

INTERGOVERNMENTAL AGREEMENT
CITY OF LAFAYETTE – TOWN OF ERIE
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, and the Parties wish to resolve those pending legal proceedings 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"); and

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 yellow 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 is not currently pursuing any annexations within the Erie Influence Area; and that the Parties will not do so during the term of this Agreement.

2. Any application or other proposal for annexation or development on any parcel within 2500 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 20 days of the date of referral. Any application or other proposal for annexation or development within 2500 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 20 days of the date of the referral.

II. *NINE MILE CORNER/SOUTHEAST QUADRANT 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 is currently pending. 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, Lafayette will withdraw its petition for certiorari in the Colorado Supreme Court, and the Parties will stipulate to the dismissal of the case before the Colorado Court of Appeals and underlying Boulder County District Court action. Dismissal of the litigation shall be with prejudice with each party responsible for its respective costs and attorney's 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 the southernmost 250 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 buffer between Lafayette and Erie 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.

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 45 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 paved driveway ("drive aisle") as necessary to accommodate a drive-thru facility adjacent to a commercial building on the property north of the Easement Area shall be permitted within the Easement Area, along with accessory structures necessary for the drive-thru facility, provided that such paved driveway shall encroach no more than 100 feet into the Easement Area from the north, shall have a length of no longer than 500 feet and shall be located approximately 450 feet east of the boundary line of State Highway 287. **Exhibit B** depicts the approximate location of the Easement Area and the area within the Easement Area in which construction of the drive aisle and accessory drive-thru structures is permitted. The drive aisle may be used only for vehicular traffic to and from the drive-thru facility and for a parking area of not more than 10 parking spaces.

2. Upon delivery of the executed easement document, Lafayette shall pay to TOEURA the sum of \$440,000.00, said sum representing the amount claimed as attorney's

fees incurred by Erie and TOEURA in the underlying civil proceedings. 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 1,000 square feet of the Easement Area and one shrub per 150 square feet of Easement Area, and native grasses for the balance. TOEURA shall provide for the maintenance of such landscape improvements in good health and attractive condition for the initial year after installation.

4. Erie will require that any building installed within 250 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.

III. NINE MILE CORNER/SOUTHWEST QUADRANT PROVISIONS.

A. 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," referenced herein as the "Tebo Parcel." The Tebo 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 Tebo 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 Tebo Parcel attempts to annex to Erie by filing an annexation petition, the Parties understand that Erie will not accept the annexation petition.

B. SALES TAX REVENUE SHARING.

1. In the event that the Tebo Parcel is annexed to Lafayette and the developed for uses that generate Lafayette sales tax revenues, Lafayette agrees that it will share the net, uncommitted Lafayette sales taxes with Erie on a 60%-40% basis, with Erie receiving 40% of the net, uncommitted sales tax revenues.

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, "committed," and shall not be considered as part of the uncommitted sales tax revenues for the purposes of this Agreement.

3. To the extent that Lafayette enters into an economic incentive agreement with the owner or developer of the Tebo Parcel and the incentives granted thereunder include the rebate of, or payments based upon, Lafayette sales tax revenues generated at the Tebo Parcel, the sales tax revenues subject to sharing with Erie shall be based upon the net sales tax revenues 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 Tebo Parcel.

4. Lafayette and Erie agree that any expenses incurred to incentivize the development of the Tebo Parcel shall be shared by Lafayette and Erie in the same proportion as the revenues are shared (60% Lafayette and 40% Erie). Such expenses of the Parties may include not only future expenses, but expenses that have already been paid by Erie or Lafayette in anticipation of development of the Tebo 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.

5. Subject to the remittance of sales tax revenues to 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 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 revenues.

C. WATER STORAGE FACILITY.

Lafayette agrees to cooperate with Erie to find a suitable location for an above-ground water storage facility of sufficient elevation to fit its intended purpose. The Parties agree that the above-ground water storage facility will not be located on the Nine Mile Property. The Parties acknowledge that currently, the above-ground water storage facility is intended to be located on or near the Tebo Parcel and within the boundaries of Lafayette. If the above-ground water storage facility is to be located on the Tebo Parcel, the Parties acknowledge that this will be subject to negotiations between Tebo Partnership, LLLP and Erie.

