

**INTERGOVERNMENTAL AGREEMENT  
CITY OF LAFAYETTE – TOWN OF ERIE – TOWN OF ERIE URBAN RENEWAL  
AUTHORITY**

Comprehensive Development Plan/Dispute Resolution

This Intergovernmental Agreement by and among the City of Lafayette, a Colorado home rule municipal corporation ("Lafayette"), the Town of Erie, a Colorado statutory town ("Erie"), and the Town of Erie Urban Renewal Authority, a Colorado urban renewal authority ("TOEURA") (each a "Party" and collectively, the "Parties"), is made to be effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2019 (the "Effective Date").

WITNESSETH:

WHEREAS, C.R.S. § 29-20-101, *et seq.*, as amended, enables Lafayette and Erie to enter into Intergovernmental Agreements to plan for and regulate land uses in order to minimize the negative impacts on the surrounding areas; to regulate the location of activities and developments that may result in significant changes in population density, and provide for phased development of services and facilities; and specifically authorizes local governments to cooperate and contract with each other for the purpose of planning and regulating the development of land by means of a "comprehensive development plan" to agree as to areas that are subject to annexation, and to provide for revenue sharing; and

WHEREAS, in order to ensure that the unique and individual characters of Lafayette and Erie, respectively, are preserved, the Parties believe that a comprehensive development plan that recognizes the potential annexation areas and development approved by each community, accompanied by binding commitments by the respective jurisdictions for the preservation of the character of surrounding lands within the affected area is in the best interest of the citizens of both Lafayette and Erie; and

WHEREAS, the Parties desire to enter into this Intergovernmental Agreement in order to plan for and regulate the use of the lands within the affected area through joint disposition of a mutually binding and enforceable comprehensive development plan and to resolve ongoing disputes between the Parties; and

WHEREAS, with respect to the annexation provisions herein, Lafayette and Erie declare that the matters contained in this Agreement affect the future development of each municipality. Consistent with the municipal annexation, utility service, and land use laws of the State of Colorado, this Agreement, including specifically the annexation and utility service portions hereof, is intended to encourage the natural and well-ordered future development of Lafayette and Erie; to promote planned and orderly growth in the affected areas; to distribute fairly and equitably the costs of government services among those persons who benefit therefrom; to extend the government, services and facilities to the affected areas in a logical fashion; to simplify providing utility services to the affected areas; to simplify the governmental structure of the affected areas; to reduce and avoid, where possible, friction between the Parties; and to promote the economic viability of the Parties; and

WHEREAS, C.R.S. § 29-1-201, *et seq.*, as amended, authorizes the Parties to cooperate and contract with one another with respect to functions lawfully authorized to each of the Parties, and the people of the State of Colorado have encouraged such cooperation and contracting through the adoption of Colorado Constitution, Article XIV, § 18(2); and

WHEREAS, the Parties are currently engaged in formal legal proceedings (both judicial and administrative) dealing with their respective authority to regulate development activities affecting their respective citizens, which were partially resolved on February 11, 2019, when the Colorado Supreme Court denied Lafayette's petition for *certiorari* to hear the case. Nonetheless, because the denial of the petition addressed some, but not all, of the issues in dispute among the Parties, the Parties wish to resolve the remaining issues in an amicable way through this Agreement, and TOEURA, being a party to one such judicial proceeding, is included as a Party to this Agreement for the specific purpose of resolving such proceeding and to further implement the Highway 287 Urban Renewal Plan approved by Erie on September 16, 2015 (the "Urban Renewal Plan");

WHEREAS, Lafayette and Erie have each held public hearings for the consideration of entering into this Agreement and the adoption of a comprehensive development plan for the affected lands, and TOEURA has considered this Agreement at a duly-noticed public meeting; and

WHEREAS, the functions described in this Agreement are lawfully authorized to each of the Parties that perform such functions hereunder, as provided in Article 20 of Title 29, C.R.S., as amended; C.R.S. § 31-12-101, *et seq.*, as amended; C.R.S. § 31-25-101, *et seq.*; Parts 2 and 3 of Article 23 of Title 31, C.R.S., as amended; and their respective ordinances, and in the case of Lafayette, its home rule charter.

NOW, THEREFORE, in consideration of the above and the mutual covenants and commitments made herein, the Parties agree as follows:

*I. ANNEXATION PROVISIONS.*

*A. INFLUENCE AREAS.*

1. Lafayette Influence Area: The map attached hereto as **Exhibit A** identifies areas currently located within the unincorporated Boulder County, which may in the future be annexed to Lafayette, which are collectively referenced herein as "Lafayette Influence Area" said Lafayette Influence Area generally being south or west of the red line shown on **Exhibit A**. Nothing in this section is intended to require Lafayette to annex such area. However, the Parties agree that, if such area is to be annexed to, or is to be provided water or sewer service by either municipality in the future, such area will be annexed to and will be so served by Lafayette, not by Erie. By authorizing the execution of this Agreement, the Erie Board of Trustees finds and declares that the community of interest in the area so designated on the map portion of this Agreement is with Lafayette rather than Erie.

2. Erie Influence Area: The map attached hereto as **Exhibit A** also identifies areas currently located within the unincorporated Boulder County that may in the future be annexed to

Erie, which are collectively referenced herein as "Erie Influence Area" said Erie Influence Area generally being north or east of the yellow line shown on **Exhibit A**. Nothing in this Section is intended to require Erie to annex such area. However, Erie and Lafayette agree that, if such area is to be annexed to or is to be provided water or sewer service by either municipality in the future, such area will be annexed to and will be so served by Erie, not Lafayette. By authorizing the execution of this Agreement, the City Council of the City of Lafayette finds and declares that the community of interest in the area so designated on the map portion of this Agreement is with Erie rather than Lafayette.

