXHIBIT I

UNDERMINING DISCLOSURE

The undersigned, being the purchaser(s) identified in that certain _____ (“Purchase Contract”) dated _____, 20____, between _____, a _____, as seller, and the undersigned, as purchaser, with respect to Block _____, Lot _____, Daybreak Filing No. 1A, 1ST Amendment, Town of Erie, County of Weld, State of Colorado (the “Lot”) do hereby acknowledge and agree as follows, which acknowledgements and agreements are given in consideration of and as a condition of Seller’s agreement to sell the undersigned the Lot and the home to be constructed thereon:

In accordance with requirements of the Town of Erie’s approval of the subdivision plat of Daybreak, Seller advises the undersigned, and the undersigned hereby acknowledges that it has been advised by Seller, and understands, that the Lot being purchased is or may be located above an inactive and abandoned coal mines, including but not limited to the Boulder Valley Mine (new), the Boulder Valley Mine (old), the Northwest Mine, the Clayton Mine and an Unknown Mine (collectively “Mines”). These Mines are several of many coal mines historically operated within Weld County. In connection with the review and approval of the final plat for Daybreak, the Town of Erie Community Development Department required a mine subsidence investigation summary report that was prepared by Western Environmental and Ecology, dated September 5, 1999. A copy of this report and an updated report prepared by CTL Thompson, Inc., dated October 14, 2010, (collectively “reports”) have been made available for inspection at the offices of the Town of Erie Town Clerk upon written request. The undersigned further acknowledges and agrees that it has been advised by Seller to review the Reports. The undersigned, for themselves, all occupants of the Lot, and their respective heirs, administrators, executors, and assigns, accepts the conditions of the Lot as it relates to the Lot’s location above the Mines, and assumes the risk of owning property that is or may be located above an inactive and abandoned coal mine.

IN WITNESS WHEREOF, the undersigned has/have executed this Undermining Disclosure this ____ day of _____, 20____.

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

STATE OF COLORADO)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____,
20____, by _____.

WITNESS my hand and official seal.

My commission expires: _____

Notary Public

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM
Board Meeting Date: August 26, 2014

SUBJECT: **CONSENT AGENDA**
 Consideration Of Resolution 14-96: A Resolution Accepting Federal Funds In The Amount Of \$159,000 For A Bridge Rehabilitation Project: CR5 at Sullivan Ditch (19743) (BRO M400-007); And Authorizing the Town To Enter Into An Agreement With The Colorado Department Of Transportation For Administrating The Funds; And, Setting Forth Details in Relation Thereto.

DEPARTMENT: Public Works

PRESENTER/PREPARER: **Gary Behlen, Director of Public Works**
Wendi Palmer, Public Works Civil Engineer

FISCAL INFORMATION: Cost as Recommended: **\$198,750**
 Balance Available: 199,000
 Budget Line Item Number: 100 . 70 . 710 . 605000 . 1000116
 New Appropriation Required: Yes No

STAFF RECOMMENDATION: **Approve Resolution 14-96, accepting said federal funding, authorizing the Town Administrator to sign said agreement, and authorize Staff to expend said funds.**

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

On September 16, 2011, the Town received notification that the Special Highway Committee is accepting applications for bridge funds for rehabilitation or replacement of substandard bridges. On November 7, 2011 the Town was informed that the Town's application for funding the rehabilitation of the County Road 5 bridge over the Sullivan Ditch was approved. The funding was scheduled for Fiscal year 2014. The funds will be administered through the Colorado Department of Transportation (CDOT). Town Staff has worked with CDOT Staff to create the Inter-Governmental Agreement for **Project: CR5 at Sullivan Ditch (19743) (BRO M400-007)**.

A preliminary construction cost estimate generated by the Public Works Staff estimates that the project will cost \$198,750. This amount includes design, a ditch crossing agreement, advertisement and bidding, construction, geotechnical testing, and Staff's time to manage and perform construction observation of the project. \$159,000,000 will be federally funded (80%) and \$39,750 (20%) will be funded by the Town's General Fund.

Project Budget Summary

Federal Funding	\$159,000.00
Town of Erie	\$39,750.00
Total	\$198,750.00

Project Schedule

Estimated Design Complete	November 2014
Estimated Construction Complete	April, 2015

The funds currently available, as identified in Exhibit C, are \$53,480 which will be used for design. An Option Letter will be utilized to release the additional funding for the construction phase.

Board Goal

This serves the Board's goal for Infrastructure – Fund and provide essential infrastructure that corresponds with the planned rate of growth.

RESOLUTION NO. 14-96

A RESOLUTION ACCEPTING FEDERAL FUNDS IN THE AMOUNT OF \$159,000 FOR A BRIDGE REHABILITATION PROJECT; CR5 AT SULLIVAN DITCH (19743) (BRO M400-007); AND AUTHORIZING THE TOWN TO ENTER INTO AN AGREEMENT WITH THE COLORADO DEPARTMENT OF TRANSPORTATION(CDOT) FOR ADMINSTRING THE FUNDS; AND SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town of Erie, Colorado applied for funds through the Special Highway Committee for rehabilitation of bridge funding; and

WHEREAS, the Town of Erie, Colorado November 7, 2011 the Town was notified that their application for funding for the County Road 5 Bridge over the Sullivan Ditch was approved and funding was scheduled for 2014; and

WHEREAS, a preliminary construction cost estimate of \$198,750 has been generated by the Public Works Staff with eighty percent of the funding to be provided by CDOT; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to accept this funding.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the Intergovernmental Agreement with the Colorado Department of Transportation Contract (19743) (BRO M400-007) for the CR5 at Sullivan Ditch Bridge Rehabilitation Project is found to be a reasonable and acceptable agreement; and

Section 2. That the Town of Erie be and is hereby authorized and directed to enter into the agreement, and the appropriate Town officers are hereby authorized and directed to sign and bind the Town of Erie to said amendment.

Section 3. That IGA is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy J. Parker, CMC, Town Clerk

**VICINITY MAP FOR
WELD COUNTY ROAD 5 BRIDGE REPAIR**



STATE OF COLORADO
Department of Transportation
Agreement
with
TOWN OF ERIE

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1. PARTIES

THIS AGREEMENT is entered into by and between TOWN OF ERIE (hereinafter called the "Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, and Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

D. References

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 contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

"Agreement Funds" means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

"Budget" means the budget for the Work described in Exhibit C.

D. Consultant and Contractor

“Consultant” means a professional engineer or designer hired by Local Agency to design the Work and “Contractor” means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

“Evaluation” means the process of examining the Local Agency’s Work and rating it based on criteria established in §6 and Exhibits A and E.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

G. Goods

“Goods” means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

“Oversight” means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration (“FHWA”) and as it is defined in the Local Agency Manual.

I. Party or Parties

“Party” means the State or the Local Agency and “Parties” means both the State and the Local Agency

J. Work Budget

Work Budget means the budget described in **Exhibit C**.

K. Services

“Services” means the required services to be performed by the Local Agency pursuant to this Contract.

L. Work

“Work” means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A and E**, including the performance of the Services and delivery of the Goods.

M. Work Product

“Work Product” means the tangible or intangible results of the Local Agency’s Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM AND EARLY TERMINATION

The Parties’ respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after five (5) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency’s, Consultants’, or Contractors’ employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in Exhibit H. If the Local Agency enters into a contract with a Consultant for the Work:
 - (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
 - (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - (4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in Exhibit H to administer the Consultant contract.
 - (5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with Exhibit H and 23 C.F.R. 172.5(b) and (d).
 - (6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

- (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
- (c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
- (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. Construction

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

- a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b) The Local Agency shall be responsible for the following:
 - (1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.
 - (2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).
 - (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefore, as required by 23 C.F.R. 633.102(e).
 - (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.
 - (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.
 - (3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.
 - (4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.
 - (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.

- (b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.
- (c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
- (d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

E. State's Commitments

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, **Exhibit E**.

F. ROW and Acquisition/Relocation

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
- c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.
- d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:
 - (1) Right of way acquisition (3111) for federal participation and non-participation;
 - (2) Relocation activities, if applicable (3109);
 - (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

- a) Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:
- b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- c) Obtain the railroad's detailed estimate of the cost of the Work.
- d) Establish future maintenance responsibilities for the proposed installation.
- e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

H. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

I. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

An option letter may be used to add a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to add a phase and/or increase or decrease the total encumbrance amount.

The State may require the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds remaining the same. The State may simultaneously increase and/or decrease the total encumbrance amount by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase.

The State may require or permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B.

The State may require the Local Agency to add a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2**, **C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

8. PAYMENTS

The State shall, in accordance with the provisions of this **§8**, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Contract set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit. The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C**. The Local Agency 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. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency 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 the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8**. The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and Exhibit C. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred).

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until

CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency 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 or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to:

internal evaluation procedures, examination of program data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency 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 apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency’s Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain 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. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to sub-contractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker’s Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. 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.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency and all Contractors, subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each contractor, subcontractor, or consultant shall deliver to the State or the Local Agency certificates of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each contractor, subcontractor, or consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provisions of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

B. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

C. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency'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 the same as if this Agreement had been terminated in the public interest, as described herein.

D. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

E. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

F. Remedies Not Involving Termination

The State, its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that due to the Local Agency's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. If to State:

CDOT Region: 04
Jake Schuch
Project Manager
1420 2nd Street

B. If to the Local Agency:

TOWN OF ERIE
Wendi Palmer
Town of Erie
645 Holbrook Street

Greeley, CO 80631
(970) 350-2103

Erie, CO 80516
303-926-2875

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at any time thereafter, this §21 applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State- approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in §25(A), all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

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.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes, but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i.** Colorado Special Provisions,
- ii.** The provisions of the main body of this Agreement,
- iii.** **Exhibit A** (Scope of Work),
- iv.** **Exhibit B** (Local Agency Resolution),
- v.** **Exhibit C** (Funding Provisions),
- vi.** **Exhibit D** (Option Letter),
- vii.** **Exhibit E** (Local Agency Contract Administration Checklist),
- viii.** Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions

apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in italics.

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

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

3. GOVERNMENTAL IMMUNITY.

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, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency 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 The Local Agency or any of its agents or employees. Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

The Local Agency shall strictly 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.

6. CHOICE OF LAW.

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. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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. The Local Agency hereby certifies and warrants that, during the term of this Agreement and any extensions, The Local Agency has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that The Local Agency 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.

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

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. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements]. Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[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]. The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall 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 program established pursuant to CRS §8-17.5-102(5)(c), The Local Agency 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 The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) 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 (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

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27. SIGNATURE PAGE

Agreement Routing Number: **15 HA4 71251**

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

* Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.

<p style="text-align: center;">THE LOCAL AGENCY TOWN OF ERIE</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO John W. Hickenlooper, GOVERNOR Colorado Department of Transportation Donald E. Hunt, Executive Director</p> <p>By: Joshua Laipply, P.E., Chief Engineer</p> <p>Date: _____</p>
<p>2nd Local Agency Signature if needed</p> <p>Print: _____</p> <p>Title: _____</p> <p>_____</p> <p style="text-align: center;">*Signature</p> <p>Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW John W. Suthers, Attorney General</p> <p>By: _____</p> <p style="text-align: center;">Signature - Assistant Attorney General</p> <p>Date: _____</p>

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

<p style="text-align: center;">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p style="text-align: center;">Colorado Department of Transportation</p> <p>Date: _____</p>
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28. EXHIBIT A – SCOPE OF WORK

The Colorado Department of Transportation ("CDOT") will oversee the Town of Erie when the town designs and performs bridge rehabilitation of the bridge on county road 5 crossing Sullivan Ditch (Hereinafter referred to as "this work"). CDOT and the Town of Erie believe it will be beneficial to perform this work because the bridge is classified as structurally deficient due to section loss of piles and backwall. This work will be located at the crossing of Sullivan Ditch on Weld County Road 5. This work will contain the following features: upgrading of the rail system, installation of reflectors, sealing asphalt cracks on the deck, removing debris, and encasing the piles and abutments. This work will conform to the parameters articulated in the following:

AASHTO design standards, MUTCD, Local Agency Manual and all applicable federal regulations. The design phase of the work will begin as soon as reasonably possible after the execution of this agreement. The design phase will identify more exact requirements, qualities, and attributes for this work. (Herein after referred to as #the exact work#] The exact work shall be used to complete the construction phase of the project.

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29. EXHIBIT B – LOCAL AGENCY RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

30. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$198,750.00, which is to be funded as follows:

1 BUDGETED FUNDS				
a. Federal Funds				\$159,000.00
(80% of Participating Costs)				
b. Local Agency Matching Funds				\$39,750.00
(20% of Participating Costs)				
TOTAL BUDGETED FUNDS				\$198,750.00
2 ESTIMATED CDOT-INCURRED COSTS				
a. Federal Share				\$0.00
(0% of Participating Costs)				
b. Local Agency				
Local Agency Share of Participating Costs	\$0.00			
Non-Participating Costs (Including Non-Participating Indirects)	\$0.00			
Estimated to be Billed to Local Agency				\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS				\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted (1a)				\$159,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$159,000.00
FOR CDOT ENCUMBRANCE PURPOSES				
Total Encumbrance Amount				\$198,750.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$198,750.00
NOTE: Only the Design funds of \$53,480.00 are currently available; the Construction funding will become available after federal authorization and execution of an Option Letter (Exhibit D) or amendment.				
WBS Element 19743.10.30	Design	3020		\$53,480.00
WBS Element 19743.20.10	Const	3301		\$0.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds (CFDA #20.205) to 20.00% Local Agency funds, it being understood that such ratio applies only to the \$198,750.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$198,750.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$198,750.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$159,000.00 (For CDOT accounting purposes, the federal funds of \$159,000.00 and the Local Agency matching funds of \$39,750.00 will be encumbered for a total encumbrance of \$198,750.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. **NOTE: Only the Design funds of \$53,480.00 are currently available; the Construction funding will become available after federal authorization and execution of an Option Letter (Exhibit D) or Amendment.** It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$500,000

If the Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding \$500,000-Highway Funds Only

If the Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding \$500,000-Multiple Funding Sources

If the Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

- A. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (does not apply to Acquisition/Relocation or Railroads) and to update encumbrance amounts(a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS:

Option A (Insert the following language for use with the Option A):

In accordance with the terms of the original Agreement (insert CMS routing # of the original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous)is (insert dollars here). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only, please delete when using this option. Future changes for this option for **Exhibit C** shall be labled as follows: **C-2, C-3, C-4, etc.**).

Option B (Insert the following language for use with Option B):

In accordance with the terms of the original Agreement (insert CMS # of the original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be

made using an formal amendment)..

Option C (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement (*insert CMS routing # of original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment*).

(*The following language must be included on ALL options*):

The total encumbrance as a result of this option and all previous options and/or amendments is now (*insert total encumbrance amount*), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (*indicate total budgeted funds*) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

The following checklist has been developed to ensure that all required aspects of a project approved for Federal funding have been addressed and a responsible party assigned for each task.

After a project has been approved for Federal funding in the Statewide Transportation Improvement Program, the Colorado Department of Transportation (CDOT) Project Manager, Local Agency project manager, and CDOT Resident Engineer prepare the checklist. It becomes a part of the contractual agreement between the Local Agency and CDOT. The CDOT Agreements Unit will not process a Local Agency agreement without this completed checklist. It will be reviewed at the Final Office Review meeting to ensure that all parties remain in agreement as to who is responsible for performing individual tasks.

COLORADO DEPARTMENT OF TRANSPORTATION

LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

Project No. BRO M400-007	STIP No. SR46601.022	Project Code 19743	Region 04
Project Location CR 5 at Sullivan Ditch			Date 3/10/2014
Project Description Bridge Rehabilitation			
Local Agency Town of Erie		Local Agency Project Manager Wendi Palmer	
CDOT Resident Engineer Long Nguyen		CDOT Project Manager Jake Schuch	

INSTRUCTIONS:

This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the *CDOT Local Agency Manual*.

The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.

Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.

The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consist with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	#	X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	#
5.4	Conduct Design Scoping Review Meeting	X	X
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	X
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	#
5.11	Justify Force Account Work by the Local Agency	X	#
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	#
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications and Construction Cost Estimates	X	#
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Long Nauven _____ 3/18/2014 CDOT Resident Engineer (Signature on File) _____ Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances	X	
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	#
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	#
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety		X
8.3	Conduct Conferences: Pre-Construction Conference (Appendix B)	X	X
	Pre-survey • Construction staking • Monumentation	X X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	
8.5	Supervise Construction A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Wendi Palmer _____ 303-926-2875 Local Agency Professional Engineer or _____ CDOT Resident Engineer _____ Phone number	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
8.6	Approve Shop Drawings	X	
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates Provide the name and phone number of the person authorized for this task. Wendi Palmer _____ 303-926-2875 _____ Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	X	#
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	X	
8.16	Prepare and Submit Monthly Progress Reports	X	X
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews Provide the name and phone number of the person responsible for this task. Chris Boespflug _____ 303-546-5676 _____ CDOT Resident Engineer Phone number		X
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	X	
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X X X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input checked="" type="checkbox"/> CDOT Procedures <input type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X X	X
9.8	Approve mix designs • Concrete • Hot mix asphalt	X X	
9.9	Check Final Materials Documentation	X	
9.10	Complete and Distribute Final Materials Documentation	X	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	#
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	X	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor		NA
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	X
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office
Colorado Department of Transportation
4201 East Arkansas Avenue, Room 287
Denver, Colorado 80222-3400
Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
 7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
 8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b.(1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under §5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including

procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

37. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

**State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13**

The contract, grant, or purchase order to which these Supplemental 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 Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
 - 1.1. **“Award”** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:
 - 1.1.1. Grants;
 - 1.1.2. Contracts;
 - 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
 - 1.1.4. Loans;
 - 1.1.5. Loan Guarantees;
 - 1.1.6. Subsidies;
 - 1.1.7. Insurance;
 - 1.1.8. Food commodities;
 - 1.1.9. Direct appropriations;
 - 1.1.10. Assessed and voluntary contributions; and
 - 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

 - 1.1.12. Technical assistance, which provides services in lieu of money;
 - 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
 - 1.1.14. Any award classified for security purposes; or
 - 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).
 - 1.2. **“Contract”** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.
 - 1.3. **“Contractor”** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.
 - 1.4. **“Data Universal Numbering System (DUNS) Number”** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.
 - 1.5. **“Entity”** means all of the following as defined at 2 CFR part 25, subpart C;
 - 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
 - 1.5.2. A foreign public entity;
 - 1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
 - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
 - 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
 - 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
 - 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
 - 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
 - 1.11. **“Subrecipient”** 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 “Subrecipient” includes and may be referred to as Subgrantee.
 - 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
 - 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
 - 1.14. **“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 <http://www.sam.gov>.
 - 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 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;
 - 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;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 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.
 - 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. The Transparency Act also is referred to as FFATA.
 - 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and

is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. 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), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 ToSAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

- 7.1.1** Subrecipient DUNS Number;
- 7.1.2** Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;
- 7.1.3** Subrecipient Parent DUNS Number;
- 7.1.4** Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;
- 7.1.5** Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and
- 7.1.6** Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

- 7.2.1** Subrecipient's DUNS Number as registered in SAM.
- 7.2.2** Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

- 8.1.** These Supplemental 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.
- 8.2** A Contractor 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.
- 8.3** Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.
- 8.4** There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract 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 Contract, at law or in equity.

**TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM**

Board Meeting Date: August 26, 2014

SUBJECT: **CONSENT AGENDA**
Consideration of Resolution 14-97: A Resolution Authorizing Award Of A Design Contract To JVA, Incorporated, In The Amount Of \$45,900.00; And Setting Forth Details In Relation Thereto.

DEPARTMENT: Public Works/Parks

PRESENTER/PREPARER: **Gary Behlen, Director of Public Works**
Wendi Palmer, Public Works Civil Engineer

FISCAL INFORMATION: Cost as Recommended: **\$52,800**
Balance Available: **\$1,750,000**
Budget Line Item
Number: 500 . 70 . 110 . 605000 . 100119
New Appropriation Required: Yes No

STAFF RECOMMENDATION: Approving Resolution 14-97 awarding said contract, authorizing the Town Administrator to execute said contract, authorizing Staff to expend contracted funds and contingency funds.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The 2014 first Supplemental Capital Budget includes funds to design and construct a non-potable waterline to by-pass Erie Lake and convey non-potable water directly to the Lynn R. Morgan Water Treatment Plant. Staff started the process of selecting a consultant earlier this year.

A Request for Proposal was posted on the Town's website on February 14, 2014 to ensure that local consultants were notified about this project. No local consultants submitted proposals.

The following schedule was used for consultant selection:

Request for Proposal Issued	February 14, 2014
Pre-Proposal Meeting	February 20, 2014
Proposals Due	March 12, 2014
Consultant Selected	April 4, 2014

Staff reviewed 5 proposals. One did not meet the proposal requirements The following are the fees for the 4 proposals that met the proposal requirements:

Fee Proposal Information

JVA.	\$53,336.00
Burns & McDonnell	\$59,049.00
Hatch Mott MacDonald	\$73,349.00
Drexel Barrell & Company	\$68,880.00

The proposal was defined in 5 separate tasks. The first task was the Preliminary Design Phase. The preliminary design phase of \$8,100 was awarded to JVA. Staff is recommending that the remainder of the contract be awarded.

Project Budget Summary

Remaining Services	\$45,900.00
<u>Contingency (15%)</u>	<u>\$6,900.00</u>
Total	\$52,800.00

Remaining funds will be used in the construction of the project, which will be presented to the Board later in the year.

Project Schedule

Notice of Award	August 27, 2014
Final Design Complete	October, 2014
Construction Contract Bid	November, 2014
Construction Complete	April, 2015

Board Goal

This serves the Board's goal for Infrastructure – Fund and provide essential infrastructure that corresponds with the planned rate of growth.

Staff Review:

_____ Town Attorney
_____ Town Clerk
_____ Community Development Director
SR Finance Director
COB Police Chief
_____ Public Works Director

Approved by:



(A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-97
- b. Vicinity Map

RESOLUTION NO. 14-97

A RESOLUTION OF THE TOWN OF ERIE, AWARDING A DESIGN CONTRACT TO JVA, INCORPORATED FOR THE CONSTRUCTION OF A NON-POTABLE WATERLINE TO BY-PASS ERIE LAKE IN THE AMOUNT OF \$45,900.00; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town of Erie, Colorado wishes to award a Design Contract to JVA Incorporated for the construction of a non-potable waterline to by-pass Erie Lake; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to enter into such a contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the contract between the Town of Erie and JVC Incorporated is found to be a reasonable and acceptable contract for the construction of a non-potable waterline to by-pass Erie Lake.

Section 2. That the Town of Erie be and is hereby authorized and directed to enter into the contract with JVC Incorporated and the appropriate Town Officers are hereby authorized and directed to sign and bind the Town of Erie to said contract in the amount of \$45,900.00 with a contingency not to exceed \$6,900.00.

Section 3. That entering into the contract is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy J. Parker, CMC, Town Clerk

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM
Board Meeting Date: August 26, 2014

SUBJECT: **CONSENT - RESOLUTION**
Resolution 14-98: A Resolution of the Town of Erie, Colorado Consenting To Erie Farm Metropolitan District's Use Of The Power Of Eminent Domain In Accordance With The Terms Of The Erie Farm Metropolitan District Amended And Restated Service Plan.

DEPARTMENT: Community Development

PRESENTER: R. Martin Ostholthoff, Community Development Director

FISCAL	Cost as	n/a
	Recommended:	
INFORMATION:	Balance Available:	
	Budget Line Item	
	Number:	000 . 00 . 000 . 000000 . 000000
	New Appropriation	<input type="checkbox"/> Yes <input type="checkbox"/> No
	Required:	

STAFF

RECOMMENDATION: Staff recommends approval of Resolution 14-98.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Erie Farm Metropolitan District (District) encompasses approximately 158 acres of residential land at the northwest corner of County Line Road and Arapahoe Road. The original Service Plan for the District was approved in 2006 and an Amended and Restated Service Plan (Plan) was approved in 2013.

A future phase of the Compass development will require the extension of Vista Parkway on the west side of County Line Road as shown on the Town of Erie Transportation Master Plan. This roadway extension (future Town dedicated right-of-way) is partially on the Compass property and partially on the property to the north, the proposed Golden Run development. To date the developer of the Compass property has been unsuccessful in negotiating for that portion of the future Vista Parkway right-of-way that is located within the proposed Golden Run development.

The approved Plan allows for the use of eminent domain powers to acquire property that is essential for the developments success. Section V.12 of the Plan requires the Town to consent to the use of eminent domain powers. Attachment C is the proposed Consent Letter for the Mayor's signature.

Staff Review:

____ Town Attorney
____ Town Clerk
 Community Development Director
____ Finance Director
____ Police Chief
____ Parks and Recreation Director
____ Public Works Director

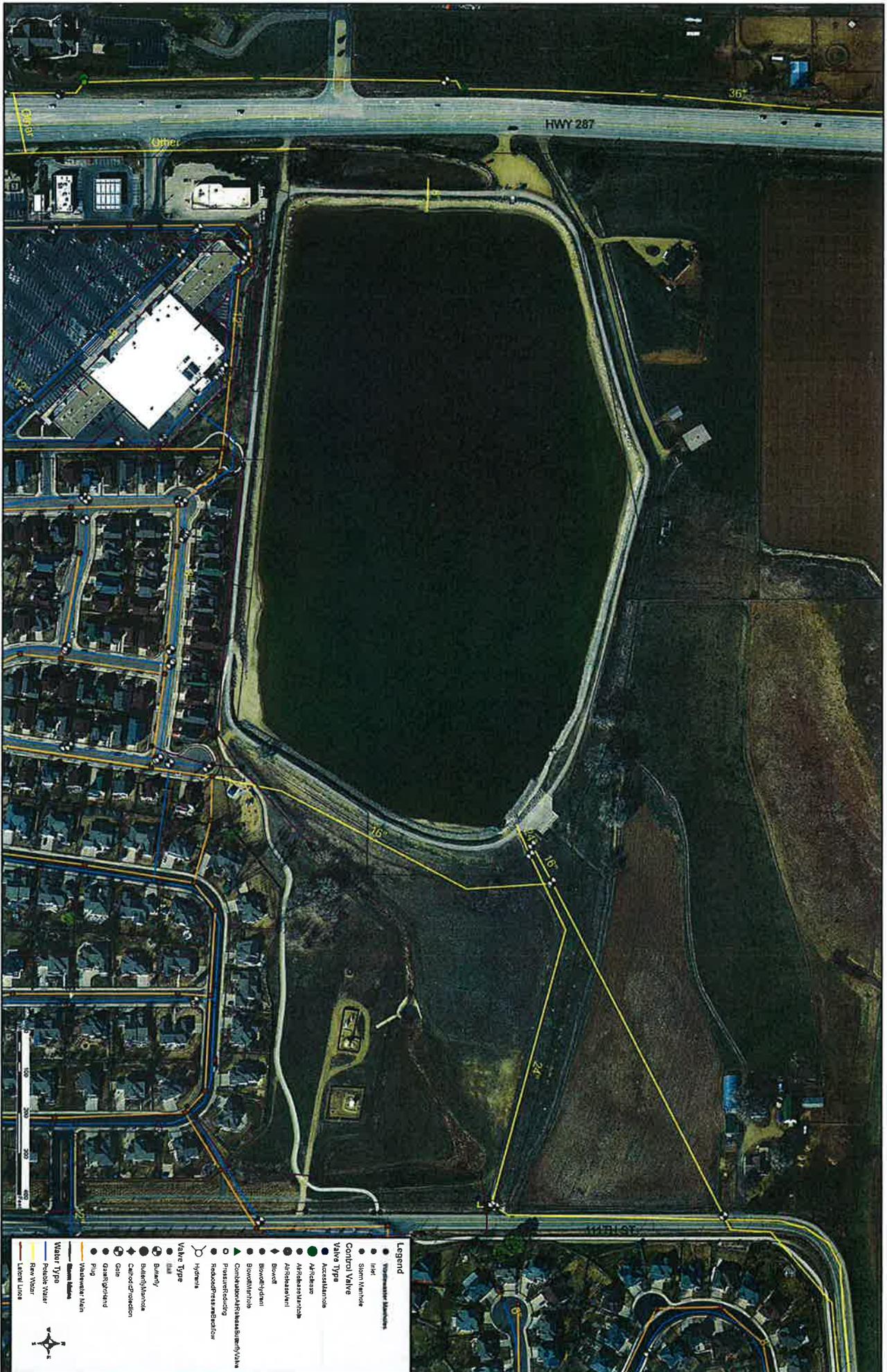
Approved by:



A. J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-98
- b. Erie Farm Metropolitan District Amended and Restated Service Plan
- c. Consent Letter



- Legend**
- Wastewater Manholes
 - Inlet
 - Storm Manhole
 - Control Valve
 - Valve Type
 - Access Manhole
 - Airlocks
 - Airlock/Valve/Access
 - Airlocks (new)
 - Borewell
 - Borewell/Drain
 - Borewell/Inlets
 - Combined Airlocks/Access Manhole/Valve
 - Pressure Reducing
 - Inflow/Overflow Indicator
 - Hydrants
 - Valve Type
 - Ball
 - Butterfly
 - Ball/Plug/Manhole
 - Control/Protection
 - Gate
 - Gate/Plug/Inlet
 - Plug
 - Valve/Access Man
 - Storm Manhole
- Master Type**
- Public Valve
 - Fire Valve
 - Lateral Lines



ATTACHMENT A

RESOLUTION NO. 14-98

**A RESOLUTION OF THE TOWN OF ERIE, COLORADO,
CONSENTING TO ERIE FARM METROPOLITAN
DISTRICT'S USE OF THE POWER OF EMINENT DOMAIN
IN ACCORDANCE WITH THE TERMS OF THE ERIE FARM
METROPOLITAN DISTRICT AMENDED AND RESTATED
SERVICE PLAN.**

WHEREAS, the Town of Erie, Colorado previously entered into the Erie Farm Amended and Restated Service Plan ("Service Plan") with the Erie Farm Metropolitan District ("District"); and,

WHEREAS, Section V.12 of the Service Plan provides that the District shall not exercise the power of eminent domain except upon the prior written consent of the Town; and,

WHEREAS, the District has indicated that it may need to exercise the power of eminent domain to acquire property interests necessary to construct certain road improvements on County Line Road and a connection to Vista Parkway as an entry into the District, and these road improvements are important to the Town as depicted in the Town's Transportation Plan and necessary to the District's continued development; and,

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to consent to the District's use of the power of eminent domain in accordance with the terms of the Service Plan.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the Town hereby consents to the District's exercise of its power of eminent domain in accordance with the Service Plan for any and all purposes including the acquisition of the property interests to construct the roadway improvements on County Line Road and a connection to Vista Parkway as an entry into the District.

Section 2. That the Town of Erie be and is hereby authorized and directed to sign the letter indicating the Town's Consent to the District's use of the power of eminent domain, a copy of which letter is attached hereto and incorporated herein by this reference.

ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, CMC, Town Clerk

ATTACHMENT B

**ERIE FARM
METROPOLITAN DISTRICT**

TOWN OF ERIE
COUNTY OF BOULDER, COLORADO

AMENDED AND RESTATED
SERVICE PLAN

Prepared by:
Collins Cockrel & Cole, PC
390 Union Blvd., Suite 400
Denver, Colorado 80228

Submitted:
February 13, 2013

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LIST OF EXHIBITS

EXHIBIT A	Town of Erie Resolutions of Approval A-1 NO. 06-97, Dated September 12, 2006 A-2 NO. 13- , Dated _____, 2013
EXHIBIT B	Legal Description
EXHIBIT C	Erie Vicinity Map
EXHIBIT D	District Boundary Map
EXHIBIT E	Description of Public Improvements, including the information required by Section 32-1-202(2)(c) and (e).
EXHIBIT F	Matrix of Ownership and Maintenance
EXHIBIT G	Financing Plan, including sources and uses and bond solutions
EXHIBIT H	District Election Questions – November 7, 2006
EXHIBIT I	Underwriter Commitment Letter
EXHIBIT J	Form of Disclosure
EXHIBIT K	Proof of Ownership and Encumbrances

**AMENDED AND RESTAED SERVICE PLAN
FOR
ERIE FARM METROPOLITAN DISTRICT**

I. INTRODUCTION

A. Purpose and Intent. The District is an independent unit of local government, separate and distinct from the Town. It is intended that the District will provide a part or all of the Public Improvements for the use and benefit of all anticipated constituents and taxpayers of the District. The primary purpose of the District will be to finance the construction of these Public Improvements. The District is not being created to provide ongoing operations and maintenance services other than as specifically set forth in Exhibit E to this Service Plan.

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

C. Objective of the Town Regarding District Service Plans. The Town's objective in approving the Service Plan for the District is to authorize the District to provide for the planning, design, acquisition, construction, installation, and financing of the Public Improvements from the proceeds of Debt to be issued by the District.

This Service Plan is intended to establish a limited purpose for the District and explicit financial constraints that are not to be violated under any circumstances. The primary purpose is to provide for the Public Improvements associated with development and regional needs. Operational activities are allowed, but only as specified in Exhibit E to this Service Plan.

Unless the District has operational responsibilities for any of the Public Improvements, it is the intent of the District to dissolve upon payment or defeasance of all Debt incurred or upon a court determination that adequate provision has been made for the payment of all Debt, or upon the occurrence of an event specified in Section 32-1-701(2) or (3), C.R.S.

The District shall be authorized to finance the Public Improvements that can be funded from Debt to be repaid from tax revenues collected from a mill levy which shall not exceed the Maximum Mill Levy and which shall not exceed the Maximum Mill Levy Imposition Term. It is the intent of this Service Plan to assure to the extent possible that no property bear an economic burden that is greater than that associated with the Maximum Mill Levy in amount and that no property bear an economic burden that is greater than that associated with the Maximum Mill Levy Imposition Term. Generally, the cost of Public Improvements that cannot be funded within these parameters are not costs to be paid by the District.

D. Organizers and Consultants. This Service Plan has been prepared by the following:

Organizers/Developer:

Ryan Carlson
Erie Equities, LLC
P.O. Box 247
Eastlake, CO 80614

District Counsel:

Joan M. Fritsche
Collins Cockrel & Cole
390 Union Blvd., Suite 400
Denver, CO 80228

Investment Banker:

Sam Sharp
D.A. Davidson & Co.
1600 Broadway, Suite 1100
Denver, CO 80202

Engineers:

Thomas C. Jansen
Jansen Strawn
45 West 2nd Avenue
Denver, CO 80223

Bond Counsel:

To be determined

E. Board of Directors.

The current board of directors includes:

Tom Kaufman
c/o Joan M. Fritsche, Esq.
Collins Cockrel & Cole
390 Union Boulevard, Suite 400
Denver, CO 80228

John T. McShane
c/o Joan M. Fritsche, Esq.
Collins Cockrel & Cole
390 Union Boulevard, Suite 400
Denver, CO 80228

Debra C. Mitchell
c/o Joan M. Fritsche, Esq.
Collins Cockrel & Cole
390 Union Boulevard, Suite 400
Denver, CO 80228

Attached hereto as Exhibit K is proof of current ownership of and encumbrances on property in the District.

II. DEFINITIONS

In this Service Plan, the following terms shall have the meanings indicated below, unless the context hereof clearly requires otherwise:

Board: means the board of directors of one District.

Board of Trustees: means the Board of Trustees of the Town of Erie, Colorado.

Bonds or Debt: means any bonds, notes, debentures, certificates, contracts, capital leases, or other multiple fiscal year financial obligations of the District.

District: means the Erie Farm Metropolitan District.

External Investment Banker: means a consultant that: (1) advises Colorado governmental entities on matters relating to the issuance of securities by Colorado governmental entities, including matters such as the pricing, sales and marketing of such securities and the procuring of bond ratings, credit enhancement and insurance in respect of such securities; (2) shall be an underwriter, investment banker, or individual listed as a public finance advisor in the Bond Buyer's Municipal Market Place (also known as the Redbook); and (3) is not an officer of the District.

Financial Plan: means the Financial Plan attached hereto as Exhibit G and described in Section VI which describes (a) how the Public Improvements are to be financed; (b) how the Debt is expected to be incurred; and (c) the estimated revenue and expenses.

Initial District Boundaries: means the boundaries of the area described in the District Boundary Map.

Initial District Boundary Map: means the map attached hereto as Exhibit D, describing the Initial District's Boundaries.

Market Issued Debt: means Debt which is underwritten by an underwriter or investment banker listed in the Bond Buyer's Municipal Market Place (also known as the Redbook).

Maximum Mill Levy: means the maximum mill levy the District is permitted to impose for payment of Debt as set forth in Section VI.E below.

Maximum Mill Levy Imposition Term: means the maximum term for imposition of a mill levy as set forth in Section VI.F below.

Official Development Plan: means an Official Development Plan as approved by the Town pursuant to the Town Code.

Privately Placed Debt: means Debt which is sold or placed directly with an investor, without being underwritten by an underwriter or investment banker.

Project: means the development or property commonly referred to as Erie Farm.

Public Improvements: means a part or all of the improvements authorized to be planned, designed, acquired, constructed, installed, and financed as generally described in Exhibit E, except as specifically limited in Section V below, to serve the future taxpayers and inhabitants of the Initial District Boundaries as determined by the Board of the District.

Service Plan: means this service plan for the District approved by Board of Trustees.

Service Plan Amendment: means an amendment to the Service Plan approved by Board of Trustees in accordance with the Town's ordinance and the applicable state law.

Special District Act: means Section 32-1-101, et seq., of the Colorado Revised Statutes, as amended from time to time.

State: means the State of Colorado.

Town: means the Town of Erie, Colorado.

Town Code: means the Town Code of the Town of Erie, Colorado.

III. BOUNDARIES

The area of the Initial District Boundaries includes approximately 158 acres. A legal description of the Initial District Boundaries is attached hereto as Exhibit B. A map of the Initial District Boundaries is attached hereto as Exhibit D. A vicinity map is attached hereto as Exhibit C.

IV. PROPOSED LAND USE/POPULATION PROJECTIONS/ASSESSED VALUATION

The Initial District Boundaries consists of approximately 158 acres of vacant land. The current assessed valuation of the Initial District Boundaries is \$21,283.00 and, at build out, is expected to be sufficient to reasonably discharge the Debt under the Financial Plan. The population of the District at build-out is estimated to be approximately 1,300 people.

The Official Development Plan for the property in the Initial District Boundaries has not been approved by the Town to date.

V. DESCRIPTION OF PROPOSED POWERS, IMPROVEMENTS AND SERVICES

A. Powers of the District and Service Plan Amendment.

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

1. Operations and Maintenance Limitation. The purpose of the District is to plan for, design, acquire, construct, install, and finance the Public Improvements. The District

shall dedicate the Public Improvements to the Town or other appropriate jurisdiction or owners association in a manner consistent with the Official Development Plan and other rules and regulations of the Town and applicable provisions of the Town Code. The District shall not be authorized to operate and maintain any part or all of the Public Improvements unless the provision of such operation and maintenance is pursuant to Exhibit E in the approved Service Plan.

2. Use of Bond Proceeds and Other Revenues of the District Limitation. Proceeds from the sale of Debt instruments and other revenues of the District may not be used to pay landowners within the District for any items required by annexation agreements or land use codes. Examples of ineligible reimbursements include: the acquisition of rights of way, easements, water rights, and land for prudent drainage, parkland or open space. Additionally, if the landowner/developer constructs the public infrastructure and conveys it to the District contingent upon a pledge from the District that it will issue bonds to pay the landowner/developer, prior to reimbursing the landowner/developer for such amounts, the District must receive the report of an independent engineer or accountant confirming that the amount of the reimbursement is reasonable.

3. Recovery Agreement Limitation. Should the District construct infrastructure subject to a recovery agreement with the Town or other entity, the District retains all benefits under the recovery agreement. Any subsequent reimbursement for public improvements installed or financed by the District will remain the property of the District and be applied toward repayment of their Debt, if any. Any reimbursement revenue not necessary to repay District Debt may be utilized to construct additional Public Improvements permitted under this Service Plan.

4. Construction Standards Limitation. The District will ensure that the Public Improvements are designed and constructed in accordance with the standards and specifications of the Town and of other governmental entities having proper jurisdiction. In all instances, the District will comply with applicable Town ordinances, regulations and standards, including, without limitation, and to the extent necessary, execution of public improvement agreements and provision of improvements and dedication of any of the public improvements to the Town. The District will obtain the Town's approval of civil engineering plans and will obtain applicable permits for construction and installation of Public Improvements prior to performing such work. Nothing herein requires the Town to accept the transfer of any public Improvement.

5. Privately Placed Debt Limitation. Prior to the issuance of any Privately Placed Debt, the District shall obtain the certification of an External Investment Banker substantially as follows:

We are [I am] an External Investment Banker within the meaning of the District's Service Plan.

We [I] certify that (1) the net effective interest rate (calculated as defined in Section 32-1-103(12), C.R.S.) to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-

exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable considering the financial circumstances of the District.

6. Boundary Change Limitation. The District shall not include within or exclude from its boundaries any property without the prior written consent of the Town.

7. Total Debt Issuance Limitation. The District shall not issue Debt in an aggregate principal amount in excess of Thirteen Million Dollars (\$13,000,000.00), provided that the foregoing shall not include the principal amount of Debt which has been refunded by the issuance of refunding Debt.

8. No Rates, Fees, Charges, Assessments or Exaction. The District shall not impose any rate, fee, charge, assessment or exaction and shall not utilize any rate, fee, charge, assessment or exaction imposed by any public or private entity without written consent of the Town.

9. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the Town is eligible to apply for, except pursuant to an intergovernmental agreement with the Town. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

10. Consolidation Limitation. The District shall not file a request with any Court to consolidate with another Title 32 district without the prior written consent of the Town.

11. Bankruptcy Limitation. All of the limitations contained in this Service Plan, including, but not limited to, those pertaining to the Maximum Mill Levy and the Maximum Mill Levy Imposition Term have been established under the authority of the Town to approve a Service Plan with conditions pursuant to Section 32-1-204.5, C.R.S. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent a Service Plan Amendment; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code (11 U.S.C.) Section 903, and are also included in the “regulatory or electoral approval necessary under applicable nonbankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under Bankruptcy Code Section 943(b)(6).

Any Debt issued with a pledge or which results in a pledge that exceeds the Maximum Mill Levy or the Maximum Mill Levy Imposition Term, shall be deemed a material departure from this Service Plan pursuant to Section 32-1-207, C.R.S., and the Town shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

12. Eminent Domain Powers Limitation. The District shall not exercise the power of eminent domain except upon the prior written consent of the Town.

13. Notice of Meetings. The District shall deliver to the Town Clerk a copy of written notice of every regular or special meeting of the District at least five (5) business days prior to such meeting. The District shall post a copy of such notice at Town Hall and the Town Post Office. From the time that 50% of the structures to be built in the District have been sold to purchasers, all meetings of the Board of Directors shall be held within Town limits.

14. Subdistricts; 63-20 Corporations. No subdistricts shall be created by the District pursuant to Section 32-1-1101(1.5), C.R.S. The District shall not create any corporation to issue Bonds on the District's behalf.

15. Intergovernmental Agreement; Improvement Guaranty. The District shall not levy any taxes or issue any debt until it enters into an intergovernmental agreement with the Town regarding the provisions of this Amended and Restated Service Plan. The intergovernmental agreement shall be in form and substance satisfactory to the Town Administrator and Town Attorney. The creation of the District does not alter the obligation of the developer of property in the District to provide the Town with improvement guarantees pursuant to the Development Agreement entered into with the Developer.

16. Service Plan Amendment Requirement. This Service Plan has been designed with sufficient flexibility to enable the District to provide required services and facilities under evolving circumstances without the need for numerous amendments. While the assumptions upon which this Service Plan are generally based are reflective of an Official Development Plan for the property within the District, the cost estimates and Financing Plan are sufficiently flexible to enable the District to provide necessary services and facilities without the need to amend this Service Plan as development plans change. Modification of the general types of services and facilities, and changes in proposed configurations, locations, or dimensions of various facilities and improvements shall be permitted to accommodate development needs consistent with then-current Official Development Plans for the property. Actions of the District which violate the limitations set forth in Sections A.1-15 above or in Section VI shall be deemed to be material departures from this Service Plan and the Town shall be entitled to all remedies available under State and local law to enjoin such actions of the District.

B. Preliminary Engineering Survey.

The District shall have authority to provide for the planning, design, acquisition, construction, installation, relocation, redevelopment, maintenance, and financing of the Public Improvements within and without the boundaries of the District, as more specifically described in Exhibit E. An estimate of the costs of the Public Improvements which may be planned for, designed, acquired, constructed, installed, relocated, redeveloped, maintained or financed was prepared based upon a preliminary engineering survey and estimates derived from the Official Development Plan on the property in the District Boundaries and is approximately Eight Million Seven Hundred Eighty-Seven Thousand and One Hundred Eighty Dollars (\$8,787,180.00) and as more specifically detailed in Exhibit E.

All of the Public Improvements described herein will be designed in such a way as to assure that the Public Improvements standards will be compatible with those of the Town and shall be in accordance with the requirements of the Official Development Plan. All descriptions of the Public Improvements to be constructed, and their related costs, are estimates only and are subject to modification as engineering, development plans, economics, the Town's requirements, and construction scheduling may require. Upon approval of this Service Plan, the District will continue to develop and refine cost estimates contained herein and prepare for issuance of Debt. All cost estimates will be inflated to then-current dollars at the time of the issuance of Debt and construction. All construction cost estimates assume construction to applicable local, State or Federal requirements.

VI. FINANCIAL PLAN

A. General.

The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation, and financing of the Public Improvements from its revenues and by and through the proceeds of Debt to be issued by the District. The Financial Plan for the District shall be to issue such Debt as the District can reasonably pay within the Maximum Mill Levy Imposition Term from revenues derived from the Maximum Mill Levy and other legally available revenues (subject to Section V.A.8 hereof). The total Debt that the District shall be permitted to issue shall not exceed the total Debt issuance limitation set forth in Section V.A.7 hereof, and shall be permitted to be issued on a schedule and in such year or years as the District determine shall meet the needs of the Financial Plan referenced above and phased to serve development as it occurs. All Debt issued by the District may be payable from any and all legally available revenues of the District, including general ad valorem taxes to be imposed upon all taxable property of the District. Prior to issuing any Debt, the District shall deliver to the Town an opinion of nationally recognized bond counsel (acceptable to the Town Attorney) stating that the Debt satisfies the requirements of the Service Plan.

B. Maximum Voted Interest Rate and Maximum Underwriting Discount.

The interest rate on any Debt is expected to be the market rate at the time the Debt is issued. The proposed maximum interest rate on any Debt shall not exceed 18%. The maximum underwriting discount shall not exceed 5%. Debt, when issued, will comply with all relevant requirements of this Service Plan, State law and Federal law as then applicable to the issuance of public securities. The form of the ballot questions submitted to its electors at the organizational election held on November 7, 2006, are attached hereto as Exhibit H.

C. No-Default Provisions.

Debt issued by a District shall be structured so that failure to pay debt service when due shall not of itself constitute an event of default or result in the exercise of remedies. The foregoing shall not be construed to prohibit events of default and remedies for other occurrences including, without limitation, (1) failure to impose or collect the Maximum Mill Levy or such portion thereof as may be pledged thereto, or to apply the same in accordance with the terms of the Debt, (2) failure to abide by other covenants made in connection with such Debt,

or (3) filing by a District as a debtor under any bankruptcy or other applicable insolvency laws. Notwithstanding the foregoing, Debt will not be structured with a remedy which requires the District to increase the Maximum Mill Levy or the Maximum Mill Levy Imposition Term.

D. Eligible Bondholders

All District Bonds or other Debt instruments, if not rated in one of its four highest rating categories by one or more nationally recognized organizations which regularly rate such obligations, must be issued in minimum denominations of \$500,000. The foregoing shall not prohibit the redemption by the District of such Debt instruments in denominations smaller than \$500,000.

E. Maximum Mill Levy.

The "Maximum Mill Levy" shall be the maximum mill levy the District is permitted to impose upon the taxable property of the District and shall be determined as follows:

1. The Maximum Mill Levy shall be fifty (50) mills; provided that if, on or after January 1, 2006, there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the mill levy limitation applicable to such Debt may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2006, are neither diminished nor enhanced as a result of such changes. For purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

F. Maximum Mill Levy Imposition Term.

The District shall not impose a Debt service mill levy for more than forty (40) years after the year of the initial imposition of such Debt service mill levy unless: (1) a majority of the Board of Directors of the District imposing the mill levy are residents of such District, and (2) such Board has voted in favor of issuing Debt with a term which requires or contemplates the imposition of a Debt service mill levy for a longer period of time than the limitation contained herein.

G. Debt Repayment Sources.

The District may impose a mill levy on taxable property within its boundaries as a primary source of revenue for repayment of Debt service and for operations and maintenance. The Debt mill levy shall only be used for Debt service on Market Issued Debt or for Privately Placed Debt. It shall never be used to pay debt service on any other obligation. Specifically, Developer advances for capital outlays must be structured as Privately Placed Debt if there is a reasonable expectation that the advance will not be repaid in its entirety within one (1) year. In no event shall the debt service mill levy in any District exceed the Maximum Mill Levy or the Maximum Mill Levy Imposition Term.

H. Security for Debt.

No Debt or other financial obligation of any District will constitute a debt or obligation of the Town in any manner. The faith and credit of the Town will not be pledged for the repayment of any Debt or other financial obligation of any District. This will be clearly stated on all offering circulars, prospectuses, or disclosure statements associated with any securities issued by any District. District shall not utilize the Town of Erie' name in the name of the District.

I. Operating Mill Levy

In addition to the capital costs of the Public Improvements, the District will require operating funds for administration and to plan and cause the Public Improvements to be constructed and maintained. The annual operating budget is estimated to be less than Fifty Thousand Dollars (\$50,000.00) which is anticipated to be derived from property taxes and other revenues as described in Exhibit G.

VII. ANNUAL REPORT

A. General.

The District shall be responsible for submitting an annual report to the Town no later than August 1 of each year following the year in which the Order and Decree creating the District has been issued.

B. Reporting of Significant Events.

The annual report shall include the following information:

(a) A narrative summary of the progress of the District in implementing its Service Plan;

(b) Except when an exemption from audit has been granted for the fiscal year under the Local Government Audit Law, the audited financial statements of the District for the fiscal year including a statement of financial condition (i.e. balance sheet) as of December 31 of the fiscal year and the statement of operations (i.e. revenues and expenditures) for the fiscal year;

(c) Unless disclosed within a separate schedule to the financial statements, a summary of the capital expenditures incurred by the District in development of public facilities in the fiscal year, as well as any capital improvements or projects proposed to be undertaken in the five (5) years following the fiscal year;

(d) Unless disclosed within a separate schedule to the financial statements, a summary of the financial obligations of the District at the end of the fiscal year, including the amount of outstanding indebtedness, the amount and terms of any new District indebtedness or long-term obligations issued in the fiscal year, the amount of payment or retirement of existing indebtedness of the District in the fiscal year, the total assessed valuation

of all taxable properties within the District as of January 1 of the fiscal year, and the current mill levy of the District pledged to debt retirement in the fiscal year;

(e) The District's budget for the calendar year in which the annual report is submitted;

(f) A summary of residential and commercial development which has occurred within the District for the fiscal year;

(g) A summary of all taxes, fees, charges and assessments imposed by the District as of January 1 of the fiscal year;

(h) The name, business address and telephone number of each member of the Board and its chief administrative officer and general counsel, together with the date, place and time of the regular meetings of the Board.

VIII. DISSOLUTION

The District agrees to file petitions in the appropriate District Court for dissolution, pursuant to the applicable State statutes upon the occurrence of one of the following: (1) if the Board of Trustees has not approved a preliminary plat and/or development agreement for the development of the property within the District within one year from the approval of this Service Plan, (2) if the District has not issued any Debt within two years from the approval of this Service Plan, (3) upon an independent determination of the Board of Trustees that the purposes for which the District were created have been accomplished, or (4) when no Debt is then outstanding. If the Board of Trustees has not approved a preliminary plat and/or development agreement for the development of the property within the District within one year from the approval of this Service Plan, the District may request a modification of this Service Plan to provide for a six-month extension of the one year dissolution clause. The Board of Trustees may approval up to two six-month extensions for a maximum of one year. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of its outstanding Debt as required pursuant to State statutes.

IX. DISCLOSURE TO PURCHASERS

The District will use reasonable efforts to assure that all developers of the property located within the District provide written notice to all purchasers or lessees of property in the District regarding the Maximum Mill Levy as well as a description of the District's authority to impose and collect rates, fees, charges or exactions. The form of notice shall be substantially in the form of Exhibit J hereto; provided that such form may be modified by the District so long as a new form is submitted to the Town prior to modification. All promotional, marketing, and sales information shall display notice, equal in size and font to all other pertinent information, as to debt, taxes, rates, fees and exactions, and this information shall further be recorded in the real estate records of the County with the order of the court creating the District.

X. COMPLIANCE WITH LAWS

The approval of the Service Plan shall not limit the Town in implementing any growth limitations imposed by the Board of Trustees or the voters. The District shall be subject to all of the Town's zoning, subdivision, building code or land use requirements.

XI. CONCLUSION

It is submitted that this Service Plan for the District, as required by Section 32-1-203(2), C.R.S., establishes that:

1. There is sufficient existing and projected need for organized service in the area to be serviced by the District;
2. The existing service in the area to be served by the District is inadequate for present and projected needs;
3. The District is capable of providing economical and sufficient service to the area within its proposed boundaries; and
4. The area to be included in the District does have, and will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

EXHIBIT A-1

Town of Erie Resolution of Approval

No. 06-97, Dated September 12, 2006

Attached hereto

RESOLUTION NO. 06-97

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF ERIE,
COLORADO APPROVING THE SERVICE PLAN FOR THE ERIE FARM
METROPOLITAN DISTRICT**

WHEREAS, §32-1-204.5, C.R.S. provides that no special district shall be organized within the boundaries of the Town of Erie (the "Town") except upon adoption of a resolution of the Board of Trustees (the "Board") approving the Service Plan of the proposed special district; and

WHEREAS, a service plan dated September 5, 2006 has been submitted to the Board for the Erie Farm Metropolitan District (the "District") in compliance with § 32-1-204.5 (the "Service Plan"); and

WHEREAS, the territory of the proposed District is located wholly within the boundaries of the Town; and

WHEREAS, adequate notice of a public hearing of the Board to review the Service Plan has been given; and

WHEREAS, the Board has conducted a public hearing on the Service Plan for the Erie Farm Metropolitan District.

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO:

Section 1. The Board has jurisdiction to hear this matter.

Section 2. The Board makes the following findings:

a. There is sufficient existing and projected need for organized service in the area to be serviced by the proposed special district.

b. The existing service in the area to be served by the proposed special district is inadequate for present and projected needs.

c. The proposed special district is capable of providing economical and sufficient service to the areas within its proposed boundaries.

d. The area to be included in the proposed special district has, or will have, the financial ability to discharge the proposed indebtedness on a reasonable basis.

Section 3. The Service Plan for the District is hereby approved. Nothing herein limits the Town's powers with respect to the District, the property within the District, or the improvements to be constructed by the District. The Town's findings are based solely upon the evidence in the Service Plan and such other evidence presented at the public hearing, and the Town has not conducted any independent investigation of the evidence. The Town makes no guarantee as to the financial viability of the Districts or the achievability of the results.

ADOPTED AND APPROVED THIS 12TH DAY OF SEPTEMBER, 2006, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.



TOWN OF ERIE,
a Colorado municipal corporation

By: _____

Andrew J. Moore, Mayor

ATTEST:

By: _____

Nancy Parker, Town Clerk

EXHIBIT A-2

Town of Erie Resolution of Approval

No. 13-_____, Dated _____, 2013

Attached hereto

EXHIBIT B

Legal Description

EXHIBIT B

A PARCEL OF LAND BEING LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH P.M., TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS: SOUTH 00°21'26" WEST ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER BETWEEN THE FOUND 2" ALUMINUM CAP IN RANGE BOX AT THE NORTHEAST CORNER THEREOF AND THE FOUND 3 1/4" ALUMINUM CAP LOCATED AT THE SOUTHEAST CORNER THEREOF WITH ALL BEARINGS SHOWN HEREON RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 25; THENCE NORTH 89°42'40" WEST A DISTANCE OF 30.00 FEET ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF EAST COUNTY LINE ROAD (COUNTY ROAD NO. 901), SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE SOUTH 00°21'26" WEST A DISTANCE OF 2594.67 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ARAPAHOE DRIVE (COUNTY ROAD NO. 54); THENCE NORTH 89°57'39" WEST A DISTANCE OF 2644.84 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO A POINT ON THE WEST LINE OF SAID SOUTHEAST QUARTER; THENCE NORTH 00°13'49" WEST A DISTANCE OF 2836.30 FEET ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER TO THE NORTHWEST CORNER THENCE SOUTH 89°42'40" EAST A DISTANCE OF 2701.53 FEET ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 158.69 ACRES, MORE OR LESS;

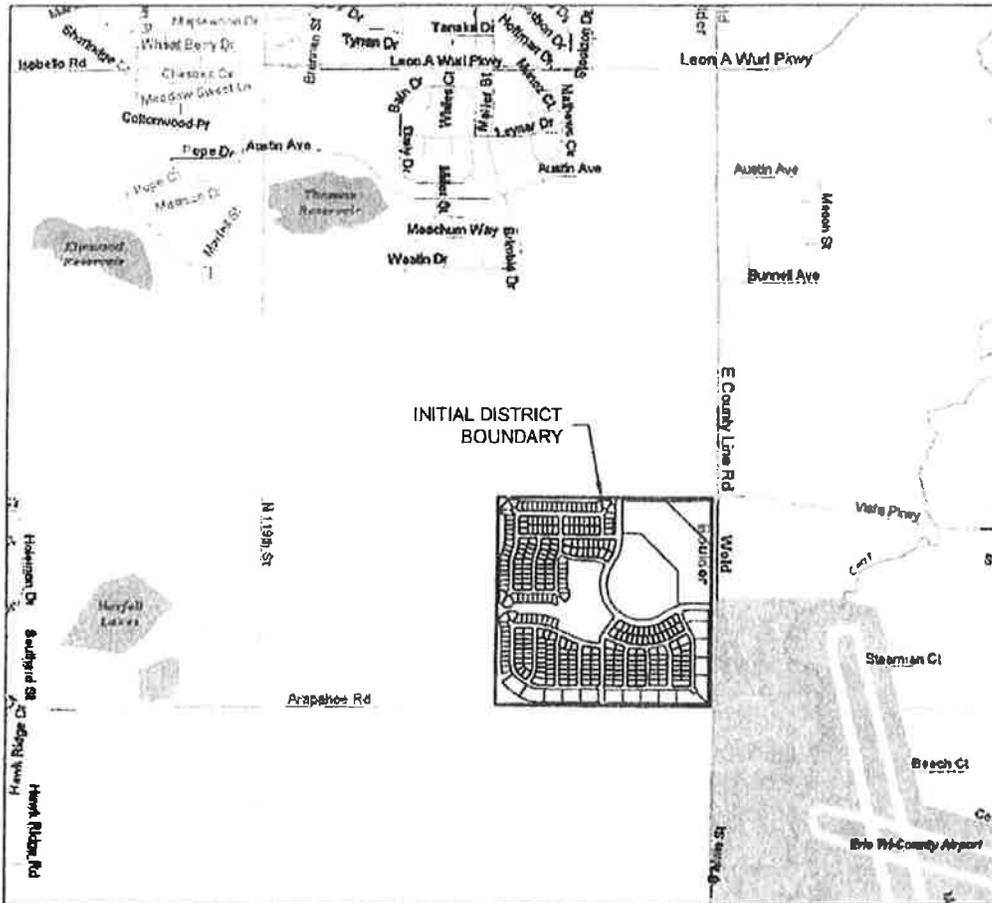
 JANSEN STRAWN CONSULTING ENGINEERS 45 WEST 2ND AVENUE DENVER, CO 80223 P.303.461.3333 F.303.861.3338	PROJECT: ERIE FARMS	DATE : 10/19/12	SHEET EX-B
	JOB NO.: 11063	SCALE: N.A.	

EXHIBIT C
Erie Vicinity Map

LEGEND

NOTE: LOT CONFIGURATION IS CONCEPTUAL ONLY.

— INITIAL DISTRICT BOUNDARY



Scale: 1" = 2000



**Engineers
Surveyors
Scientists
Construction
Advisors**

COMPANIES OF COLORADO, LTD.

