



**Town of Frederick**  
**Board of Trustees Agenda**  
Frederick Town Hall  
Board Chambers  
401 Locust Street  
Tuesday, June 28 2022

Livestreaming of the Board of Trustees meetings will be transitioning from the Zoom Meeting Application to a livestream on the Town of Frederick website. While in transition the meetings will be offered the Zoom Meeting platform.

Public Comment will only be taken in person unless an accommodation is requested through the Town Clerk's Office. If you require an accommodation or have questions about making public comment please contact the Town Clerk:

Meghan Martinez  
[mmartinez@frederickco.gov](mailto:mmartinez@frederickco.gov)  
720-382-5500

or

Taylor Kittilson  
[tkittilson@frederickco.gov](mailto:tkittilson@frederickco.gov)  
720-382-5500

Join Zoom Meeting  
<https://us06web.zoom.us/j/82043122269>

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## Town of Frederick Board of Trustees Agenda

Frederick Town Hall  
Board Chambers  
401 Locust Street  
Tuesday, June 28, 2022

**5:30 P.M.**

### **Call to Order – Roll Call:**

### **Pledge of Allegiance:**

### **Approval of Agenda:**

### **Executive Session:**

For discussion of a personnel matter under C.R.S. Section 24-6-402(2)(f) and not involving: any specific employees who have requested discussion of the matter in open session; any member of this body or any elected official; the appointment of any person to fill an office of this body or of an elected official; or personnel policies that do not require the discussion of matters personal to particular employees; regarding the Municipal Judge Recruitment

### **Recess to Liquor Licensing Authority Meeting:**

### **Public Comment:**

This portion of the agenda is provided to allow members of the audience to provide comments to the Town Board. Please sign in and the Mayor will call you. If your comments or concerns require an action, that item(s) will need to be placed on a later Agenda. Please limit the time of your comments to three (3) minutes.

### **Staff Reports:**

- A. Administrative Report – Bryan Ostler, Town Manager
- B. Town Clerk's Report – Meghan Martinez, Town Clerk

**Consent Agenda:** Consent Agenda items are considered to be routine and will be enacted by one motion and vote. There will be no separate discussion of Consent Agenda Items unless a Board member so requests, in which case the item may be removed from the Consent Agenda and considered at the end of the Consent Agenda.

- C. May 3, 2022 Meeting Minutes – Meghan Martinez, Town Clerk

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D. May 24, 2022 Meeting Minutes – Meghan Martinez, Town Clerk

E. Resolution 22-R-56 Authorizing the Purchase of 10 Units of C-BT Water from David and Deanna Hoskins – Sarah Watson, Engineer

**Action Agenda:**

F. Resolution 22-R-57 Approving Amendments to the Memorandum of Agreement for Public Improvements for Eagle Business Park – Jason Berg, Engineer

G. Resolution 22-R-58 Approving an Amendment to the Memorandum of Agreement for Public Improvements for Wyndham Hill Filing 6 – Jason Berg, Engineer

**Discussion Agenda:**

H. Community Tour and Talk Debrief

**Mayor and Trustee Reports:**

**Adjournment:**



# TOWN OF FREDERICK MEMORANDUM

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TO: Honorable Mayor and Board of Trustees

FROM: Bryan Ostler, Town Manager

DATE: June 28, 2022

CC: Town Staff  
Local Media

**SUBJECT: Departmental Report**

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Upcoming Board of Trustees Work Sessions – If there are topics that the Board would like staff to schedule for discussion, please let me know. The following topics are recommended for Board discussion (all meetings will be held in the Town Board Chambers unless otherwise indicated):

- June 28<sup>th</sup> – FURA & Regular Meeting
- July 5<sup>th</sup> – CANCELLED Work Session
- July 12<sup>th</sup> – Regular Meeting
- July 19<sup>th</sup> – FURA & Work Session
- July 26<sup>th</sup> – Regular Meeting
- August 2<sup>nd</sup> – Work Session
- August 9<sup>th</sup> – Regular Meeting
- August 16<sup>th</sup> – FURA & Work Session

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## Communications and Engagement Department

### Community partnerships/training:

- Angela attended Weld County PIO meeting on June 23.
- Working with HOAs and neighborhood leaders for National Night Out.

### Internal Department Communication:

- Attended groundbreaking ceremony for Eco Devo story.
- Working with HOAs and neighborhood leaders for National Night Out.
- Teamwork for mailing Annual Water Drinking Quality Report.
- Ongoing roadwork updates with Engineering.