3. Any property located within the current municipal limits of Erie or Lafayette, and any property that hereafter annexes to either municipality in accordance with the provisions of this Agreement, which subsequently is disconnected from the municipality, shall thereafter, for purposes of this Agreement, be considered to be located within that municipality's Influence Area.

**B. REFERRALS.**

1. Erie and Lafayette each agree that they will immediately disclose to the other any and all instances in which they are approached by landowners in the Influence Area of the other Party seeking annexation. Further, Erie and TOEURA commit that they are not currently pursuing any annexations within the Lafayette Influence Area; Lafayette commits that it is not currently pursuing any annexations within the Erie Influence Area; and Erie, TOEURA and Lafayette agree that they will not do so during the term of this Agreement.

2. Any application or other proposal for annexation or development on any parcel within 2,500 feet of the Erie Influence Area shall be immediately referred in writing to Erie, and no action shall be taken thereon by any Party until Erie has had the opportunity to respond concerning the proposal's conformity to this Agreement and other land use concerns, all such responses to be received within 21 days of the date of referral. Any application or other proposal for annexation or development within 2,500 feet of the Lafayette Influence Area shall be immediately referred in writing to Lafayette, and no action shall be taken thereon by any Party until Lafayette has had the opportunity to respond concerning the proposal's conformity to this Agreement and other land use concerns, all such responses to be received within 21 days of the date of the referral.

**II. ERIE DEVELOPMENT PARCEL PROVISIONS.**

**A. FULL AND FINAL SETTLEMENT OF LITIGATION.**

The Parties are currently engaged in ongoing litigation pertaining to Lafayette's attempt to acquire title to a portion of property located on the southeast corner of the intersection of State Highway 287 and Arapahoe Road (the "Nine Mile Property"). Said litigation was designated as Case No. 16CV30791 in the Boulder County District Court; Case No. 17CA0595 in the Colorado Court of Appeals (collectively, the "underlying civil proceedings"); and Case No. 2018SC538 in the Colorado Supreme Court, where Lafayette's petition for certiorari was denied. The Parties intend to resolve all matters covered by said litigation in accordance with the provisions of this Section II. Within 30 days of the Effective Date, the Parties will stipulate to the

dismissal of the case. Dismissal of the litigation shall be with prejudice with each Party responsible for its respective costs and attorney fees, except as provided herein.

**B. GRANT OF CONSERVATION EASEMENT.**

1. TOEURA holds fee title to the Nine Mile Property. Within 30 days of the Effective Date, TOEURA will execute and deliver to Lafayette a conservation easement over, across and under a portion of the southernmost 150 feet of the Nine Mile Property, as depicted on **Exhibit B**, attached hereto and incorporated herein by this reference (the "Easement Area") for the purpose of preserving such property as a 150 foot buffer between Lafayette residential properties and development on the Erie Development Parcel (as defined below) and in furtherance of the Urban Renewal Plan. Such easement shall prohibit the development of the burdened property, except as provided herein. No structure or other improvement to the burdened property shall be permitted, except as follows:

- a. The irrigation ditch that currently traverses the Nine Mile Property may be located in an underground pipeline within the Easement Area at such location as is necessary to accommodate the development of the remainder of the Nine Mile Property and Erie's property to the north of the Easement Area. The owner of the irrigation facility shall be entitled to an irrigation easement that is superior to the conservation easement for the purpose of maintaining the irrigation facility. To accommodate the location of the ditch within the Easement Area, portions of the existing ditch (both on and near the Nine Mile Property) will need to be relocated. Depending on the details of the relocation, such relation may be subject to permitting by Lafayette. Lafayette agrees not to oppose the relocation of the ditch, and Lafayette agrees not to unreasonably withhold or delay any permit or other approvals related to the relocation of the ditch, whether on or near the Nine Mile Property.
- b. Underground utilities may be installed and maintained in the Easement Area at such location as is necessary to accommodate the development of the remainder of the Nine Mile Property and Erie's property to the north of the Easement Area, provided that the surface of the Easement Area is revegetated to substantially the same conditions as existed prior to the such installation or maintenance activities.
- c. In conjunction with the development of the property to the north of the Easement Area, TOEURA and Erie may allow grading activities generally conforming with the drawing attached hereto as **Exhibit C**, including the installation, if necessary, of one retaining wall of approximately 8 feet in height, which will be located no closer than 80 feet to the southern boundary of the Easement Area. Upon completion of the grading, the surface of the property will be revegetated to substantially the same conditions as existed prior to the grading activity, except that the specific landscaping requirements described below shall be completed.
- d. A water tank necessary and designed to provide fire flows to the Nine Mile Property shall be allowed to be located above ground or underground in the Easement Area. Any facilities that are appurtenant to the water tank, such as pumps, pump stations and equipment, shall not be located within the Easement Area, unless located

underground. The highest point of the water tank shall not exceed the highest point of the finish grading of the Easement Area. The determination of whether the water tank will be located above ground or underground shall be made as part of the land use approval process for the Nine Mile Property, and as such, will be solely within Erie's discretion. However, if Lafayette is willing and able to accommodate the fire flows necessary for the Nine Mile Property without the necessity of the on-site water tank and at a lower cost to Erie and the developer of the Nine Mile Property, then the on-site water tank shall not be permitted in the Easement Area.

