

**TOWN OF TIMNATH, COLORADO
RESOLUTION NO. 4, SERIES 2025**

**A RESOLUTION APPROVING INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH AND FISHER FARMS METROPOLITAN DISTRICT NO. 1
REGARDING LIMITED AUTHORIZATION TO EXERCISE EMINENT DOMAIN**

WHEREAS, Fisher Farm Metropolitan District No. 1 (the "District") is a quasi-municipal entity formed under the Special District Act, C.R.S. §§ 32-1-101, *et seq.*, to provide those services and to exercise powers as are more specifically set forth in the Service Plan for Fisher Farms Metropolitan District Nos. 1-4, approved by the Town on October 26, 2021 ("Service Plan"), including the financing and construction of certain public improvements pursuant to an approved Development Plan; and

WHEREAS, as a governmental entity, the District is authorized under Colorado Revised Statutes 32-1-1004(4) to exercise the power of eminent domain for the purposes of providing public sanitation improvements, including storm sewer improvements, unless limited under its Service Plan; and

WHEREAS, Section V(A)(17) of the Service Plan states: "The Districts shall be authorized to utilize the power of eminent domain after entering into a written agreement with the Town;" therefore, the Town has determined that an intergovernmental agreement authorizing the use of eminent domain is required before the District can exercise eminent domain; and

WHEREAS, Exhibit F-2 of the Service Plan describes Public Improvements which the District anticipated constructing, including a perimeter drain and perimeter drain forcemain (the "Facilities"), as shown on Figure 7 of 8 of Exhibit F-2; and

WHEREAS, the construction of the Facilities will be at no cost to the Town and not only benefit particular developments but also serves an important public purpose that benefits the community at large; and

WHEREAS, the construction of the Facilities necessitates the acquisition of the following easement interests:

- A. The easement rights set forth in that certain Easement for Subdrain recorded in the real property records of Larimer County, Colorado (the "Records") on January 11, 2002, at Reception No. 2002004311, and re-recorded in the Records on March 27, 2002, at Reception No. 2002033658 (as amended, the "Existing Easement Interest"), attached hereto as **Exhibit A**.
- B. A 30-foot wide permanent easement for the Facilities in the location set forth on **Exhibit**

B and a 30-foot wide temporary construction easement directly east of the permanent easement for construction of the Facilities (collectively, the “Additional Easement Interest,” depicted on Exhibit C, and, collectively with the Existing Easement Interest, the “Interests”); and

WHEREAS, the District is unable to proceed with construction of the Facilities because of its inability to obtain the Interests by agreement with the rightsholders of the Interests; and

WHEREAS, after reviewing the District’s affidavit regarding same, the Town Council believes that the District’s acquisition of the Interests are necessary for the construction of the Facilities and should be supported by the District’s exercise of its eminent domain powers because of the public purpose and benefit involved in such acquisitions; therefore, the Town wishes to enter into an Intergovernmental Agreement with the District to authorize the limited use of eminent domain.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, COLORADO AS FOLLOWS:

Section 1. Findings

That the Town Council, hereby finds the following circumstances exist:

- (a) Because the Facilities will benefit the entire community and the eminent domain proceedings therefor are not being commenced primarily to advance a private interest or private use, there is a sufficient public purpose to justify the acquisition by eminent domain;
- (b) The District has pursued all reasonable options to obtain the Interests by private agreement, and despite the District’s attempted negotiations with and good faith offers to the rightsholders of the Interests, the District’s efforts have been unsuccessful;
- (c) The Facilities for which the Interests are needed will be utilized by many members of the community and comprise utilities which are necessary for the proper functioning of infrastructure within the District’s boundaries to be constructed;
- (d) The District will enter into an Intergovernmental Agreement with the Town, satisfactory in form and substance to the Town Manager and Town Attorney, that sets forth the District’s respective rights and obligations related to the eminent domain proceedings, including, without limitation, a provision obligating the District to pay all costs of the property acquisition, including all reasonable Town costs related to said proceedings.

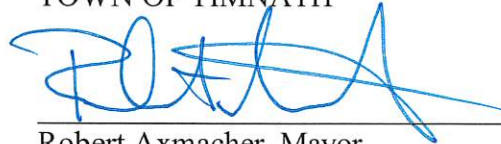
Section 2. Approval

The Intergovernmental Agreement between the Town of Timnath, Colorado and Fisher Farm Metropolitan District No. 1 Regarding Limited Authorization To

Exercise Eminent Domain is hereby approved in substantially the form as attached hereto as **Exhibit D**, subject to technical or otherwise non-substantive modifications, as deemed necessary by the Town Manager in consultation with the Legal Counsel, and other applicable staff or consultants.

