

MAINTENANCE AGREEMENT
(Ponds and Sidewalks -Vista Ridge)

THIS MAINTENANCE AGREEMENT (the "**Agreement**") is made and entered into at Erie, Colorado this day of October, 2021 (the "**Effective Date**"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, CO 80516 (the "**Town**"), and the Vista Ridge Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado, whose address is c/o Special District Management Services, Inc., 141 Union Boulevard, Suite 150, Lakewood, Colorado, 80228-1898 (the "**District**") (individually a "**Party**" and collectively, the "**Parties**").

WHEREAS, there exists within the Town a mixed use residential, commercial, and golf course community known as the Vista Ridge Development, the final master plat for which the Town approved in fall of 2001, which was subsequently amended by various replats;

WHEREAS, the Vista Ridge Development contains several ponds, which are identified in **Exhibit A**, attached hereto and incorporated by this reference (each a "**Pond**" and collectively the "**Ponds**");

WHEREAS, the Vista Ridge Development contains numerous public sidewalks which are not adjacent to residential properties all of which are depicted in **Exhibit B**, attached hereto and incorporated by this reference (the "**Sidewalks**");

WHEREAS, maintenance of the Ponds and Sidewalks is currently provided by the Town, the District, and the Colorado National Golf Club ("**CNGC**"), to varying degrees and with varying degrees of success; and

WHEREAS, the Parties now desire to resolve ambiguities in the determination of these maintenance responsibilities and designate which Party will be responsible for future maintenance of the Ponds and Sidewalks.

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

1. Repair and Maintenance of Ponds.

a. The Town agrees to be responsible for the costs it incurs (and the associated maintenance) in repairing and maintaining the Ponds, as set forth in **Exhibit C**, in accordance with applicable storm drainage and water quality requirements.

b. The District agrees to continue incurring the annual expense for maintaining Pond A20, as needed, as set forth in **Exhibit C**.

c. To provide security for the long-term capital maintenance of Pond A20, the District agrees to contribute \$10,000 annually into a segregated fund held by the Town, as more fully explained below.

2. Long-Term Capital Maintenance Fund for Pond A20

a. Pursuant to this Agreement, the Town is required to hold funds, to be used solely and exclusively for costs related to the long-term capital maintenance of Pond A20 in a segregated account ("**Vista Ridge Storm Drainage Maintenance Account**"). The Town agrees to establish, make deposits into, and make disbursements from the Vista Ridge Storm Drainage Maintenance Account.

b. The District shall cause the first deposit of \$10,000 to be made within thirty (30) days from the effective date of this Agreement into the Vista Ridge Storm Drainage Maintenance Account, with future annual deposits occurring each August 1st thereafter.

c. The Town will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the amounts deposited into and paid out from the Vista Ridge Storm Drainage Maintenance Account. A segregated accounting shall be performed by the Town on an annual basis and shall be made available to the District, upon the District's request. The District will keep proper and current books and accounts in which complete and accurate entries shall be made of such payments to the Vista Ridge Storm Drainage Maintenance Account, as required by this Agreement or as may be reasonably requested by the Town in relation to this Agreement.

d. All books, records and reports, invoices, and contracts in the possession of the Town, relating to the Vista Ridge Storm Drainage Maintenance Account, shall at all reasonable times be open to inspection by the District.

e. The Town and the District recognize the impact that excessive residential and business irrigation and fertilization has on downstream wetlands, riparian areas and aquatic life. The Town, through its Multiple Separate Storm Sewer System (MS4) Permit is responsible to ensure such impacts are mitigated. As such, the Town and District are committed to outreach and education directed in reducing such impacts throughout Vista Ridge and will work together in a good faith effort to inform residents of specific actions residents should take to minimize irrigation and eliminate over-fertilization. At a minimum, the District shall notify residents annually in the spring of actions residents should take and shall provide the Town with copies of such notifications.

f. The Town will, at its sole cost and expense, perform regular sampling for contaminants downstream of Pond A20. Should contaminant levels rise over time and if the rise in the level of contaminants is directly related to the fertilization of public spaces by the Vista Ridge Metropolitan District, the District may: i) reduce the application of fertilization of public spaces as needed to reduce the increase in the level of contaminants directly related to the District's fertilization of public spaces; or ii) may be required to fund further water quality improvements that are required to reduce the increase in the level of contaminants directly related to the District's fertilization of public spaces.