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- Public Works and Park teamwork for Frederick In Flight.
- Public Works/Parks Submit-A-Request and Adopt-A-Place process improvement
- Updates for Employee Portal on new hires and work anniversaries.

### Media

- New platform Agility PR for media relations. Agility PR software customizes media monitoring, has updated list of media contacts, and stores all of our media coverage in one place, and provides in-depth briefing and reports on Frederick coverage/mentions.
- PR relationship building – conversations with local and Denver area media outlets to build best practices.

### Events

- Local businesses are committing to event sponsorships. We have \$71,250 in pledges to date. Our 2022 goal is \$125,000.
- Frederick in Flight will lift off on Saturday and Sunday, June 25 and 26 with over 20 balloons each day. Lift off at 6 am each day. Balloon Bash party on Saturday night from 5 to 9 pm. Information Station on June 22,23,24 with activities and local business gift card giveaways.
- June 22 - Community Tour in Talk in Savannah for Angel View, Hidden Creek, Prairie Greens, and Savannah. 101 RSVPs and staff prepped with feedback.

### Design

- Chainsaws new design and all corresponding collateral and advertising.
- Creating library of B-roll and pictures for media.
- Acquiring drone footage of alleyway project for “Before, during, and after” video.

## **Parks and Open Space Department**

### Parks, Open Space and Trails

- Opened the Splash Pad at Crist Park, will complete additional minor repairs on the control clock when parts arrive.
- Sprayed several open spaces and parks.
- Mostly worked on irrigation issues throughout the entire park system.

### Golf

- Continued hosting Junior Programs. The Advanced June Program was held last week.
- Continued growing-in new sod on #1 tee.
- Focused on irrigation issues and watering newly seeded areas.
- Edged all bunkers.
- Golf and Parks partnered with OtterBox on a large volunteer project to re-landscape the clubhouse and driving range area.

### Administration

- Advertised for a Parks Maintenance Supervisor position.
- Finalized re-organization plan for the Parks & Open Space Division. Will begin focusing on the Golf Division this summer.
- Finalizing Capital Equipment Requests for now and for the 2023 budget year.
- Sent RFQ for Community Parks Master Plan for internal review. Will begin organizing the Project Advisory Committee later this month and early July. We expect to advertise the RFQ in July, with a project kickoff in the fall.

- Began organizing the 1 and 5 Year Capital Improvement Plans for the Department. Those will be finalized throughout this year's budget process.

## **Police Department**

### New Officers

- Two new Police Officers will be joining our team starting June 28<sup>th</sup>, 2022. Both Cassandra Yuma and Chadwick Berry have several years of previous experience in law enforcement and we are excited to have them as part of Team FRED. Recruitment is ongoing to fill one last vacancy for 2022.

### New Equipment

- The Police Department recently purchased a FARO 3D Laser Scanner that creates accurate, complete and photorealistic 3D representation to document any crime scene or serious traffic accident. This device enhances the capabilities of the department to provide state of the art representation of crime scenes for court purposes. Several officers just completed a three-day training to learn how to operate the device, its' capabilities, and merging the data into the software to produce the end result.

## **Public Works**

### Streets

- Reinstalled Logistics for Crosswalks at Bella Rosa
- Street Sweeping schedule continues for Morningside, Wildflower, Wyndham Hill, Rinn Valley, Bear Industrial Park, Frederick West Business Park, Glacier Business Park, and Downtown Area for Frederick in Flight.
- Filled potholes at County Road 5 as well as Tipple Parkway.
- Repaired and/or replaced damaged highway signs
- Installed Agilent Technologies Adopt a Road signs on both sides of Tipple Parkway

### Water

- Responded to Water Main Break at 4030 Bruin Boulevard. Crews worked through the night to repair a main line failure and reinstall fire line.
- Repair of hydrant on Indian Paintbrush Drive in Carriage Hills
- Completed 70 Locates, 15 Backflow non-compliance site visits and 18 Final Reads
- Flushed Hydrants in Savannah and Angel View Subdivisions

### Buildings

- Completed Safety Inspections on all Town Buildings
- Town Hall Maintenance
  - Replaced Ballasts
  - Renovations started and continue at Town Hall
    - Toned and tested data ports in Phase I
  - Completed work on exterior landscaping
- Engineering Maintenance
  - Repaired gas leak
- Wellness House Maintenance

- Reseeded Backyard
- Installed new door handles for card reader system
- Repaired Damaged Conduit Clamps on Skatepark Cameras

#### Fleet Services

- Completed 21 Service Requests
  - 11 Unscheduled
  - 10 Scheduled

#### Storm Water

- Cleared out and Checked Drainage areas at Frederick and 6<sup>th</sup> Street, Old Town, Fox Run, No Name Creek, Eagle Valley, and Summit View.
- Coordinating with Engineering on assessment of drainage structures.