2. Upon delivery of the executed easement document, Lafayette shall pay to TOEURA the sum of \$476,500, said sum representing the attorney fees and costs incurred by Erie and TOEURA in the underlying civil proceedings and the negotiation of this Agreement. Lafayette shall not be required to pay any further monetary consideration for the conservation easement.

3. In conjunction with the development of the commercial and residential property immediately north of the Easement Area, TOEURA shall cause the Easement Area to be landscaped in accordance with the landscape plan mutually agreed upon by the Parties. The landscape plan shall be designed as a component of a visual buffer between the area immediately south of the Easement Area and the development area north of the Easement Area, and shall consist of a minimum of 2-inch caliper deciduous trees, 1.5-inch caliper ornamental trees, 6-foot tall evergreen trees and 5-gallon shrubs, with at least one tree per 600 square feet of the Easement Area and one shrub per 90 square feet of Easement Area, and native grasses for the balance. Erie shall ensure that the developer of the Nine Mile Property or its successors and assigns are responsible for the maintenance of such landscape improvements in good health and attractive condition.

4. Erie will require that any building installed within 350 feet of the Easement Area include adequate screening of rooftop mechanical equipment to reasonably block the view of such equipment from properties immediately adjacent to and south of the Easement Area. The Parties expressly acknowledge that this provision does not grant any third-party enforcement rights to any owner of property in the area to the south of the Easement Area.

5. The form and content of the conservation easement executed pursuant to this Section shall be modeled upon the standard form conservation easement utilized by the County of Boulder, with modifications as required herein. The easement shall be granted free and clear of encumbrances, except as provided herein.

### ***C. TAX REVENUE SHARING.***

1. For the purposes of this Agreement, the following four parcels of real property, as depicted on **Exhibit D**, shall be known as the "Erie Development Parcel": Parcel 2 (owned by TOEURA), which includes the Nine Mile Property; plus the parcel to the north of the Parcel 2 and to the east of Highway 287 owned by Erie (and the former site of the Prince Reservoir); plus the two parcels directly to the east and owned by TOEURA. For the purposes of this Agreement, "Erie Tax Revenue" shall include all revenue generated by Erie's sales, use, lodging, admissions,

amusement, excise and any other sales or activity based taxes for activities occurring on the Erie Development Parcel.

2. In the event that the Erie Development Parcel is developed for uses that generate Erie Tax Revenue, Erie and TOEURA, to the extent that TOEURA receives any portion of such Erie Tax Revenue as tax increment or otherwise, agree that they will share such Erie Tax Revenue with Lafayette on a 50%-50% basis with Lafayette receiving 50% of the net, unrestricted Erie Tax Revenue. Except for incentive payments that reduce the net amount of Erie Tax Revenue that is subject to sharing, as provided in Subsection 5 hereof, the amount of Erie Tax Revenue to which Lafayette is entitled to receive under this Agreement shall not be affected by, or otherwise reduced by reason of TOEURA's entitlement to sales tax increment pursuant to the Colorado Urban Renewal Law, or the relevant Urban Renewal Plan. The Erie Tax Revenue sharing shall continue in perpetuity, subject to annual appropriation, commencing on the date on which the first certificate of occupancy is issued by Erie for an Erie Tax Revenue generating business on the Erie Development Parcel. The Parties anticipate that the provisions regarding Erie Tax Revenue sharing for the Erie Development Parcel will be further detailed and memorialized in one or more separate agreements, to be negotiated at the time of development of the Erie Development Parcel.

3. Erie's current sales tax rate is 3.5% as is Lafayette's. Because 0.5% of Lafayette's 3.5% sales tax rate (*i.e.* 1/7<sup>th</sup>) is considered "restricted", and not subject to sharing (see Subsection III.A.2. hereof), for the purposes of equalizing the share of tax revenue that is subject to sharing pursuant to this Agreement, 0.5% of Erie's 3.5% sales tax rate (*i.e.* 1/7<sup>th</sup>) shall be considered as "restricted" and shall not be subject to sharing with Lafayette.

4. Any future increase in the rate of sales tax levied by Erie shall not increase the amount of Erie Tax Revenue that is subject to sharing under this Agreement.

5. To the extent that Erie or TOEURA enters into an economic incentive agreement with the owner or developer of the Erie Development Parcel and the incentives granted thereunder include the rebate of or payments based upon Erie Tax Revenue generated at the Erie Development Parcel, the Erie Tax Revenue subject to sharing with Lafayette shall be based on the net unrestricted Erie Tax Revenue received by Erie and TOEURA after such incentive payments are deducted. Erie and TOEURA shall consult with Lafayette prior to entering into an economic incentive agreement pertaining to the development of the Erie Development Parcel.

6. The Parties agree that the net expenses incurred to incentivize the development of the Erie Development Parcel, including any contributions of real property (the "Erie Incentive Expenses") shall be shared by Erie and Lafayette in the same proportion as the unrestricted Erie Tax Revenue shared (50% Lafayette and 50% Erie). Such expenses of the Parties may include not only future expenses, but expenses that have already been paid in anticipation of development of the Erie Development Parcel, such as the extension of infrastructure to the Erie Development Parcel. Any Erie Incentive Expenses incurred by TOEURA shall be allocated to Erie. Any Erie Incentive Expenses for which Lafayette is responsible pursuant to this subsection shall be deducted from Lafayette's share of the Erie Tax Revenue that are to be shared under this Agreement, until such time as Lafayette's obligation for the Erie Incentive Expenses is satisfied.