3. Repair and Maintenance of Sidewalks.

a. The District shall, at its sole cost, repair and maintain those portions of the Sidewalks that do not contain the Town's storm drainage infrastructure (as indicated on **Exhibit B**), inclusive of all concrete maintenance and replacement work that is required now or in the future, so long as

this Agreement is in effect. All maintenance shall comply with the Town's Standards and Specifications for Design and Construction Improvements (the "**Standards**") and other applicable law, and the District shall obtain all required permits from the Town. If any wheelchair ramps are required to be repaired or replaced, they shall also comply with the American with Disabilities Act, 42 U.S.C. § 12101, *et seq.*

b. The Town shall, at its sole cost, repair and maintain those portions of the Sidewalks that contain the Town's storm drainage infrastructure (as indicated on **Exhibit B**), including the free-standing storm drainage infrastructures which are separated from the sidewalk (as shown on **Exhibit D**). This will include the cost to repair or replacement of any single jointed section (sidewalk panel, stone, or curb) which is directly adjacent to, contiguous with and in direct physical contact with the Town's storm drainage infrastructure (as depicted on **Exhibit E**). The Town would anticipate such work to occur as part of the District's annual sidewalk maintenance or as needed due to safety issues or hazards. The District will make every effort to identify such areas to the Town annually in July or August to ensure the Town can budget for such work in the following year's budget. The Town will make every attempt to identify curb and gutter repairs in July or August and communicate such plans to the District to ensure the District can budget and plan for such work in the following year in an effort to assist the District with its annual sidewalk repair and replacement program.

3. Term and Termination.

a. *Term.* This Agreement shall commence as of the Effective Date and shall terminate on December 31, 2021; provided that this Agreement shall automatically renew annually, unless otherwise terminated as provided herein.

b. *Termination.* This Agreement shall only be terminated upon a Party's breach, provided that the breaching Party has been provided 30 days written notice of such breach and an opportunity to cure such breach. Termination of this Agreement shall not affect a Party's obligation to maintain the Ponds and Sidewalks as provided herein.

4. Insurance, Liability.

a. Each Party shall provide its own public liability and property damage insurance coverage as it may deem necessary for any potential liability arising from activities and maintenance responsibilities performed pursuant to this Agreement.

b. The Town shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the Town or its officers, employees, and agents, in connection with the performance of this Agreement.

c. The District shall be responsible for any and all claims, damages, liability and court awards, including costs, expenses, and attorney fees incurred, as a result of any action or omission of the District or its officers, employees, and agents, in connection with the performance of this Agreement.

d. Nothing in this Section or any other provision of this Agreement shall be construed as a waiver of the notice requirements, defenses, immunities, and limitations the Town or the District

may have under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, or any other defenses, immunities, or limitations of liability available to any party by law.

5. Miscellaneous.

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

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

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

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

e. *Notice.* All notices, demands, requests or other communications to be sent by one Party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the addressee or by courier delivery via FedEx or other nationally recognized overnight air courier service, by electronically-confirmed email transmission, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To Town:

Town of Erie, Colorado
645 Holbrook Street
P.O. Box 750
Erie, CO 80516
Phone: (303) 926-2700
Email: mfleming@erieco.gov
Attn: Town Administrator

With a Copy To:

Hoffmann, Parker, Wilson & Carberry, P.C.
511 16th Street, Suite 610
Denver, CO 80202
Phone: (303) 951-2095
Email: klc@hpcwclaw.com
Attn: Kendra Carberry

To District:

Vista Ridge MD
Special District Management Services, Inc.
141 Union Boulevard, Suite 150
Lakewood, CO 80228-1898
Phone: (303) 987-0835
Email: mcohers@sdmsi.com
Attn: Matt Cohers

With a Copy To:

McGeady Becher P.C.
450 E. 17th Avenue, Suite 400
Denver, CO 80203
Phone: (303) 592-4380
Email: legalnotices@specialdistrictlaw.com

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

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

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

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

j. *Execution in Counterparts.* This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument.

k. *Governmental Immunity.* The Parties and their officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Parties and their officers, attorneys or employees.

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

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE FOR MAINTENANCE AGREEMENT]

IN WITNESS WHEREOF, the Parties have executed this Maintenance Agreement as of the Effective Date.

TOWN OF ERIE, COLORADO

Jennifer Carroll, Mayor

ATTEST:

Heidi Leatherwood, Town Clerk

VISTA RIDGE METROPOLITAN
DISTRICT

By:

Michael Lund

Michael Lund, President

STATE OF COLORADO)

COUNTY OF

Denver

) ss.

The foregoing instrument was subscribed, sworn to, and acknowledged before me this 21st day of September, 2021, by Michael Lund, as the President of Vista Ridge Metropolitan District.