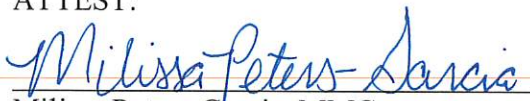
INTRODUCED, MOVED, AND ADOPTED BY THE TOWN COUNCIL OF THE TOWN OF TIMNATH, ON MARCH 11, 2025.

TOWN OF TIMNATH



Robert Axmacher, Mayor

ATTEST:



Milissa Peters-Garcia, MMC

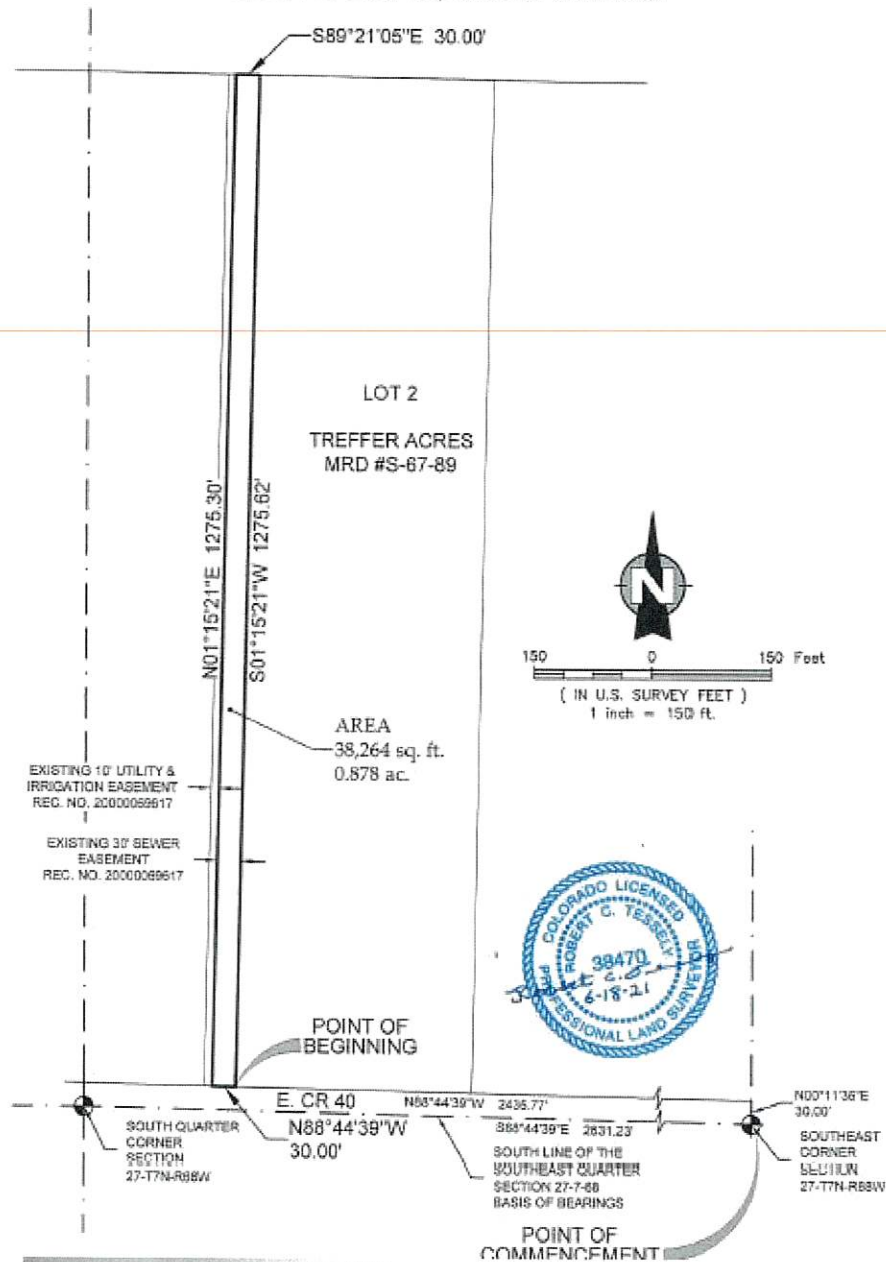
Town Clerk



EXHIBIT A
Existing Easement Interest

EXHIBIT

A TRACT OF LAND BEING A PORTION OF THE SOUTHEAST 1/4 OF SECTION 27,
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6th P.M., TOWN OF TIMNATH,
COUNTY OF LARIMER, STATE OF COLORADO