7. Subject to the receipt of Erie Tax Revenue by Erie or TOEURA, Erie shall remit to Lafayette within 60 days following the close of the last quarterly sales tax reporting period of the calendar year, any amounts that may be due pursuant to this Section. Nothing in this Agreement shall be construed as imposing upon Erie any obligation to exert special efforts in the collection of such revenue. Notwithstanding the foregoing, the Parties acknowledge that Erie is currently a statutory municipality and Erie's sales taxes are collected by the State of Colorado, and as such, there may be delays in receipt of sales tax revenue by Erie and subsequent remittance of the Erie Tax Revenue to Lafayette.

### *III. LAFAYETTE DEVELOPMENT PARCEL PROVISIONS.*

This Section addresses the development parameters of that parcel of property currently in unincorporated Boulder County on the southwest corner of the intersection of Arapahoe Road and State Highway 287, which is currently owned by Tebo Partnership, LLLP, and referenced herein as the "Lafayette Development Parcel." The Lafayette Development Parcel is bounded by the Lafayette city limits on the west and south, Arapahoe Road on the north, and State Highway 287 on the east. The Lafayette Development Parcel is located within the Lafayette Influence Area as defined in Section I of this Agreement. Accordingly, if annexed for the purposes of development or otherwise, the Parties agree that annexation should be sought into Lafayette. If the owner of the Lafayette Development Parcel attempts to annex to Erie by filing an annexation petition, the Parties understand that Erie will not accept the annexation petition.

#### *A. TAX REVENUE SHARING.*

1. For purposes of this Agreement, "Lafayette Tax Revenue" shall include all tax revenue generated by Lafayette's retail sales, use, lodging, admissions, amusement, excise and any other sales or activity based taxes for activities occurring on the Lafayette Development Parcel. In the event that the Lafayette Development Parcel is annexed to Lafayette and developed for uses that generate Lafayette Tax Revenue, Lafayette agrees that it will share the unrestricted Lafayette Tax Revenue with Erie on a 50%-50% basis, with Erie receiving 50% of the net, unrestricted Lafayette Tax Revenue. The Lafayette Tax Revenue sharing shall continue in perpetuity, subject to annual appropriation, commencing on the date on which the first certificate of occupancy is issued by Lafayette for a Lafayette Tax Revenue generating business on the Lafayette Development Parcel. Erie and Lafayette anticipate that the provisions regarding Lafayette Tax Revenue sharing for the development of the Lafayette Development Parcel described herein will be further detailed and memorialized in one or more separate agreements, to be negotiated at the time of development of the Lafayette Development Parcel.

2. The revenue generated by the 0.5% Lafayette sales tax approved by the electors of Lafayette on November 2, 1992, and November 4, 2003, November 6, 2012, November 7, 2017, and any future extensions thereof, is dedicated and committed to the purchase and maintenance of open space, and is, therefore, "restricted," and shall not be considered as part of the unrestricted sales tax revenue for the purposes of this Agreement. The revenue generated by the remaining 3.0% Lafayette sales tax imposed on sales tax generating activities on the Lafayette Development Parcel shall be considered unrestricted for the purposes of this Agreement.

3. Any future increase in the rate of sales tax levied by Lafayette shall not increase the amount of Lafayette Tax Revenue that is subject to sharing under this Agreement.

4. To the extent that Lafayette enters into an economic incentive agreement with the owner or developer of the Lafayette Development Parcel and the incentives granted thereunder include the rebate of, or payments based upon, Lafayette Tax Revenue generated at the Lafayette Development Parcel, the Lafayette Tax Revenue subject to sharing with Erie shall be based upon the net unrestricted Lafayette Tax Revenue received by Lafayette after such incentive payments are deducted. Lafayette shall consult with Erie prior to entering into an economic incentive agreement pertaining to the development of the Lafayette Development Parcel.

5. Lafayette and Erie agree that any net expenses incurred to incentivize the development of the Lafayette Development Parcel (the "Lafayette Incentive Expenses") shall be shared by Lafayette and Erie in the same proportion as the unrestricted Lafayette Tax Revenue is shared (50% Lafayette and 50% Erie). Such expenses may include not only future expenses, but expenses that have already been paid by Erie or Lafayette in anticipation of development of the Lafayette Development Parcel, such as extension of infrastructure to the property, or expenses associated with acquisition of mineral extraction rights on the property and the current oil and gas well on the Property. Any Lafayette Incentive Expenses for which Erie is responsible pursuant to this subsection shall be deducted from Erie's share of the Lafayette Tax Revenue that is to be shared under this Agreement, until such time as Erie's obligation for the Lafayette Incentive Expenses is satisfied.

6. Subject to the receipt of Lafayette Tax Revenue by Lafayette, Lafayette shall remit to Erie, within 60 days following the close of the last quarterly sales tax reporting period of the calendar year, any amounts that may be due pursuant to the Lafayette Tax Revenue sharing provisions of this Section. Nothing in this Agreement shall be construed as imposing upon Lafayette any obligation to exert special efforts in the collection of such revenue.

***B. WATER STORAGE FACILITY.***

The Parties agree to cooperate to find a suitable location for an above-ground water storage facility of sufficient elevation to provide fire flow, emergency water storage and drinking water supply for Erie water customers. Such cooperation shall not require Lafayette to expend any funds in conjunction with the acquisition or construction of such water storage facility. The Parties agree that the above-ground water storage facility will not be located on the Nine Mile Property. The Parties acknowledge that the above-ground water storage facility may be located on or near the Lafayette Development Parcel and within the boundaries of Lafayette. If the above-ground water storage facility is to be located on the Lafayette Development Parcel, the Parties acknowledge that this will be subject to negotiations between the owner of the Lafayette Development Parcel, or its successors, and Erie.