My commission expires:

(SEAL)

Tessa Dumabok

Notary Public

TESSA DUMABOK
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20204027890
MY COMMISSION EXPIRES 08/12/2024

EXHIBIT A Ponds



EXHIBIT B
Sidewalks

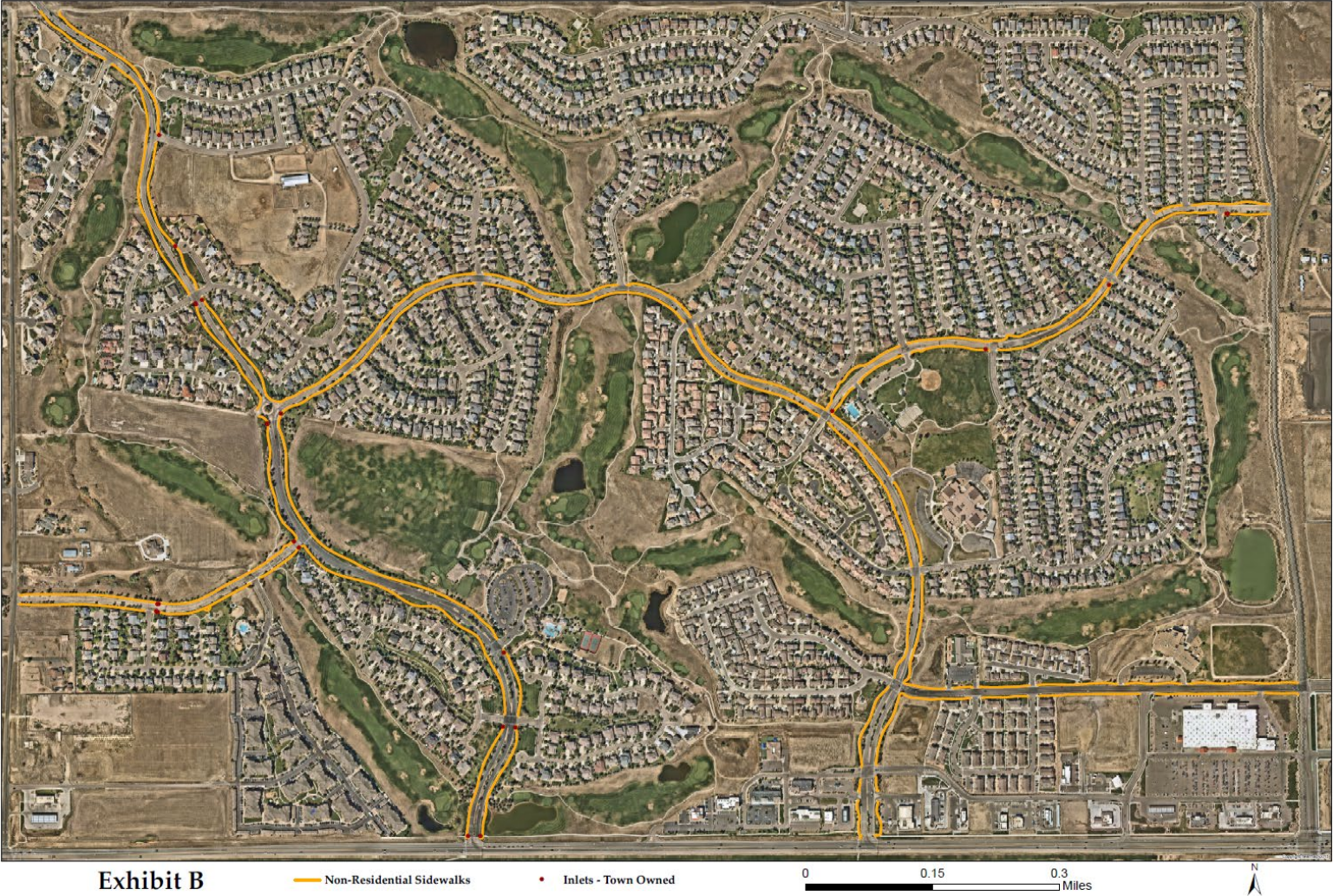


EXHIBIT C
Pond Maintenance Responsibility

Pond (as shown on Exhibit A of this Maintenance Agreement)	Town's Maintenance Responsibility¹	District's Maintenance Responsibility
A2	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
A6	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
A7	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
A17	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
A19	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
A20	Annual Maintenance = None Long Term Capital Maintenance = All ²	Annual Maintenance = All Long Term Capital Maintenance = None
B2	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
B3	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None
B7	Annual Maintenance = All Long Term Capital Maintenance = All	Annual Maintenance = None Long Term Capital Maintenance = None

¹ The Town may choose to comply with these responsibilities with the participation of CNGC.