#### Miscellaneous

- Sprayed Downtown area curb and gutters for weeds.
- Crews prepped for Frederick in Flight event.
- Set out cones and barricades for block parties.

### **Planning Department**

- *Development Applications* – The development review process has a few steps land use applications go through prior to submitting an application such as a pre-application meeting and neighborhood meeting. There are nine projects that have completed the pre-application step. There are currently one neighborhood meetings scheduled. Fourteen projects have completed the neighborhood meeting, allowing them to submit an application. The following applications have been accepted for review and are now quasi-judicial.

| <i><b>New Applications</b></i><br><i><b>Project Name</b></i><br><i><b>(Date of Application)</b></i>  | <i><b>Subdivision</b></i> | <i><b>General Location</b></i>                              | <i><b>Brief Description</b></i>                                                   |
|------------------------------------------------------------------------------------------------------|---------------------------|-------------------------------------------------------------|-----------------------------------------------------------------------------------|
| Bear Industrial Park<br>Lot 4 Block 2<br>(6/20/2022)                                                 | Bear Industrial<br>Park   | 4201 Kodiak Ct                                              | Proposed 7,506 Sq Ft 1<br>story building for light<br>industrial.                 |
| Shores On Plum Creek<br>(6/20/2022)                                                                  | Shores On<br>Plum Creek   |                                                             | Proposed residential and<br>commercial development.                               |
| <i><b>On Going Projects</b></i><br><i><b>Project Name</b></i><br><i><b>(Date of Application)</b></i> | <i><b>Subdivision</b></i> | <i><b>General Location</b></i>                              | <i><b>Brief Description</b></i>                                                   |
| Bear Industrial Park,<br>Block 1, Lot 8<br>4210 Bruin Site Plan<br>(02/16/2021)                      | Bear Industrial<br>Park   | 4210 Bruin                                                  | Site plan for 15,000 sf<br>office and warehouse<br>building for crane<br>company. |
| Brunemeier Annexation-<br>Wheatlands<br>(4/4/2022)                                                   |                           | Southwest corner of<br>County Road 16 and<br>County Road 17 | Proposed single family<br>attached and detached<br>homes.                         |

|                                                                  |                             |                                                                               |                                                                                                                        |
|------------------------------------------------------------------|-----------------------------|-------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------|
| Columbine Heights                                                |                             | North of highway 52,<br>West of WCR 17 and<br>East of Savannah<br>Subdivision | Proposed Rezone                                                                                                        |
| Eagle Business Park<br>Filing 3 Lot 1B<br>(1/18/2022)            | Eagle Business<br>Park      | 4881 Eagle                                                                    | Proposed 4,800 sq. ft<br>single story building with<br>outdoor storage.                                                |
| Eagle Business Park<br>Filing 5<br>Lot 1 & 2<br>(6/6/2022)       | Eagle Business<br>Park      |                                                                               | Replat of parcel and divide<br>into 4 lots                                                                             |
| Eagle Business Park<br>Endeavour<br>Agilent<br>(2/07/2022)       | Eagle Business<br>Park      | 7400 Eagle                                                                    | Site Plan for Agilent's<br>expansion                                                                                   |
| Frederick Town<br>Amendment B<br>Lot 1-501 Walnut<br>(9/8/2021)  | Downtown                    | 501 Walnut                                                                    | Redevelop existing<br>building into co-working<br>office space.                                                        |
| Frederick West Business<br>Center Replat J Lot 2A<br>(5/16/2022) |                             | 7950 Miller Dr                                                                | Proposed site plan for<br>28,000 sq ft building with<br>office and warehouse<br>building for unknown<br>future tenant. |
| Meadowlark Business Park<br>Replat A<br>(5/17/2021)              | Meadowlark<br>Business Park | 5660 Iris Parkway                                                             | Request to divide the lot<br>into 2 lots and a new<br>14,000 sq. ft. office<br>building on the south lot.              |
| Miners Park Town<br>Center Filing 2<br>Block 1 (1/11/2022)       |                             | North of hwy 52<br>between Colorado Blvd<br>and Maple Street                  | Proposed changes to<br>zoning boundaries with<br>keeping the current<br>zoning.                                        |
| Nelson Farms<br>(1/3/2022)                                       |                             | Southwest corner of<br>Silver Birch Blvd and<br>Tipple Blvd                   | Proposed residential<br>development on<br>236 acres                                                                    |
| No Name Creek West<br>Block 4<br>(12/6/2021)                     | No Name<br>Creek West       | 9050 Harlequin Circle                                                         | Subdividing Lots.                                                                                                      |
| <b><i>Project Name<br/>(Date of Application)</i></b>             | <b><i>Subdivision</i></b>   | <b><i>General Location</i></b>                                                | <b><i>Brief Description</i></b>                                                                                        |
| Park 4040<br>Lot 4<br>(5/16/2022)                                |                             | South of Salazar Way,<br>East of I-25 Frontage<br>Road                        | Proposed site plan for<br>40,000 sq ft auto body<br>repair.                                                            |
| Prairie Greens II<br>(12/7/2020)                                 | Prairie Greens              | 6460 Frederick Way                                                            | Request for vacation of<br>easement and preliminary<br>design for phase 4.                                             |
| Raspberry Hill Business<br>Park<br>Lot 13<br>(5/2/2022)          | Raspberry Hill              | 8274 Raspberry Way                                                            | Proposed office building<br>and sales of pickup trucks.                                                                |
| Raspberry Hill Business<br>Park<br>Lot 11                        | Raspberry Hill              |                                                                               | Updating Grading and<br>Drainage                                                                                       |