NOTE: THIS EXHIBIT IS NOT INTENDED TO BE A MONUMENTED LAND SURVEY. ITS SOLE PURPOSE IS AS A GRAPHIC REPRESENTATION TO AID IN THE VISUALIZATION OF THE WRITTEN PROPERTY DESCRIPTION WHICH IT ACCOMPANIES. THE WRITTEN PROPERTY DESCRIPTION SUPERCEDES THE EXHIBIT DRAWING.

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**NORTHERN
ENGINEERING**

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www.northernengineering.com

EXHIBIT B

Permanent Easement Interest

A tract of land being a portion of Lot 2, Treffer Acres M.R.D. #S-67-89, located in the Southeast Quarter of Section 27, Township 7 North, Range 68 West of the 6th P.M., Town of Timnath, County of Larimer, State of Colorado, and being more particularly described as follows:

Considering the South line of the Southeast Quarter as bearing South 88° 44' 39" East and with all bearings contained herein relative thereto:

COMMENCING at the Southeast corner of Section 27; thence along the East line of the Southeast Quarter of Section 27, North 00° 11' 36" East, 30.00 feet; thence, South 88° 44' 39" East, 2435.77 feet to a point on the South line of Lot 2, Treffer Acres M.R.D. #S-67-89, and the Southeast corner of an existing 30' Sewer Easement recorded at Reception No. 20000069617, said point being the **POINT OF BEGINNING**; thence along the South, West, North and East lines of said Easement the following 4 courses and distances: North 88° 44' 39" West, 30.00 feet; thence, North 01° 15' 21" East, 1275.30 feet; thence, South 89° 21' 05" East, 30.00 feet; thence South 01° 15' 21" West, 1275.62 feet to the **POINT OF BEGINNING**.

The above described tract of land is located on and or near that 30' Sewer Easement recorded at Reception No. 20000069617.

The above described tract of land contains 38,264 square feet, or 0.878 acres, more or less, and may be subject to easements and rights-of-way now on record or existing.