***C. OIL AND GAS WELL.***

Within 7 days of the effective date of the annexation of the Lafayette Development Parcel into Lafayette, and contingent upon the issuance, or recognition by CDOT, of a valid access permit to Erie for a  $\frac{3}{4}$  movement access from State Highway 287 to the Erie Development Parcel, as

contemplated by Section V below, Erie shall commence the process to close and permanently abandon the oil and gas well currently located on the Lafayette Development Parcel. Thereafter, Erie shall diligently pursue the closure and abandonment process until complete.

*IV. ECONOMIC DEVELOPMENT COOPERATION.*

*A. BENEFITS.*

Erie and Lafayette agree there are numerous benefits associated with sharing equally the revenue and costs associated with incentivizing development on the Lafayette Development Parcel and the Erie Development Parcel, including without limitation: (i) more effectively achieving the highest and best development potential for the area, which will maximize the private property values and public tax revenue generated by the area; (ii) a more diversified portfolio of tax generating properties that is less subject to economic variability that could otherwise affect the Parties individually; (iii) equalizing all Parties' position with prospective tenants and thus reducing the need to offer incentives to achieve the same public benefits associated with location of those businesses in the area; (iv) more effectively planning the area to optimize success of retail sites and fostering higher functioning transit oriented development ("TOD"); and (v) identifying other actions that mutually benefit the Parties in a way that would be impossible without collaboration. The Parties also recognize that several "anchor" tenants have been negotiating with the owners/developers of both the Lafayette Development Parcel and the Erie Development Parcel.

*B. COMMITMENT TO COOPERATE.*

In light of these benefits, and in light of the tax revenue sharing set forth in Sections II and III above, the Parties agree that they will cooperate with each other to foster development of both the Lafayette Development Parcel and the Erie Development Parcel in a complementary pattern to achieve optimal economic and societal benefits for both Lafayette and Erie. Accordingly, all Parties recognize that neither the Lafayette Development Parcel, nor the Erie Development Parcel, should be developed in a time-frame that is detrimental to development of the other parcel. All Parties recognize the importance of attracting good quality anchor tenants to the commercial development of both parcels, and pledge to work cooperatively to attract relatively equally anchor tenants to both the Lafayette Development Parcel and the Erie Development Parcel. In accordance with this cooperation, and unless Erie and Lafayette mutually agree on an alternative approach, Erie and TOEURA agree that they will not provide any form of incentive for a second anchor tenant on the Erie Development Parcel until a first anchor tenant is irrevocably committed to locating on the Lafayette Development Parcel, and Lafayette agrees that it will not provide any form of incentive for a second anchor tenant on the Lafayette Development Parcel until a first anchor tenant is irrevocably committed to locating on the Erie Development Parcel.

*V. STATE HIGHWAY 287 ACCESS.*

Erie previously instituted an administrative appeal before the State of Colorado, Office of Administrative Courts, designated as Case No: HW20170003, wherein Erie is appealing certain actions of the Colorado Department of Transportation ("CDOT") with respect to access permits

issued by CDOT on State Highway 287. This administrative appeal sought to: (i) invalidate an access permit that allows for a full movement intersection at Lucerne Drive and State Highway 287; and (ii) reverse the denial of a full movement intersection access permit at a location north of Lucerne Drive that would provide access from State Highway 287 to the Erie Development Parcel. Lafayette was prepared to formally intervene in the administrative proceedings. While the administrative appeal has been formally withdrawn by Erie, the Parties wish to resolve issues raised in the appeal as follows.

A. Erie will promptly apply for, and Lafayette agrees to support the re-issuance of a three-quarter movement intersection to access the Erie Development Parcel in the location as depicted on the permit previously approved by CDOT, as shown on **Exhibit B**, attached hereto and incorporated herein by this reference. In conjunction with the re-issuance process, Lafayette also agrees to support any necessary amendments to existing intergovernmental agreements with CDOT and/or Boulder County, as well as necessary amendments to the State Highway 287 Access Control Plan. As part of its obligation under this Section, Lafayette acknowledges that the letter from Brent Butzin, on behalf of Lafayette, to CDOT dated March 6, 2019, is moot.

B. To the extent that Lafayette acts as the issuing authority for access permits on State Highway 287, Lafayette agrees that it will not unreasonably withhold approval for access permits related to improvements to the intersection at State Highway 287 and Arapahoe Road.

#### *VI. STATE HIGHWAY 7 ACCESS – 119<sup>th</sup> / PARKDALE / COUNTY LINE ROAD.*

In conjunction with a residential development in Erie known as "Parkdale," which is located north of State Highway 7 between 119<sup>th</sup> Street and County Line Road, Erie previously submitted an application to approve a full movement intersection located between 119<sup>th</sup> Street and County Line Road, as generally depicted in **Exhibit E**, that was intended to provide access to and serve the Parkdale development as well as properties to the north that have been previously accessed via County Line Road. The application was subsequently withdrawn by Erie; however, Erie anticipates that a new application will be forthcoming. Erie and Lafayette agree as to the conditions under which such a full movement intersection would be appropriate if an application substantially similar to the previous application is submitted.