|                                                                                    |              |                                                                     |                                                                             |
|------------------------------------------------------------------------------------|--------------|---------------------------------------------------------------------|-----------------------------------------------------------------------------|
| Grading and Drainage<br>(5/2/2022)                                                 |              |                                                                     |                                                                             |
| Sanitation District<br>Annexation No. 1<br>Subdivision Amendment<br>(8/16/2021)    |              | 8500 Colorado Blvd.                                                 | Subdivision amendment to<br>subdivide existing lot into<br>2 separate lots. |
| Silverstone Filing 7<br>(1/18/2021)                                                | Silverstone  |                                                                     | Development of 581<br>residential homes.                                    |
| Wyndham Hill Filing 10<br>Final Plat and Final<br>Development Plan<br>(11/16/2020) | Wyndham Hill | Generally west of<br>WCR7, between WCR<br>14.5 and WCR 16.          | Approximately 139 acres<br>to be developed into 495<br>single family homes. |
| Wyndham Hill Filing 6<br>Replat A<br>FFFPD Station 5<br>Site Plan<br>(6/7/2021)    | Wyndham Hill | Generally, north of<br>Highway 52, West of I-<br>25 on Glacier Way. | Proposed fire station to<br>include 3 bays.                                 |
|                                                                                    |              |                                                                     |                                                                             |



# TOWN OF FREDERICK MEMORANDUM

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TO: Honorable Mayor Tracie Crites and Board of Trustees

FROM: Meghan Martinez, Town Clerk

DATE: June 24, 2022

**SUBJECT: Town Clerk's Report**

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- *Commission/Committee Updates*
  - Scholarship Committee
    - The committee conducted interviews with candidates the week of the 13<sup>th</sup>. Recipients will be introduced to the Board on July 12<sup>th</sup> for final ratification of the awards.
  - Arts Committee
    - The committee is gearing up for Chainsaws and Chuckwagons and will be working with the Clerk's Office to identify pieces for placement in the community.
- *Colorado Retirement Association Board*
  - Town Clerk Meghan Martinez was recently nominated and elected to the Colorado Retirement Association Board for a term to begin on July 1, 2022.
- *Records Management*
  - Scheduling meetings with departments to assess their records management needs, begin to plan for training and implementation of a records management policy and prepare for updates to our records management software.
- *Training*
  - Deputy Town Clerk Taylor Kittilson is attending Colorado Municipal Clerks Institute. She is in her second year and will graduate next year.
  - Assistant Town Clerk Kelly Green attended a Colorado Municipal Clerks Records class.
  - Assistant Town Clerk Emily Nitcher attended a Colorado Municipal Clerks Municipal Court class.