EXHIBIT C

Additional Easement Interest Depiction

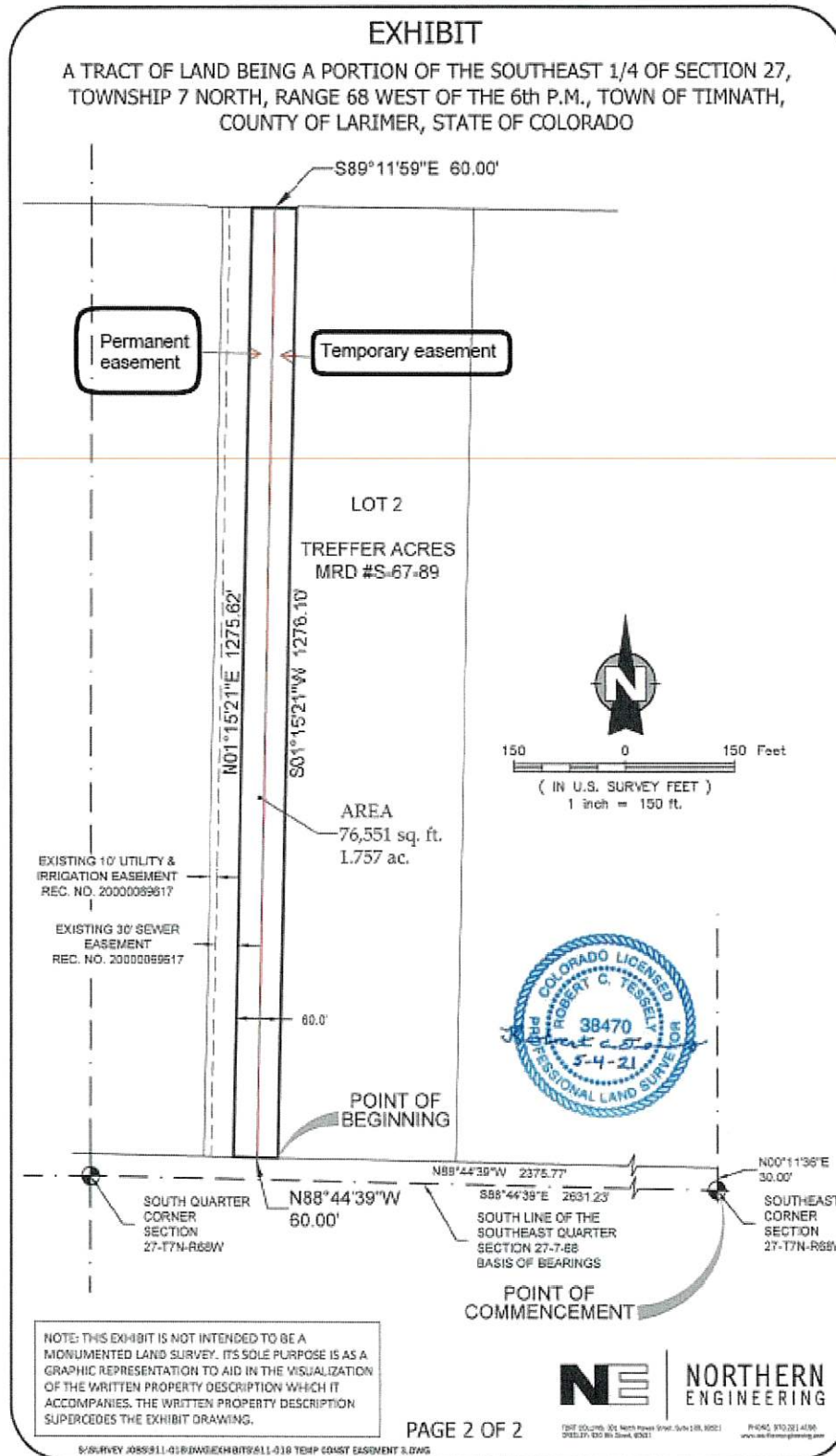


EXHIBIT D

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE TOWN OF TIMNATH,
COLORADO
AND
FISHER FARM METROPOLITAN DISTRICT NO. 1
REGARDING LIMITED AUTHORIZATION TO EXERCISE EMINENT DOMAIN**

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE TOWN OF TIMNATH, COLORADO
AND
FISHER FARM METROPOLITAN DISTRICT NO. 1
REGARDING LIMITED AUTHORIZATION TO
EXERCISE EMINENT DOMAIN**

THIS INTERGOVERNMENTAL AGREEMENT (the “**Agreement**”) is made and entered into as of this 11th day of March, 2025, by and between the TOWN OF TIMNATH, a home-rule municipality of the State of Colorado (“**Town**”), and FISHER FARM METROPOLITAN DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “**District**”). The Town and the District are collectively referred to as the “**Parties**.”

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the Service Plan for Fisher Farms Metropolitan District Nos. 1-4, approved by the Town on October 26, 2021 (“**Service Plan**”), including the financing and construction of certain public improvements pursuant to an approved Development Plan; and

WHEREAS, Section V(A)(17) of the Service Plan states: “The Districts shall be authorized to utilize the power of eminent domain after entering into a written agreement with the Town;” and

WHEREAS, the Service Plan includes as an attachment and incorporates by reference, an intergovernmental agreement between the Town and the District, as required by the Timnath Model Service Plan, but such agreement does not address or authorize the use of eminent domain so the Town has determined that this Agreement is required before the District can exercise eminent domain; and

WHEREAS, Exhibit F-2 of the Service Plan describes Public Improvements which the District anticipated constructing, including a perimeter drain and perimeter drain forcemain (the “**Underdrain**”), as shown on Figure 7 of 8 of Exhibit F-2, attached hereto as **Exhibit A** and incorporated herein by this reference; and

WHEREAS, the District has been unable to negotiate the purchase of certain easements required for the construction of the Underdrain, as more specifically set forth herein, and has asked that the Town Council approve the District’s exercise of eminent domain to acquire such easements; and

WHEREAS, the District agrees to be solely responsible for all costs and burdens associated with such exercise of eminent domain powers; and

WHEREAS, the Town and the District have determined it to be in the best interests of their respective taxpayers, residents and property owners to enter into this Agreement.