#### *A. ACCESS PERMIT.*

1. In the event that an application for an access permit to serve the Parkdale development is submitted to Lafayette that is substantially similar to the previous access permit application, and subject to review of the details of such application for compliance with the State Highway Access Code, Lafayette agrees to issue the appropriate access permit to allow the intersection at County Line Road to serve the Parkdale development, and to enable utility services to cross State Highway 7 if necessary, on the condition that the current intersection at State Highway 7 and County Line Road will be closed to the general public and the properties currently served by the intersection of County Line Road and State Highway 7, which specifically includes, without limitation, Lafayette's wastewater treatment plant, are provided reasonable access through the intersection being planned for the Parkdale development, then through the Parkdale development and thence south along the current County Line Road right-of-way, as generally depicted in **Exhibit E**.

2. The intersection of the new public road within the Parkdale development and County Line Road, north of the wastewater treatment plant shall be designed and constructed by Erie, or the developer of Parkdale, appropriate for turning movements to and from the wastewater treatment plant.

3. Any improvements to the transportation system, specifically including improvements to the intersection of County Line Road and State Highway 7, and the new access to the properties previously served, shall be at the expense of Erie. The improvements to be paid for by Erie under this Section shall not include any improvements to County Line Road that are necessitated by Lafayette's wastewater treatment plant improvements or expansion, and Lafayette agrees to bear any such costs.

***B. INTERSECTION IMPROVEMENTS.***

The Parties agree that Erie will be responsible for 25% of the total cost of any future intersection improvements that are required to the intersection of North 119<sup>th</sup> Street and State Highway 7, including without limitation, traffic signals and additional lanes as may be necessary to the intersection, at such time as improvement is required. The total costs shall include all costs to design and construct the intersection improvements, including right-of-way acquisition, regardless of the source of the funding for such costs. The Parties acknowledge that the currently anticipated total cost is between \$10,000,000 and \$12,000,000. Such improvements shall be scheduled by Lafayette in consultation with Erie.

***C. WATER RECLAMATION PLANT.***

Erie acknowledges that Lafayette has submitted plans to the Colorado Department of Public Health and Environment for the improvement and expansion of its Water Reclamation Plant on County Line Road (the "Plant Expansion"). Erie agrees that it will not unreasonably object the Plant Expansion. Lafayette shall resolve the issues raised by Erie in its letter to Douglas Short dated March 8, 2019 by taking the following actions related to the Plant Expansion:

1. Provide odor control equipment for the Plant Expansion as well as existing odor sources in a reasonable manner, reviewable by Erie;
2. Provide visual screening of the Water Reclamation Plant and equipment when looking from west to east, and northwest to southeast, including without limitation the installation and maintenance of a solid wood privacy fence (or equivalent) at least six feet in height and rooftop mechanical equipment screening;
3. With the exception of the water rights already decreed for Lafayette's use, and subject to all prior stipulations and other water rights-related agreements between the Parties, the Plant Expansion and operation of the Water Reclamation Plant shall not result in additional impacts to Erie's decreed water rights;
4. With the exception of the water rights already decreed and permits issued for Lafayette's use, and subject to all prior stipulations and agreements between the Parties, the Plant

Expansion and operation of the Water Reclamation Plant shall not result in material adverse impacts on Erie's wastewater discharge permit limits; and

5. Assume full financial responsibility for any improvements to East County Line Road south of the intersection described in Section VI.A.2. above, as necessary to maintain access to the Water Reclamation Plant after County Line Road is closed at the terminus with State Highway 7.

***D. RE-USE MAIN.***

Erie acknowledges that Lafayette is in the process of designing and constructing a water re-use main that will convey water from the Water Reclamation Plant to the west across the Parkdale development and then north to Lafayette's Goose Haven Reservoir facilities on State Highway 287. The water re-use main will be located in the same easement, and generally run parallel to the existing wastewater outfall main as it traverses the Parkdale development. Erie will cooperate in good faith with Lafayette in conjunction with the design and construction of the water re-use main. Such cooperation shall not require Erie to expend any funds in conjunction with the design and construction of such water re-use main.

***E. DISCONNECTION/ANNEXATION OF COUNTY LINE ROAD.***

That portion of County Line Road that is south of the north boundary line of Assessor Parcel No. 14653600046 (which is owned by Lafayette), as extended to the east across County Line Road, and north of State Highway 7 (the "Disconnection Property") is currently within Erie's jurisdictional boundaries. Within 30 days of Lafayette's grant of the access permit described in Section VI.A. above, Erie and Lafayette will commence appropriate proceedings, and cooperate with each other, to disconnect the Disconnection Property from Erie and annex the Disconnection Property to Lafayette.

***VII. GENERAL PROVISIONS.***

***A. CONTROLLING REGULATIONS.***

1. No Party shall agree with any landowner or other person or entity interested in any parcel within the area affected by this Agreement to allow any use, development, or to annex property that does not comply with this Agreement without first obtaining an amendment, as set forth herein.

2. The Parties each agree to undertake all steps to adopt procedures, plans, policies, and ordinances or other regulations as may be necessary to implement and enforce the provisions of this Agreement. Any Party adopting such procedures, plans, policies, ordinances or regulations shall give each of the other Parties sufficient advance notice of such action as will enable such Parties, if they so desire, to comment upon the planned actions of that Party.

3. To the extent this Agreement is silent as to a particular land use matter, existing local land use regulations of the Party having jurisdiction over the property, as amended from time to time, shall control.

4. Nothing in this Agreement shall limit either Erie's or Lafayette's quasi-judicial authority over land use decisions, and nothing in this Agreement shall be construed as prejudgment of either Erie or Lafayette regarding such decisions.