D. APPROVAL OF DEVELOPMENT PLAN.

Lafayette agrees that the final development plan for the Tebo Parcel shall be subject to Erie's prior approval, which approval shall not be unreasonably withheld or delayed.

IV. STATE HIGHWAY 287 ACCESS – NINE MILE CORNER LEGAL PROCEEDING PROVISIONS.

Erie has 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 seeks 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 for the property owned by Erie and TOEURA at the southeast corner of the intersection of Arapahoe Road and State Highway 287 (*see* Section 2 of II. above.) In order to protect its interest in the access permit issued for Lucerne Drive and State Highway 287, Lafayette is prepared to formally intervene in the administrative proceedings. The Parties wish to agree to the manner by which the administrative appeal will be resolved.

A. Upon execution of this Agreement by all Parties, Erie will immediately take steps to withdraw and dismiss the administrative appeal.

B. Upon the dismissal of the administrative appeal, Lafayette agrees to the issuance of a three-quarter movement intersection to access the property owned by Erie and TOEURA on the southeast corner of State Highway 287 and Arapahoe Road in the location as depicted on the permit previously approved by CDOT, at the location shown on **Exhibit B**, attached hereto and incorporated herein by this reference.

C. 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.

V. STATE HIGHWAY 7 ACCESS – 119th / PARKDALE / COUNTY LINE ROAD LEGAL PROCEEDING PROVISIONS.

In conjunction with a residential development in Erie, known as "Parkdale," which is located north of State Highway 7 between 119th Street and County Line Road, Erie previously submitted an application to approve a full movement intersection located between 119th Street and County Line Road, as generally depicted in **Exhibit D**, 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 wish to 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. **Consent to Access Permit.** 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, on the condition that the current intersection at State Highway 7 and County Line Road will be closed 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, through the Parkdale development and thence south along the current County Line Road right-of-way, as generally depicted in **Exhibit E**. 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.

B. 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 119th 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. Such improvements shall be scheduled by Lafayette in consultation with Erie.

VI. *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 Party 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 injunction 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 VI. C. above. This Agreement shall automatically renew for one additional 10-year term unless, between 180 and 90 days prior to the termination of the initial term, a Party elects not to renew and provides written notice to the other Party of such election.

I. NO MULTI-YEAR FISCAL OBLIGATION.

Nothing herein shall constitute a multiple fiscal year obligation of the Parties pursuant to Colorado Constitution Article X, Section 20. Notwithstanding any other provisions of this Agreement, each Party's obligations under this Agreement for monetary payments in future years are subject to annual appropriation by the respective governing bodies of the Parties. Any failure to appropriate adequate monies to finance such obligations under this Agreement shall not constitute a breach of this Agreement. Notice shall be given promptly to the other Party of any failure to appropriate such adequate monies.

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**

By: _____
Jennifer Carroll, Chair

ATTEST:

Secretary

APPROVED AS TO FORM:

Carolynne C. White, General Counsel

EXHIBIT A

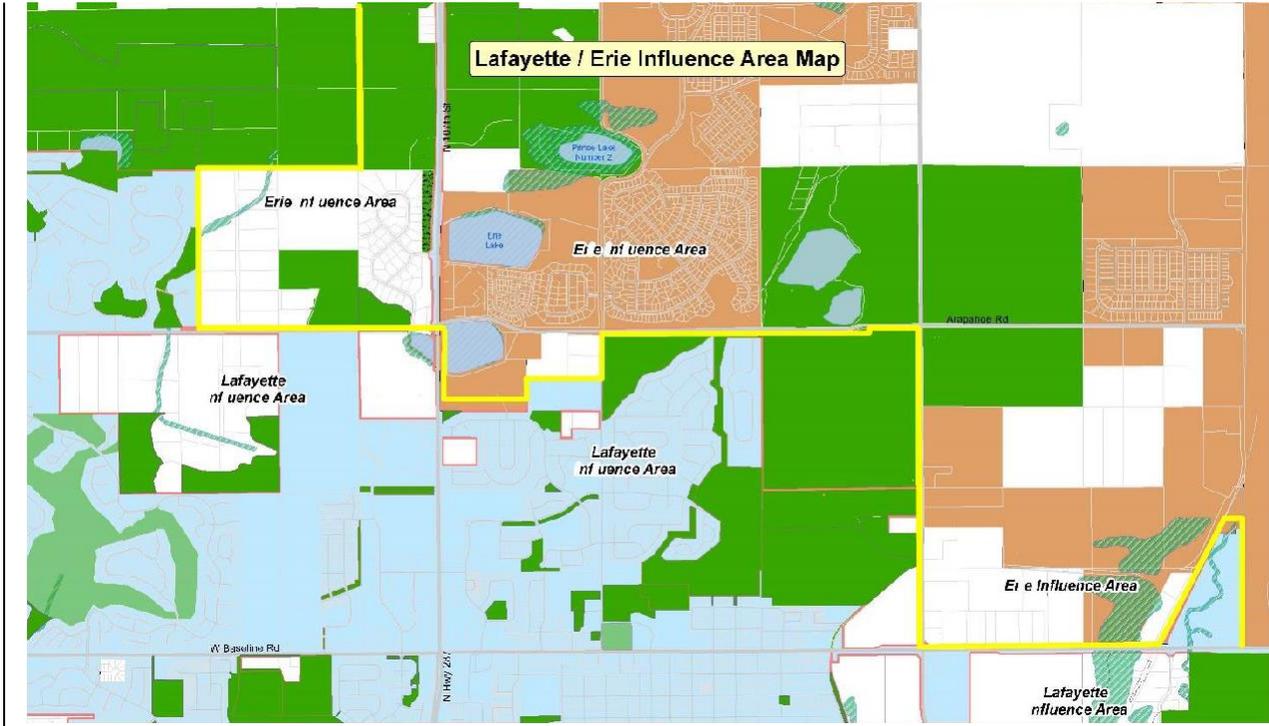


EXHIBIT B