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**TOWN OF FREDERICK BOARD OF TRUSTEES**  
**SPECIAL HYBRID BOARD MEETING MINUTES**  
**FREDERICK TOWN HALL, 401 LOCUST STREET**  
**MAY 3, 2022**

**Call to Order:** At 5:51 Mayor Crites called the meeting to order and requested roll call.

**Roll Call:** Present were Mayor Crites and Trustees March, Lamach, teVelde, Brown, and Padia. Trustee Mahan was not present, his absence was excused. Also present were Town Manager Bryan Ostler, Town Attorney Jason Meyers and Town Clerk Meghan Martinez.

**Executive Session:**

Motion by Trustee Brown and seconded by Trustee March to go into executive session for the purpose of determining positions relative to matters that may be subject to negotiations, developing strategy for negotiations, and/or instructing negotiators under C.R.S. Section 24-6-402(4)(e)(1) regarding water. Upon roll call vote motion passed unanimously.

At 5:56 Mayor Crites recessed the meeting to go into executive session.

At 6:47 Mayor Crites reconvened the meeting.

Motion by Trustee Lamach and seconded by Trustee Brown to direct staff to proceed with negotiations as discussed in executive session. Upon roll call vote, motion passed unanimously.

There being no further business of the Board, Mayor Crites adjourned the meeting at 6:47 PM.

Approved by the Board of Trustees:

ATTEST:

\_\_\_\_\_  
Tracie Crites, Mayor

\_\_\_\_\_  
Meghan C. Martinez, MMC, Town Clerk

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# TOWN OF FREDERICK BOARD OF TRUSTEES

## REGULAR HYBRID BOARD MEETING MINUTES

### FREDERICK TOWN HALL, 401 LOCUST STREET

#### MAY 24, 2022

**Call to Order:** At 7:01 Mayor Crites called the meeting to order and requested roll call.

**Roll Call:** Present were Mayor Crites and Trustees March, Mahan Lamach, teVelde, Brown, and Padia. Also present were Town Manager Bryan Ostler, Town Attorney Jason Meyers and Town Clerk Meghan Martinez.

**Public Comment:**

Bethany Cooner and Bing Seller, 2455 Apple Street Frederick, discussed their subdivision in the Town and neighboring subdivisions. They asked they hold their neighbors to the residential estate zoning.

Russ Fox, 5690 Tipple Parkway, thanked the Board for their ongoing support.

Janice de Lucio, addressed fireworks in the Town and asked for a no tolerance policy related to enforcement.

**Staff Reports:**

**Administrative Report:** Town Manager Bryan Ostler provided a written report.

**Town Clerk's Report:** Town Clerk Meghan Martinez provided a written report.

**Consent Agenda:**

Motion by Trustee March and seconded by Trustee Mahan to approve the consent agenda which included the following items:

- April 12, 2022 Minutes
- April 19, 2022 Minutes
- April 26, 2022 Minutes
- Resolution 22-R-41 Adopting the Town of Frederick Long Term Water Supply Plan
- Resolution 22-R-42 Accepting a Dedication of Right of Way from Sandra S. Halleck
- Resolution 22-R-43 Creating and Ad-Hoc Land Use Code Revision Committee
- Resolution 22-R-44 Removing Specific Time Requirements for the Termination of Meetings

Upon roll call vote, motion passed unanimously.

**Action Agenda:**

**Resolution 22-R-45 Approving an Updated Memorandum of Agreement for Public Improvements for Clearview Villages:** Engineer Jason Berg presented the proposed amendment. Motion by Trustee March and seconded by Trustee Lamach to approve Resolution 22-R-45. Upon roll call vote, motion passed unanimously.

**Resolution 22-R-46 Accepting a Grant of Utility Easement from Wagscap LLC:** Engineer Zackery Roberson presented the proposed easement. Motion by Trustee March and seconded by Trustee Mahan to approve Resolution 22-R-46. Upon roll call vote, motion passed unanimously.

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Appointment of a Mayor Pro Tem: Town Clerk Meghan Martinez and Town Attorney Jason Meyers outlined a proposed process for appointment of a Mayor Pro Tem.

Mayor Crites opened the floor for nominations, the following trustees were nominated and accepted the nomination.

- Trustee Mahan
- Trustee March

Town Clerk Martinez provided ballots for voting. The following were the results:

Trustee Padia voted for Trustee March  
Trustee Lamach voted for Trustee March  
Mayor Crites voted for Trustee March  
Trustee March voted for Trustee Mahan  
Trustee Brown voted for Trustee March  
Trustee Mahan voted for Trustee Mahan  
Trustee teVelde voted for Trustee March

Trustee March was selected as Mayor Pro Tem with a majority vote of 5-4.