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

AGREEMENT

1. Exercise of Eminent Domain Powers. The District and the Town agree the District shall be permitted to exercise its eminent domain powers pursuant to Colorado Revised Statutes 32-1-1004(4) to acquire the following easements:

- A. The easement rights set forth in that certain Easement for Subdrain recorded in the real property records of Larimer County, Colorado (the “**Records**”) on January 11, 2002, at Reception No. 2002004311, and re-recorded in the Records on March 27, 2002, at Reception No. 2002033658 (as amended, the “**Existing Easement Interest**”), attached hereto as **Exhibit B.**
- B. A 30-foot wide permanent easement for the Underdrain in the location set forth on **Exhibit C,** and a 30-foot wide temporary construction easement directly east of the permanent easement for construction of the Underdrain, (collectively, the “**Additional Easement Interest,**” depicted on **Exhibit D,** and, collectively with the Existing Easement Interest, the “**Interests**”); and

Nothing set forth in this Agreement shall be construed so as to create any responsibility or liability on the part of the Town, nor require the Town to bear any financial burden in relation thereto. The District shall reimburse the Town of its actual costs associated with the drafting, review and approval of this Agreement or associated with the District’s exercise of eminent domain within thirty (30) days of receipt of an invoice. The District shall not exercise dominant eminent domain without additional prior written approval of the Town.

- 2. Construction, Maintenance and Use of the Underdrain. The Underdrain shall be designed and constructed in accordance with all requirements and specifications of the Town, including without limitation the Timnath Land Use Code and Design Criteria Manual. Following construction, the Underdrain shall be owned and maintained in good condition by the District. The District shall allow other area property owners with underdrain systems to, at no cost to the District, connect to and convey groundwater produced from such underdrain systems through the Underdrain, subject to: a) approval of plans for the connection by the District, which shall not be unreasonably withheld or delayed, b) availability of sufficient capacity in the Underdrain to accommodate the additional water and c) reimbursement to the District by the connecting property owner of its Proportionate Share of the cost to design and construct the Underdrain, as determined after the initial draining, or based on such other methodology as agreed to in writing between the District and the connecting landowner. The reimbursement agreement between the connecting landowner and the District shall be subject to reasonable approval by the Town Engineer in advance. Any and all reimbursements received for the Underdrain shall be paid to the District only and used to re-pay the District’s costs of the Underdrain or shall be deposited in the District’s debt service fund and used for the purpose of retiring the debt issued to finance

such public improvement. The District shall maintain an accurate accounting of the funds received and disbursed pursuant to reimbursement agreements.

3. Notices. 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 by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the Districts:	Fisher Farm Metropolitan District No. 1 Attn: Jeff Mark, President 212 North Wahsatch Avenue, Suite 301 Colorado Springs, CO 80903 Phone:(303) 210-7747 Email: jmark@landhuisco.com
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With a copy to:	Spencer Fane LLP Attn: David S. O'Leary 1700 Lincoln Street, Suite 2000 Denver, CO 80203 Phone: (303) 839-3800 Fax: (303) 839-3838
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To the Town:	Attn: Town Manager Town of Timnath 4750 Signal Tree Drive Timnath, CO 80547 Phone: (970) 224-3211
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With a copy to:	Carolyn R. Steffl Dietze and Davis, P.C. 2060 Broadway, Suite 400 Boulder, CO 80302 Phone: (303) 447-1375
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All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

4. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Service Plan, unless otherwise required.

5. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party. Any purported assignment or delegation in violation of the provisions hereof

shall be void and ineffectual.

6. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including but not limited to suits for declaratory judgment, specific performance, injunction, and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys' fees.

7. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado.

8. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

9. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

10. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the Town any right, remedy, or claim under or by reason of this Agreement, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the Town shall be for the sole and exclusive benefit of the District and the Town.

11. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

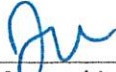
12. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

13. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

14. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Service Plan.

[Signature Page Follows]

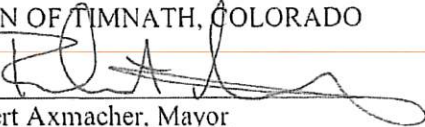
Fisher Farm Metropolitan District No. 1,
a quasi-governmental entity formed pursuant to the
laws of Colorado

By: 
Name: Jeffrey Mark
Title: President


Attest:


Secretary

TOWN OF TIMNATH, COLORADO

By: 
Robert Axmacher, Mayor

Attest:


By: Melissa Peters-Garcia
Its: Town Clerk

APPROVED AS TO FORM:

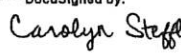
DocuSigned by:

F44B3963ECD949F
Town Attorney

EXHIBIT A

EXCERPT OF EXHIBIT F-2 OF SERVICE PLAN

FIGURE 7 OF 8

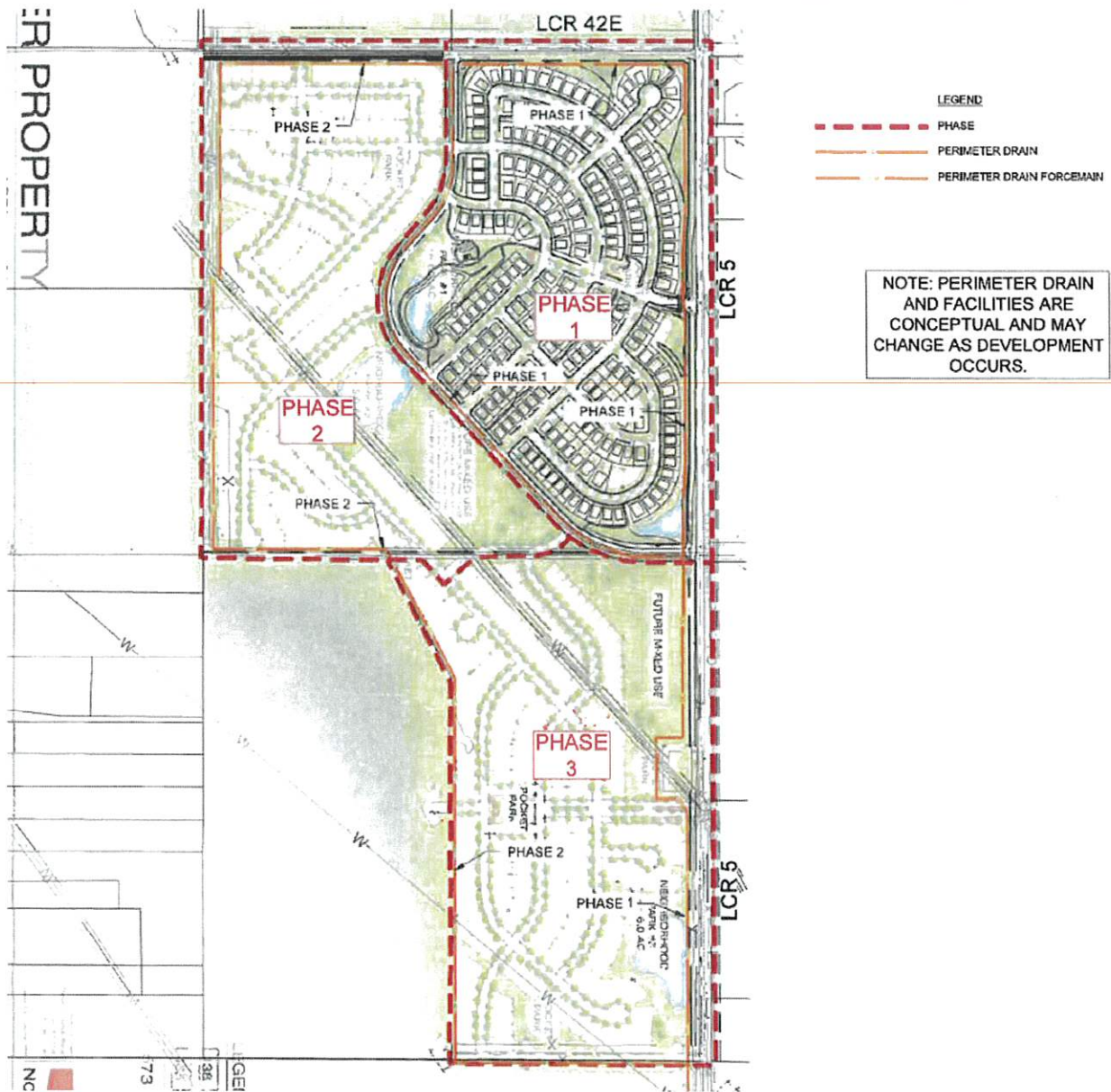
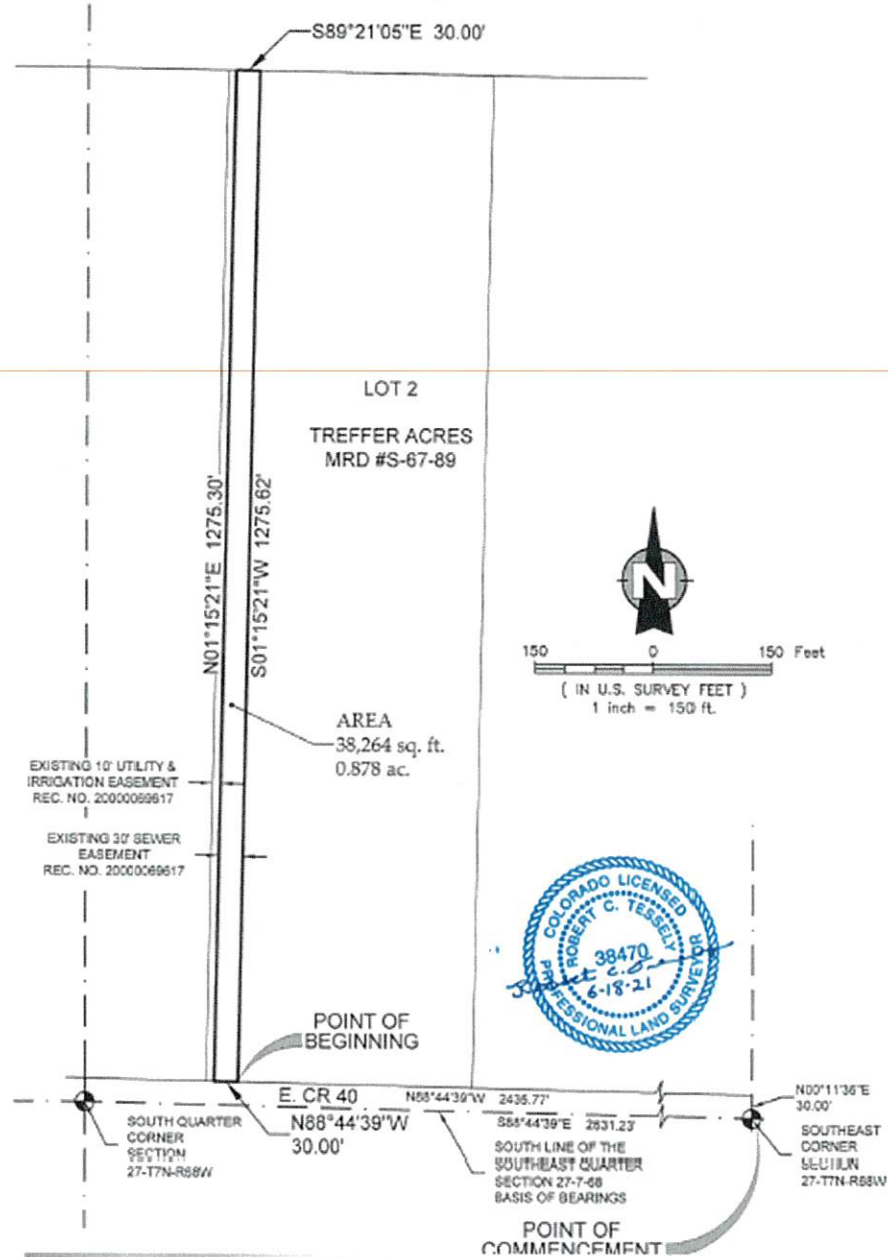