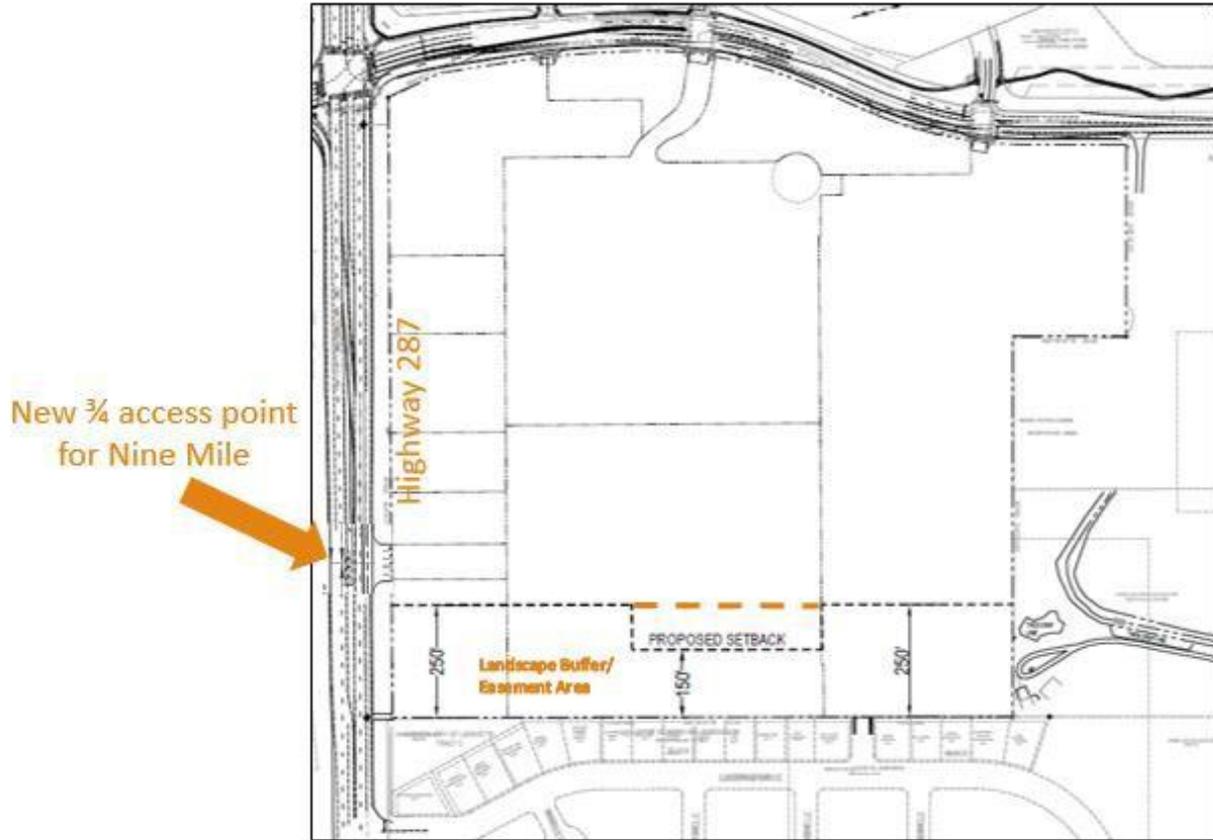


EXHIBIT C

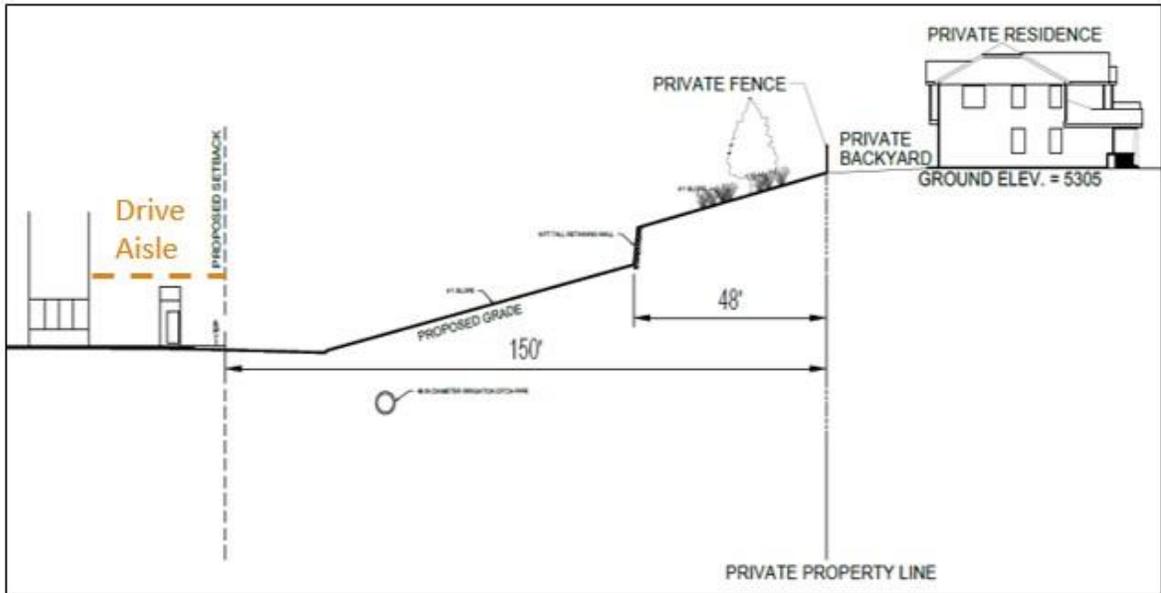


EXHIBIT D



EXHIBIT E