² The District will contribute \$10,000 annually into a dedicated account held and used by the Town (along with added funding from the Town) exclusively for the long term capital maintenance of Pond A20.

EXHIBIT D

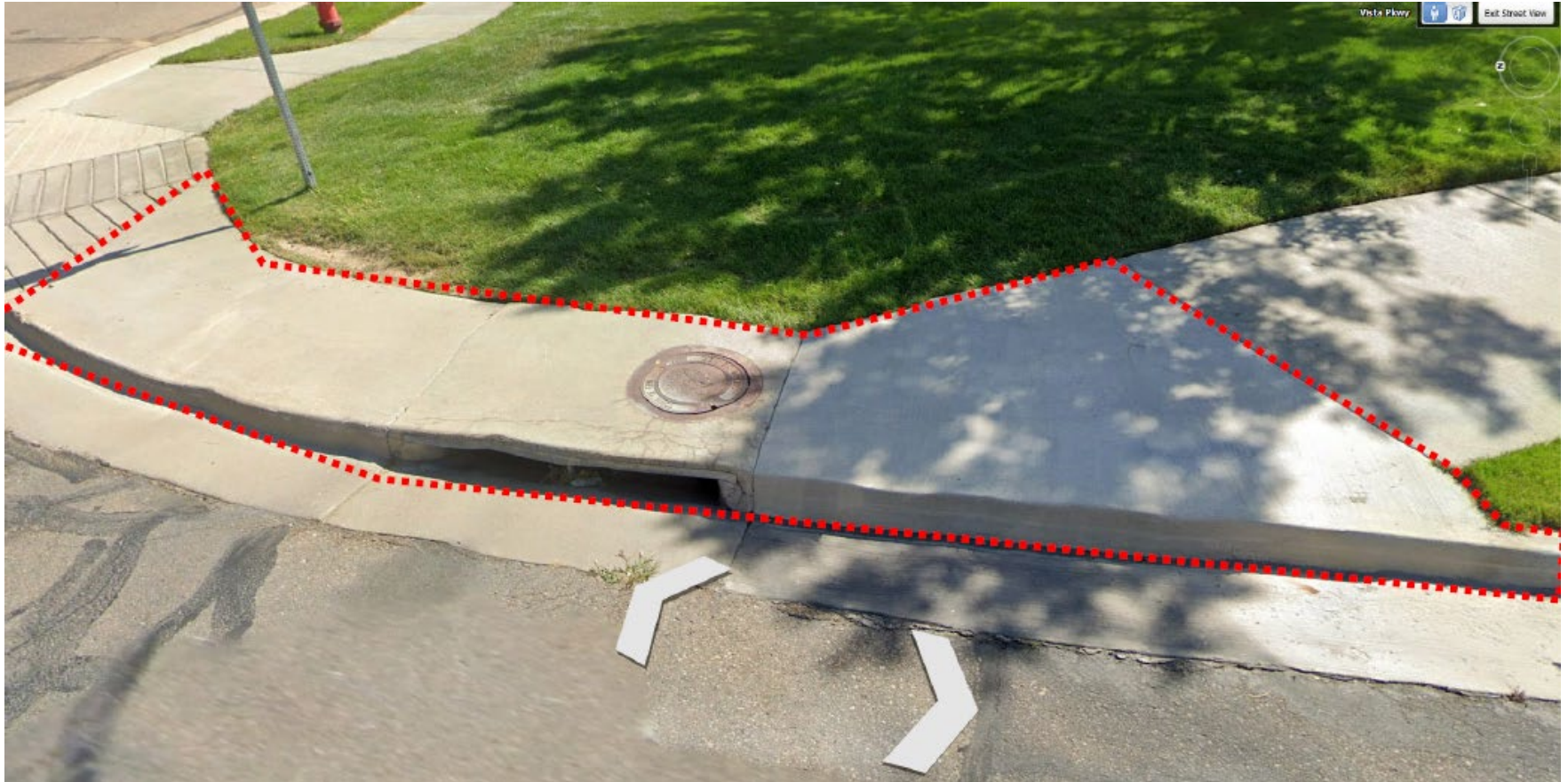
Example of Free-Standing Storm Drainage Infrastructure (Which is Separated from the Sidewalk)³



³ The photo in Exhibit D is from Google Earth and is used only as an example. It does not necessarily depict the current condition of this area as of the date of this Agreement.

EXHIBIT E

Examples of Areas of Sidewalks Adjacent to Storm Drainage Infrastructure to be Maintained by the Town⁴



⁴ The photos in Exhibit E are from Google Earth and are used only as examples. They do not necessarily depict the current conditions of this area as of the date of this Agreement.