2389 Blake Street, Suite 130
Denver, CO 80206
303.989.8588 voice
303.989.9932 fax
V3co.com

VICINITY MAP
ERIE FARM - EXHIBIT C

06/26/06
1" = 2000'

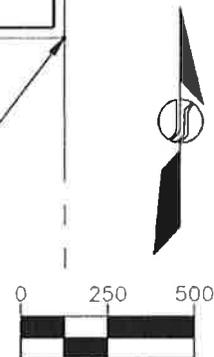
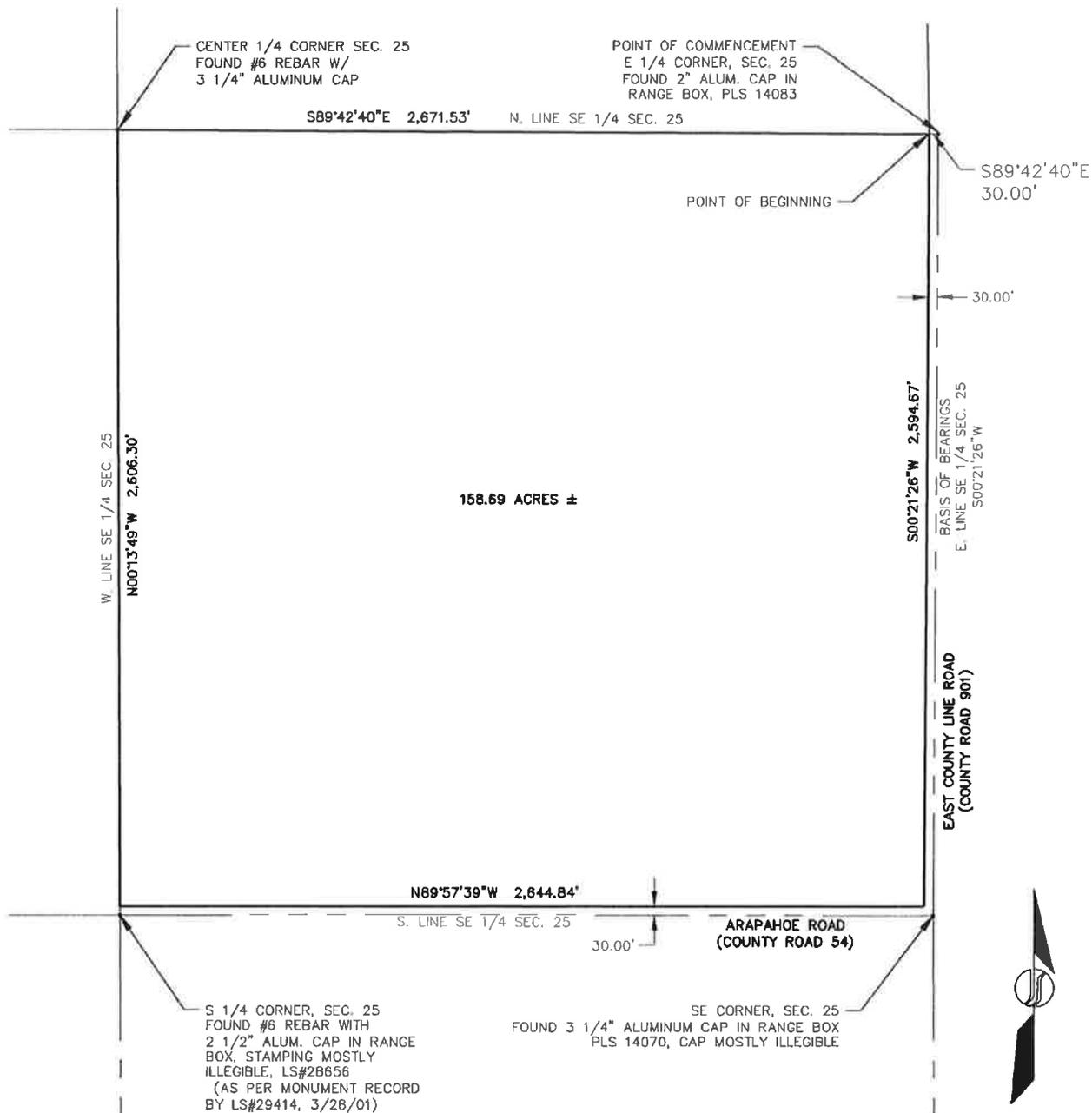
ERIE

COLORADO

EXHIBIT D

Initial District Boundary Map

EXHIBIT D



SCALE: 1" = 500'

 JANSEN STRAWN CONSULTING ENGINEERS 45 WEST 2ND AVENUE DENVER, CO 80223 P.303.461.8839 F.303.461.3339	PROJECT: ERIE FARMS	DATE : 10/19/12	SHEET EX-D
	JOB NO.: 11063	SCALE: 1"=500'	

EXHIBIT E

Description of Public Improvements

EXHIBIT E
ENGINEER'S PRELIMINARY COST ESTIMATE
ERIE FARMS
October 22, 2012
JN: 11063

IMPROVEMENTS

<u>DESCRIPTION</u>	<u>QNTY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
1. STREETS				
A. COUNTY LINE ROAD AND ARAPAHOE RD				
6 Inch VERTICAL CURB & GUTTER	5,100	LF	\$ 11.00	\$ 56,100
6 Inch MEDIAN CURB & GUTTER	2,550	LF	9.50	24,225
8 FT. WALK	2,550	LF	14.00	35,700
5 FOOT DETACHED WALK	2,580	LF	11.00	28,380
STREET LIGHTS	12	EA	2,000.00	24,000
CURB RETURN W/ HCR (35' RADIUS)	6	EA	800.00	4,800
MILLING	1	LS	15,000.00	15,000
ASPHALT (10" est.)	14,490	SQ YD	27.00	391,230
SUBGRADE PREPARATION	14,490	SQ YD	2.00	28,980
STRIPING	5,160	LF	0.50	2,580
				<hr/>
		SUBTOTAL ITEM A		\$ 610,995
B. LOCAL ROADS (PUBLIC)				
4 Inch ROLLOVER CURB & GUTTER	45,300	LF	\$ 15.17	\$ 687,201
CURB RETURN W/ HCR (15' RADIUS)	85	EA	600.00	51,000
6 Inch VERTICAL CURB & GUTTER	2,500	LF	11.50	28,750
6 Inch MEDIAN CURB & GUTTER	2,500	LF	9.50	23,750
CROSS PAN	8	EA	4,000.00	32,000
STREET LIGHTS	50	EA	800.00	40,000
5 FOOT DETACHED WALK	47,800	LF	11.00	525,800
SIGNAGE	75	EA	200.00	15,000
RANGE BOX	40	EA	350.00	14,000
ASPHALT (7" est.) (36' FL-FL)	99,000	SQ YD	18.00	1,782,000
SUBGRADE PREPARATION	99,000	SQ YD	2.00	198,000
				<hr/>
		SUBTOTAL ITEM B		\$ 3,397,501
C. TRAILS				
8' NEIGHBORHOOD TRAIL	7,000	LF	\$ 14.00	\$ 98,000
				<hr/>
		SUBTOTAL ITEM C		\$ 98,000
		SUBTOTAL I		\$ 4,106,496

ENGINEER'S PRELIMINARY COST ESTIMATE
ERIE FARMS
October 22, 2012
JN: 11063

IMPROVEMENTS

<u>DESCRIPTION</u>	<u>QNTY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>TOTAL COST</u>
II. UTILITIES				
A. WATER FACILITIES (ENTIRE SITE)				
CONNECT TO EXISTING	1	EA	\$ 800.00	\$ 800
16 Inch DIP W/Bedding	2,580	LF	45.00	116,100
16 Inch tee	3	EA	1,500.00	4,500
16 Inch Butterfly Valve	4	EA	3,500.00	14,000
12 Inch PVC W/Bedding	2,500	LF	36.00	90,000
12 Inch Tee	6	EA	1,050.00	6,300
12 Inch Gate Valve	11	EA	2,700.00	29,700
12 Inch Bend	6	EA	675.00	4,050
12 Inch Cross	4	EA	1,000.00	4,000
12 Inch Blow Off	2	EA	1,753.00	3,506
Water Main Lowering	16	EA	3,000.00	48,000
8 Inch PVC	23,080	LF	23.00	530,840
8 Inch tee	20	EA	850.00	17,000
8 Inch Gate Valve	45	EA	1,457.00	65,565
8 Inch Bend	32	EA	400.00	12,800
8 Inch Cross	4	EA	850.00	3,400
6 Inch Fire Hydrant Assembly	26	EA	4,100.00	106,600
Water Services	428	EA	1,100.00	470,800
			SUBTOTAL ITEM A	\$ 1,527,961
B. SANITARY SEWER FACILITIES (ENTIRE SITE)				
8 Inch PVC with Bedding	23,822	LF	\$ 27.00	\$ 643,194
12 Inch PVC with Bedding	1,597	LF	34.00	54,298
15 Inch PVC with Bedding	1,599	LF	40.00	63,960
Channel Crossings	2	EA	5,000.00	10,000
Underdrain	23,822	LF	6.00	142,932
Manhole	87	EA	1,900.00	165,300
Connect to Existing	1	EA	700.00	700
Sewer Services	428	EA	750.00	321,000
			SUBTOTAL ITEM B	\$ 1,401,384

ENGINEER'S PRELIMINARY COST ESTIMATE
ERIE FARMS
October 22, 2012
JN: 11063

IMPROVEMENTS

DESCRIPTION	QNTY	UNIT	UNIT COST	TOTAL COST
C. STORM DRAINAGE FACILITIES (ENTIRE SITE)				
18 Inch RCP Storm Sewer	3,100	LF	\$ 40.80	\$ 126,480
24 Inch RCP Storm Sewer	1,000	LF	50.00	50,000
36 Inch RCP Storm Sewer	80	LF	80.00	6,400
48 Inch RCP Storm Sewer	170	LF	115.00	19,550
18 Inch F.E.S.	8	EA	600.00	4,800
24 Inch F.E.S.	4	LF	700.00	2,800
36 Inch F.E.S.	2	LF	1,200.00	2,400
48 Inch Manhole	18	EA	1,850.00	33,300
60 Inch Manhole	4	EA	3,000.00	12,000
5' TYPE R Inlet	16	EA	3,800.00	60,800
10' TYPE R Inlet	6	EA	4,500.00	27,000
15' TYPE R Inlet	5	EA	5,200.00	26,000
Riprap	300	CY	50.00	15,000
Pond Shaping	20,000	CY	3.00	60,000
Pond Outlet	1	EA	8,000.00	8,000
Forebay	12,000	SF	10.00	120,000
4' Concrete Pan	1,000	LF	18.00	18,000
10' Maintenance Road 6" Class 2 Base	500	SF	2.00	1,000
SUBTOTAL ITEM C				\$ 417,050
SUBTOTAL II				\$ 3,346,395

III. EARTHWORK

Overlot Grading for roadways	200,000	CY	\$ 2.00	\$ 400,000
Erosion Control	1	LS	50,000.00	50,000
SUBTOTAL III				\$ 450,000

IV. ADDITIONALS

Mobilization	12,000	LS	\$ 1.00	\$ 12,000
Permits	12,000	LS	1.00	12,000
Survey	50,000	LS	1.00	50,000
Dry Utility Sleeving	20,000	LS	1.00	20,000
SUBTOTAL IV				\$ 94,000

SUMMARY	
STREET IMPROVEMENTS	\$ 4,106,496
UTILITY IMPROVEMENTS	3,346,395
EARTHWORK	450,000
ADDITIONALS	94,000
CONTINGENCY & NON-ITEMIZED IMPROVEMENTS (10%)	790,289
TOTAL IMPROVEMENTS	\$ 8,787,180

Based on Preliminary Plans Revised 10/22/12

EXHIBIT F

Matrix of Ownership and Maintenance

Erie Farm Metro District

	Constructed by	Ownership	Maintenance
Neighborhood Park	Metro District	Town of Erie	Town of Erie
Pocket Parks	Metro District	HOA	HOA
Storm	Metro District	Town of Erie	Town of Erie
Sanitary	Metro District	Town of Erie	Town of Erie
Water	Metro District	Town of Erie	Town of Erie
Roads	Metro District	Town of Erie	Town of Erie

EXHIBIT G

Financing Plan, including sources and uses
and bond solutions

ERIE FARM METROPOLITAN DISTRICT
Development Projection at 42.00 (target) Mills for Debt Service, plus Facility Fees
Series 2014, Non-Rated G.O. Bonds, 30-year maturity

YEAR	Mkt Value		As'ed Value		Cumulative		As'ed Value		Cumulative		District DIS Mill Levy [42.00 Target] [50.00 Cap]	Total Collections @ 98%	S.O. Taxes Collected @ 6%	Facility Fees Collected	Total Available Revenue
	Total Reassess'mt @ 2.0%	Blennial	Reassess'mt @ 7.96%	Blennial	Market Value	Market Value	of Market (2-yr lag)	of Market (2-yr lag)	Market Value	Market Value					
2013	0	0	0	0	2,700,000	2,700,000	0	0	0	0	42,000	\$0	\$0	\$180,000	0
2014	84	0	27,000,000	0	2,700,000	2,700,000	783,000	783,000	0	0	42,000	\$32,228	1,934	180,000	180,000
2015	84	0	54,540,000	0	2,385,000	2,385,000	783,000	783,000	0	0	42,000	120,689	7,241	180,000	307,931
2016	77	1,090,800	80,444,340	2,149,200	2,160,000	2,160,000	691,650	691,650	0	0	42,000	207,160	12,430	180,000	399,589
2017	72	2,067,329	103,866,433	4,341,384	2,160,000	2,160,000	626,400	626,400	0	0	42,000	289,345	17,361	180,000	486,706
2018	72	2,067,329	129,814,296	6,403,369	2,110,000	2,110,000	626,400	626,400	0	0	42,000	364,446	21,867	175,000	561,313
2019	70	3,042,208	152,110,401	8,227,968	960,000	960,000	611,900	611,900	0	0	42,000	447,225	26,833	70,000	544,058
2020	28	3,042,208	165,963,768	10,253,618	350,000	350,000	611,900	611,900	0	0	42,000	509,824	30,589	25,000	565,413
2021	10	3,999,683	189,984,168	12,107,988	0	0	278,400	278,400	0	0	42,000	547,931	32,876	0	580,807
2022	0	3,999,683	173,383,852	13,210,716	0	0	101,500	101,500	0	0	42,000	556,925	33,416	0	590,341
2023	0	3,467,677	173,383,852	13,530,740	0	0	13,530,740	13,530,740	0	0	42,000	568,064	34,084	0	602,148
2024	0	3,467,677	176,851,529	13,801,355	0	0	13,801,355	13,801,355	0	0	42,000	568,064	34,084	0	602,148
2025	0	3,537,031	176,851,529	13,801,355	0	0	13,801,355	13,801,355	0	0	42,000	579,425	34,766	0	614,191
2026	0	3,537,031	180,386,559	14,077,382	0	0	14,077,382	14,077,382	0	0	42,000	579,425	34,766	0	614,191
2027	0	3,607,771	180,386,559	14,077,382	0	0	14,077,382	14,077,382	0	0	42,000	591,014	35,461	0	626,474
2028	0	3,607,771	183,996,330	14,358,929	0	0	14,358,929	14,358,929	0	0	42,000	591,014	35,461	0	626,474
2029	0	3,679,927	183,996,330	14,358,929	0	0	14,358,929	14,358,929	0	0	42,000	602,834	36,170	0	639,004
2030	0	3,679,927	187,676,257	14,646,108	0	0	14,646,108	14,646,108	0	0	42,000	602,834	36,170	0	639,004
2031	0	3,753,525	187,676,257	14,646,108	0	0	14,646,108	14,646,108	0	0	42,000	614,890	36,893	0	651,784
2032	0	3,753,525	191,429,782	14,939,030	0	0	14,939,030	14,939,030	0	0	42,000	614,890	36,893	0	651,784
2033	0	3,828,596	191,429,782	14,939,030	0	0	14,939,030	14,939,030	0	0	42,000	627,188	37,631	0	664,820
2034	0	3,828,596	195,258,378	15,237,811	0	0	15,237,811	15,237,811	0	0	42,000	627,188	37,631	0	664,820
2035	0	3,905,166	195,258,378	15,237,811	0	0	15,237,811	15,237,811	0	0	42,000	639,732	38,384	0	678,116
2036	0	3,905,166	199,163,545	15,542,567	0	0	15,542,567	15,542,567	0	0	42,000	639,732	38,384	0	678,116
2037	0	3,983,271	199,163,545	15,542,567	0	0	15,542,567	15,542,567	0	0	42,000	652,527	39,152	0	691,678
2038	0	3,983,271	203,146,816	15,853,418	0	0	15,853,418	15,853,418	0	0	42,000	652,527	39,152	0	691,678
2039	0	4,062,936	203,146,816	15,853,418	0	0	15,853,418	15,853,418	0	0	42,000	665,577	39,935	0	705,512
2040	0	4,062,936	207,209,752	16,170,487	0	0	16,170,487	16,170,487	0	0	42,000	665,577	39,935	0	705,512
2041	0	4,144,195	207,209,752	16,170,487	0	0	16,170,487	16,170,487	0	0	42,000	678,889	40,733	0	719,622
2042	0	4,144,195	211,353,948	16,493,896	0	0	16,493,896	16,493,896	0	0	42,000	678,889	40,733	0	719,622
2043	0	4,227,079	211,353,948	16,493,896	0	0	16,493,896	16,493,896	0	0	42,000	692,467	41,548	0	734,015
2044	0	4,227,079	215,581,026	16,823,774	0	0	16,823,774	16,823,774	0	0	42,000	692,467	41,548	0	734,015
497	51,797,195				16,208,519	16,208,519	972,511	972,511	1,170,000	1,170,000					18,351,030

ERIE FARM METROPOLITAN DISTRICT

Development Projection at 42.00 (target) Mills for Debt Service, plus Facility Fees

Series 2014, Non-Rated G.O. Bonds, 30-year maturity

YEAR	Net Available for Debt Svc	Series 2014 \$8,100,000 Par [Net \$5.848 MM] Net Debt Service	Annual Surplus	Surplus Release @ 50% DIA to \$200,000	Cumulative Surplus \$±10,000 Target	Total Debt/ Assessed Ratio	Total Debt/ Act'l Value Ratio
2013	0	0	0	0	0	n/a	n/a
2014	180,000	\$0	180,000	0	180,000	1034%	14%
2015	214,162	0	214,162	0	394,162	276%	10%
2016	307,931	0	307,931	0	702,093	161%	8%
2017	399,589	242,282	157,307	0	859,400	115%	6%
2018	486,706	484,564	2,142	51,543	810,000	91%	5%
2019	561,313	484,564	76,749	76,749	810,000	75%	5%
2020	544,058	484,564	59,495	59,495	810,000	65%	5%
2021	565,413	539,564	25,850	25,850	810,000	60%	5%
2022	580,807	576,264	4,543	4,543	810,000	59%	5%
2023	590,341	590,564	(223)	0	809,777	57%	4%
2024	602,148	598,664	3,484	0	813,261	56%	4%
2025	602,148	600,864	1,284	4,545	810,000	54%	4%
2026	614,191	612,464	1,727	1,727	810,000	53%	4%
2027	614,191	612,884	1,327	1,327	810,000	50%	4%
2028	626,474	622,664	3,811	3,811	810,000	49%	4%
2029	626,474	621,264	5,211	615,211	200,000	47%	4%
2030	639,004	634,264	4,740	4,740	200,000	45%	4%
2031	639,004	635,764	3,240	3,240	200,000	43%	3%
2032	651,784	651,364	420	420	200,000	41%	3%
2033	651,784	650,164	1,620	1,620	200,000	38%	3%
2034	664,820	663,054	1,756	1,756	200,000	36%	3%
2035	664,820	664,164	656	656	200,000	33%	3%
2036	678,116	674,064	4,052	4,052	200,000	31%	2%
2037	678,116	677,164	952	952	200,000	28%	2%
2038	691,678	688,764	2,915	2,915	200,000	25%	2%
2039	691,678	688,264	3,415	3,415	200,000	22%	2%
2040	705,512	701,264	4,248	4,248	200,000	19%	1%
2041	705,512	701,864	3,648	3,648	200,000	15%	1%
2042	719,622	715,664	3,958	3,958	200,000	12%	1%
2043	719,622	716,764	2,858	2,858	200,000	8%	1%
2044	734,015	732,564	1,451	201,451	0		
	18,351,030	17,266,299	1,084,731				

[BOct15/2 14nrB]

ERIE FARM METROPOLITAN DISTRICT
 Operations Revenue and Expense Projection

YEAR	Total Assessed Value	Operns Mill Levy	Total Collections @ 56%	S.O. Taxes Collected @ 6%	Total Available For O&M	Less District Operations @ of \$30,000 Infr. @ 1% or max 8.0 mills	Developer Advances for Operations	Developer Repayment for Operations	Annual Surplus
2013	0	8.000	0	0	0	30,000	30,000	0	0
2014	783,000	8.000	6,139	368	6,507	30,300	23,793	0	0
2015	2,932,200	8.000	22,988	1,379	24,368	30,603	6,235	0	0
2016	5,033,034	8.000	39,459	2,368	41,827	30,909	0	10,917	0
2017	7,029,769	8.000	55,113	3,307	58,420	31,218	0	27,202	0
2018	8,654,368	8.000	69,418	4,165	73,583	31,530	0	21,909	20,144
2019	10,865,518	2.821	30,043	1,803	31,846	31,846	0	0	0
2020	12,386,388	2.500	30,343	1,821	32,164	32,164	0	0	0
2021	13,312,216	2.349	30,647	1,839	32,486	32,486	0	0	0
2022	13,530,740	2.334	30,953	1,857	32,811	32,811	0	0	0
2023	13,801,355	2.311	31,263	1,876	33,139	33,139	0	0	0
2024	13,801,355	2.335	31,576	1,895	33,470	33,470	0	0	0
2025	14,077,382	2.312	31,891	1,913	33,805	33,805	0	0	0
2026	14,077,382	2.335	32,210	1,933	34,143	34,143	0	0	0
2027	14,358,929	2.312	32,532	1,952	34,484	34,484	0	0	0
2028	14,358,929	2.335	32,858	1,971	34,829	34,829	0	0	0
2029	14,646,108	2.312	33,186	1,991	35,177	35,177	0	0	0
2030	14,646,108	2.335	33,518	2,011	35,529	35,529	0	0	0
2031	14,939,030	2.312	33,853	2,031	35,884	35,884	0	0	0
2032	14,939,030	2.335	34,192	2,052	36,243	36,243	0	0	0
2033	15,237,811	2.313	34,534	2,072	36,606	36,606	0	0	0
2034	15,237,811	2.336	34,879	2,093	36,972	36,972	0	0	0
2035	15,542,567	2.313	35,228	2,114	37,341	37,341	0	0	0
2036	15,542,567	2.336	35,580	2,135	37,715	37,715	0	0	0
2037	15,853,418	2.313	35,936	2,156	38,092	38,092	0	0	0
2038	15,853,418	2.336	36,295	2,178	38,473	38,473	0	0	0
2039	16,170,487	2.313	36,658	2,199	38,858	38,858	0	0	0
2040	16,170,487	2.336	37,025	2,221	39,246	39,246	0	0	0
2041	16,493,896	2.313	37,395	2,244	39,639	39,639	0	0	0
2042	16,493,896	2.337	37,769	2,266	40,035	40,035	0	0	0
2043	16,823,774	2.314	38,147	2,289	40,435	40,435	0	0	0
2044									
			1,041,629	62,498	1,104,127	1,083,982	60,028	60,028	20,144

ERIE FARM METROPOLITAN DISTRICT
 Development Projection (updated 10/15/12)

YEAR	Residential Development				<u>SFDs - '40</u>				<u>SFDs - '56</u>				<u>SFDs - '66</u>			
	# Lots Devel'd	Incr(Deacr) in Finished Lot Value @ 10%	# Units Completed	Price Inflated @ 2%	Market Value	# Lots Devel'd	Incr(Deacr) in Finished Lot Value @ 10%	# Units Completed	Price Inflated @ 2%	Market Value	# Lots Devel'd	Incr(Deacr) in Finished Lot Value @ 10%	# Units Completed	Price Inflated @ 2%	Market Value	
2013	24	600,000	0		0	24	720,000	0		0	24	840,000	0		0	
2014	24	0	24	\$250,000	6,000,000	24	0	24	\$300,000	7,200,000	24	0	24	\$350,000	8,400,000	
2015	24	0	24	255,000	6,120,000	24	0	24	306,000	7,344,000	24	0	24	357,000	8,568,000	
2016	24	0	24	260,100	6,242,400	24	0	24	312,120	7,490,880	24	0	24	364,140	8,799,360	
2017	24	0	24	265,302	6,367,248	24	0	24	318,362	7,640,698	24	0	24	371,423	8,914,147	
2018	22	(50,000)	24	270,608	6,494,593	24	0	24	324,730	7,793,512	24	0	24	378,851	9,092,430	
2019	0	(550,000)	22	276,020	6,072,444	4	(600,000)	24	331,224	7,949,362	24	0	24	386,428	9,274,278	
2020	0	0	0	281,541	0	0	(120,000)	4	337,849	1,351,395	10	(460,000)	24	384,157	9,459,764	
2021	0	0	0	287,171	0	0	0	0	344,606	0	0	(350,000)	10	402,040	4,020,400	
2022	0	0	0	292,915	0	0	0	0	351,498	0	0	0	0	410,081	0	
2023	0	0	0	298,773	0	0	0	0	358,528	0	0	0	0	418,262	0	
2024	0	0	0	304,749	0	0	0	0	365,698	0	0	0	0	426,649	0	
2025	0	0	0	310,844	0	0	0	0	373,012	0	0	0	0	435,181	0	
2026	0	0	0	317,060	0	0	0	0	380,473	0	0	0	0	443,885	0	
2027	0	0	0	323,402	0	0	0	0	388,092	0	0	0	0	452,762	0	
2028	0	0	0	329,870	0	0	0	0	395,844	0	0	0	0	461,818	0	
2029	0	0	0	336,467	0	0	0	0	403,761	0	0	0	0	471,054	0	
2030	0	0	0	343,196	0	0	0	0	411,636	0	0	0	0	480,475	0	
	142	0	142		37,296,685	148	0	148		46,769,866	178	0	178		66,468,380	

ERIE FARM METROPOLITAN DISTRICT

Development Projection (updated 10/15/12)

YEAR	# Lots Developed		Inert(Direct) in Finished Lot		Price Inflation @		Market Value	Total Residential Market Value	Total Rest Units	Total SFD Facility Fees @ \$2,500/unit	Annual Market Value +/- of Platted & Developed Lots
	10%	20%	Value @ 10%	# Units Completed	2%	Value					
2013	12	0	540,000	0			0	\$0	0	0	2,700,000
2014	12	0	0	12	\$450,000	5,400,000	5,400,000	27,000,000	84	180,000	0
2015	5	0	(315,000)	12	459,000	5,508,000	27,540,000	27,540,000	84	180,000	(315,000)
2016	0	0	(225,000)	5	468,180	2,340,900	24,813,540	24,813,540	77	180,000	(225,000)
2017	0	0	0	0	477,544	0	22,922,093	22,922,093	72	180,000	0
2018	0	0	0	0	487,094	0	23,380,535	23,380,535	72	180,000	(50,000)
2019	0	0	0	0	496,636	0	23,296,105	23,296,105	70	175,000	(1,150,000)
2020	0	0	0	0	506,773	0	10,811,159	10,811,159	28	70,000	(610,000)
2021	0	0	0	0	516,909	0	4,020,400	4,020,400	10	25,000	(350,000)
2022	0	0	0	0	527,247	0	0	0	0	0	0
2023	0	0	0	0	537,792	0	0	0	0	0	0
2024	0	0	0	0	548,547	0	0	0	0	0	0
2025	0	0	0	0	559,518	0	0	0	0	0	0
2026	0	0	0	0	570,709	0	0	0	0	0	0
2027	0	0	0	0	582,123	0	0	0	0	0	0
2028	0	0	0	0	593,765	0	0	0	0	0	0
2029	0	0	0	0	605,641	0	0	0	0	0	0
2030	0	0	0	0	617,754	0	0	0	0	0	0
	29	0		29		13,246,900	163,783,631	163,783,631	497	1,170,000	0

Residential Summary

SOURCES AND USES OF FUNDS

ERIE FARM METROPOLITAN DISTRICT
GENERAL OBLIGATION BONDS, SERIES 2014
Non-Rated, 42 Mills, 2044 Final Maturity
[Preliminary -- for discussion only]

Dated Date 12/01/2014
 Delivery Date 12/01/2014

Sources:

Bond Proceeds:	
Par Amount	8,100,000.00
<hr/>	
	8,100,000.00
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Uses:

Project Fund Deposits:	
Project Fund Deposit	5,848,205.99
Other Fund Deposits:	
Capitalized Interest Fund	1,209,594.01
Debt Service Reserve Fund	718,200.00
	<hr/>
	1,927,794.01
Delivery Date Expenses:	
Cost of Issuance	324,000.00
<hr/>	
	8,100,000.00
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BOND SUMMARY STATISTICS
ERIE FARM METROPOLITAN DISTRICT
GENERAL OBLIGATION BONDS, SERIES 2014
Non-Rated, 42 Mills, 2044 Final Maturity
[Preliminary -- for discussion only]

Dated Date	12/01/2014
Delivery Date	12/01/2014
First Coupon	06/01/2015
Last Maturity	12/01/2044
Arbitrage Yield	6.000000%
True Interest Cost (TIC)	6.000000%
Net Interest Cost (NIC)	6.000000%
All-In TIC	6.342695%
Average Coupon	6.000000%
Average Life (years)	22.920
Duration of Issue (years)	12.398
Par Amount	8,100,000.00
Bond Proceeds	8,100,000.00
Total Interest	11,139,000.00
Net Interest	11,139,000.00
Bond Years from Dated Date	185,650,000.00
Bond Years from Delivery Date	185,650,000.00
Total Debt Service	19,239,000.00
Maximum Annual Debt Service	1,452,200.00
Average Annual Debt Service	641,300.00
Underwriter's Fees (per \$1000)	
Average Takedown	
Other Fee	
Total Underwriter's Discount	
Bid Price	100.000000

Bond Component	Par Value	Price	Average Coupon	Average Life	Average Maturity Date	PV of 1 bp change
Term Bond due 2044	8,100,000.00	100.000	6.000%	22.920	11/01/2037	11,259.00
	8,100,000.00			22.920		11,259.00

	TIC	All-In TIC	Arbitrage Yield
Par Value	8,100,000.00	8,100,000.00	8,100,000.00
+ Accrued Interest			
+ Premium (Discount)			
- Underwriter's Discount			
- Cost of Issuance Expense		-324,000.00	
- Other Amounts			
Target Value	8,100,000.00	7,776,000.00	8,100,000.00
Target Date	12/01/2014	12/01/2014	12/01/2014
Yield	6.000000%	6.342695%	6.000000%

BOND DEBT SERVICE
ERIE FARM METROPOLITAN DISTRICT
GENERAL OBLIGATION BONDS, SERIES 2014
Non-Rated, 42 Mills, 2044 Final Maturity
[Preliminary -- for discussion only]