EXHIBIT B Existing Easement Interests

EXHIBIT

A TRACT OF LAND BEING A PORTION OF THE SOUTHEAST 1/4 OF SECTION 27,
TOWNSHIP 7 NORTH, RANGE 68 WEST OF THE 6th P.M., TOWN OF TIMNATH,
COUNTY OF LARIMER, STATE OF COLORADO



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NORTHERN
ENGINEERING

1001 COLLEGE BLVD. SUITE 1000, BOULDER, CO 80501
(303) 440-8800 FAX (303) 440-8801

PHONE: 970.331.4176
www.northernengineering.com

EXHIBIT C

Permanent Easement Interest

A tract of land being a portion of Lot 2, Treffer Acres M.R.D. #S-67-89, located in the Southeast Quarter of Section 27, Township 7 North, Range 68 West of the 6th P.M., Town of Timnath, County of Larimer, State of Colorado, and being more particularly described as follows:

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COMMENCING at the Southeast corner of Section 27; thence along the East line of the Southeast Quarter of Section 27, North 00° 11' 36" East, 30.00 feet; thence, South 88° 44' 39" East, 2435.77 feet to a point on the South line of Lot 2, Treffer Acres M.R.D. #S-67-89, and the Southeast corner of an existing 30' Sewer Easement recorded at Reception No. 20000069617, said point being the **POINT OF BEGINNING**; thence along the South, West, North and East lines of said Easement the following 4 courses and distances: North 88° 44' 39" West, 30.00 feet; thence, North 01° 15' 21" East, 1275.30 feet; thence, South 89° 21' 05" East, 30.00 feet; thence South 01° 15' 21" West, 1275.62 feet to the **POINT OF BEGINNING**.