**B. AMENDMENTS.**

This Agreement contains the entire agreement among the Parties. Amendment of this Agreement shall take place upon approval by resolution or ordinance adopted by the governing body of each of the Parties, after notice and hearing as may be required by law.

**C. SEVERABILITY.**

If any portion of this Agreement is held by a court in a final, non-appealable decision, to be *per se* invalid or unenforceable as to any Party, the entire Agreement shall be terminated, except for those matters that have been executed; it being the understanding and intent of the Parties that every portion of the Agreement is essential to and not severable from the remainder. Any finding of invalidity or unenforceability of any portion of this Agreement shall not void or otherwise affect matters that are executory.

**D. BENEFICIARIES.**

The Parties, in their corporate and representative governmental capacities, are the only entities intended to be the beneficiaries of the Agreement, and no other person or entity is so intended.

**E. ENFORCEMENT.**

Any one or more of the Parties may enforce this Agreement by any legal or equitable means including specific performance, declaratory and injunctive relief. No other person or entity shall have any right to enforce the provisions of this Agreement.

**F. DEFENSE OF CLAIMS.**

If any person allegedly aggrieved by any provision of this Agreement, and who is not a Party to the Agreement, should sue any Party concerning such Agreement provision, the other Parties may defend such claim upon receiving timely and appropriate notice of pendency of such claim. Defense costs shall be paid by the Party providing such defense.

**G. GOVERNING LAW AND VENUE.**

This Agreement shall be governed by the laws of the State of Colorado and venue shall lie in the County of Boulder.

**H. TERM AND EFFECTIVE DATE.**

This Agreement shall become effective upon signature of an authorized representative of the each of governing bodies of the Parties. Except as provided herein, this Agreement shall remain in effect for a period of 10 years from the Effective Date, unless terminated prior thereto by agreement of the Parties or pursuant to the terms of Section VII.C. above. This Agreement shall



APPROVED AS TO FORM:

\_\_\_\_\_  
David S. Williamson, City Attorney

**TOWN OF ERIE, COLORADO**

By: \_\_\_\_\_  
Jennifer Carroll, Mayor

ATTEST:

\_\_\_\_\_  
Jessica Koenig, Town Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Kendra L. Carberry, Town Attorney

**TOWN OF ERIE URBAN  
RENEWAL AUTHORITY**

\_\_\_\_\_  
Jennifer Carroll, Chair

ATTEST:

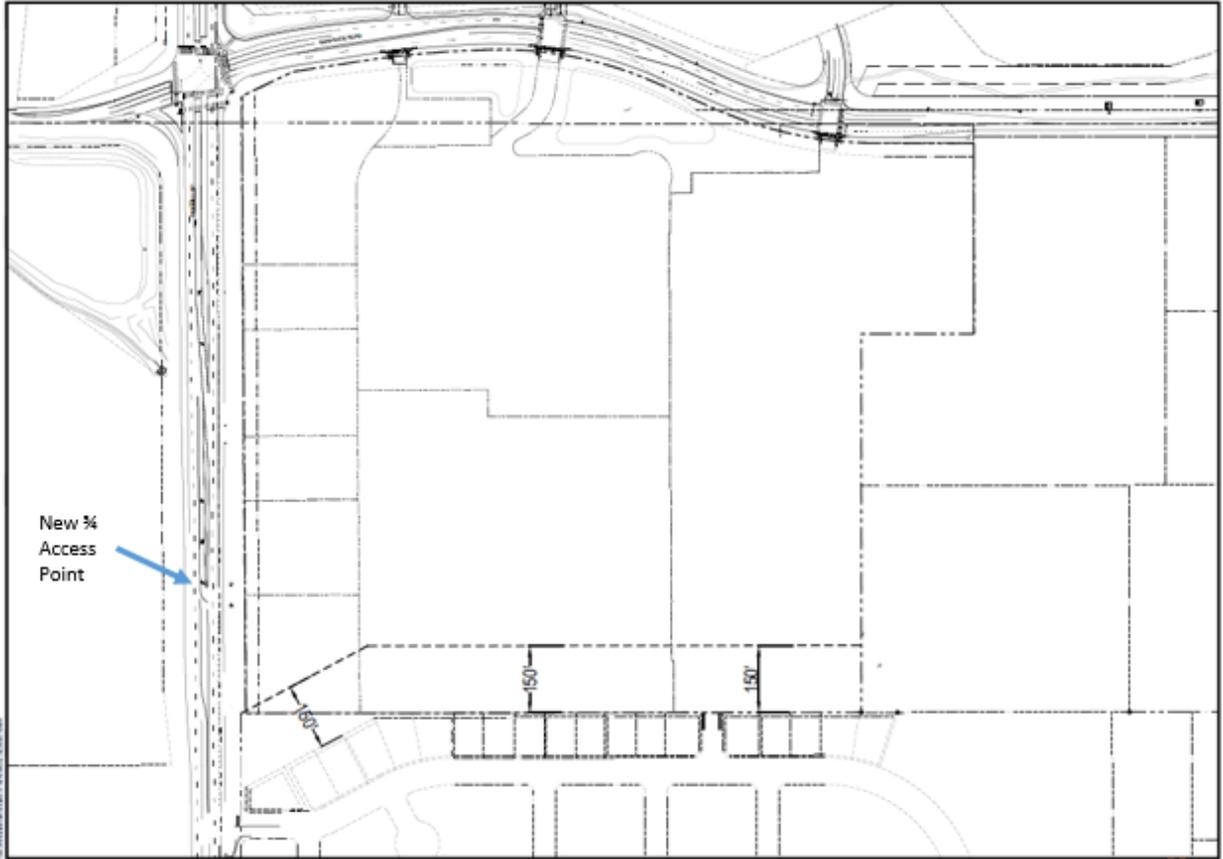
\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