Period Ending	Principal	Coupon	Interest	Debt Service	Annual Debt Service
06/01/2015			243,000	243,000	
12/01/2015			243,000	243,000	486,000
06/01/2016			243,000	243,000	
12/01/2016			243,000	243,000	486,000
06/01/2017			243,000	243,000	
12/01/2017			243,000	243,000	486,000
06/01/2018			243,000	243,000	
12/01/2018			243,000	243,000	486,000
06/01/2019			243,000	243,000	
12/01/2019			243,000	243,000	486,000
06/01/2020			243,000	243,000	
12/01/2020			243,000	243,000	486,000
06/01/2021			243,000	243,000	
12/01/2021	55,000	6.000%	243,000	298,000	541,000
06/01/2022			241,350	241,350	
12/01/2022	95,000	6.000%	241,350	336,350	577,700
06/01/2023			238,500	238,500	
12/01/2023	115,000	6.000%	238,500	353,500	592,000
06/01/2024			235,050	235,050	
12/01/2024	130,000	6.000%	235,050	365,050	600,100
06/01/2025			231,150	231,150	
12/01/2025	140,000	6.000%	231,150	371,150	602,300
06/01/2026			226,950	226,950	
12/01/2026	160,000	6.000%	226,950	386,950	613,900
06/01/2027			222,150	222,150	
12/01/2027	170,000	6.000%	222,150	392,150	614,300
06/01/2028			217,050	217,050	
12/01/2028	190,000	6.000%	217,050	407,050	624,100
06/01/2029			211,350	211,350	
12/01/2029	200,000	6.000%	211,350	411,350	622,700
06/01/2030			205,350	205,350	
12/01/2030	225,000	6.000%	205,350	430,350	635,700
06/01/2031			198,600	198,600	
12/01/2031	240,000	6.000%	198,600	438,600	637,200
06/01/2032			191,400	191,400	
12/01/2032	270,000	6.000%	191,400	461,400	652,800
06/01/2033			183,300	183,300	
12/01/2033	285,000	6.000%	183,300	468,300	651,600
06/01/2034			174,750	174,750	
12/01/2034	315,000	6.000%	174,750	489,750	664,500
06/01/2035			165,300	165,300	
12/01/2035	335,000	6.000%	165,300	500,300	665,600
06/01/2036			155,250	155,250	
12/01/2036	365,000	6.000%	155,250	520,250	675,500
06/01/2037			144,300	144,300	
12/01/2037	390,000	6.000%	144,300	534,300	678,600
06/01/2038			132,600	132,600	
12/01/2038	425,000	6.000%	132,600	557,600	690,200
06/01/2039			119,850	119,850	
12/01/2039	450,000	6.000%	119,850	569,850	689,700
06/01/2040			106,350	106,350	
12/01/2040	490,000	6.000%	106,350	596,350	702,700
06/01/2041			91,650	91,650	
12/01/2041	520,000	6.000%	91,650	611,650	703,300
06/01/2042			76,050	76,050	
12/01/2042	565,000	6.000%	76,050	641,050	717,100
06/01/2043			59,100	59,100	
12/01/2043	600,000	6.000%	59,100	659,100	718,200
06/01/2044			41,100	41,100	
12/01/2044	1,370,000	6.000%	41,100	1,411,100	1,452,200
	8,100,000		11,139,000	19,239,000	19,239,000

NET DEBT SERVICE

**ERIE FARM METROPOLITAN DISTRICT
 GENERAL OBLIGATION BONDS, SERIES 2014
 Non-Rated, 42 Mills, 2044 Final Maturity
 [Preliminary -- for discussion only]**

Period Ending	Principal	Interest	Total Debt Service	Debt Service Reserve Fund	Capitalized Interest Fund	Net Debt Service
12/01/2015		486,000	486,000		-486,000	
12/01/2016		486,000	486,000		-486,000	
12/01/2017		486,000	486,000	-718.20	-243,000	242,281.80
12/01/2018		486,000	486,000	-1,436.40		484,563.60
12/01/2019		486,000	486,000	-1,436.40		484,563.60
12/01/2020		486,000	486,000	-1,436.40		484,563.60
12/01/2021	55,000	486,000	541,000	-1,436.40		539,563.60
12/01/2022	95,000	482,700	577,700	-1,436.40		576,263.60
12/01/2023	115,000	477,000	592,000	-1,436.40		590,563.60
12/01/2024	130,000	470,100	600,100	-1,436.40		598,663.60
12/01/2025	140,000	462,300	602,300	-1,436.40		600,863.60
12/01/2026	160,000	453,900	613,900	-1,436.40		612,463.60
12/01/2027	170,000	444,300	614,300	-1,436.40		612,863.60
12/01/2028	190,000	434,100	624,100	-1,436.40		622,663.60
12/01/2029	200,000	422,700	622,700	-1,436.40		621,263.60
12/01/2030	225,000	410,700	635,700	-1,436.40		634,263.60
12/01/2031	240,000	397,200	637,200	-1,436.40		635,763.60
12/01/2032	270,000	382,800	652,800	-1,436.40		651,363.60
12/01/2033	285,000	366,600	651,600	-1,436.40		650,163.60
12/01/2034	315,000	349,500	664,500	-1,436.40		663,063.60
12/01/2035	335,000	330,600	665,600	-1,436.40		664,163.60
12/01/2036	365,000	310,500	675,500	-1,436.40		674,063.60
12/01/2037	390,000	288,600	678,600	-1,436.40		677,163.60
12/01/2038	425,000	265,200	690,200	-1,436.40		688,763.60
12/01/2039	450,000	239,700	689,700	-1,436.40		688,263.60
12/01/2040	490,000	212,700	702,700	-1,436.40		701,263.60
12/01/2041	520,000	183,300	703,300	-1,436.40		701,863.60
12/01/2042	565,000	152,100	717,100	-1,436.40		715,663.60
12/01/2043	600,000	118,200	718,200	-1,436.40		716,763.60
12/01/2044	1,370,000	82,200	1,452,200	-719,636.40		732,563.60
	8,100,000	11,139,000	19,239,000	-757,701.00	-1,215,000	17,266,299.00

EXHIBIT H

District Election Questions

Shall Erie Farm Metropolitan District, Town of Erie, County of Boulder, Colorado, be organized as a special district pursuant to Article 1 of Title 32, C.R.S. and pursuant to its service plan?

Vote for not more than two (2) Directors, to serve until the next regular special district election (May 2008)

April Rachel Richards

Jacob Allen Bakker

Vote for not more than three (3) Directors, to serve until the second regular special district election (May 2010)

Dan Mitchell Trevey

John T. McShane

Tom Kaufman

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5A: Operations tax increase:

SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$500,000 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S OPERATIONS, MAINTENANCE, AND OTHER EXPENSES: SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED FOR THE PURPOSE OF PAYING THE DISTRICT'S OPERATIONS, MAINTENANCE, AND OTHER EXPENSES; AND SHALL THE PROCEEDS OF SUCH TAXES AND INVESTMENT INCOME THEREON BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE IN 2007 AND IN EACH YEAR THEREAFTER, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, OR SECTION 29-1-301, COLORADO REVISED STATUTES, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5B: TABOR exemption for non-ad valorem tax revenues:

SHALL ERIE FARM METROPOLITAN DISTRICT BE AUTHORIZED TO COLLECT, RETAIN, AND SPEND ANY AND ALL AMOUNTS ANNUALLY FROM ANY REVENUE SOURCES WHATSOEVER OTHER THAN AD VALOREM TAXES, INCLUDING BUT NOT LIMITED TO TAP FEES, FACILITY FEES, SERVICE CHARGES, INSPECTION CHARGES, ADMINISTRATIVE CHARGES, GRANTS, OR ANY OTHER FEE, RATE, TOLL, PENALTY, INCOME, OR CHARGE IMPOSED, COLLECTED, OR AUTHORIZED BY LAW TO BE IMPOSED OR COLLECTED BY THE DISTRICT, AND SHALL SUCH REVENUES BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5C: Debt for street purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$7,378,000.00, WITH A REPAYMENT COST OF \$60,499,600.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$60,499,600.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, STREET IMPROVEMENTS INCLUDING CURBS, GUTTERS, CULVERTS, OTHER DRAINAGE FACILITIES, SIDEWALKS, BRIDGES, PARKING FACILITIES, PAVING, LIGHTING, GRADING, LANDSCAPING, AND OTHER STREET IMPROVEMENTS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN

ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5D: Debt for park and recreation purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$4,334,000.00, WITH A REPAYMENT COST OF \$35,538,800.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$35,538,800.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, PARKS AND RECREATIONAL FACILITIES, IMPROVEMENTS, AND PROGRAMS, INCLUDING PARKS, BIKE PATHS AND PEDESTRIAN WAYS, OPEN SPACE, LANDSCAPING, CULTURAL ACTIVITIES, COMMUNITY RECREATION CENTERS, WATER BODIES, IRRIGATION FACILITIES, AND OTHER ACTIVE AND PASSIVE RECREATION

FACILITIES AND PROGRAMS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5E: Debt for water purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$1,069,200.00, WITH A REPAYMENT COST OF \$8,767,440.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$8,767,440.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR

ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A COMPLETE POTABLE AND NON-POTABLE WATER SUPPLY, STORAGE, TRANSMISSION, AND DISTRIBUTION SYSTEM, INCLUDING TRANSMISSION LINES, DISTRIBUTION MAINS AND LATERALS, IRRIGATION FACILITIES, AND STORAGE FACILITIES, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5F: Debt for sanitation purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$3,699,200.00 WITH A REPAYMENT COST OF \$30,333,440.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$30,333,440.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT; SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A COMPLETE LOCAL SANITARY SEWAGE COLLECTION AND TRANSMISSION SYSTEM, INCLUDING COLLECTION MAINS AND LATERALS, TRANSMISSION LINES, TREATMENT FACILITIES, STORM SEWER, FLOOD, AND SURFACE DRAINAGE FACILITIES AND SYSTEMS, AND DETENTION AND RETENTION PONDS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT

REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5G: Debt for safety protection purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$1,000,000.00, WITH A REPAYMENT COST OF \$8,200,000.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$8,200,000.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A SYSTEM OF TRAFFIC AND SAFETY CONTROLS AND DEVICES ON STREETS AND HIGHWAYS AND AT RAILROAD CROSSINGS, INCLUDING TRAFFIC SIGNALS, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF,

PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5H: Debt for public transportation purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$500,000.00, WITH A REPAYMENT COST OF \$4,100,000.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$4,100,000.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, A SYSTEM TO TRANSPORT THE PUBLIC BY BUS, RAIL, OR ANY OTHER MEANS OF CONVEYANCE, OR ANY COMBINATION THEREOF, INCLUDING PUBLIC TRANSPORTATION SYSTEM IMPROVEMENTS, TRANSPORTATION EQUIPMENT, PARK AND RIDE FACILITIES, PUBLIC PARKING LOTS, STRUCTURES, ROOFS, COVERS, AND FACILITIES, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT,

INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5I: Debt for mosquito control purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$500,000.00, WITH A REPAYMENT COST OF \$4,100,000.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$4,100,000.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED FOR THE PURPOSE OF PAYING, REIMBURSING, OR FINANCING ALL OR ANY PART OF THE COSTS OF ACQUIRING, CONSTRUCTING, RELOCATING, INSTALLING, COMPLETING, AND OTHERWISE PROVIDING, WITHIN OR WITHOUT THE BOUNDARIES OF THE DISTRICT, FACILITIES, PROPERTIES, AND EQUIPMENT FOR THE ELIMINATION AND CONTROL OF MOSQUITOES, TOGETHER WITH ALL NECESSARY, INCIDENTAL, AND APPURTENANT FACILITIES, EQUIPMENT, LAND, AND EASEMENTS, AND EXTENSIONS OF AND IMPROVEMENTS TO SAID FACILITIES, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING

PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5J: Debt for operations purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$500,000.00, WITH A REPAYMENT COST OF \$4,100,000.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$4,100,000.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS, INCLUDING CONTRACTS, ISSUED OR INCURRED TO PAY THE COSTS OF OPERATING, MAINTAINING, OR OTHERWISE PROVIDING SYSTEMS, OPERATIONS, AND ADMINISTRATION TO CARRY OUT THE OBJECTS AND PURPOSES FOR WHICH THE DISTRICT WAS ORGANIZED, TOGETHER WITH ALL NECESSARY, INCIDENTAL AND APPURTENANT PROPERTIES, FACILITIES, EQUIPMENT, PERSONNEL, CONTRACTORS, CONSULTANTS, AND COSTS AND ALL LAND, EASEMENTS, AND APPURTENANCES NECESSARY OR APPROPRIATE IN CONNECTION THEREWITH, SUCH DEBT TO BEAR INTEREST AT A NET EFFECTIVE INTEREST RATE NOT IN EXCESS OF 18% PER ANNUM, SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND ANNUALLY OR SEMIANNUALLY AS MAY BE DETERMINED BY THE DISTRICT, SUCH

DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY OF THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE, WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT ISSUE 5K: Debt for refunding purposes:

SHALL ERIE FARM METROPOLITAN DISTRICT DEBT BE INCREASED \$18,980,400.00, WITH A REPAYMENT COST OF \$155,639,280.00; AND SHALL ERIE FARM METROPOLITAN DISTRICT TAXES BE INCREASED \$155,639,280.00 ANNUALLY, OR BY SUCH LESSER ANNUAL AMOUNT AS MAY BE NECESSARY TO PAY THE DISTRICT'S DEBT: SUCH DEBT TO CONSIST OF GENERAL OBLIGATION BONDS OR OTHER OBLIGATIONS ISSUED FOR THE PURPOSE OF REFUNDING, PAYING, OR DEFEASING, IN WHOLE OR IN PART, BONDS, NOTES, OR OTHER FINANCIAL OBLIGATIONS OF THE DISTRICT; SUCH DEBT TO BEAR INTEREST AT A RATE TO BE DETERMINED BY THE DISTRICT BOARD, WHICH INTEREST RATE MAY BE HIGHER THAN THE INTEREST RATE BORNE BY THE OBLIGATIONS BEING REFUNDED; SUCH INTEREST TO BE PAYABLE AT SUCH TIME OR TIMES AND WHICH MAY COMPOUND PERIODICALLY AS MAY BE DETERMINED BY THE DISTRICT BOARD, SUCH DEBT TO BE SOLD IN ONE SERIES OR MORE AT A PRICE

ABOVE, BELOW, OR EQUAL TO THE PRINCIPAL AMOUNT OF SUCH DEBT AND ON SUCH TERMS AND CONDITIONS AS THE DISTRICT MAY DETERMINE, INCLUDING PROVISIONS FOR REDEMPTION OF THE DEBT PRIOR TO MATURITY WITH OR WITHOUT PAYMENT OF PREMIUM IN AN AMOUNT NOT IN EXCESS OF 5% OF THE PRINCIPAL AMOUNT BEING REDEEMED, SUCH DEBT TO BE PAID FROM ANY LEGALLY AVAILABLE MONEYS OF THE DISTRICT, INCLUDING THE PROCEEDS OF AD VALOREM PROPERTY TAXES; SUCH TAXES TO CONSIST OF AN AD VALOREM MILL LEVY IMPOSED ON ALL TAXABLE PROPERTY WITHIN THE DISTRICT, WITHOUT LIMITATION OF RATE OR WITH SUCH LIMITATIONS AS MAY BE DETERMINED BY THE DISTRICT BOARD, AND IN AMOUNTS SUFFICIENT TO PRODUCE THE ANNUAL INCREASE SET FORTH ABOVE OR SUCH LESSER AMOUNT AS MAY BE NECESSARY, TO BE USED SOLELY FOR THE PURPOSE OF PAYING THE PRINCIPAL OF, PREMIUM IF ANY, AND INTEREST ON THE DISTRICT'S DEBT; AND SHALL THE PROCEEDS OF ANY SUCH DEBT AND THE PROCEEDS OF SUCH TAXES, ANY OTHER REVENUE USED TO PAY SUCH DEBT, AND INVESTMENT INCOME THEREON, BE COLLECTED AND SPENT BY THE DISTRICT AS A VOTER-APPROVED REVENUE CHANGE WITHOUT REGARD TO ANY SPENDING, REVENUE-RAISING, OR OTHER LIMITATION CONTAINED WITHIN ARTICLE X, SECTION 20 OF THE COLORADO CONSTITUTION, AND WITHOUT LIMITING IN ANY YEAR THE AMOUNT OF OTHER REVENUES THAT MAY BE COLLECTED AND SPENT BY THE DISTRICT?

ERIE FARM METROPOLITAN DISTRICT BALLOT QUESTION 1: Waiver of term limitations:

Shall members of the Board of Directors of the Erie Farm Metropolitan District be authorized to serve without limitation on their terms of office pursuant to the right granted to the voters of the District in Article XVIII, Section 11 of the Colorado Constitution to lengthen, shorten, or eliminate the limitations on the terms of office imposed by such section?

ERIE FARM METROPOLITAN DISTRICT BALLOT QUESTION 2: Authorization to exercise public transportation authority:

Shall Erie Farm Metropolitan District be authorized to exercise the power to establish, maintain, and operate a system to transport the public by bus, rail, or any other means of conveyance, or any combination thereof, and may the District contract to undertake such activities?

EXHIBIT I

Underwriter Commitment Letter



D.A. Davidson & Co.
member SIPC

February 13, 2013

Town of Erie
645 Holbrook
P.O. Box 750
Erie, CO 80516

RE: Erie Farm Metropolitan District

To Whom It May Concern:

D.A. Davidson is engaged as investment banker for Erie Farm Metropolitan District. We have reviewed the amended service plan and the cash flow analyses, which demonstrate the feasibility of the financing based on assumptions provided by the developer.

Based on our work thus far and our understanding of, and experience with, the financial markets, we believe the debt assumptions included in the financial analysis are reasonable. Our engagement provides that we will serve as underwriter to the District's voter authorized debt once sufficient credit support can be identified based on assessed value, guarantees provided by the Developer and/or other forms of credit enhancement.

Please do not hesitate to contact me with any questions.

Sincerely,

D.A. Davidson & Co. Fixed Income Capital Markets

Samuel R. Sharp
Managing Director

EXHIBIT J

Form of Disclosure

Special Taxing District. The property is located within the boundaries of Erie Farm Metropolitan District, a special taxing district (the "District"). The District has issued or expects to issue bonds that are paid by revenues produced from annual tax levies on the taxable property within the District. The buyer should investigate the financing plans of the District, proposed or existing mill levies of the District servicing such indebtedness, and the potential for an increase in such mill levies.

EXHIBIT K

Proof of Ownership and Encumbrances



Land Title Guarantee Company

Date: 02-11-2013

Our Order Number: ABC70363698.1

Property Address:

ERIE FARMS MINOR SUBDIVISION

Buyer/Borrower:

Seller/Owner:

SCM - GRP ERIE, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
SCM - LOWRIE, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
SCM - POG, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
GYF INVESTMENTS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,

Need a map or directions for your upcoming closing? Check out Land Title's web site at www.ltgc.com for directions to any of our 54 office locations.

ESTIMATE OF TITLE FEES

ALTA Owners Policy 06-17-06

TBD

If Land Title Guarantee Company will be closing this transaction, above fees will be collected at that time.

TOTAL

\$0.00

First American Title Insurance Company

ALTA COMMITMENT

Our Order No. ABC70363698.1

Schedule A

Cust. Ref.:

Property Address:

ERIE FARMS MINOR SUBDIVISION

1. **Effective Date:** February 01, 2013 at 5:00 P.M.

2. **Policy to be Issued, and Proposed Insured:**

"ALTA" Owner's Policy 06-17-06

\$0.00

Proposed Insured:

3. **The estate or interest in the land described or referred to in this Commitment and covered herein is:**

A Fee Simple

4. **Title to the estate or interest covered herein is at the effective date hereof vested in:**

SEE ATTACHED

5. **The Land referred to in this Commitment is described as follows:**

SEE ATTACHED PAGE(S) FOR LEGAL DESCRIPTION

4. Title to the estate or interest covered herein is at the effective date hereof vested in:

SCM - GRP ERIE, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
SCM - LOWRIE, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
SCM - POG, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
GYF INVESTMENTS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
DOODLEBUG INVESTMENTS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,

SCM - NEAL, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
SCM - GOLDENSON, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
GRASS SHACK INVESTMENTS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED
PARTNERSHIP,
WATTSUP, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
NEAL MANAGEMENT LLC, AN ARIZONA LIMITED LIABILITY COMPANY,
SCM-JC ZAHARIS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
LS TYLER INVESTMENTS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
TK COWLEY INVESTMENTS, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,

SCM - BLOOM, LLLP, AN ARIZONA LIMITED LIABILITY LIMITED PARTNERSHIP,
THE ALLEN-COWLEY LIVING TRUST DATED DECEMBER 19, 2007,
AND THE COWLEY FAMILY FOUNDATION,
AS THEIR INTERESTS MAY APPEAR,
AS TO PARCEL I
AND

JOHN MCSHANE,
THOMAS KAUFMAN,
JACOB A. BAKKER,
APRIL RICHARDS,
DEBRA C. MITCHELL,
AND
COWLEY MANAGEMENT, LLC, AN ARIZONA LIMITED LIABILITY COMPANY,
AS THEIR INTERESTS MAY APPEAR
AS TO PARCEL II

LEGAL DESCRIPTION

PARCEL I:

A PARCEL OF LAND BEING LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE 6TH P.M., TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BASIS OF BEARINGS:

S 00 DEGREES 14 MINUTES 35 SECONDS W ALONG THE EAST LINE OF SAID SOUTHEAST QUARTER BETWEEN THE FOUND 2" ALUMINUM CAP IN RANGE BOX AT THE NORTHEAST CORNER THEREOF AND THE FOUND 3 1/4" ALUMINUM CAP LOCATED AT THE SOUTHEAST CORNER THEREOF WITH ALL BEARINGS SHOWN HEREON RELATIVE THERETO.

COMMENCING AT THE NORTHEAST CORNER OF SAID SOUTHEAST QUARTER OF SECTION 25;

THENCE N 89 DEGREES 42 MINUTES 39 SECONDS W A DISTANCE OF 30.00 FEET ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF EAST COUNTY LINE ROAD (COUNTY ROAD NO. 901) AND THE POINT OF BEGINNING;

THENCE S 00 DEGREES 14 MINUTES 35 SECONDS W A DISTANCE OF 2594.39 FEET ALONG SAID WEST RIGHT-OF-WAY LINE TO A POINT ON THE NORTH RIGHT-OF-WAY LINE OF ARAPAHOE DRIVE (COUNTY ROAD NO. 54);

THENCE N 89 DEGREES 57 MINUTES 47 SECONDS W A DISTANCE OF 2649.57 FEET ALONG SAID NORTH RIGHT-OF-WAY LINE TO A POINT ON THE WEST LINE OF SAID SOUTHEAST QUARTER;

THENCE N 00 DEGREES 14 MINUTES 08 SECONDS W A DISTANCE OF 2606.17 FEET ALONG SAID WEST LINE OF THE SOUTHEAST QUARTER TO THE NORTHWEST CORNER THEREOF;

THENCE S 89 DEGREES 42 MINUTES 39 SECONDS E A DISTANCE OF 2671.32 FEET ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER TO THE POINT OF BEGINNING

EXCEPT THE FOLLOWING DESCRIBED PARCEL:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER, AS MONUMENTED BY A 2-1/2" ALUMINUM CAP, STAMPED LS 28656, WHENCE THE SOUTHEAST QUARTER CORNER, AS MONUMENTED BY A 3-1/4" ALUMINUM CAP, STAMPED PLS 14070, BEARS S 89 DEGREES 57 MINUTES 47 SECONDS E, A DISTANCE OF 2679.57 FEET FORMING THE BASIS OF BEARINGS USED IN THIS DESCRIPTION;

THENCE N 00 DEGREES 14 MINUTES 08 SECONDS W, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, N 00 DEGREES 14 MINUTES 08 SECONDS W, A DISTANCE OF 261.89 FEET;

THENCE S 89 DEGREES 57 MINUTES 47 SECONDS E, ALONG A LINE 261.89 FEET NORTHERLY AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 117.15 FEET;

THENCE S 00 DEGREES 14 MINUTES 08 SECONDS E, ALONG A LINE 117.15 FEET EASTERLY AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 261.89 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER;

THENCE N 89 DEGREES 57 MINUTES 47 SECONDS W, ALONG SAID SOUTH LINE, A DISTANCE

LEGAL DESCRIPTION

OF 117.15 FEET TO THE POINT OF BEGINNING.

PARCEL II:

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 1 NORTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, TOWN OF ERIE, COUNTY OF BOULDER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER, AS MONUMENTED BY A 2-1/2" ALUMINUM CAP, STAMPED LS 28656, WHENCE THE SOUTHEAST QUARTER CORNER, AS MONUMENTED BY A 3-1/4" ALUMINUM CAP, STAMPED PLS 14070, BEARS S 89 DEGREES 57 MINUTES 47 SECONDS E, A DISTANCE OF 2679.57 FEET FORMING THE BASIS OF BEARINGS USED IN THIS DESCRIPTION;

THENCE N 00 DEGREES 14 MINUTES 08 SECONDS W, ALONG THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 30.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, N 00 DEGREES 14 MINUTES 08 SECONDS W, A DISTANCE OF 261.89 FEET;

THENCE S 89 DEGREES 57 MINUTES 47 SECONDS E, ALONG A LINE 261.89 FEET NORTHERLY AND PARALLEL WITH THE SOUTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 117.15 FEET;

THENCE S 00 DEGREES 14 MINUTES 08 SECONDS E, ALONG A LINE 117.15 FEET EASTERLY AND PARALLEL WITH THE WEST LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 261.89 FEET TO THE SOUTH LINE OF SAID SOUTHEAST QUARTER;

THENCE N 89 DEGREES 57 MINUTES 47 SECONDS W, ALONG SAID SOUTH LINE, A DISTANCE OF 117.15 FEET TO THE POINT OF BEGINNING.

ALTA COMMITMENT

Schedule B - Section 1

(Requirements)

Our Order No. ABC70363698.1

The following are the requirements to be complied with:

Item (a) Payment to or for the account of the grantors or mortgagors of the full consideration for the estate or interest to be insured.

Item (b) Proper instrument(s) creating the estate or interest to be insured must be executed and duly filed for record, to-wit:

Item (c) Payment of all taxes, charges or assessments levied and assessed against the subject premises which are due and payable.

Item (d) Additional requirements, if any disclosed below:

THIS COMMITMENT IS FOR INFORMATION ONLY, AND NO POLICY WILL BE ISSUED PURSUANT HERETO.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABC70363698.1

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

1. Any facts, rights, interests, or claims thereof, not shown by the Public Records but that could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
4. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this Commitment.
6. Any and all unpaid taxes, assessments and unredeemed tax sales.
7. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.
8. LEASES AND/OR TENANCIES.
9. OIL AND GAS LEASE BETWEEN MARY P. YOUNG AKA MARY PATRICIA BRENNAN YOUNG AND MARTIN OIL SERVICE, INC., RECORDED NOVEMBER 28, 1978 UNDER RECEPTION NO. 311444 AND ANY AND ALL ASSIGNMENTS THEREOF, OR INTEREST THEREIN.

AFFIDAVITS OF EXTENTION IN CONNECTION WITH SAID LEASE RECORDED JANUARY 18, 1982 UNDER RECEPTION NO. 480059 AND MAY 15, 1997 UNDER RECEPTION NO. 1698739.

DECLARATION OF UNITIZATIONS IN CONNECTION WITH SAID LEASE RECORDED AUGUST 7, 1991 UNDER RECEPTION NO. 1121903 AND MARCH 17, 1992 UNDER RECEPTION NO. 1168173 AND OCTOBER 21, 1992 UNDER RECEPTION NO. 1231402.
10. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE NORTHERN COLORADO WATER CONSERVANCY DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED JANUARY 21, 1997, UNDER RECEPTION NO. 1671966.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABC70363698.1

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

11. THE EFFECT OF REQUEST FOR NOTIFICATION OF SURFACE DEVELOPMENT, RECORDED MAY 17, 2002, UNDER RECEPTION NO. 2288463.
12. THE EFFECT OF NOTICE OF RIGHT TO USE SURFACE OF LANDS, RECORDED OCTOBER 17, 2005, UNDER RECEPTION NO. 2730042.
13. TERMS, CONDITIONS AND PROVISIONS OF TENANTS-IN-COMMON AGREEMENT AS EVIDENCED BY MEMORANDUM OF AGREEMENT RECORDED MARCH 17, 2006 AT RECEPTION NO. 2763609.
14. RESERVATION OF MINERAL RIGHTS AS CONTAINED IN DEED RECORDED MARCH 9, 2007 UNDER RECEPTION NO. 2841457 AS TO PARCEL II. ALL COAL AS RESERVED BY UNION PACIFIC RAILROAD COMPANY DEED RECORDED AUGUST 26, 1904 IN BOOK 251 AT PAGE 531 AS TO BOTH PARCELS.
15. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE ERIE FARM METROPOLITAN DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED DECEMBER 05, 2006, UNDER RECEPTION NO. 2822234.
16. THE EFFECT OF REQUEST FOR NOTIFICATION OF SURFACE DEVELOPMENT, RECORDED OCTOBER 23, 2007, UNDER RECEPTION NO. 2890878.
17. THE EFFECT OF ORDINANCE NO. 26-2007 REGARDING ZONING, RECORDED JANUARY 29, 2008, UNDER RECEPTION NO. 2907032. ZONING MAP RECORDED JANUARY 29, 2008 UNDER RECEPTION NO. 2907033.
18. TERMS, CONDITIONS AND PROVISIONS OF YOUNG PARCEL ERIE FARM PRE-DEVELOPMENT AGREEMENT RECORDED JANUARY 29, 2008 AT RECEPTION NO. 2907034, AND FIRST AMENDMENT THERETO RECORDED NOVEMBER 26, 2012 UNDER RECEPTION NO. 3269484.
19. TERMS, CONDITIONS AND PROVISIONS OF GRANT OF PERMANENT AVIGATION EASEMENT AGREEMENT RECORDED JANUARY 29, 2008 AT RECEPTION NO. 2907035.
20. THE EFFECT OF NOTICE OF RIGHT TO USE SURFACE OF LAND, RECORDED OCTOBER 07, 2009, UNDER RECEPTION NO. 3034824.

ALTA COMMITMENT

Schedule B - Section 2

(Exceptions)

Our Order No. ABC70363698.1

The policy or policies to be issued will contain exceptions to the following unless the same are disposed of to the satisfaction of the Company:

21. TERMS, CONDITIONS AND PROVISIONS OF TOWN OF ERIE ANNEXATION ORDINANCE #442 RECORDED SEPTEMBER 03, 1993 AT RECEPTION NO. 1333940, AFFIDAVIT IN CONNECTION THEREWITH RECORDED SEPTEMBER 3, 1993 UNDER RECEPTION NO. 1333941 AND ANNEXATION MAP IN CONNECTION THEREWITH RECORDED SEPTEMBER 3, 1993 UNDER RECEPTION NO. 1333942.
22. ANY TAX, LIEN, FEE, OR ASSESSMENT BY REASON OF INCLUSION OF SUBJECT PROPERTY IN THE SANITATION DISTRICT, AS EVIDENCED BY INSTRUMENT RECORDED DECEMBER 23, 1993, UNDER RECEPTION NO. 1375530.
23. TERMS, CONDITIONS AND PROVISIONS OF STIPULATION BY AND BETWEEN MARY P. YOUNG AND TOWN OF ERIE, CASE NO. 75-0865-2, RECORDED OCTOBER 17, 1997 AT RECEPTION NO. 1739983.
24. TERMS, CONDITIONS, PROVISIONS, BURDENS AND OBLIGATIONS AS SET FORTH IN TOWN OF ERIE ORDINANCE #28-2012 REGARDING REZONING RECORDED OCTOBER 17, 2012 UNDER RECEPTION NO. 3260151.
25. THE EFFECT OF ERIE FARMS ZONING MAP, RECORDED OCTOBER 22, 2012 UNDER RECEPTION NO. 3261094. SAID MAP DISCLOSES AIRPORT APPROACH SURFACE OVER SOUTHWESTERLY CORNER OF SUBJECT PROPERTY.

NOTE: THIS COMMITMENT IS NOT A REPORT OR REPRESENTATION AS TO MINERAL INTERESTS, AND SHOULD NOT BE USED, OR RELIED UPON, IN CONNECTION WITH THE NOTICE REQUIREMENTS THAT ARE SET FORTH IN CRS 24-65.5-103.

NOTE: THE COMMITMENT DOES NOT REFLECT THE STATUS OF TITLE TO WATER RIGHTS OR REPRESENTATION OF SAID RIGHTS.