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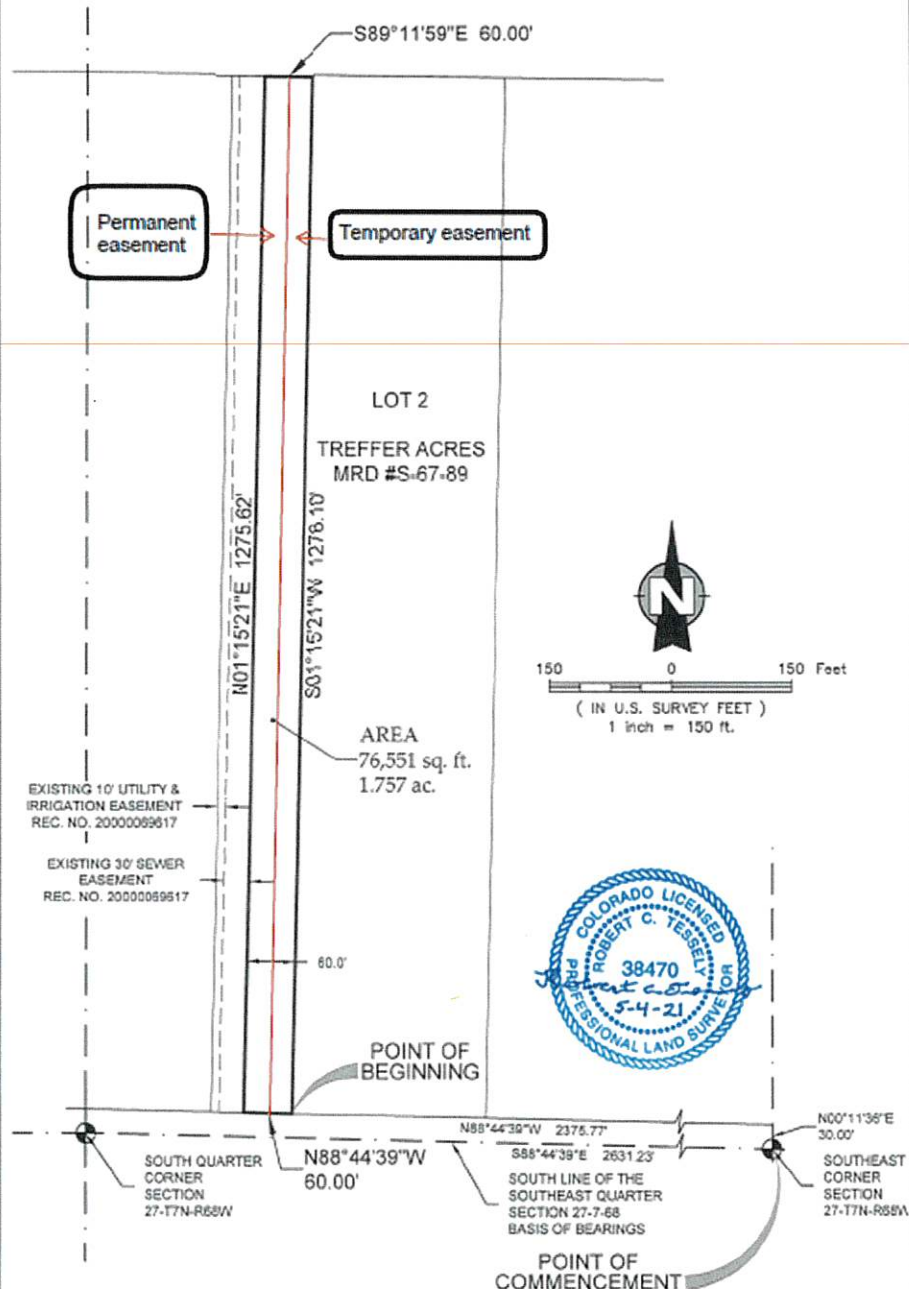
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Additional Easement Interest Depiction

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