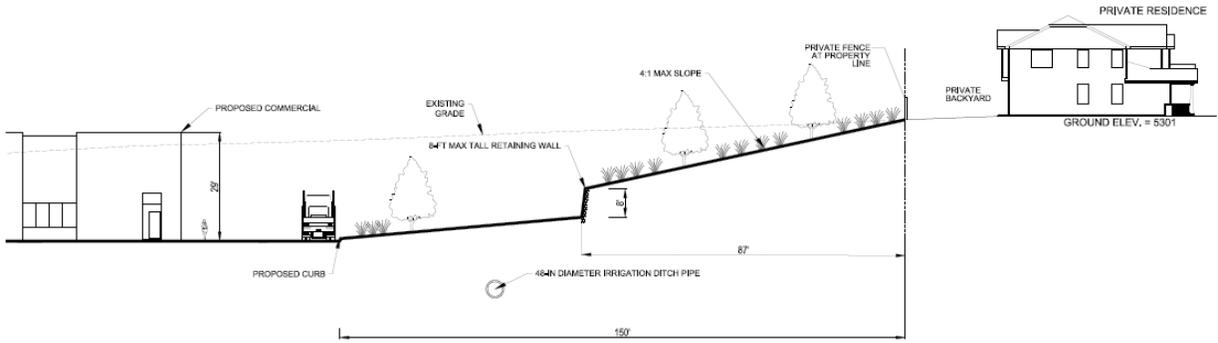
\_\_\_\_\_  
Carolynne C. White, General Counsel



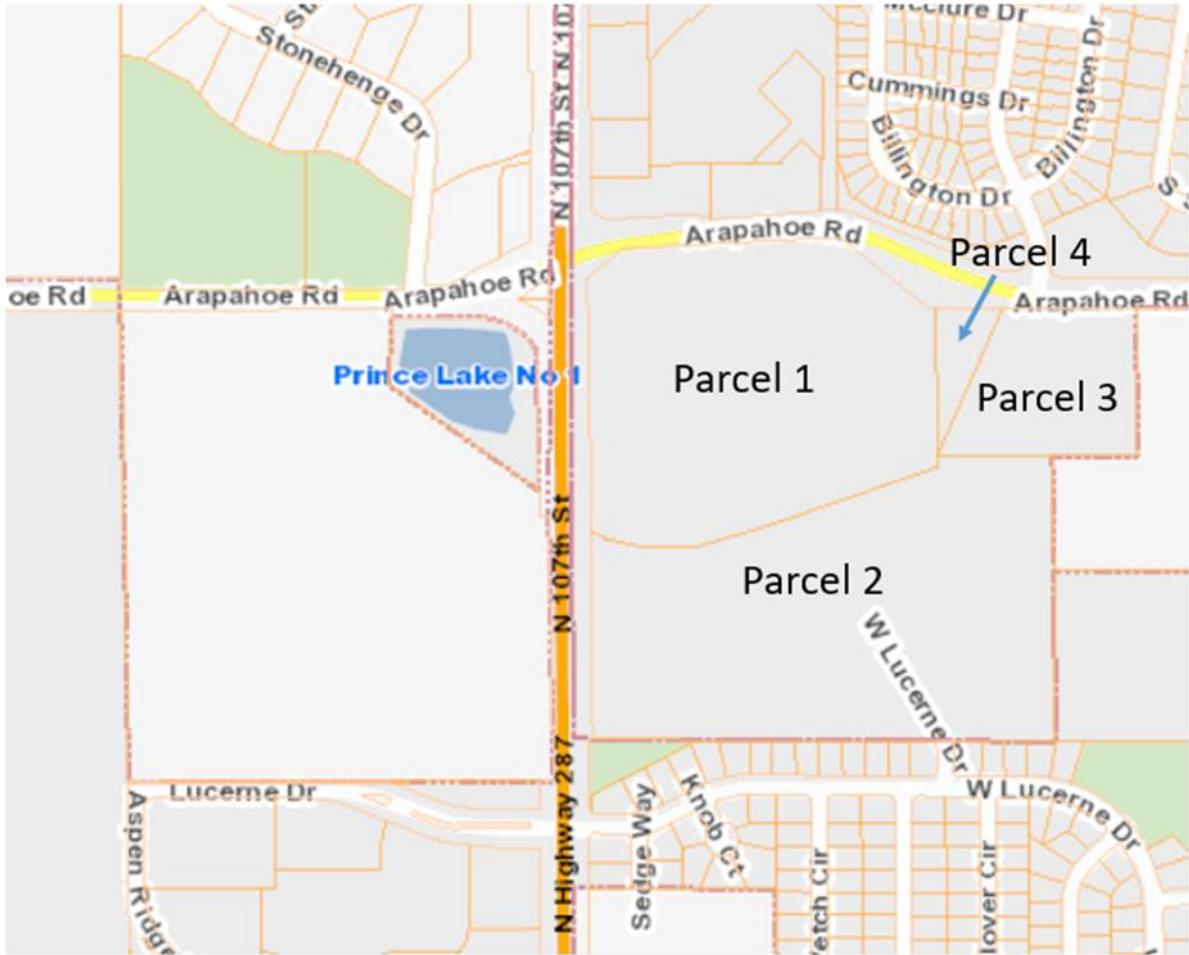
# Exhibit B



# Exhibit C



# Exhibit D



# Exhibit E