Land Title Guarantee Company
CUSTOMER DISTRIBUTION

Date: 02-11-2013

Our Order Number: ABC70363698.1

Property Address:
ERIE FARMS MINOR SUBDIVISION

If you have any inquiries or require further assistance, please contact one of the numbers below:

For Title Assistance:
Commercial Title "ABC" Unit
Scott Bennetts
5975 GREENWOOD PLAZA BLVD
GREENWOOD VILLAGE, CO 80111
Phone: 303-850-4175
Fax: 303-850-4184
EMail: sbennetts@ltgc.com

ERIE EQUITIES LLC
C/O CARLSON ASSOCIATES INC
P O BOX 247
EASTLAKE, CO 80614-0247
Attn: RYAN CARLSON
Copies: 1
EMail: ryan@carlsonland.net
Sent Via EMail

ATTACHMENT C

August 26, 2014

Ryan Carlson
President
Erie Farm Metropolitan District
P.O. Box 247
Eastlake, CO 80614

Re: Town's Written Consent to Exercise the Power of Eminent Domain

Dear Mr. Carlson:

This letter is in response to your request as the President of the Board of Directors of the Erie Farm Metropolitan District (the "District") for consent from the Town in order for the District to exercise the power of eminent domain, as required by Section V.12 of the Erie Farm Metropolitan District Amended and Restated Service Plan.

The Town understands that the District may need to exercise this power to acquire property interests necessary to construct certain road improvements on County Line Road and a connection to Vista Parkway as an entry into the District. These road improvements are very important to the Town, as depicted in the Transportation Plan, and the Town is in support of the District's continued development.

The Town hereby consents to the District's exercise of its power of eminent domain in accordance with its Amended and Restated Service Plan for any and all purposes including the acquisition of the property interests to construct the roadway improvements described above.

Town of Erie, Colorado

By: _____
Tina Harris, Mayor

cc: Mark Shapiro, Town Attorney
Joan Fritsche, Collins Cockrel & Cole, PC

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM
Board Meeting Date: August 26, 2014

SUBJECT: **CONSENT AGENDA**
 Consideration of Resolution 14-99: A Resolution Authorizing Award Of Contract To Road Safe Traffic Systems For Pavement Striping In The Amount Of \$98,759.70; And Setting Forth Details In Relation Thereto.

DEPARTMENT: Public Works

PRESENTER/ **Gary Behlen, Director Public Works**

PREPARER: **Kris McDaniel, Public Works Coordinator**

FISCAL Cost as Recommended: **\$100,000**
INFORMATION: Balance Available: \$100,000
 Budget Line Item Number: 100 . 70 . 710 . 523000 . 000000
 New Appropriation Required: Yes No

STAFF **Approve Resolution 14-99, authorizing the Town Administrator to**
RECOMMENDATION: **execute said contract, and authorizing Staff to expend contracted and**
contingency funds.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Striping of the Town's pavement is required for safety and traffic control and to meet the adopted Uniform Traffic Code. The Town requires reflective, painted pavement striping to meet the Colorado Department of Transportation (CDOT) specifications for pavement markings.

It is our experience that pavement striping may require re-painting every year due to the typical weather conditions and snowplowing activities experienced in Colorado. Therefore, Public Works has created a cost-conscious, annual pavement striping program where each pavement segment is striped either annually or biannually, as determined by actual conditions.

An Invitation to Bid was sent out and posted on the Town's website on July 25, 2014 to complete striping on various streets throughout the Town. All work will be performed in accordance with the Town of Erie Standards and Specifications. Bids were received on Monday, August 11, 2014. The following bids were received:

<u>Contractor</u>	<u>Bid Price</u>
Road Safe Traffic Systems	\$151,787.94
Kolbe Striping, Inc.	\$159,612.94

<u>Project Budget Summary</u>	
Contract	\$98,759.70
<u>Contingency</u>	<u>\$1,240.30</u>
Total	\$100,000.00

The bids received were higher than the budget therefore; we entered in to a bid negotiation was Road Safe Traffic Systems to reduce the quantities and the contract price to \$98,759.70. Staff recommends awarding the contract to Road Safe Traffic Systems. They have successfully completed this service for the Town previously.

Project Schedule

Notice of Award	August 27, 2014
Notice to Proceed	September, 2014
Estimated Project Completion	October, 2014

Board Goal

This serves the Board's goal for Infrastructure – Fund and provide essential infrastructure that corresponds with the planned rate of growth.

Staff Review:

Approved by:

_____ Town Attorney
_____ Town Clerk
_____ Community Development Director
ST Finance Director
_____ Police Chief
EWB Public Works Director

A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-99
- b. Vicinity Map

RESOLUTION NO. 14-99

A RESOLUTION AUTHORIZING AWARD OF A CONTRACT TO ROAD SAFE TRAFFIC SYSTEMS, INC. FOR PAVEMENT STRIPING IN AN AMOUNT NOT TO EXCEED \$98,759.70; AND SETTING FORTH DETAILS IN RELATION THERETO:

WHEREAS, the Town of Erie, Colorado wishes to award a contract to Road Safe Traffic Systems, Inc. for the pavement striping in the amount of \$98,759.70.

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to enter into such a contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the contract between the Town of Erie and Road Safe Traffic Systems, Inc. is found to be a reasonable and acceptable contract for pavement striping and

Section 2. That the Town of Erie be and is hereby authorized and directed to enter into the contract with Road Safe Traffic Systems, Inc. and the appropriate Town Officers are hereby authorized and directed to sign and bind the Town of Erie to said contract in an amount not to exceed \$98,759.70 with a contingency not to exceed \$1,240.30.

Section 3. That entering into the contract is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

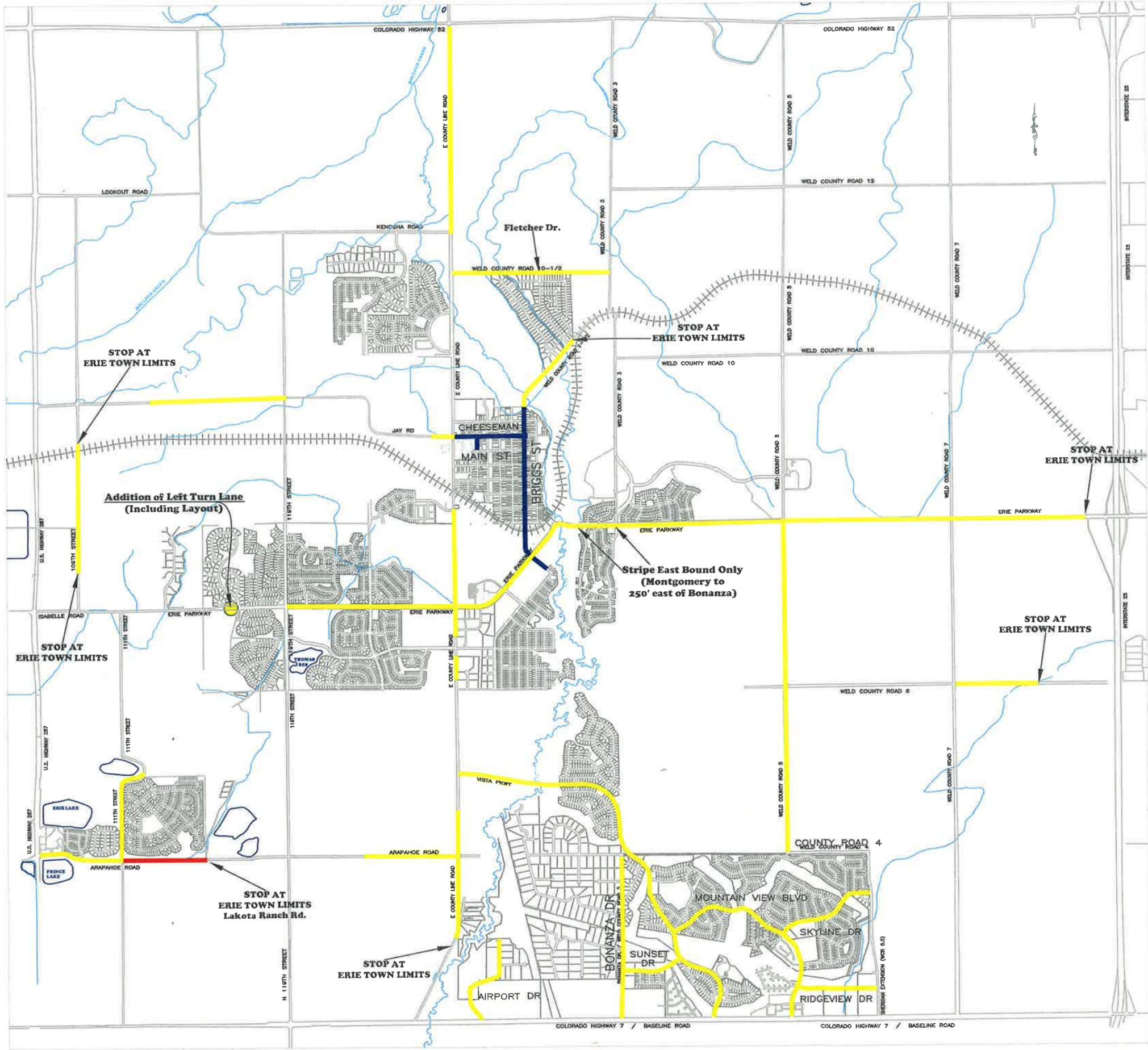
ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

**TOWN OF ERIE, COLORADO
a Colorado Municipal Corporation**

By _____
Tina Harris, Mayor

ATTEST:

Nancy J. Parker, CMC, Town Clerk



TOWN OF ERIE



STREET STRIPING PROJECT 2014

Edge, Center and Turn Lines



Center Lines Only



Arapahoe Road
111th to Lakota Ranch
Center and North
Edge Lines Only



513,150.00 Linear Feet

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM

Board Meeting Date: August 26, 2014

SUBJECT: **ORDINANCES – CONSENT**
Ordinance No. 29-2014: An Ordinance Of The Town Of Erie, Colorado Vacating A Portion Of Weld County Road 3, A Dedicated Roadway; And, Setting Forth Details In Relation Thereto. Second Reading

PURPOSE: To vacate right-of-ways within Daybreak Filing No. 1A and the Bridgewater Master Subdivision Final Plat.

CODE REVIEW: Municipal Code, Title 10

DEPARTMENT: Community Development

PRESENTER: Todd Bjerkaas, Senior Planner

FISCAL INFORMATION: Cost as Recommended: na
Balance Available: na
Budget Line Item Number: 000 . 00 . 000 . 000000 . 000000
New Appropriation Required: Yes No

STAFF RECOMMENDATION: Staff recommends the Board of Trustees approve the vacation application by approving Ordinance No. 29-2014.

PLANNING COMMISSION RECOMMENDATION: n/a

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Applicant: Community Development Group of Erie, Inc.
Attn: Jon Lee
2500 Arapahoe, Suite 220
Boulder, CO 80302

Location:
Colliers Hill (Daybreak Filing No. 1A and Bridgewater Master Subdivision)

Requested Action:
The applicant requests vacation of a portion of Weld County Road 3, a road right-of-way annexed by the Town in 2001. The portions being vacated no longer contain roadway or utilities resulting from the relocation of Weld County Road 3/Daybreak Boulevard to the east. The Bridgewater Master Subdivision Plat dedicated the new, relocated Weld County Road 3 right-of-way and easements.

STAFF ANALYSIS AND FINDINGS:

Compliance with Town Standards:

Below are the Approval Criteria from Municipal Code 10.7.10.B.9 for review of the Vacation application. Staff finds the application in compliance with each of the criteria.

- a. The Vacation is generally consistent with the Town’s Comprehensive Plan, as amended.

Staff Comment: The application is consistent with the Comprehensive Plan.

- b. The right-of-way or easement will not be utilized in the short or long term or the Town receives conveyance or dedication of substituted easements or rights-of-way appropriate to satisfy the continuing municipal need;

Staff Comment: The Town has received new right-of-way as part of the Bridgewater Master Subdivision Final Plat.

- c. The Vacation does not create an irregular right-of-way or easement configuration which could create difficulty in the provision of services or installation of public improvements;

Staff Comment: The Vacation does not create irregular shaped easements or right-of- ways.

- d. The Vacation serves the interest of the Town by removing maintenance or liability risks;

Staff Comment: Not applicable.

- e. The public benefits and utility of the Vacation request outweigh any adverse impacts of the Vacation; and

Staff Comment: No adverse impacts will be created through this Vacation.

- f. The applicant will relocate, if necessary, any public facilities or utilities located within the right-of-way or easement, and grant and/or obtain an easement for relocation of said public facilities or utilities.

Staff Comment: Relocation of the roadway and utilities is in process and the Town has secured a Letter of Credit guarantee for said improvements.

Staff Recommendation:

Staff recommends the Board of Trustees approve the vacation application by approving Ordinance No. 29-2014.

Staff Review:

____ Town Attorney
____ Town Clerk
 Community Development Director
____ Finance Director
____ Police Chief
____ Public Works Director

Approved by:



A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Ordinance No. 29-2014
- b. Applicants submittal

ATTACHMENT A

ORDINANCE NO. 29-2014
Series of 2014

AN ORDINANCE OF THE TOWN OF ERIE, COLORADO, VACATING A PORTION OF WELD COUNTY ROAD 3, A DEDICATED ROADWAY; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the portions of right-of-way of Weld County Road 3 subject to vacation in this Ordinance were established pursuant to order by the Board of County Commissioners for Weld County, recorded October 14, 1889 in Book 86 at Page 273 in the real property records of Weld County, Colorado; and,

WHEREAS, the subject right-of-way was annexed to the Town pursuant to the Erie Cemetery Annexation #1 thru #3 recorded on May 1, 2001 in the office of the Weld County Clerk and Recorder, at Reception No. 2844859, and the Erie Cemetery Annexation #4 recorded on May 1, 2001 in the office of the Weld County Clerk and Recorder, at Reception No. 2844860, in the real property records of Weld County, Colorado; and,

WHEREAS, by virtue of said annexation, the Town has succeeded to ownership and control of, and maintenance responsibility for said portion of Weld County Road 3; and,

WHEREAS, the Town now desires to vacate a portion of right-of-way of Weld County Road 3 as specifically set forth and legally described on the Exhibits attached hereto and incorporated herein by this reference, and as designated as follows: Exhibit "A" contains the legal descriptions and maps for the portion of the right-of-way of Weld County Road 3 to be vacated herein (the "Right-of-Way Vacation Descriptions and Maps"); and,

WHEREAS, it is in the best interest of the Town and its citizens to vacate a portion of said right-of-way of Weld County Road 3 as specifically described on Exhibit "A."

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That a certain specific portion of right-of-way of Weld County Road 3 as specifically legally described on the Right-of-Way Vacation Descriptions and Maps marked Exhibit "A" be and are hereby vacated.

Section 2. That the Town hereby reserves any and all rights-of-way or easements for the continued use of existing sewer, gas, water, or similar pipelines and appurtenances, for ditches or canals and appurtenances, and for electric, telephone, and similar lines and appurtenances that may exist in the vacated area.

Section 3. That title to the right-of-way vacated herein shall vest in accordance with the requirements of C.R.S. §43-2-302.

Section 4. That this Ordinance vacating a portion of the right-of-way of Weld County Road 3 shall be recorded in the office of the Weld County Clerk and Recorder in which county such right-of-way is located.

Section 5. Severance Clause. 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 Board of Trustees hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 6. Repeal. All other Ordinances, or parts of any Ordinances in conflict herewith are hereby repealed.

Section 7. Effective Date. This Ordinance shall take effect thirty (30) days after publication following final passage.

INTRODUCED, PASSED, ADOPTED AND ORDER PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE THIS 26th DAY OF AUGUST, 2014.

PUBLISHED IN FULL ON THE ___ DAY OF _____, 2014.

TOWN OF ERIE, COLORADO, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy J. Parker, CMC, Town Clerk

Exhibit "A"

Right-of-Way Vacation Descriptions and Maps

EXHIBIT

VACATION DESCRIPTION:

TWO PORTIONS OF WELD COUNTY ROAD 3 LOCATED IN THE SOUTHWEST QUARTER OF SECTION 17 AND THE SOUTHEAST QUARTER OF SECTION 18, TOWNSHIP 1 NORTH, RANGE 68 WEST OF THE 6TH P.M., TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

PARCEL 1:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17 (2.5" ALUMINUM CAP, LS 19003, 2002) FROM WHENCE THE WEST QUARTER CORNER OF SECTION 17 (3.5" BRASS CAP, BLM, 1952) LIES N00°25'10"W, 2,604.46 FEET (BASIS OF BEARINGS)

THENCE N05°54'19"W, 313.81 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF SAID WELD COUNTY ROAD 3, ALSO BEING AN ANGLE POINT OF TRACT 2 OF "BRIDGEWATER MASTER SUBDIVISION" AND THE POINT OF BEGINNING;

THENCE N00°25'10"W, 226.47 FEET ALONG THE WESTERLY RIGHT OF WAY OF SAID WELD COUNTY ROAD 3, BEING A LINE PARALLEL WITH AND 30.00 FEET WEST OF THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 18;

THENCE 34.07 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, SAID CURVE HAVING A RADIUS OF 150.00 FEET, A CENTRAL ANGLE OF 13°00'51", AND A CHORD BEARING S55°19'31"E, 34.00 FEET;

THENCE S48°49'06"E, 43.04 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF WELD COUNTY ROAD 3;

THENCE S00°25'10"E, 58.00 FEET ALONG THE EASTERLY RIGHT OF WAY OF SAID WELD COUNTY ROAD 3, BEING A LINE PARALLEL WITH AND 30.00 FEET EAST OF THE WESTERLY LINE OF THE SOUTHWEST QUARTER OF SECTION 17 TO THE SOUTHERNMOST CORNER OF TRACT 3 OF "BRIDGEWATER MASTER SUBDIVISION";

THENCE 134.83 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 535.00 FEET, A CENTRAL ANGLE OF 14°26'24", AND A CHORD BEARING S26°04'44"W, 134.48 FEET TO THE POINT OF BEGINNING, CONTAINING 8,259 SQUARE FEET, MORE OR LESS.

PARCEL 2:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 17 (2.5" ALUMINUM CAP, LS 19003, 2002) FROM WHENCE THE WEST QUARTER CORNER OF SECTION 17 (3.5" BRASS CAP, BLM, 1952) LIES N00°25'10"W, 2,604.46 FEET (BASIS OF BEARINGS)

THENCE N03°15'39"W, 605.23 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY OF SAID WELD COUNTY ROAD 3 AND THE POINT OF BEGINNING;

THENCE N00°25'10"W, 1,726.68 FEET ALONG THE WESTERLY RIGHT OF WAY OF SAID WELD COUNTY ROAD 3, BEING A LINE PARALLEL WITH AND 30.00 FEET WEST OF THE EASTERLY LINE OF THE SOUTHEAST QUARTER OF SECTION 18;

THENCE 251.07 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 515.00 FEET, A CENTRAL ANGLE OF 27°55'58", AND A CHORD BEARING S14°23'10"E, 248.59 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF WELD COUNTY ROAD 3, ALSO BEING THE NORTHERNMOST CORNER OF TRACT 5 OF "BRIDGEWATER MASTER SUBDIVISION";

THENCE S00°25'10"E, 1,519.28 FEET ALONG THE SAID EASTERLY RIGHT OF WAY OF SAID WELD COUNTY ROAD 3, BEING A LINE PARALLEL WITH AND 30.00 FEET EAST OF THE WESTERLY LINE OF THE SOUTHWEST QUARTER OF SECTION 17;

THENCE 69.20 FEET ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, SAID CURVE HAVING A RADIUS OF 210.00 FEET, A CENTRAL ANGLE OF 18°52'48", AND A CHORD BEARING N60°59'38"W, 68.89 FEET TO THE POINT OF BEGINNING, CONTAINING 94,717 SQUARE FEET, MORE OR LESS.

TOTAL AREA: 102,976 SQUARE FEET OR 2.36 ACRES, MORE OR LESS

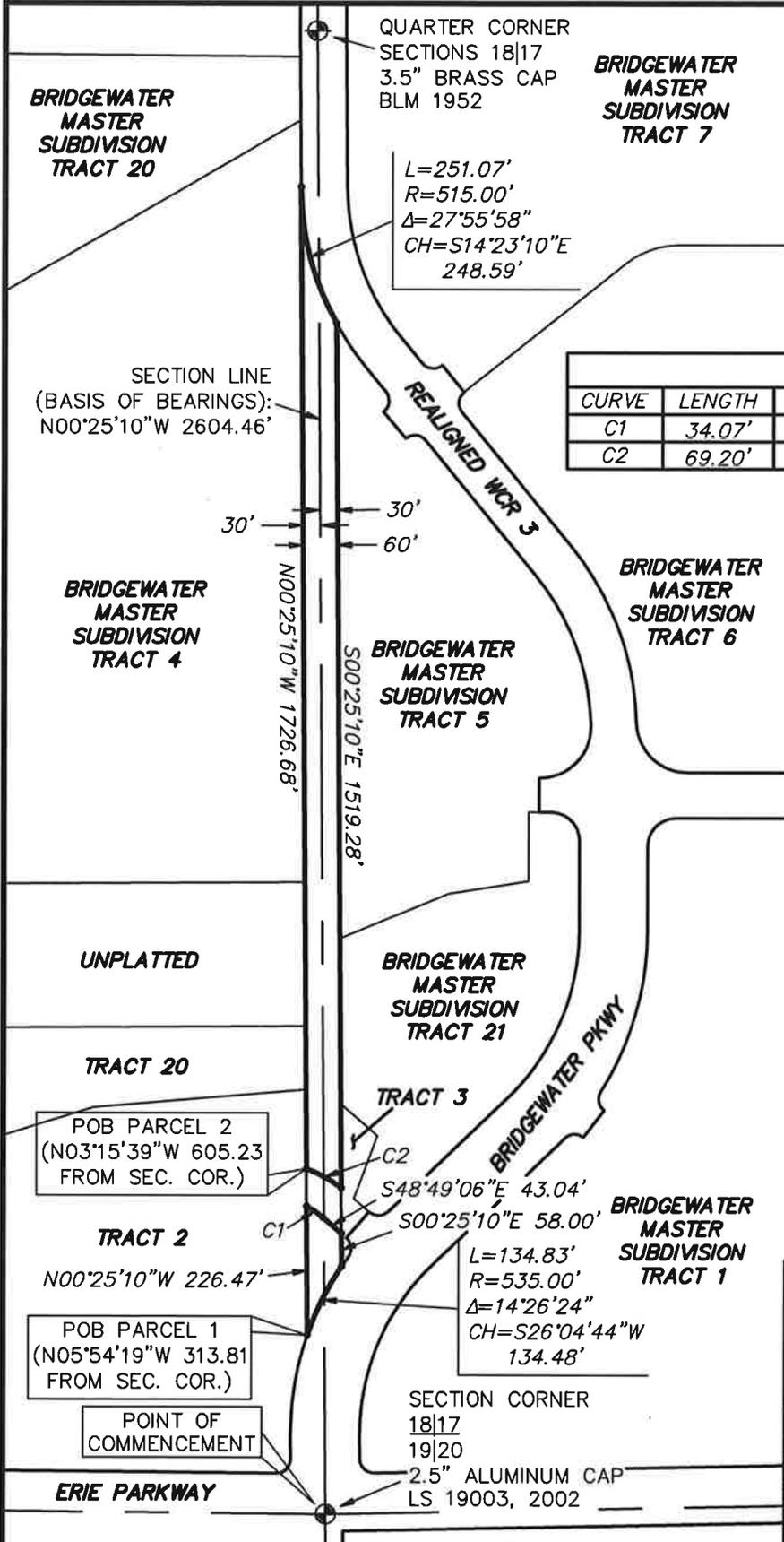
LEGAL DESCRIPTION PREPARED BY:
BO BAIZE, COLORADO PLS 37990
FOR AND ON BEHALF OF
HURST & ASSOCIATES, INC.
2500 BROADWAY, SUITE B
BOULDER, CO 80304

WCR 3 ROW VACATION
SW 1/4 SEC. 17, SE 1/4 SEC. 18
T1N, R 68W OF THE 6TH P.M.
ERIE, COLORADO

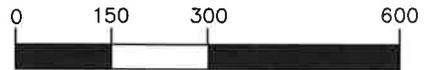
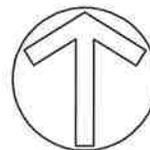
ORG: 02/24/13
REV: 04/04/13

HURST	2500 Broadway, Suite B	SCALE HOR. N/A VERT. N/A
	Boulder, CO 80304	DESIGN/APPR.
	303.449.9105	DRAWN BY BO
	www.hurst-assoc.com	DATE 04/04/13
FILE G:\202042\SURVEY\LEGAL\CR3 ROW VACATION		SHEET 1 OF 2

EXHIBIT



CURVE	LENGTH	RADIUS	DELTA	CHORD	BEARING
C1	34.07'	150.00'	13°00'51"	34.00'	S55°19'31"E
C2	69.20'	210.00'	18°52'48"	68.89'	N60°59'38"W



1 inch = 300 ft.

NOTE: THIS IS NOT A LAND SURVEY PLAT OR AN IMPROVEMENT SURVEY PLAT. THIS EXHIBIT IS ONLY INTENDED TO DEPICT THE ACCOMPANYING DESCRIPTION.

WCR 3 ROW VACATION
SW 1/4 SEC. 17, SE 1/4 SEC. 18
T1N, R 68W OF THE 6TH P.M.
ERIE, COLORADO

HURST	CIVIL ENGINEERING	2500 Broadway, Suite B	SCALE HOR. 1"=300'
	PLANNING	Boulder, CO 80304	VERT. N/A
	SURVEYING	303.449.9105	DESIGN/APPR.
	www.hurst-assoc.com		DRAWN BY BO
	FILE G:\202042\SURVEY\LEGAL\CR3 ROW VACATION		DATE 04/04/13

SHEET 2 of 2

ATTACHMENT B



TOWN OF ERIE
Community Development Department – Planning Division
645 Holbrook Street – PO Box 750 – Erie, CO 80516
Tel: 303.926.2770 – Fax: 303.926.2706 – Web: www.erieco.gov

LAND USE APPLICATION

Please fill in this form completely. Incomplete applications will not be processed.

STAFF USE ONLY		
FILE NAME: <u>Bridgewater WCR 3 Vacation</u>	DATE SUBMITTED: <u>3/6/13</u>	FEES PAID: <u>\$1,000</u>
FILE NO: <u>VA-13-02014</u>		

PROJECT/BUSINESS NAME: BRIDGEWATER

PROJECT ADDRESS: CORNER OF WCR 3 AND ERIE PARKWAY

PROJECT DESCRIPTION:

LEGAL DESCRIPTION (attach legal description if Metes & Bounds)

Subdivision Name:

Filing #: N/A Lot #: _____ Block #: _____ Section: 17/18 Township: Lamar Range: 68 WEST

OWNER (attach separate sheets if multiple)	AUTHORIZED REPRESENTATIVE
Name/Company: <u>TOWN OF ERIE</u>	Company/Firm: <u>COMMUNITY DEVELOPMENT GROUP OF ERIE, INC</u>
Contact Person: <u>A.J. KALEYER</u>	Contact Person: <u>JON LES</u>
Address: <u>645 HOLBROOK STREET</u>	Address: <u>2500 ANAPANDE, SUITE 220</u>
City/State/Zip: <u>ERIE, COLORADO 80516</u>	City/State/Zip: <u>BOULDER, CO 80302</u>
Phone: <u>303-926-2770</u> Fax: <u>303-926-2706</u>	Phone: <u>303-442-2299</u> Fax: <u>303-442-1241</u>
E-mail: _____	E-mail: <u>JON.LES@CAPCOLORADO.COM</u>

MINERAL RIGHTS OWNER (attach separate sheets if multiple)	MINERAL LEASE HOLDER (attach separate sheets if multiple)
Name/Company: <u>ANADARKO E&P COMPANY, LP</u>	Name/Company: <u>SEE SUR'S</u>
Address: <u>P.O. Box 1330</u>	Address: _____
City/State/Zip: <u>HOUSTON, TX 77251-1330</u>	City/State/Zip: _____

LAND-USE & SUMMARY INFORMATION

Present Zoning: <u>LR/AG/05</u>	Gross Site Density (du/ac): <u>N/A</u>
Proposed Zoning: <u>LR/AG/05</u>	# Lots/Units Proposed: <u>N/A</u>
Gross Acreage: <u>2.46</u>	Gross Floor Area: <u>N/A</u>

SERVICE PROVIDERS

Electric: <u>UNITED POWER</u>	Gas: <u>SOURCE GAS</u>
Metro District: <u>BRIDGEWATER METROPOLITAN #1</u>	Fire District: <u>MOUNTAIN VIEW</u>
Water (if other than Town): <u>TOWN</u>	Sewer (if other than Town): <u>TOWN</u>

PAGE TWO MUST BE SIGNED AND NOTARIZED

DEVELOPMENT REVIEW FEES			
ANNEXATION		SUBDIVISION	
<input type="checkbox"/> Major (10+ acres)	\$ 4000.00	<input type="checkbox"/> Sketch Plan	\$ 1000.00 + 10.00 per lot
<input type="checkbox"/> Minor (less than 10 acres)	\$ 2000.00	<input type="checkbox"/> Preliminary Plat	\$ 2000.00 + 40.00 per lot
<input type="checkbox"/> Deannexation	\$ 1000.00	<input type="checkbox"/> Final Plat	\$ 2000.00 + 20.00 per lot
COMPREHENSIVE PLAN AMENDMENT		<input type="checkbox"/> Minor Subdivision Plat	\$ 2000.00
<input type="checkbox"/> Major	\$ 3000.00	<input type="checkbox"/> Minor Amendment Plat	\$ 1000.00 + 10.00 per lot
<input type="checkbox"/> Minor	\$ 1200.00	<input checked="" type="checkbox"/> Road Vacation (constructed)	\$ 1000.00
ZONING/REZONING		<input type="checkbox"/> Road Vacation (paper)	\$ 100.00
<input type="checkbox"/> Rezoning	\$ 1700.00 + 10.00 per acre	SITE PLAN	
<input type="checkbox"/> PUD Rezoning	\$ 1700.00 + 10.00 per acre	<input type="checkbox"/> Residential	\$ 1400.00 + 10.00 per unit
<input type="checkbox"/> PUD Amendment	\$ 1700.00 + 10.00 per acre	<input type="checkbox"/> Non-Resl. (>10,000 sq. ft.)	\$ 2200.00
<input type="checkbox"/> Major PD Amendment	\$ 3700.00 + 10.00 per acre	<input type="checkbox"/> Non-Resl. (>2,000 sq. ft.)	\$ 1000.00
<input type="checkbox"/> Minor PD Amendment	\$ 500.00	<input type="checkbox"/> Non-Resl. (<2,000 sq. ft.)	\$ 200.00
SPECIAL REVIEW USE		<input type="checkbox"/> Amendment (major)	\$ 1100.00
<input type="checkbox"/> Major	\$ 1000.00	<input type="checkbox"/> Amendment (minor)	\$ 350.00
<input type="checkbox"/> Minor	\$ 400.00	VARIANCE	
<input type="checkbox"/> Oil & Gas	\$ 1200.00	\$ 600.00	
		SERVICE PLAN	
		\$ 10,000.00	

All fees include both Town of Erie Planning & Engineering review. These fees do not include referral agency review fees, outside consultant review fees, or review fees incurred by consultants acting on behalf of staff. See Town of Erie Municipal Code, Title 2-10-5 for all COMMUNITY DEVELOPMENT FEES.

The undersigned is fully aware of the request/proposal being made and the actions being initiated on the referenced property. The undersigned understand that the application must be found to be complete by the Town of Erie before the request can officially be accepted and the development review process initiated. The undersigned is aware that the applicant is fully responsible for all reasonable costs associated with the review of the application/request being made to the Town of Erie. Pursuant to Chapter 7 (Section 7.2.B.5) of the Unified Development Code (UDC) of the Town of Erie, applicants shall pay all costs billed by the Town for legal, engineering and planning costs incurred by staff, including consultants acting on behalf of staff, necessary for project review. By this acknowledgement, the undersigned hereby certify that the above information is true and correct.

Owner: [Signature]

Date: 3/7/13

Owner: [Signature]

Date: _____

Applicant: [Signature]

Date: 3/5/13

AUTHORIZED REPRESENTATIVE, COBE, INC

STATE OF COLORADO)
County of Boulder) ss.

The foregoing instrument was acknowledged before me this 5th day of March, 2013, by [Signature]

My commission expires: 11-22-2014
Witness my hand and official seal.

[Signature]
Notary Public

Narrative to the Weld county Road 3 vacation application:

Weld County Road 3 is being requested to be vacated and relocated to a new alignment for a number of reasons. The most important is the current alignment cannot meet Town Code for grade for such a roadway if reconstructed. If the road is filled to meet the required grade, it will stand out amongst the hillside. The better solution is to curve the road to the east so it follows the contours of the hillside. We have incorporated such curvature into our design of the Bridgewater Project.

A Town water line is the only public utility in the current Weld County Road 3 right of way. This waterline will be relocated with the roadway. There is an existing private Fiber Optics line in the right of way that will be relocated along with the roadway but will veer off from the roadway and be in its own easement as shown on the construction drawings. In addition, Kerr McGee gathering has an easement for a gas line which is adjacent to the roadway and that easement will be relocated as shown on the construction plans and the old alignment will be abandoned.

The new Weld County 3 roadway and above described utilities will be relocated to the new alignment or easements and then the vacation of the old right of way will occur such that the ownership and use by the public will not be affected.

TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM
Board Meeting Date: August 26, 2014

SUBJECT: **RESOLUTION**
 Consideration of Resolution 14-85: A Resolution Awarding A Site Work Guaranteed Maximum Price, Construction Manager At Risk Agreement To Fransen Pittman For the Police Station And Municipal Court In The Amount of \$1,525,000.00 And Setting Forth Details In Relation Thereto.

DEPARTMENT: Public Works/Parks

PRESENTER/PREPARER: **Gary Behlen, Director of Public Works**
Joni E. Fournier, Project Owners Representative

FISCAL INFORMATION: Cost as Recommended: **\$1,525,000.00**
 Balance Available: \$6,625,000
 Budget Line Item
 Number: 100 . 70 . 110 . 605000 . 100021
 New Appropriation Required: Yes No

STAFF RECOMMENDATION: Approving Resolution 14-85 awarding said contract, authorizing the Mayor to execute said contract, authorizing Staff to expend contracted funds and contingency funds.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

During the April 1, 2014 Town of Erie Regular Municipal Election, voters approved funding for the construction of a new Police Station and Municipal Court Building to help ensure the safety of our growing community and to improve the work space from the outdated workspace currently located at Town Hall. Work on the police station and municipal court building has been in progress since 2011. The Board of Trustees previously awarded the design contract to Roth Sheppard Architects and approved the purchase of the vacant land for the future facility site. Once the Police Station and Municipal Court Building is completed, the remodel of Town Hall will begin.

Since April, Fransen Pittman (contractor), Roth Sheppard (architect), Consilium Partners (Owner's Representative since June) have been working with Town staff performing cost estimating, value engineering and determining constructability of the Police Station and Municipal Court Building. Based on Roth Sheppard's grading plan, Fransen Pittman has prepared a Guaranteed Maximum Price (GMP) for site work which includes: earthwork, utilities, slab on grade, underground plumbing, electrical and foundation. It is understood that a GMP for the building structure, furniture, fixtures, and equipment (FF&E) will be brought to the Board for approval later in the Fall. This type of contracting has successfully been used by the Town in previous projects such as the Erie Committee Center, Leon A. Wurl service Center and the North Water Reclamation Facility. Using these methods allows the Town to work efficiently with the team to successfully complete the project quickly, and within budget.

The scope of services for this phase of the project includes site grading, asphalt paving & concrete paving and utility construction phase for the Police Station and Municipal Court Building. Fransen Pittman will proceed with site work immediately to maintain the project scheduled to complete the work by June 2015.

Project Budget Summary

Site Work GMP	\$1,525,000.00
Building – TBD FALL 2014	\$4,120,698.00

Furniture Allowance –	\$220,719.00
Soft Cost	\$436,190.00
<u>Contingency</u>	<u>\$321,426.00</u>
Total	\$6,624,033.00

Remaining funds will be used in the construction of the project, which will be presented to the Board later in the year.

Staff Review

Town of Erie staff has review the GMP for this site work with the Owner’s Representative and find the cost within the budgeted amount and consistent with our project cost estimate.

Project Schedule

Notice of Award (Site Work)	August 27, 2014
Notice to Proceed (Site Work)	August 27, 2014
Estimate Site Completion (Site Work)	November 2014
Estimate Project Completion	June 2015

Board Goal

This serves the Board’s goal for Providing essential Infrastructure and to maintain a safe community in which to live, work and play.

Staff Review:

- _____ Town Attorney
- _____ Town Clerk
- _____ Community Development Director
- _____ Finance Director
- _____ Police Chief
-  Public Works Director

Approved by:



A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-85
- b. CMAR Agreement

RESOLUTION NO. 14-85

A RESOLUTION OF THE TOWN OF ERIE AWARDING A SITE WORK GUARANTEED MAXIMUM PRICE, CONSTRUCTION MANAGEMENT AT RISK AGREEMENT TO FRANSEN PITTMAN FOR THE POLICE STATION AND MUNICIPAL COURT IN THE AMOUNT OF \$1,525,000.00; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town of Erie, Colorado wishes to award Site Work Guaranteed Maximum Price, Construction at Risk Agreement to Fransen Pittman for the Police Station and Municipal Court in the Amount of \$1,525,000.00; and

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to enter into such a contract.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the contract between the Town of Erie and Fransen Pittman is found to be a reasonable and acceptable owners contract for the award Site Work Guaranteed Maximum Price, Construction at Risk Agreement for the Police Station and Municipal Court.

Section 2. That the Town of Erie be and is hereby authorized and directed to enter into the contract with Fransen Pittman and the appropriate Town Officers are hereby authorized and directed to sign and bind the Town of Erie to said contract in the amount of \$1,525,000.00.

Section 3. That entering into the contract is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy J. Parker, CMC, Town Clerk

**TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM**

Board Meeting Date: August 26, 2014

SUBJECT: **RESOLUTIONS**
Resolution 14-100: A Resolution Authorizing The Town of Erie, Colorado, To Enter Into A Purchase And Sale Agreement For The Purchase Of Real Property From The Mary Jane Strieby Revocable Trust; Authorizing And Directing The Appropriate Town Officers To Sign Said Purchase And Sale Agreement; And Setting Forth Details In Relation Thereto.

DEPARTMENT: Administration

PRESENTER/PREPARER: **A.J. Krieger, Town Administrator**
 Gary Behlen, Director of Public Works

FISCAL	Cost as Recommended:	\$ 800,000
INFORMATION:	Balance Available:	\$ 0
	Budget Line Item	
	Number:	000 . 00 . 000 . 000000 . 000000
	New Appropriation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	Required:	

STAFF Staff recommends approval of Resolution 14-100, authorizing the Mayor to
RECOMMENDATION: sign the Purchase and Sale Agreement.

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

Staff is currently working on multiple projects in the vicinity of Erie Lake. Two of the projects include evaluating the feasibility of increasing capacity of Erie Lake and to make dam improvements that are required by the State of Colorado. The dam improvement project requires that the Town acquire additional property to the north of Erie Lake. Earlier this year, the Town purchased the Schofield property that is adjacent to Erie Lake on the northeast side. When contact was made with the property owner of the property to the northwest (Strieby Property) to purchase a portion of their property for the improvements, the owner mentioned that they would be listing the property for sale in the near future.

This is an opportunity to obtain a strategic property that is contiguous with Erie Lake, the Schofield property, and US 287. The Strieby Property is in unincorporated Boulder County and lies within the Rural Preservation of the East Central Boulder County IGA.

As part of the dam improvement project, the Town obtained an appraisal of the property for \$800,000. The property has two homes, an outbuilding, and two water shares of the South Boulder Canon Ditch Company. The purchase price for the approximately 8.8 acres is \$800,000.

The purchase of this property was presented to the Open Space and Trails Advisory Board (OSTAB) at the August 2014.

Approval of the attached Purchase and Sale Agreement will allow the Town to proceed with environmental and other due diligence investigations. The purchase will proceed only if the Town's investigations are satisfactory.

Staff Review:

_____ Town Attorney
_____ Town Clerk
_____ Community Development Director
 Finance Director
_____ Police Chief
 Public Works Director

Approved by:



A.J. Krieger
Town Administrator

ATTACHMENTS:

- a. Resolution 14-100
- b. Vicinity Map

RESOLUTION NO. 14-100

A RESOLUTION AUTHORIZING THE TOWN OF ERIE, COLORADO, TO ENTER INTO A PURCHASE AND SALE AGREEMENT FOR THE PURCHASE OF REAL PROPERTY FROM THE MARY JANE STRIEBY REVOCABLE TRUST; AUTHORIZING AND DIRECTING THE APPROPRIATE TOWN OFFICERS TO SIGN SAID PURCHASE AND SALE AGREEMENT; AND, SETTING FORTH DETAILS IN RELATION THERETO.

WHEREAS, the Town desires to enter into a Purchase and Sale Agreement with the Mary Jane Strieby Revocable Trust, a Colorado limited liability company in order to purchase the real property described as approximately 8.8 acres in Section 27, T1N, R69W of the 6th PM, which real property is needed for open space purposes by the Town (the "Property"); and,

WHEREAS, the Town of Erie, Colorado desires to purchase the Property for a price of \$800,000 on terms as set forth in the Purchase and Sale Agreement; and,

WHEREAS, the timing and deadlines set forth in the Purchase and Sale Agreement require action on the part of the Town in order to agree to the sale price offer, begin the due diligence process for the purchase the Property, and to obtain the Property for the Town's use; and,

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to enter into such a Purchase and Sale Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the Purchase and Sale Agreement between the Town of Erie and the Mary Jane Strieby Revocable Trust, a copy of which is attached hereto and incorporated herein by reference, is found to be a reasonable and acceptable agreement for purchase of the Property.

Section 2. That the Town of Erie be and is hereby authorized and directed to enter into the Purchase and Sale Agreement, and the appropriate Town officers are hereby authorized and directed to sign and bind the Town of Erie to said Purchase and Sale Agreement.

Section 3. That entering into the Purchase and Sale Agreement is found to be in the best interest of the Town of Erie, and necessary for the preservation of the public health and safety.

ADOPTED AND APPROVED THIS 26TH DAY OF AUGUST, 2014, BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO.

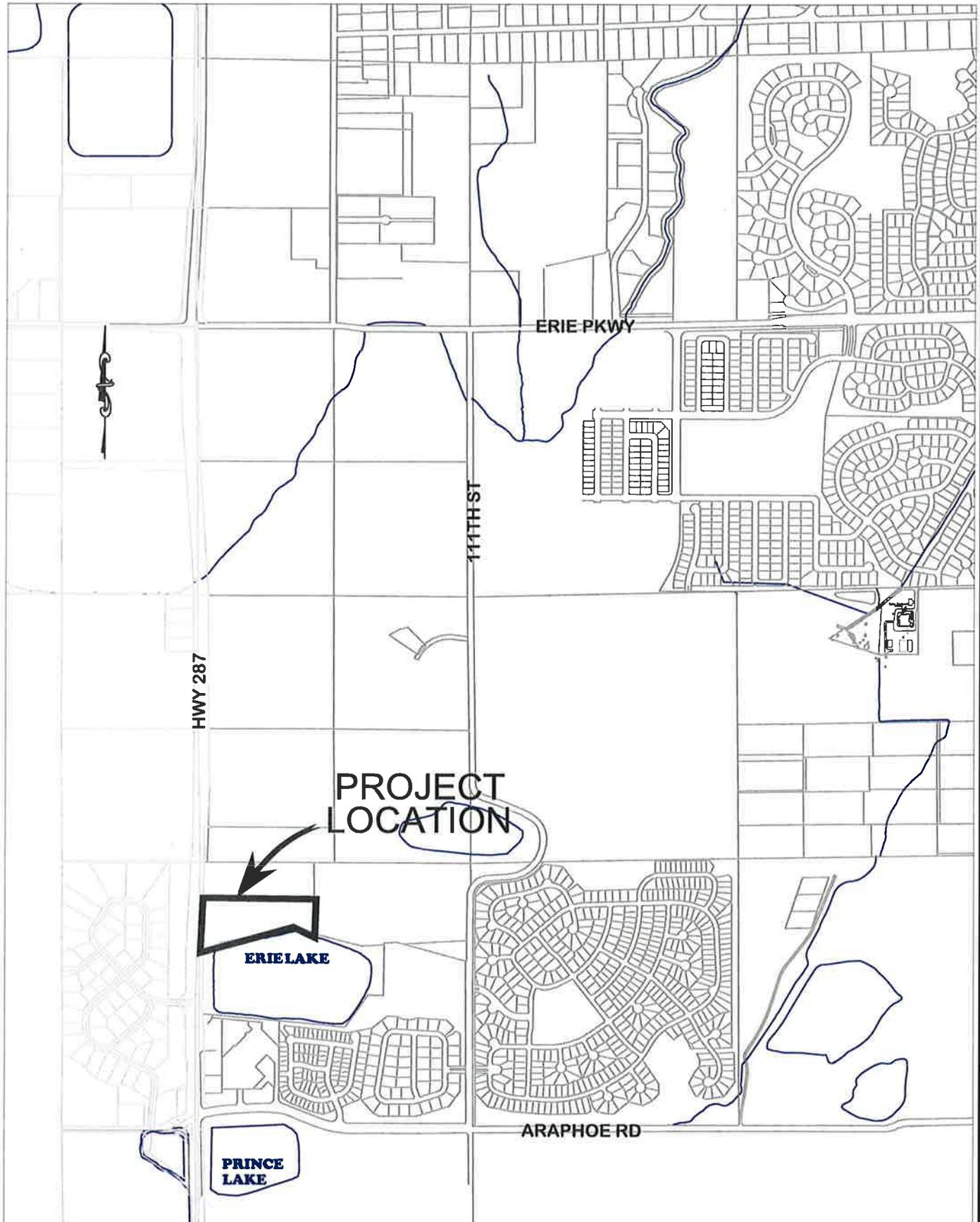
TOWN OF ERIE,
a Colorado municipal corporation

By: _____
Joseph A. Wilson, Mayor

ATTEST:

By: _____
Nancy Parker, CMC, Town Clerk

STRIEBY PROPERTY



PURCHASE AND SALE AGREEMENT
(Improved Land)

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is made as of the ____ day of _____, 2014, by and between **THE MARY JANE STRIEBY REVOCABLE TRUST, DATED OCTOBER 1, 1998**, having an address of 2140 North 107th Street, Lafayette, Colorado 8026-9102 ("Seller"), and **TOWN OF ERIE**, a Colorado municipal corporation, having an address at 645 Holbrook Street, P.O. Box 750, Erie, Colorado, 80516 ("Purchaser").

RECITALS

A. Seller is the fee owner of that certain parcel of real property known as 2140 North 107th Street, Lafayette, Colorado 8026-9102, located in the County of Boulder, State of Colorado, and which is more particularly described on **Exhibit A** attached hereto and made a part hereof.

B. As used in this Agreement, the term "Property" includes all of the following: (1) the real property described on **Exhibit A** together with all reversions, remainders, easements, rights-of-way, appurtenances, agreements, licenses, tenements and hereditaments appertaining to or otherwise benefiting or used in connection with said real property or the Improvements (as defined below), together with all of Seller's right, title and interest in and to any strips of land, streets and alleys abutting or adjoining such real property, and together with any and all minerals and mineral rights, water and water rights (whether decreed or undecreed, tributary, nontributary or not nontributary, surface or underground, appropriated or unappropriated, permitted or unpermitted, including, but not limited to, 2 shares of the South Boulder Canon Ditch company wells), well rights and well permits, water and sewer taps and any water service agreements which shall be assigned to Purchaser or sanitary or storm sewer capacity appurtenant or appertaining to or otherwise benefiting or used in connection with the real property (the "Land"); (2) the existing buildings and other improvements, structures, open parking facilities and fixtures placed, constructed, installed or located on the Land, and all plants, trees, sculptures and other appurtenances located upon, over or under the Land (collectively, the "Improvements;" the Land and Improvements are sometimes hereinafter collectively referred to as the "Real Property"); (3) all right, title and interest of Seller as landlord, under all leases, tenancies or occupancy arrangements affecting any portion of the Real Property (the "Tenant Leases"), all prepaid rents under the Tenant Leases applicable to the period from and after the Closing (as defined below), and security and other deposits under the Tenant Leases; (4) all right, title and interest of Seller in and to all contracts, agreements or commitments, oral or written, other than the Tenant Leases, relating to the Real Property, if any (the "Contracts"), to the extent that they are assignable; (5) all right, title and interest of Seller in and to all unexpired warranties, guaranties and bonds, including, without limitation, contractors' and manufacturers' warranties or guaranties, relating to the Real Property to the extent that they are assignable, if any (the "Warranties"); (6) all right, title and interest of Seller in and to all governmental or quasi-governmental permits, agreements, licenses, certificates and authorizations, including, without limitation, certificates of occupancy, relating to the construction, use or operation of the Real Property to the extent that they are assignable, if any (the "Permits"); (7) all right, title and interest of Seller in and to all surveys, soil and substratus studies, architectural drawings and environmental studies or reports if existing and in Seller's possession or control that relate to the Real Property (the "Plans"); and (8) any and all other rights, privileges, and appurtenances owned by Seller and in any way related to, or used in connection with the operation of the Real Property to the extent that they are assignable (the "Intangible Property").

C. Seller now desires to sell and Purchaser now desires to purchase all of Seller's right, title and interest in and to the Property, upon the terms and covenants and subject to the conditions set forth below.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed as follows:

ARTICLE I
Purchase and Sale of the Property

1.1 Purchase. For the consideration hereinafter set forth, but subject to the terms, provisions, covenants and conditions contained herein, Seller hereby agrees to sell, assign and convey to Purchaser, and Purchaser agrees to purchase from Seller, all of the Property.

1.2 Purchase Price. The total purchase price (the "Purchase Price") for the Property shall be Eight Hundred Thousand Dollars (\$800,000.00), adjusted as set forth herein, below. The Purchase Price shall be payable as follows:

(a) Deposit. Within five Business Days (as hereinafter defined) after the Effective Date (as hereinafter defined in Section 13.5), Purchaser will deliver an earnest money deposit in the amount of One Thousand Dollars (\$1,000.00) to Heritage Title Company, Boulder (the "Title Company"). The Title Company will hold such One Thousand Dollars (\$1,000.00) as an earnest money deposit hereunder pursuant to the terms and provisions hereof (the "Deposit"). The Title Company will deposit such cash amount in an interest-bearing, insured account and continue hold such money as the Deposit hereunder pursuant to the terms and provisions hereof. The Deposit shall earn interest which shall be credited to the Purchaser and the full amount shall be applied to the Purchase Price at Closing. The Deposit shall be fully refundable to the Purchaser during the Inspection Period and after such shall constitute liquidated damages in the event of Purchaser's default.

(b) Balance. The balance of the Purchase Price, subject to prorations and adjustments in accordance with Article XI hereof, will be paid in good funds in compliance with laws on the Closing Date (as hereinafter defined in Article VIII), in such manner, place and account as Seller may, by prior notice, instruct.

ARTICLE II
Seller's Deliveries

It is understood by the parties that Purchaser will be relying on Seller's Deliveries (as defined herein) in order to conduct Purchaser's inspection and due diligence investigation of the Property. Except as otherwise provided below, Seller will, within Twenty (20) days after the Effective Date (as defined below), at Seller's expense, deliver, or cause to be delivered to Purchaser, the following (collectively, the "Seller's Deliveries"):

2.1 Title Insurance Commitment. A current title insurance commitment issued by the Title Company, including the best available copies of all recorded exceptions to title referred to therein (collectively, the "Title Commitment"), showing marketable title to the Real Property to be vested in Seller and committing to insure such title to the Real Property in Purchaser by the issuance of a 2006 ALTA form of extended coverage policy of owner's title insurance, with the standard printed exceptions deleted, in the amount of the Purchase Price, subject to the satisfaction of the requirements of the instruments to be delivered at the Closing as contemplated hereby and any affidavits and agreements of Purchaser and Seller which the Title Company requires in connection with deletion of the standard printed exceptions. Purchaser will review the Title Commitment as part of its investigation of the Property during the Inspection Period. Purchaser will have the right to negotiate with Title Company in order to cause Title Company to modify the Title Commitment to reflect only those exceptions to title that are acceptable to Purchaser. Seller hereby agrees to cooperate with any of Purchaser's negotiations with the Title Company. If Purchaser does not terminate this Agreement pursuant to Section 3.2 hereof, then the exceptions to title disclosed in the Title Commitment and approved by Purchaser in writing, excluding (a) any delinquent taxes or assessments, (b) any monetary liens or encumbrances which are not a result of the action of Purchaser, its representatives, agents or contractors, and (c) any standard printed exceptions, will be the "Permitted Exceptions" hereunder.

2.2 Environmental Studies. Without in any way limiting any other duties of Seller hereunder to provide information to Purchaser, copies of all environmental studies, reports and information in Seller's possession or control, including, without limitation, correspondence from any governmental or quasi-governmental authorities having jurisdiction over the Property (a "Governmental Authority"), concerning the environmental condition of the Property (all of the foregoing being hereinafter referred to as "Seller's Environmental Information"). In addition, without in any way limiting the preceding sentence, Seller shall provide Purchaser with a copies of any Phase I Environmental Site Assessment Report for the Property and any Phase II Environmental Site Assessment Report for

the Property in Seller's possession (collectively, the "Environmental Reports") within Ten (10) days of the Effective Date.

2.3 Environmental Site Assessment Report. Purchaser shall have the right to obtain a current Phase I Environmental Site Assessment Report for the Property and, in the event an environmental hazard or a potential contamination of any sort, in the sole discretion of Purchaser, has been identified on the Property, a current Phase II Environmental Site Assessment Report for the Property. Purchaser shall pay all costs associated with the Phase I and Phase II Environmental Site Assessment Reports obtained by Purchaser.

2.4 Other Information. True, accurate and complete copies of all documents in any way related to the prior development, usage, operation or marketability of the Property which are in the possession or control of Seller, including, without limitation, information related to utilities to the Property and adverse conditions. Such documents shall include, without limitation, surveys, all environmental, soils and engineering tests, appraisals, reports and other studies ordered or performed at the direction of Seller.

2.5 Survey. Seller shall provide to Purchaser a copy of any surveys of the Property Seller may have in its possession ("Survey"). Purchaser and/or its agents shall be allowed access to the Property in order to update any Survey received from the Seller or to obtain and create a new, current pinned survey of Property. Purchaser shall pay all costs associated with the new survey obtained by Purchaser.

2.6 Disclosure. A written disclosure from Seller to Purchaser of all easements, liens or other title matters not shown by public records of which Seller has current actual knowledge.

2.7 Certificate of Occupancy. A permanent and unconditional Certificate of Occupancy for the Property and all other permits, licenses and authorizations necessary for the use or required by any applicable zoning law, building codes or other laws or regulations affecting the Property.

2.8 Contracts. All service contracts, management agreements, maintenance contracts, instruments, documents and any similar items reasonably required by Purchaser to conduct and complete Purchaser's inspection and due diligence investigation.

2.9 Leases. Copies of all Leases. This information should include tenant name, rental rate, security deposit, and lease expiration date and which will also provide information regarding whether the tenant is current on the payment of rent and all other obligations of tenant under the lease.

2.10 Historic Designation Documents. A copy of all State or County Historic Designation documents relating to the Property.

2.11 Wastewater Transfer Certificate. An Onsite Wastewater Transfer Certificate from the Boulder County Health Department certifying that the septic system is functional.

2.12 Water Well Permit. A copy of the current water well permit.

ARTICLE III **Investigation of the Property**

3.1 Inspection of Property. Purchaser will have until 5:00 p.m., Mountain Time, on the date that is Ninety (90) days after the Effective Date (as it may be extended, as set forth below, the "Inspection Period"), to investigate and evaluate the Property, the structures on the Property, the zoning and other governmental limitations applicable to the Property, Seller's Deliveries and all other documents and/or information provided to Purchaser pursuant to Article II, and any other aspects or characteristics of the Property which may affect its acquisition, ownership, development, usage, operation, marketability or economic viability. Such right of investigation will include, without limitation, the right to enter the Property, to enter the structures on the Property, and to have made, at Purchaser's expense, any studies, inspections or plans of the Property and the structures on the Property as Purchaser may deem necessary or appropriate, including environmental studies and/or flood plain studies. Seller agrees to cooperate reasonably with any such investigations, inspections or studies made by or at Purchaser's direction so long as such cooperation is at no expense to Seller. Purchaser will indemnify, defend and hold Seller harmless from any

expenses, damages and liabilities, including reasonable attorneys' fees that Seller may suffer or incur arising out of any claims for property damage, personal injury or claims from materialmen, or laborers which arise from Purchaser's investigations under this Section 3.1. The provisions of this Section shall survive the Closing or termination of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the Inspection Period shall be extended one day for each and every day that Seller fails to deliver to Purchaser the Seller's Deliveries as and when required by Article II.

3.2 Termination. If on or before the expiration of the Inspection Period, Purchaser gives Seller written notice setting forth Purchaser's dissatisfaction with the Property or any characteristic thereof, in Purchaser's sole discretion, for any reason whatsoever, then this Agreement shall terminate, the Deposit shall be returned to Purchaser and both parties shall be relieved from any further liability hereunder, except for any liabilities and obligations which by their terms survive any termination of this Agreement. If Purchaser does not terminate this Agreement as described in the preceding sentence, then this Agreement shall remain in full force and effect in accordance with its terms.

ARTICLE IV **Maintenance of Property**

Seller shall: (i) maintain the Property in at least as good a condition and state of repair as upon the Effective Date, ordinary wear and tear excepted, and pay all associated costs and expenses for such maintenance performed on or before the Closing Date; (ii) maintain its current (or equivalent) fire and casualty insurance in effect, without reduction in coverage; (iii) not dispose of, mortgage, pledge or subject to lien, license or other encumbrance any interest in the Property; (iv) not knowingly commit or omit any act that constitutes a breach of any lease or, upon the expiration of any applicable grace period, will constitute a breach under a lease; (v) operate the Property in accordance with the ordinary course of business of the Seller, except in cases of emergency or casualty; (vi) shall collect all rents as they become due and enforce all requirements of Leases; and (vii) shall not modify, amend or change the Property in any manner whatsoever without the prior written approval of Purchaser.

ARTICLE V **Title**

At Closing hereunder, Seller will convey to Purchaser by General Warranty Deed good, marketable and insurable fee simple title to the Property, free and clear of all liens and encumbrances and subject only to the Permitted Exceptions. Seller will not, after the date hereof, sell, convey, option or contract to do any of the foregoing or otherwise convey, abandon, relinquish, cloud or encumber title to the Property or any part thereof or contract to do any of the foregoing in a manner which would survive Closing except as may be expressly provided for herein. At Closing, Seller will cause the Title Company to issue to Purchaser, or unconditionally commit to issue to Purchaser after Closing, a 2006 ALTA form of extended coverage owner's policy of title insurance insuring marketable, insurable title to the Property in Purchaser in the amount of the Purchase Price for such Property, subject only to the Permitted Exceptions (the "Title Policy"). At Closing, Seller will pay for the title insurance policy insuring the Purchaser's purchase. If any update of the Title Commitment issued after expiration of the Inspection Period shall show any exceptions which are not Permitted Exceptions or shall contain any additional requirements, which exceptions or additional requirements are caused by Seller (or anyone acting by, through or under Seller or its affiliates) without Purchaser's prior written consent (which may be withheld in Purchaser's sole discretion), Seller will, at its sole cost and expense, within the earlier of Thirty (30) days or the Closing Date, cure such exceptions and satisfy such requirements. Seller's obligation to cure such exceptions will, if such method is acceptable to Purchaser as to any specific exception, include the obligation to obtain title insurance protection for Purchaser against such exception and to pay additional premiums or costs which the Title Company charges for such protection. If each of such exceptions has not been cured by Seller or waived by Purchaser within the earlier of Thirty (30) days or the Closing Date, and Purchaser does not elect to waive such exception or requirements, Purchaser will be entitled to all rights and remedies therefor, including, without limitation, specific performance with abatement and/or damages on account of the existence of any such exceptions which are not Permitted Exceptions or for any requirements which are not satisfied by Seller, or termination of this Agreement and the return of the Deposit. If a third party (not related to Seller or anyone acting by, through or under Seller or its affiliates) causes such new title exception or additional requirements, Seller will, at its sole cost and expense, within the earlier of Thirty (30) days or the Closing Date, cure such exceptions and satisfy such requirements; provided, however, that if Seller is unable cure such exceptions and satisfy such requirements using its best efforts, Purchaser's only right

will be to either waive its objection thereto or to terminate this Agreement. In the event of any such termination, the Deposit will be returned to Purchaser and the parties will thereupon be relieved of all further liabilities and obligations hereunder, except for any liabilities and obligations which by their terms survive any termination of this Agreement.

ARTICLE VI
Representations and Warranties

6.1 Seller's Representations and Warranties. To Seller's current actual knowledge, without inquiry and without duty to inquire, Seller represents, warrants and covenants to Purchaser that the following are true and correct:

(a) No Possessory Rights; No Third Party Interests. Except for any parties in possession pursuant to, and any rights of possession granted under, the Permitted Exceptions, there are no parties in possession of any part of the Property, and there are no other rights of possession which have been granted to any third party or parties. Seller has not granted to any party any option, contract or other agreement with respect to a purchase or sale of the Property or any portion thereof or any interest therein.

(b) No Liens. There are no mechanics' or materialmen's liens of record against the Property, nor are there any unsatisfied charges, debts, liabilities, claims or obligations arising from the construction, ownership, maintenance or operation of or otherwise relating to the Property, which could give rise to any mechanics' or materialmen's or constitutional, statutory or common law lien against the Property, or any part thereof.

(c) Contracts and Tenant Leases. Seller is not in default of any of its obligations under the Permitted Exceptions, the Contracts or any Tenant Leases. Seller represents that there are no Contracts other than those set forth on the list of Contracts delivered by Seller to Purchaser hereunder.

(d) Compliance with Law. Except as otherwise disclosed to Purchaser as part of Seller's Deliveries, Seller has not received notice of any violation of any applicable statutes, ordinances, codes (including, but not limited to, zoning, building, subdivision, pollution, environmental protection, water disposal, health, fire and safety, and engineering codes), and the rules and regulations of, any Governmental Authority. With respect to the Property, there are no violations of any applicable statutes, ordinances, codes (including, but not limited to, zoning, building, subdivision, pollution, environmental protection, water disposal, health, fire and safety, and engineering codes), and the rules and regulations of, any Governmental Authority.

(e) No Actions. There are no actions, suits, proceedings or claims pending, or to Seller's knowledge, contemplated or threatened, with respect to or in any manner affecting the Property or the ability of the Seller to consummate the transaction contemplated by this Agreement. There are no pending condemnation or similar proceedings or special assessments affecting the Property, or any part thereof, and to the best of Seller's knowledge, no such proceeding or assessment is contemplated or threatened by any Governmental Authority. No filing or petition under the United States Bankruptcy Law or any insolvency laws, or any laws for composition of indebtedness or for the reorganization of debtors has been filed with regard to Seller.

(f) Assumption of Obligations. Purchaser, by virtue of the purchase of the Property will not be required to satisfy any obligation of Seller other than those expressly assumed by Purchaser pursuant to this Agreement, any obligations imposed under the Permitted Exceptions or any obligations which may be incurred under any expressly assumed Permits or Contracts.

(g) Hazardous Material. To Seller's knowledge, except as disclosed in any environmental or engineering reports or studies delivered by Seller to Purchaser as part of the Seller's Environmental Information: (i) the Property has not at any time been used for the purpose of storing, manufacturing, releasing or dumping Hazardous Materials (as hereinafter defined), and there are no Hazardous Materials located at, on or under the Property, except for normal quantities of Hazardous Materials utilized in connection with the maintenance and operation of the Property in compliance with all Environmental Laws (as hereinafter defined), and (ii) no underground storage tanks, pipelines or clarifiers have been or are located on the Property. As used in this Agreement, "Hazardous Materials" shall mean any hazardous or toxic substances,

materials or wastes, defined or regulated as such in or under any Environmental Law, including, without limitation, asbestos, gasoline and any other petroleum products, polychlorinated biphenyls and urea formaldehyde insulation. As used in this Agreement, "Environmental Law" shall mean any and all federal, state, local or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees or requirements of any Governmental Authority or requirements of law (including common law) relating to or imposing liability or standards of conduct concerning the protection of human health, the environment or natural resources, or the release or threatened release of Hazardous Materials into the environment.

(h) Seller's Deliveries. The copies of any documents furnished to Purchaser pursuant to this Agreement are true, accurate and complete copies of the documents they purport to be. Seller has no knowledge of any misrepresentations or any material inaccuracy in any of Seller's Deliveries that have been provided to Purchaser pursuant to this Agreement.

(i) Authority. Seller has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. Seller has taken all requisite action in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Seller is authorized to do so. Seller will furnish to Purchaser any and all documents to evidence such authority as Purchaser shall reasonably request.

(j) Consents; Binding Obligations. No third party approval or consent is required to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Seller are and shall be valid, legally binding obligations of and enforceable against Seller in accordance with their terms.

(k) No Representations; "As Is" Purchase. Except as expressly set forth herein or called for herein or any conveyance documents delivered at Closing, SELLER MAKES NO WARRANTIES OR REPRESENTATIONS of any kind or character, express or implied, with respect to the Property, its physical condition, income to be derived therefrom or expenses to be incurred with respect thereto, and there are no oral agreements, warranties or representations collateral to or affecting the Property except as may otherwise be expressly set forth herein. Notwithstanding anything contained herein to the contrary, this Section shall survive the Closing or any termination of this Agreement.

(l) Materiality. Each of the representations and warranties contained in this Article are acknowledged by Seller to be material and to be relied upon by Purchaser in proceeding with this transaction, shall be deemed to have been remade by Seller as of the date of Closing, shall not be deemed merged into any instrument of conveyance delivered at Closing and shall survive the Closing.

(m) Seller is not a "foreign person" but is a "United States person" as such terms are defined in Sections 1445 and 7701 of the United States Internal Revenue Code.

(n) Seller is not, and will not be, a person or entity with whom Purchaser is restricted from doing business under the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56 (commonly known as the "USA Patriot Act") and Executive Order Number 13224 on Terrorism Financing, effective September 24, 2001 and regulations promulgated pursuant thereto, including persons and entities named on the Office of Foreign Asset Control Specially Designated Nationals and Blocked Persons List (collectively, "Anti-Terrorism Laws").

6.2 Purchaser's Representations and Warranties. Purchaser represents, warrants and covenants to Seller that the following are true and correct:

(a) Authority. Purchaser has the full right and authority to enter into this Agreement and consummate the transaction contemplated by this Agreement. Purchaser has taken all requisite action in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Purchaser is authorized to do so. Purchaser will furnish to Seller any and all documents to evidence such authority as Seller shall reasonably request.

(b) Consents; Binding Obligations. No third party approval or consent is required to enter into this Agreement or to consummate the transaction contemplated hereby. This Agreement and all documents required hereby to be executed by Purchaser are and shall be valid, legally binding obligations of and enforceable against Purchaser in accordance with their terms.

ARTICLE VII
Seller's Undertakings Pending Closing

Seller agrees to terminate by written notice to the other party thereto, effective as of Closing, any of the Contracts that Purchaser, pursuant to written notice to Seller, requests Seller to terminate. Seller agrees to terminate by written notice to the other party thereto, effective as of Closing, all Tenant Lease to be effective as of the Closing Date. Seller shall deliver copies of all notices of termination given by Seller hereunder to Purchaser.

ARTICLE VIII
Purchaser's Obligation to Close

Purchaser shall not be obligated to close hereunder unless each of the following conditions shall exist on the date of Closing (the "Closing Date"): (1) the Title Company shall be prepared to issue (or shall unconditionally commit to issue) the Title Policy as described in Article V; (2) the representations and warranties made by Seller in Article VI shall be true and correct on and as of the Closing Date with the same force and effect as though such representations and warranties had been made on and as of the Closing Date, and Seller will so certify; (3) Seller will have, in all material respects, (a) performed all covenants and obligations, and (b) complied with all conditions required by this Agreement to be performed or complied with by Seller on or before the Closing Date or each such covenant, obligation and condition shall be waived by Purchaser in writing prior to the Closing; and (4) no part of the Property shall be about to be acquired, or shall previously have been acquired, by authority of any governmental agency in the exercise of its power of eminent domain or by private purchase in lieu thereof. If any condition specified in this Article VIII is not satisfied on or before the Closing Date, Purchaser may, at its option, (a) extend the date for Closing to allow Seller a sufficient time (but not to exceed Thirty (30) days) within which to cure or satisfy such condition, and Seller will immediately commence prosecution of such cure or satisfaction and diligently pursue the same to completion, at which time a new Closing Date shall be scheduled within Ten (10) days from Purchaser's acceptance of such cure or satisfaction, (b) waive such condition either at the time originally established for Closing or at any time thereafter and proceed to Closing, (c) terminate this Agreement by written notice thereof to Seller, in which case the Deposit shall be returned to Purchaser, or (d) if the failure of the condition is due to a breach by Seller hereunder, pursue any of its remedies under Section 12.1 hereof. Notwithstanding the foregoing, if eminent domain proceedings are commenced against any portion of the Property, Seller shall immediately give notice thereof to Purchaser, and Purchaser at its option may either (i) exercise any of the remedies available to Purchaser in this Article VIII, or (ii) proceed to Closing and receive at Closing either a credit against the Purchase Price in the amount of the award, in the case of a completed eminent domain proceeding, or an assignment of all rights in eminent domain, in the case of a pending eminent domain proceeding. Prior to Closing, Seller shall not designate counsel, appear in, or otherwise act with respect to any eminent domain proceedings, or commence any repair or restoration resulting therefrom, without the consent of Purchaser.

ARTICLE IX
Seller's Obligation to Close

Seller shall not be obligated to close hereunder unless Purchaser has delivered to the Title Company the Purchase Price as described in Article I hereof.

ARTICLE X
Closing

10.1 Time of Closing. The closing ("Closing") shall take place in the offices of the Title Company at the time specified by Purchaser in written notice to Seller. The Closing Date shall be the Thirtieth (30th) day after the expiration of the Inspection Period (as it may be extended) or such earlier date as may be mutually acceptable to the parties. If Closing does not occur, the Deposit shall be returned to Purchaser, paid to Seller or otherwise dealt with, all as provided elsewhere in this Agreement.

10.2 Deliveries. At Closing the following shall occur:

(a) Seller will deliver to Purchaser a duly executed and acknowledged General Warranty Deed, in form satisfactory to Purchaser, conveying good and marketable fee simple title to the Property ((including the water and water rights for the 2 shares of the South Boulder Canon Ditch Company) to Purchaser, free of all liens and encumbrances and subject only to the Permitted Exceptions.

(b) Purchaser will pay to Seller the Purchase Price as provided in Article I hereof, subject to the adjustments described in Article XI.

(c) Possession of the Property will be delivered to Purchaser and Seller shall deliver to Purchaser all keys to all locks on such Property within Seller's possession or control.

(d) Seller will execute and deliver to Purchaser and the Title Company an affidavit that evidences that Seller is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

(e) Seller will execute and deliver to Purchaser an assignment, in form and substance satisfactory to Purchaser, of all of Seller's right, title and interest in and to the Contracts, if any are approved by Purchaser, and will deliver to Purchaser, the originals of all of the Contracts, if any, including all amendments and modifications thereto.

(f) Seller will execute and deliver to Purchaser a bill of sale and assignment, in form satisfactory to Purchaser, of all of Seller's right, title and interest in and to the Warranties, Permits and Intangible Property, and Personal Property to the extent the same are assignable and will deliver to Purchaser the originals of any Warranties or Permits in Seller's possession or control.

(g) Seller will execute and deliver to Purchaser a bill of sale and assignment, in form satisfactory to Purchaser, of all of Seller's right, title and interest in and to the water and sewer taps, if any; and, Seller will execute and deliver to Purchaser the original water stock certificates evidencing ownership of two (2) shares of the South Boulder Canon Ditch Company and an executed assignment form for such shares.

(h) Public utility services shall remain in Seller's name pursuant to the lease terms for Seller's lease back of the Property. The provisions of this Section shall survive Closing.

(i) Seller and Purchaser will each execute and deliver to the Title Company such agreements or statements concerning claims for mechanic's liens and any other documents as may be required by the Title Company in order to issue the applicable Title Policy.

(j) Immediately after the Closing, the originals of all Plans in Seller's possession or control and all other materials of whatever kind owned by Seller relating to the design, construction, development, ownership, maintenance and operation of the Property, if any, will be delivered to and become the property of Purchaser.

(k) Seller will, whenever and as often as it shall be reasonably requested to do so by Purchaser, and Purchaser will, whenever and as often as it shall be reasonably requested to do so by Seller, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, any and all conveyances, assignments and all other instruments and documents as may be reasonably necessary in order to complete the transaction herein provided and to carry out the intent and purposes of this Agreement.

ARTICLE XI

Prorations and Closing Expenses

11.1 Closing Adjustments. The cash due at Closing pursuant to Article I hereof shall be subject to adjustment as of the Closing Date in accordance with the following provisions:

(a) Taxes. Real and personal property taxes on the Property shall be prorated to the Closing Date based on the most recent assessed valuations and mill levy available, which proration shall be deemed a final settlement between the parties.

(b) Liens and Encumbrances. The amount of any lien, deed of trust or other monetary encumbrance (including all prepayment penalties) then affecting the Property other than as a result of the actions of the Purchaser, its representatives, agents or contractors shall be paid from the funds to which Seller shall otherwise be entitled. If such funds are insufficient to pay all such encumbrances, Seller shall pay the deficiency.

(c) Closing Costs. Seller shall pay for any transfer taxes, the cost of recording any instruments required to discharge any liens or encumbrances against the Property, the premium for the Title Policy including costs to delete or insure over the standard exceptions, Seller's attorneys' fees and one-half of the customary closing costs of the Title Company. Purchaser shall pay for recording Seller's deed, the state documentary fee, Purchaser's attorneys' fees and one-half of the customary closing costs of the Title Company.

11.2 Settlement Sheet. At the Closing, Seller and Purchaser shall execute a closing settlement sheet to reflect the credits, prorations and adjustments contemplated by or specifically provided for in this Agreement.

11.3 Post Closing Adjustments. In general, without limiting any of the foregoing, Seller shall be entitled to all income, and shall pay all expenses, relating to the operation of the Property for the period prior to the Closing Date and Purchaser shall be entitled to all income, and shall pay all expenses, relating to the operation of the Property for the period commencing on the Closing Date and thereafter. Purchaser and Seller shall undertake, following Closing, to adjust between themselves, as of the Closing Date, any income or expenses of the Property that are not adjusted on the settlement statement. Seller shall pay promptly upon receipt any bills relating to the operation of the Property for periods prior to the Closing. Seller shall also pay promptly upon receipt any so called "rollback taxes" imposed on the Property for periods from and after Closing. The terms, covenants and conditions of this Article XI will survive the Closing or termination of this Agreement without limitation as to time.

ARTICLE XII

Remedies

12.1 Breach by Seller. Time is of the essence of Seller's obligations hereunder. If Seller fails to comply with any of its obligations hereunder which are required to be performed at or prior to Closing, Purchaser, at Purchaser's option, shall be entitled to terminate this Agreement, whereupon the Deposit shall be returned to Purchaser and both parties shall be discharged from all duties and performance hereunder, except for any obligations which by their terms survive any termination of this Agreement. In the alternative, Purchaser shall be entitled to specific performance, or damages or both.

12.2 Breach by Purchaser. Time is of the essence of Purchaser's obligations hereunder. In the event that Purchaser is in default of any provision hereof, which shall include the failure to provide any notice required by this Agreement, Seller, as a condition precedent to the exercise of its remedies or termination of this Agreement, shall be required to give Purchaser written notice of the same. Purchaser shall have Ten (10) Business Days (as defined below) (or such longer period of time as is reasonably required so long as Purchaser is diligently pursuing said cure) from the receipt of such notice to cure the default or failure to provide notice. If Purchaser timely cures the default, the default shall be deemed waived and this Agreement shall continue in full force and effect. If Purchaser fails to timely cure such default, Seller, as its sole and exclusive remedy, shall be entitled to terminate this Agreement and have the Deposit paid to Seller as liquidated damages. The parties hereby agree that the amount of the Deposit is a fair and reasonable estimate of the total detriment that Seller would suffer in the event of Purchaser's default and failure to duly complete the acquisition hereunder.

12.3 Attorneys' Fees. If any legal proceeding is commenced to enforce or interpret any provision of this Agreement, the prevailing party in such suit shall be awarded, in addition to all other remedies or damages, its reasonable attorneys' fees and expenses.

ARTICLE XIII
Miscellaneous

13.1 Brokers. Seller and Purchaser each hereby represent and warrant to the other that their sole contact with the other or with the Property has been made without the assistance of any broker or other third party. Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that no brokers or finders have been engaged by it, respectively, in connection with the transactions contemplated by this Agreement, or to its knowledge is in any way connected with any such transactions. Seller and Purchaser agree to save and hold each other free, clear and harmless from any claim, cost or expense, including reasonable attorneys' fees, for or in connection with any claims for commissions or compensation claimed or asserted by or through each respective party in connection with the transaction contemplated herein.

13.2 Interpleader. Seller and Purchaser mutually agree that, in the event of any controversy regarding the Deposit held by the Title Company, unless mutual written instructions for disposition of the Deposit are received by the Title Company, the Title Company shall not take any action, but instead shall wait any proceeding, or else shall interplead all parties and deposit the Deposit into a court of competent jurisdiction, in which case the Title Company may recover all court costs and reasonable attorney's fees incurred in connection therewith. Seller or Purchaser, whichever loses in any such interpleader action, shall be solely obligated to pay such costs and fees of the Title Company, as well as the attorney's fees of the prevailing party. By its execution of this Agreement, the Title Company hereby agrees to treat the Deposit in accordance with the foregoing provisions, which supersede any standard form or other escrow instructions of the Title Company.

13.3 1031 Exchange. Seller and Purchaser acknowledge and agree that the purchase and sale of the Property may be part of a tax-free exchange under Section 1031 of the Internal Revenue Code for either Purchaser or Seller. Each party hereby agrees to take all reasonable steps on or before the Closing Date to facilitate such exchange if requested by the other party, provided that no party making such accommodation shall be required to acquire any substitute property or incur any cost or expense in connection with such exchange.

13.4 General. No change or modification of this Agreement shall be valid unless the same is in writing and signed by the party or parties to be bound. No waiver of any of the provisions of this Agreement shall be valid unless in writing and signed by the party against whom it is sought to be enforced. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement, and there are no promises, agreements, conditions, undertakings, warranties or representations, oral or written, express or implied, between the parties other than as expressly herein set forth. Each of the parties hereto undertakes and agrees to execute and deliver such documents, writings and further assurances as may be requisite to carry out the intent and purpose of this Agreement. This Agreement may be executed in one or more counterparts, each of which will constitute an original, and all of which together shall constitute one and the same agreement. Executed copies hereof may be delivered by facsimile or electronic delivery and, upon receipt, shall be deemed originals and binding upon the parties hereto. Without limiting or otherwise affecting the validity of executed copies hereof that have been delivered by facsimile, the parties will use their best efforts to deliver originals as promptly as possible after execution. If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the expiration of the Inspection Period or the Closing Date) should, under the terms hereof, fall on a day other than a Business Day, then such date shall be automatically extended to the next succeeding Business Day. For purposes of this Agreement, "Business Day" means each day of the year other than Saturdays, Sundays, holidays and days on which banking institutions are generally authorized or obligated by law or executive order to close in the State of Colorado. For purposes of this Agreement, "Effective Date" means the date that this Agreement has been executed by both Seller and Purchaser, as evidenced by later of the dates on the signature blocks below. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. The paragraph headings that appear in this Agreement are for purposes of convenience of reference only and are not in any sense to be construed as modifying the substance of the paragraphs in which they appear. Purchaser may assign this Agreement without Seller's written consent. Any such assignee shall assume all obligations imposed on Purchaser as if the assignee were the original Purchaser under this Agreement. Any assignment of this Agreement by Purchaser shall relieve Purchaser of its obligations and liabilities hereunder. Should Seller consist of more than one person or entity, they shall be jointly and severally liable under this Agreement. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns.

13.5 Notices. Any notice required or permitted to be sent pursuant to this Agreement shall be in writing and shall be deemed received (a) within the same Business Day when personally delivered; (b) within the same Business Day when sent by confirmed facsimile transmission or electronic delivery; (c) three (3) days after having been deposited in a U.S. Postal Service depository and sent by registered or certified mail, return receipt requested, with all required postage prepaid, and addressed; or (d) the next Business Day after deposit with Federal Express or a similar overnight courier service, with delivery charges for morning delivery on the next Business Day prepaid. Either party may change its address for notices by written notice to the other party in accordance with this Section 13.5:

If to Seller:

The Mary Jane Strieby Revocable Trust, dated October 1, 1998
2140 N. 107th Street
Lafayette, Colorado 80026-9102
Attn: Jim Strieby
Telephone: (303) 665-5667

E-mail: JSTRIEBY@MESANETWORKS.NET

with a copy (which shall not constitute notice) to:

If to Purchaser:

Town of Erie
P.O. Box 8
Erie, Colorado 80516
Attn: Town Administrator
Telephone: (303) 926-2700
E-mail: ajkrieger@erieco.gov

with a copy (which shall not constitute notice) to:

Mark R. Shapiro
Mark R. Shapiro, P.C.
1650 38th Street, Suite 103
Boulder, Colorado 80301
Telephone: (303) 443-3234
Email: mark@mshapirolaw.com

Any address fixed pursuant to the foregoing may be changed by the addressee by notice given pursuant to this Section 13.5.

13.6 Lease to James Strieby. Following the Closing, Purchaser shall lease the Property to James Strieby for a period of six (6) months from Closing for a rental of One Dollar (\$1.00). The lease terms shall be in accordance with and pursuant to the terms set forth on the lease attached hereto, marked **Exhibit B**, and incorporated herein by this reference (hereinafter the "Strieby Lease"). The parties hereto shall sign and enter into the Strieby Lease at Closing and prior to James Strieby taking possession of the Property as a rental property. This Paragraph 13.6 shall survive the Closing and delivery of the deed.

ARTICLE XIV
Risk of Loss

14.1 Casualty Loss. Seller shall bear all risk of destruction of or damage to the Property by flood, fire or other casualty until the Closing Date; provided, however, that in the event that the Property is damaged prior to the Closing Date so as to require repair costs in excess of \$250,000, as reasonably estimated by Seller, Purchaser may elect to terminate this Agreement by written notice to Seller within ten (10) days after the date of such damage (or the Closing Date, whichever period is shorter), in which event this Agreement shall terminate pursuant to the provisions of Section 3.2. If the damage does not exceed such amount, or if Purchaser elects not to terminate this Agreement in accordance with the terms of this Section, the parties shall proceed to Closing notwithstanding such damage and Purchaser shall be entitled to a credit, at Closing, in the amount of the reasonable cost of repairing such damage, not to exceed the Purchase Price. If the parties are unable, despite their good faith and commercially reasonable efforts, to agree upon the reasonable cost of repair on or before the Closing Date, then Purchaser may give notice terminating this Agreement. After the Closing, Purchaser shall bear the risk of destruction of or damage to the Property.

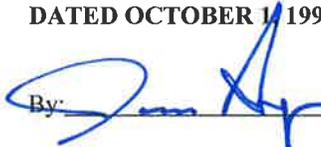
14.2 Failure of Inclusions. Should any inclusions or services (including systems and components of the Property, *e.g.*, heating, plumbing, etc.) fail or be damaged between the Effective Date and the Closing Date, then, at the option of Seller: (i) Seller shall repair or replace such inclusions or services with a new unit of similar size and quality; or (ii) Purchaser shall receive a credit at Closing equal to the reasonable costs of repairing or replacing such Inclusion or service.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first set forth above.

SELLER:

**THE MARY JANE STRIEBY REVOCABLE TRUST,
DATED OCTOBER 1, 1998**

By:  _____ TRUSTEE

Date of Execution: Aug 25, 2014 _____

PURCHASER:

TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

Date of Execution: _____

ATTEST:

By: _____
Nancy Parker, Town Clerk

**RECEIPT AND ACKNOWLEDGEMENT BY
TITLE COMPANY**

The undersigned Title Company, named in the foregoing Agreement, hereby acknowledges receipt of the Deposit and a fully executed copy of this Agreement as of the date set forth below. In addition, the Title Company agrees to hold and disburse the Deposit in accordance with the terms of the Agreement. While the Title Company holds in escrow any Deposit in the form of cash, it agrees to invest it in interest-bearing accounts as provided in the Agreement.

RECEIVED, ACKNOWLEDGED and AGREED TO by the Title Company on this the _____ day of _____, 2014.

By: _____
Print Name: _____
Title: _____

EXHIBIT A

LEGAL DESCRIPTION

All that portion of the Northwest Quarter of the Southeast Quarter (NW ¼ SE ¼) of Section 27, Township 1 North, Range 69 West of the 6th P.M., in the county of Boulder, State of Colorado, described as follows: Beginning at the center of Section 27; thence Southerly along the North-South centerline 924.0 feet; thence North 61 degrees 18' East 247.7 feet; thence North 77 degrees 56' East 740.8 feet; thence South 75 degrees 32' east to a point which bears South from a point on the North line of the Southeast Quarter of Section 27, which point is 200 feet Westerly from the Southeast corner of the Southwest Quarter of the Northeast Quarter of Section 27; thence North to the above described point on the North line of the Southeast Quarter of Section 27; thence Westerly to the point of beginning; EXCEPTING therefrom the North 371.0 feet thereof; ALSO EXCEPTING therefrom all coal beneath said land as reserved in instrument recorded in Book 138, Page 469 and 518, Records of Boulder County.

EXHIBIT B

STRIEBY LEASE

LEASE

1. Parties

This lease for the rental of residential property is between TOWN OF ERIE ("owner") and JAMES STRIEBY ("resident")

2. Leased Premises

Owner hereby leases to resident the premises described below:

2140 North 107th Street, Lafayette, Colorado 8026-9102
(Street Address)

After resident occupies the premises, resident shall be deemed to have fully accepted the premises in "as is" condition.

3. Term

A. **Fixed Term.** The term of this lease shall be for six (6) months, commencing at 12:00 noon on date of Closing, _____, 2014, and terminating at 12:00 noon on _____, 2015.

No notice to terminate at the end of such fixed term is necessary.

If resident retains possession of the premises after expiration of the fixed lease term with the written permission of owner, resident and owner shall continue to be bound by the terms and conditions of this lease on a month to month basis. The lease may then be terminated by either party giving ten (10) days written notice prior to the end of the rental month.

4. Rent

A. **Fixed Term.** The total rental price for the term of this lease is One Dollar (\$1.00). The rental payment, in the amount of One Dollar (\$1.00), is due on date of Closing, _____, 2014.

B. Rent payments shall be made to owner, TOWN OF ERIE, at 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516.

5. Notice

Unless otherwise specified in this lease, all notices provided by this lease shall be in writing and shall be delivered to the other party personally, or sent by first class mail, postage prepaid, or securely and conspicuously posted, as follows:

To resident: at the premises, or at resident's last known address.

To owner: at 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516, Attention: Town Administrator.

Notice to one resident shall be deemed to be notice to all residents.

6. Security Deposit

A. Resident has paid owner the sum of zero Dollars (\$0) as security deposit to secure the performance of this rental agreement.

B. Any advance or deposit of money, whether termed last month's rent, damage deposit, or security deposit, constitutes a security deposit under this section.

C. Resident may not use the security deposit in place of rent without the written permission of owner.

D. It is the duty of resident to return to the premises, including any outside areas, yards or driveways required to be maintained by resident under this lease, to their condition at the commencement of this lease, except for normal wear and tear.

E. Owner shall return the security deposit to resident within 60 days after termination of this lease or surrender and acceptance of the premises whichever occurs last. If actual cause exists for retaining any portion of the security deposit, owner shall provide resident with a written statement listing the exact reasons for the retention of any portion of the security deposit. When the statement is delivered, it shall be accompanied by payment of the difference between any sum deposited and the amount retained. Owner is deemed to have complied with this paragraph E by mailing said statement and any payment required to the last known address of resident.

F. Owner, at owner's option, may use resident's security deposit during the term of this lease to fulfill resident's obligations under this lease.

7. Eviction/holding over

A. Owner may evict resident from the premises or undertake other legal action to regain possession for non-payment of rent or breach of the lease.

B. Resident shall continue to be liable for rent and be bound by the other provisions of this lease during the time resident remains in possession of the leased premises even though owner has chosen to seek eviction because of resident's breach of this lease.

C. If the premises are abandoned or if resident is evicted, resident will remain liable for any loss of rent for the remainder of the lease term.

D. If resident does not leave at the end of the lease term owner, after notifying resident, may remove resident's belongings, so long as there is no breach of the peace.

8. Occupancy

No more than One (1) person, James Strieby, may reside in the leased premises.

Resident shall not allow guests to stay upon the premises more than three (3) days per month without written consent of owner.

9. Use

Resident shall use the premises for residential and farming purposes.

Resident shall not engage in any illegal activities on the premises.

Resident shall not grow marijuana on the premises.

Violation of any of the terms or prohibitions on use contained herein shall be grounds for immediate eviction.

10. Utilities

Resident shall be responsible for paying for the following utilities or services connected with the premises (check those applicable):

- | | |
|-----------------------------|--|
| A. water <u> X </u> | E. phone (if desired) <u> X </u> |
| B. sewer <u> X </u> | F. trash pick-up <u> X </u> |
| C. electricity <u> X </u> | G. Cable TV/Internet if desired <u> X </u> |
| | (other) |
| D. gas <u> X </u> | H. All utilities <u> X </u> |

Within 3 business days after the beginning of the lease term, resident shall arrange for such utilities or services for billing directly to resident if such utilities are not already in resident's name.

The owner shall not be liable for failure to furnish the utility or service or for failure of utilities or service.

11. Entry on Premises

Owner shall have the right to access the premises at any time to do work on the premises, including, but not limited to, work on the Erie Lake and the dam and earth structures related thereto. Resident shall permit owner to enter the structures on the premises at reasonable times and upon reasonable notice for the purpose of making necessary or convenient repairs or reasonable inspections, or to show the premises to prospective residents, purchasers, or lenders. Entry may be made to the structures on the premises without prior notice only if owner reasonably believes that an emergency exists or that the structures have been abandoned.

12. Assignment/subleasing/release

Resident shall not assign this lease, or sublet any portion of the leased premises, for any part or all of the term of this lease without prior written consent of owner, which consent may be withheld at owner's sole discretion.

13. Noise and Nuisance

Resident agrees not to make any excessive noise or to create any nuisance such as will disturb the peace and quiet of neighbors.

14. Rules and Regulations

Resident agrees to abide by all rules and regulations in effect at the time of signing this lease (a copy of which is attached to and hereby made part of this lease) and to such amended rules or regulations which resident agrees to in writing.

15. Compliance With Law

Resident shall comply, at resident's sole expense, with all laws, statutes, ordinances, and governmental rules, regulations or requirements now in force, or which may hereafter be in force, and with the requirements of any board of fire underwriters or other similar bodies now or hereafter constituted related to the premises.

16. Mechanics' Liens

Resident shall pay or cause to be paid all costs for work done by or on behalf of resident or caused to be done by or on behalf of resident on the premises of a character which will or may result in liens against owner's interest in the premises, or any part thereof and resident will keep the same free and clear of all mechanics' liens and other liens on account of work done for or on behalf of resident or persons claiming under resident. Resident hereby agrees to indemnify, defend and save owner harmless of and from all liability, loss, damages, costs or expenses, including attorneys' fees, incurred in connection with any claims of any nature whatsoever for work performed for, or materials or supplies furnished to resident, including lien claims of laborers, materialmen or others. Should any such liens be filed or recorded against the premises with respect to work done for or materials supplied to or on behalf of resident or should any action affecting the title thereto be commenced, resident shall cause such liens to be released of record within twenty (20) days after notice thereof. If resident desires to contest any such claim of lien, resident shall nonetheless cause such lien to be released of record by the posting of adequate security with a court of competent jurisdiction as may be provided by Colorado's mechanics' lien statutes. If resident shall be delinquent in paying any charge for which such a mechanics' lien or suit to foreclose such a lien has been recorded or filed and shall not have caused the lien to be released as aforesaid, owner may (but without being required to do so) pay such lien or claim and costs associated therewith, and the amount so paid, together with interest thereon at the legal interest rate and reasonable attorneys' fees incurred in connection therewith, shall be immediately due from resident to owner as additional rent.

17. Repairs and Maintenance

Resident shall make all repairs necessary and required for the upkeep and maintenance of the premises, at resident's sole cost.

Resident shall pay reasonable charges (other than for normal wear and tear) for the repair of damage to the premises or common areas caused by the negligence or willful acts of resident, members of resident's household, or guests. Damage to the premises by resident, member's of residents household, or guests shall be grounds for owner to evict resident.

18. Indemnity

Resident shall indemnify and hold harmless owner against and from any and all claims arising from resident's use of the premises or any claim arising from any breach or default on resident's part under the terms of this Lease, or from any act, omission, or negligence of resident, or any officer, agent, employee, guest or invitee of resident, and from all costs, attorneys' fees, and liabilities incurred in or about the defense of any such claim or any action or proceeding brought thereon. Resident assumes all risk of damage to property or injury to persons in, upon or about the premises, from any cause other than owner's gross negligence. Resident waives all claims with respect thereof against owner. Resident shall give prompt notice to owner in case of casualty or accidents in the premises.

19. Owner's Limited Liability

Owner shall not be liable for any loss or damage resulting from: (a) fire, explosion, falling plaster, steam, gas, electricity, water or rain; (b) the pipes, appliances or plumbing systems in the premises; (c) the roof, street, subsurface; (d) any variation or interruption of utility services; (e) theft or other criminal acts of third parties; or (f) any other cause whatsoever, unless due to the gross negligence of owner.

20. Outside Maintenance

A. Resident shall be responsible for all of the routine care and maintenance of the premises, yard, outside areas, and maintenance of the agricultural acreage including, but not limited to, the following:

1. mowing lawn
2. watering lawn, shrubs and trees
3. removing weeds
4. raking leaves
5. removing snow and ice from walkways, parking areas and driveways
6. all other maintenance and upkeep required to the premises
7. supervision (in consultation with the owner) of the agricultural acreage

B. Resident shall supply all equipment appropriate and necessary to provide the routine care and maintenance of the premises, yard, outside areas and maintenance of the agricultural acreage as required herein.

21. Alterations to Premises

Resident agrees that before making alterations to the premises including, for example, painting, adding or changing door locks, or altering landscaping, advance written consent of owner will be obtained.

22. Pets

No pet shall be allowed without the prior written consent of owner.

23. Insurance

Resident shall insure resident's personal possessions and insure against resident's personal liability. Resident shall provide to the owner proof of adequate insurance, acceptable to the owner, prior to the effective date of this Lease.

24. Attorneys' fees

In the event of any legal action concerning this lease which results in a judgment, the losing party shall pay the prevailing party reasonable attorneys' fees and court costs to be fixed by the court.

25. Resident's Liability

Resident will be liable for the injury to any person or damage to any property caused by the negligence or willful acts of resident.

26. Subordination

This lease shall be subordinate to all existing and future mortgages and deeds of trust upon the property.

27. Waiver

Any waiver, by either party of any breach of any provision of this lease shall not be considered to be a continuing waiver or a waiver of a subsequent breach of the same or a different provision of this lease.

28. Severability

The unenforceability of any provision or provisions of this lease shall not affect the enforceability of any other provision or provisions.

29. Joint and Several Liability

If this lease is signed on behalf of resident by more than one person, then the liability of the persons so signing shall be joint and several.

30. Upkeep of Property

Resident agrees to keep the premises, property, yard and landscaping of the premises in good and clean condition and agrees to water the grass and greenery and generally do all things necessary to maintain the property, yard and landscaping and agricultural acreage in good condition. Resident shall not store or keep any items on the premises or on the property including, but not limited to, vehicles, building materials, equipment, contracting materials, roofing materials, lumber, junk or garbage. All wood shall be kept in neat piles in areas as designated by owner.

31. Hazardous Materials

A. Hazardous Materials. As used herein the term "Hazardous Materials" shall mean any of the following, in any amount: (i) any petroleum or petroleum product, asbestos in any form, urea formaldehyde and polychlorinated biphenyls; (ii) any radioactive substance; (iii) any toxic, infectious, reactive, corrosive, ignitable or flammable chemical or chemical compound; and (iv) any chemicals, materials or substances, whether solid, liquid or gas, defined as or included in the definitions of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "solid waste," or words of similar import in any federal, state or local statute, law, ordinance or regulation now existing or existing on or after the Commencement Date as the same may be interpreted by government offices and agencies.

B. Hazardous Materials Laws. As used herein the term "Hazardous Materials Laws" shall mean any federal, state or local statutes, laws, ordinances or regulations now existing or existing after the Commencement Date that control, classify, regulate, list or define Hazardous Materials.

C. Claims. As used herein the term "Claims" shall mean all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under the Lease.

D. Compliance with Hazardous Materials Laws. Except as may be allowed below, Resident will not cause any Hazardous Material to be brought upon, kept or used in or on the Premises or the Building in a manner or for a purpose prohibited by or that could result in liability under any Hazardous Materials Law. Resident, at its sole cost and expense, will comply with all Hazardous Materials Laws and prudent industry practice relating to the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under or about the Premises or the Building required for Resident's use of the Premises and will notify Owner of any and all Hazardous Materials Resident brings upon, keeps or uses on the Premises or the Building (other than small quantities of office cleaning or other office supplies as are customarily used by a Resident in the ordinary course in an office building). On or before the expiration or earlier termination of this Lease, Resident, at its sole cost and expense, will completely remove from the Premises and the Building (regardless whether any Hazardous Materials Law requires removal), in compliance with all Hazardous Materials Laws, all Hazardous Materials Resident causes to be present in, on, under or about the Premises and the Building. Resident will not take any remedial action in response to the presence of any Hazardous Materials in on, under or about the Premises and the Building, nor enter into any settlement agreement, consent decree or other compromise with respect to any Claims relating to or in any way connected with Hazardous Materials in, on, under or about the Premises and the Building, without first (a) notifying Owner of Resident's intention to do so and (b) affording Owner reasonable

opportunity to investigate, appear, intervene and otherwise assert and protect Owner's interest in the Premises and the Building.

E. Notice of Actions. Resident will notify Owner of any of the following actions affecting Owner, Resident or the Premises or the Building that result from or in any way relate to Resident's use of the Premises and the Building immediately after receiving notice of the same: (i) any enforcement, clean-up, removal or other governmental or regulatory action instituted, completed or threatened (of which Resident is aware) under any Hazardous Materials Law; (ii) any Claim made and received by Resident or threatened by any person to Resident relating to damage, contribution, liability, cost recovery, compensation, loss or injury resulting from or claimed to result from any Hazardous Material; and (iii) any reports made by any person and of which Resident is aware, including Resident, to any environmental agency relating to any Hazardous Material, including any complaints, notices, warnings or asserted violations. Resident will also deliver to Owner, as promptly as possible and, in any event, within five (5) days after Resident first receives or sends the same, copies of all Claims, reports, complaints, notices, warnings or asserted violations relating in any way to the Premises or Resident's use of the Premises. Upon Owner's written request, Resident will promptly deliver to Owner documentation acceptable to Owner reflecting the legal and proper disposal of all Hazardous Materials removed or to be removed from the Premises. All such documentation will list Resident or its agent as a responsible party and, to the extent Owner has no responsibility, will not attribute responsibility for any such Hazardous Materials to Owner.

F. Disclosure and Warning Obligations. Resident acknowledges and agrees that all reporting and warning obligations required under Hazardous Materials Laws resulting from, or in any way relating to Resident's use of the Premises or Building are Resident's sole responsibility.

G. Indemnification. Resident will indemnify, defend (with counsel reasonably acceptable to Owner), protect and hold harmless the Owner from and against any and all Claims whatsoever arising or resulting, in whole or in part, directly or indirectly, from the presence, treatment, storage, transportation, disposal, release or management of Hazardous Materials in, on, under, upon or from the Premises and the Building (including water tables and atmosphere) resulting from or in any way related to Resident's use of the Premises or Building. Resident's obligations under this Paragraph 16 include, without limitation and whether foreseeable or unforeseeable, (i) the costs of any required or necessary repair, clean-up, detoxification or decontamination of the Premises and the Building; (ii) the costs of implementing any closure, remediation or other required action in connection therewith as stated above; (iii) the value of any loss of use and any diminution in value of the Premises or the Building; and (iv) consultants' fees, experts' fees and response costs. The indemnification set forth in this subsection (g) shall not cover the gross negligence or willful acts of Owner. The obligations of Resident under this Paragraph 16 shall survive the expiration or earlier termination of this Lease.

32. Signatures/amendment of lease

This lease contains the entire agreement of the parties and may not be altered or amended except by mutual written agreement signed by both parties.

Signatures on following page

Signed this _____ day of _____, 2014.

Owner:
TOWN OF ERIE

ATTEST:

By: _____
Tina Harris, Mayor

By: _____
Nancy Parker, Town Clerk

Resident:

James Strieby

8/21/14

**TOWN OF ERIE
BOARD OF TRUSTEES AGENDA ITEM**

Board Meeting Date: August 26, 2014

SUBJECT: **ORDINANCES**
Ordinance 30-2014; An Ordinance Authorizing The Town To Quitclaim And Transfer Certain Real Property To The Housing Authority Of The Town Of Erie; Setting Forth Details In Relation Thereto; And, Declaring An Emergency Therefore.

DEPARTMENT: Finance

PRESENTER: Steve Felten, Director of Finance

FISCAL INFORMATION: Cost as Recommended: N/A
Balance Available:
Budget Line Item Number:
New Appropriation Required: Yes No

STAFF RECOMMENDATION: Staff recommends approval of this ordinance to allow for the refinancing of the Erie Housing Authority mortgage due September 4, 2014. Pass on Emergency

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

The Town of Erie Housing Authority originally obtained financing for construction of the current living units through the issuance of a bond in 2001. This bond was subsequently refinanced with a mortgage loan from Great Western Bank in 2004. The mortgage loan carries a rate of 4.50% and provides for monthly payments of \$4,398.05 (based on a 30 year amortization period), but requires a balloon payment of approximately \$690,000 on September 4, 2014, the maturity date of the mortgage loan.

At the April 8th Board meeting the Board approved the staff's request to authorize staff to enter into a six-month loan extension with Great Western Bank. At that time the terms of the loan extension were not known. In June 2014 the Town received the extension terms from the bank, which required a loan payment of approximately \$200,000 in September. This was the first time there had been any indication from the bank that a partial pay-down would be required for the extension.

As a result, staff contacted Summit Bank and Trust to see if they could offer more favorable terms to refinance the loan. While the final details are still pending a completion of an appraisal, Summit has offered a two year refinancing period, with no pay-down on the loan. As proposed there would be two loans. One would be a real estate loan secured by the property, with the amount to be lent equal to 80% of the appraised value. This loan, with an estimated principal balance of \$320,000 (pending the final appraisal), would carry the same rate as the current mortgage loan (4.50%) and be amortized over the same period.

The second loan would be a cash-secured loan with a current estimated principal balance of \$370,000 and carry an interest rate of 3.25%. Interest only payments would be required during the 2-year term. Total debt service on the two loans would be approximately \$1,300 less than under the current mortgage. Summit's offer also gives the Town a full two years to accomplish the transfer of the property to Brothers Redevelopment. Great Western's offer will require yet another extension discussion in six months, as the length of their initial extension offer does not allow enough time to effect any transfer. In addition, while more cash will have to be transferred to the Housing Authority pursuant to Summit's extension offer, all the funds will stay within the Authority and be available in the future.

As just stated, the Summit offer does require the Town's General Fund to advance/transfer approximately \$370,000 to the Housing Authority, which is \$170,000 more than the amount required to be paid to Great Western under their offer. But the difference of \$170,000 would be returned to the Town upon transfer of the property to Brothers. The remaining \$200,000 would be applied to the then outstanding loan balances to bring them down to an amount equal to the price Brothers will purchase the property pursuant to the option agreement approved by the Board on February 25, 2014.

To minimize the amount of cash required to be transferred to the Authority to serve as collateral for the cash-secured loan, through this ordinance staff is recommending the transfer of the underlying land currently owned by the Town to the Housing Authority. At the time of construction of the apartments in 1999-2000, the underlying land was owned by the Town and leased to the Authority for \$1.00. By transferring the land to the Authority it will be able to pledge the land as collateral on the loan with Summit.

Staff recommends that the Board of Trustees approve Ordinance 30-2014, authorizing the transfer of the land, as described in the ordinance, from the Town to the Housing Authority. Staff also requests that this ordinance be passed by emergency to facilitate the refinancing described above.

Staff Review:

_____ Town Attorney
_____ Town Clerk
_____ Community Development Director
57 Finance Director
_____ Police Chief
_____ Public Works Director

Approved by:


A.J. Krieger
Town Administrator

ATTACHMENTS: Ordinance 30-2014

ORDINANCE NO. 30-2014
Series of 2014

**AN ORDINANCE OF THE TOWN OF ERIE, COLORADO
AUTHORIZING THE TOWN TO QUITCLAIM AND TRANSFER
CERTAIN REAL PROPERTY TO THE HOUSING AUTHORITY OF THE
TOWN OF ERIE; SETTING FORTH DETAILS IN RELATION
THERE TO; AND, DECLARING AN EMERGENCY THEREFORE.**

WHEREAS, the Town owns certain real property currently leased to the Housing Authority of the Town of Erie (“EHA”), consisting of approximately 5.1 acres of land described as follows:

TRACTS A AND B, ERIE SENIOR HOUSING, TOWN OF ERIE, COUNTY OF WELD, STATE OF COLORADO, (the “Property”); and,

WHEREAS, the refinancing of the EHA debt on the EHA living units is partly dependent upon the transfer of the Property from the Town to the EHA so as to provide adequate collateral for the debt refinancing; and,

WHEREAS, the refinancing of the EHA debt must occur prior to September 4, 2014; and,

WHEREAS, the Board of Trustees of the Town of Erie believes it is in the best interest of the Town to quitclaim and transfer the Property to the EHA, and that such a transfer is necessary to the immediate preservation of the public property, health, safety, and welfare of the Town and for the financial well being of the Town.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE, COLORADO, AS FOLLOWS:

Section 1. That the Town is hereby authorized to quitclaim and transfer the Property to the EHA for a price of \$1.00.

Section 2. That the appropriate Town officers are hereby authorized and directed to sign and bind the Town of Erie to the Quitclaim Deed and all necessary sales and transfer documents necessary to quitclaim and transfer the Property to the EHA.

Section 3. Severance Clause. If an 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 Board of Trustees of the Town of Erie, Colorado hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

Section 4. Repeal. All other ordinances, or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

Section 5. Reason for Emergency. The refinancing of the EHA debt on the EHA living units is partly dependent upon the transfer of the Property from the Town to the EHA so as to provide adequate collateral for the debt refinancing. The refinancing must occur prior to September 4, 2014.

Section 6. Emergency Declared. For the reasons stated herein, the Board of Trustees for the Town of Erie, Colorado hereby declares an emergency to exist concerning the subject matter of this Ordinance and its immediate effect is necessary in order to preserve and protect the public property, health, safety, and welfare of the Town and for the financial well being of the Town.

Section 7. The within emergency ordinance shall take effect upon final adoption.

INTRODUCED, PASSED, ADOPTED AND APPROVED AS AN EMERGENCY ORDINANCE, AND ORDERED PUBLISHED IN FULL BY THE BOARD OF TRUSTEES OF THE TOWN OF ERIE THIS 26TH DAY OF AUGUST, 2014.

PUBLISHED IN FULL ON THE _____ DAY OF _____, 2014.

TOWN OF ERIE, a Colorado municipal corporation

By: _____
Tina Harris, Mayor

ATTEST:

By: _____
Nancy Parker, Town Clerk

**TOWN OF ERIE
BOARD OF TRUSTEE AGENDA ITEM**

Board Meeting Date: August 26, 2014

SUBJECT: STAFF REPORT: Monthly Communications Report – July 2014

DEPARTMENT: Administration

PRESENTER: Fred Diehl, Assistant to the Town Administrator

FISCAL INFORMATION: Cost as Recommended: NA
Balance Available: NA
Budget Line Item Number: NA
New Appropriation Required: Yes No

STAFF RECOMMENDATION: NA

SUMMARY AND BACKGROUND OF SUBJECT MATTER:

COMMUNICATIONS CALENDAR: Attached is the monthly Communications Calendar for June which provides statistical information on the release and reach of Town of Erie News & Announcements, including the following details:

- 35 Unique Announcements Released via “Notify Me”
- 4,238 “Notify Me” Subscribers

FACEBOOK INSIGHTS:

- 24 Unique posts
- Reach of Facebook posts ranged from 396 on the low end (Mosquito Control Update) to over 8,400 on the high end (Black Rock Elementary Playground Arson Suspects Identified & Arrested).

WEBSITE: The attached monthly Website Overview Report includes visitor statistics for www.erieco.gov including the following information:

- Total Page Visits: 165,311
- Total Unique Visits: 28,725
- Erie Government Television Streaming Video:
 - Total Visits: 171
 - Total Unique Visits: 159

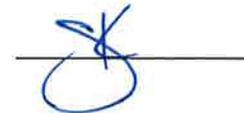
Board of Trustees Goal: “Develop & Promote Proactive, Fluid Communication Between Government & the Citizens of Erie.”

Staff Review:

 _____ Assistant to the Town Administrator
_____ Town Clerk
_____ Community Development Director
_____ Finance Director
_____ Police Chief
_____ Public Works Director

Approved by:

A.J. Krieger
Town Administrator



ATTACHMENTS:

- a. Communications Calendar
- b. Facebook Insights
- c. Website Overview Report

Communication Calendar - July 2014

NEWS & ANNOUNCEMENTS	Notify Me Message	Newsflash Posted on	Facebook Post	Twitter Post
	Reach via Subscribers & Visitors:	Website	1,425	801
7/1: Town of Erie New Website Sneak Preview #2	X	X	X	X
7/2: Temporary Change in Erie's Raw Water Source	X	X	X	X
7/2: Town of Erie New Website Sneak Preview #3	X	X	X	X
7/2: July 3rd Extravaganza at Colorado National Golf Club	X	X	X	X
7/2: Town of Erie Open House – Coal Creek Trail Bridge	X	X		X
7/3: Town of Erie New Website Sneak Preview #4	X	X	X	X
7/3: Suspects in Black Rock Elementary School Arson Identified and Arrested	X	X	X	X
7/7: Town of Erie New Website Sneak Preview #5	X	X	X	X
7/7: Mosquito Control Update – Issued July 7, 2014	X	X	X	X
7/8: Town of Erie Launches New Website	X	X	X	X
7/9: Erie Board of Trustees Action Items - July 8, 2014	X	X	X	X
7/14: Mosquito Control Update – Issued July 14, 2014	X	X	X	X
7/15: Mosquito Control Update – Updated July 15, 2014	X	X	X	X
7/18: Don't Miss The Samples Tomorrow at the Last Concert in the Park This Season!	X	X	X	X
7/21: Erie Police Honor Black Rock 2nd Grader	X	X	X	X
7/21: Mosquito Control Update – Issued July 21, 2014	X	X		X
7/22: Erie Ranked Safest Place in Colorado	X	X	X	X
7/22: Thomas Reservoir Hits the Small Screen	X	X	X	X
7/23: Erie Board of Trustees Action Items - July 22, 2014	X	X	X	X
7/28: Mosquito Control Update – Issued July 28, 2014	X	X	X	X
7/29: Erie Police Investigating Robbery at Safeway	X	X	X	X
7/29: Town's "Rumor Mill" Answers Your Questions about Oil & Gas Activity	X	X	X	X
7/30: Erie Police Make Arrest in Safeway Pharmacy Robbery	X	X	X	X
7/30: Mosquito Control Update - Updated July 30, 2014			X	

ECONOMIC DEVELOPMENT ANNOUNCEMENT	Notify Me Message	Newsflash Posted on	Facebook Post	Twitter Post
	Reach via Subscribers & Visitors:	Website	1,425	801
7/22: Free Business Start-Up Seminar – Thursday, August 28	X	X		X
7/25: Businesses in Historic Old Town Erie			X	
7/30: New Businesses are Growing in Historic Downtown Erie This Summer	X	X		X

PUBLIC WORKS ANNOUNCEMENT	Notify Me Message	Newsflash Posted on	Facebook Post	Twitter Post
	Reach via Subscribers & Visitors:	Website	1,425	801
7/11: Department of Public Works Notice: Update - 111th Street Closure - Sewer Line Installation	X	X		X
7/11: 2014 Street Maintenance Project – Resurfacing of County Line Road	X	X		X
7/11: Gas Line Installation on Wells Street	X	X		X

POLICE ANNOUNCEMENT	Notify Me Message	Newsflash Posted on	Facebook Post	Twitter Post
	Reach via Subscribers & Visitors:	Website	1,425	801
7/3: Suspects in Black Rock Elementary School Arson Identified and Arrested	X	X	X	X
7/10: OPERATION CHILL: Slurpee's for Good Behavior Back Again!	X	X	X	X
7/29: Erie Police Investigating Robbery at Safeway	X	X	X	X
7/30: Erie Police Make Arrest in Safeway Pharmacy Robbery	X	X	X	X

PARKS & RECREATION ANNOUNCEMENT	Notify Me Message	Newsflash Posted on	Facebook Post	Twitter Post
	Reach via Subscribers & Visitors:	Website	1,425	801
7/15: DON'T MISS IT! Today is the last day to receive 10% OFF an Annual Pass at the Erie Community Center!			X	
7/16: Town of Erie Active Adults 60+ Programs & Services			X	
7/25: Parks & Recreation Fall 2014 Program Guide Now Available!	X	X	X	X

TOWN OF ERIE CALENDAR NOTIFICATION		Notify Me Message	Notification Posted on Website	Twitter Post
Reach via Subscribers & Visitors:		442		801
7/2: 2nd Annual Erie Brewfest		X	X	X
7/4: Open Space and Trails Advisory Board Meeting (7/7/2014)		X	X	X
7/5: Town of Erie Open House – Coal Creek Trail Bridge (7/9/2014)		X	X	X
7/5: Board of Trustees Regular Meeting & Study Session (7/8/2014)		X	X	X
7/6: Tree Board Meeting (7/9/2014)		X	X	X
7/11: Concert in the Park - The Samples (7/19/2014)		X	X	X
7/11: Open Space and Trails Advisory Board Meeting - Rescheduled (7/14/2014)		X	X	X
7/12: Board of Trustees Study Session (7/15/2014)		X	X	X
7/13: Planning Commission Meeting (7/16/2014)		X	X	X
7/19: Board of Trustees Regular Meeting (7/22/2014)		X	X	X
7/22: National Night Out (8/5/2014)		X	X	X
7/25: Historic Preservation Advisory Board Meeting (7/28/2014)		X	X	X
7/31: Erie Air Fair (8/9/2014)		X	X	X
7/31: Planning Commission Meeting - CANCELLED (8/6/2014)		X	X	X

CONSTANT CONTACT EMAIL MESSAGE		Total # of Message Sent	Total # of Messages Opened	Open Rate %
7/22: Erie Ranked Safest Place In Colorado ~ Real Estate Company Learns What Erie Residents Already Know		951	286	30.1%

ENGAGE ERIE TOPICS		Engage Erie Message	Newsflash Posted on Website	Facebook Post	Twitter Post
Reach via Participants & Visitors:		1,302		1,425	801
7/28: Engage Erie - Answers to your Questions about Oil & Gas		X	X	X	X

YOUTUBE CHANNEL		Views Via YouTube	Newsflash Posted on Website	Facebook Post	Twitter Post
Reach via Subscribers & Visitors:				1,425	801
7/16: Town of Erie Active Adults 60+		42		X	
7/22: Town of Erie Recreation Trails: Thomas Reservoir		174	X	X	X

UTILITY BILL INSERTS		Mailed Bills	Emailed Bills		
Total:		6,800	875		
7/10: July/August Erie Edition		X	X		

Updated: 8/18/2014

July 2014 – Facebook Insights

Reach: Organic / Paid Post Clicks Likes, Comments & Shares

Published	Post	Type	Targeting	Reach	Engagement	Promote
07/30/2014 2:51 pm	Mosquito Control – Updated July 30, 2014 Due to the weather, contractors will now plan on			395	20 3	Boost Post
07/30/2014 8:41 am	Erie Police Make Arrest in Safeway Pharmacy Robbery Yesterday at approximately 6:40 pm, Erie			2.1K	327 79	Boost Post
07/29/2014 11:25 am	Town's "Rumor Mill" Answers Your Questions about Oil & Gas Activity Occasionally rumors, gossip and			1.6K	262 48	Boost Post
07/29/2014 9:09 am	Erie Police Investigating Robbery at Safeway On July 28, 2014, at 7:04 p.m., Erie Police responded to			1.8K	561 29	Boost Post
07/28/2014 9:35 am	Mosquito Control Update – Issued July 28, 2014 In response to high mosquito activity in some areas			630	66 10	Boost Post
07/25/2014 5:07 am	Erie's Economic Development staff found these great businesses and customers enjoying a			1.6K	720 55	Boost Post
07/25/2014 9:08 am	Parks & Recreation Fall 2014 Program Guide Now Available! This guide covers programs, activities, and			795	55 12	Boost Post
07/23/2014 11:22 am	Erie Board of Trustees Action Items – July 22, 2014 In This Issue: Black Rock 2nd Grader Honored,			976	375 15	Boost Post
07/23/2014 9:00 am	Thomas Reservoir Hits the Small Screen! The third video released in the Recreation Trail Videos is a			858	73 26	Boost Post
07/22/2014 2:22 am	Real estate company Movoto Real Estate announced their Top 10 Safest Places in Colorado			1.9K	118 108	Boost Post
07/16/2014 4:32 pm	Are you or someone you know over the age of 60 and living in the Town of Erie? Check out all of these			901	44 21	Boost Post
07/15/2014 9:20 am	DON'T MISS IT! Today is the last day to receive 10% OFF an Annual Pass at the Erie Community Center!			307	2 4	Boost Post
07/14/2014 4:41 pm	Mosquito Control Update – Issued July 14, 2014 In response to high mosquito activity in some areas			617	66 2	Boost Post
07/10/2014 5:49 pm	The Erie Police Department is joining 7-Eleven® and hundreds of law enforcement agencies in			2.1K	159 80	Boost Post
07/09/2014 4:29 pm	Erie Board of Trustees Action Items – July 8, 2014 In This Issue: Vista Ridge Final Plat Amendment,			533	43 1	Boost Post
07/08/2014 9:45 am	You've been asking us to change for years. Now, after months in the making, the new Town of Erie			1.6K	141 56	Boost Post
07/07/2014 5:20 am	In response to high mosquito activity in some areas within the Town of Erie, contractors plan on			964	97 20	Boost Post
07/07/2014 7:21 pm	Town of Erie New Website Sneak Preview #5 The CONSTRUCTION PROJECTS button is the fastest			915	215 15	Boost Post
07/03/2014 2:47 pm	Suspects in Black Rock Elementary School Arson Identified and Arrested. On July 3, 2014, Erie Police			8.4K	955 387	Boost Post
07/03/2014 10:19 am	Town of Erie New Website Sneak Preview #4 Today's sneak preview of our new website is the			628	54 10	Boost Post
07/02/2014 2:28 pm	Colorado National Golf Club is hosting the annual July 3rd Extravaganza tomorrow! Festivities begin at			1.6K	139 53	Boost Post
07/02/2014 11:49 am	Town of Erie New Website Sneak Preview #3 Today's sneak peek of our new website is Notify Me			692	125 9	Boost Post
07/02/2014 9:47 am	Temporary Change in Erie's Raw Water Source - Erie Residents May Notice Change in Taste to Their			986	162 24	Boost Post
07/01/2014 10:42 am	Town of Erie New Website Sneak Preview #2 Were we nervous? A little - yes. But we think yesterday's			582	184 13	Boost Post

Website Overview Report for www.erieco.gov - July 2014

Total Unique Visits	For the Month: 28,725	Year to Date: 185,530
Total Page Visits	For the Month: 165,311	Year to Date: 799,877

Top 25 Web Pages Visited	# of Visits	Rank
Home Page	91,292	#1
Erie Community Center	3,599	#2
Utility Billing	1,649	#3
Special Events	1,162	#4
Online Payment	1,052	#5
Parks & Recreation	1,011	#6
Construction Projects	808	#7
Recreation Activities	746	#8
Aquatics	583	#9
Police Department	547	#10
Maps	542	#11
Rumor Mill	533	#12
Facility Information	530	#13
Youth Sports	524	#14
Concerts in the Park	459	#15
Firecracker 4k/4 Mile Race	456	#16
Transparency	441	#17
Fees & Memberships	412	#18
Residential & Commercial Construction Map	401	#19
Online Utility Bill Payment	383	#20
Fitness & Wellnes	362	#21
Departments	352	#22
Camp Erie	317	#23
Building Division	314	#24
Oil & Gas Operations	313	#25

Erie Government Television Streaming Video via Website - OVERVIEW



WHAT MEDIA YOUR CITIZENS ARE VIEWING

All Media Live Events Encoder Streams On Demand Media

ALL MEDIA

Filter by title

Media Title	Type	Total Views
Erie Channel 8 Live Feed	Encoder	47
Board of Trustees - Jul 22nd, 2014	Archive	43
Planning Commission - Jul 16th, 2014	Archive	34
Planning Commission - Jul 16th, 2014	Archive	21
Board of Trustees Study Session - Jul 15th, 2014	Archive	16
Board of Trustees - Jul 8th, 2014	Archive	15
Planning Commission - Jul 16th, 2014	Live event	13
Board of Trustees - Jun 24th, 2014	Archive	8
Board of Trustees - Jul 8th, 2014	Live event	8
Board of Trustees - Jun 10th, 2014	Archive	5





July 2014 Erie Police Department Monthly Report



Crimes of Interest

July Crimes	
Theft	11
Simple Assaults	1
Criminal Mischief	14
DUI	7
Domestic Violence	2
Burglary	2
Robbery	1

Directed Activities

Month	Calls for Service	Case Reports Completed	Assigned Cases
January	503	268	18
February	493	254	26
March	573	277	41
April	585	299	65
May	601	385	64
June	730	361	35
July	711	348	49
August			
September			
October			
November			
December			
Total	4196	2192	298

Officer Initiated Activities

July Activities	
Foot Patrols	231
Open Doors	24
Citizen Assists	40
Felony Arrests	8
Misdemeanor Arrests	30

July Traffic Accidents	
Property Damage	9
Injury	1
Total	10

- Several members of the department planned for and worked the July 3rd Fireworks event at Vista Ridge Golf Course. Several thousand people showed up for the event. There were no major concerns or incidents.
- Commander Stewart and Sergeant Jamison attended the Aurora Police Academy Career fair on July 8th 2014 in an attempt to recruit qualified applicants for future hiring processes for the department.
- On July 14th, 2014 Chief Vasquez and Commander Mathis travelled to Ft Collins to assist and observe the accreditation assessment for the Ft Collins Police Department by assessors for the Colorado Association of Chiefs of Police
- The department conducted Defensive Driving training for all patrol and investigation staff at the Colorado State Patrol Driving track on July 24th, 2014.

Monthly Traffic Enforcement

Month	Warnings	Citations
January	269	85
February	300	118
March	257	114
April	245	136
May	221	106
June	288	89
July	264	111
August		
September		
October		
November		
December		
Total	1844	759