Town Clerk Meghan Martinez swore Trustee March in as Mayor Pro Tem.

**Discussion Agenda:** Town Clerk Meghan Martinez walked the Board through the various commissions, committees, and boards that the Board has an opportunity to participate on as representatives of the Town. After discussion the Board appointed the following members to the following groups:

DRCOG – Mayor Pro Tem March  
Building Appeals Board – Trustees Mahan and Padia  
Arts Committee – Trustee Brown  
Historic Preservation Advisory Committee – Mayor Pro Tem March  
Parks, Open Space, and Trails Commission – Trustee Lamach  
Miners Day Committee – Trustee Mahan  
Northern Water – Trustees Lamach and teVelde

**Mayor and Trustee Reports:**

Mayor Pro Tem March: He has gotten lots of great comments on the Colorado Boulevard improvements.

Trustee Mahan: He reminded the team about the Friday Memorial Day event at Bella Rosa.

Trustee teVelde: He asked for an economic development update

There being no further business of the Board, Mayor Crites adjourned the meeting at 8:09 PM.

Approved by the Board of Trustees:

ATTEST:

\_\_\_\_\_  
Tracie Crites, Mayor

\_\_\_\_\_  
Meghan C. Martinez, MMC, Town Clerk



# TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Dan March, Mayor Pro Tem  
Mark Lamach, Trustee  
Adam Mahan, Trustee

Tracie Crites, Mayor

Chad teVelde, Trustee  
Kevin Brown, Trustee  
Windi Padia, Trustee

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## 10 Colorado-Big Thompson Unit Purchase Consideration

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**Agenda Date:** Town Board Meeting – June 28, 2022

**Attachments:**

- a. Resolution 22-R-56
- b. Purchase and Sale Agreement

**Finance Review:**

\_\_\_\_\_

Administrative Services

**Submitted by:**

Sarah Watson  
Civil Engineer II

**Approved for Presentation:**

Bryan Ostler  
Town Manager

☐ Quasi-Judicial

☐ Legislative

☐ Administrative

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### **Strategic Plan Alignment:**

Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal.

- Water acquisition to start in early 2022

### **Summary Statement:**

The Town has an opportunity to purchase 10 units of C-BT water.

### **Detail of Issue/Request:**

In accordance with the recently adopted 10-Year Water Supply Plan staff has been in contact with a water broker, Arnold Turner, about the purchase of 10 units of Colorado-Big Thompson water. The Plan recommends purchasing C-BT water when it is available to the Town as the cost of C-BT units are projected to continue to increase. The recently adopted 2022 Budget included funds for the purchase of

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at least 200 units of C-BT water. These 200 units are intended to be used for economic incentives which will work towards the Town's 2021-2022 Strategic Plan: Strategic, Reliable & Sustainable Infrastructure goal. This purchase would bring the Town's number of C-BT purchased in 2022 to 120 units.

The units are being offered at \$70,000 per unit for a total of \$700,000.

**Legal Comments:**

The Town is required to supply water to properties and customers that the Town has commitments to serve.

**Alternatives/Options:**

The Town may decide not to enter into a contract for the water at this time.

**Financial Considerations:**

The Town has budgeted funds for the purchase of 200 C-BT unit and has adequate funds to purchase the 10 units proposed at this time.

**Staff Recommendation:**

Staff recommends the approval of resolution 22-R-56 for the purchase of 10 unit of C-BT from David and Deann Hoskins.

**TOWN OF FREDERICK, COLORADO  
RESOLUTION NO. 22-R-56**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,  
AUTHORIZING THE PURCHASE OF 10 UNITS OF C-BT WATER  
FROM DAVID AND DEANN HOSKINS.**

**WHEREAS**, C.R.S. § 31-35-101 authorizes the purchase by a municipality of rights and interests in water, waterways, and water franchises in order to supply the municipality and its residents with water; and; and

**WHEREAS**, the Board of Trustees of the Town of Frederick has received one offer for the sale of 10 units of C-BT water; and

**WHEREAS**, the water fund contains sufficient appropriated funds to make the payment and the expenditures would be deemed an eligible expenditure; and

**WHEREAS**, the Board of Trustees has determined it is in the best interests of the residents of the Town to secure water rights for municipal purposes; and

**WHEREAS**, the Board of Trustees authorizes the Town Manager to execute the contracts for the purchase of those respective units; and

**WHEREAS**, in the 2022 Budget, the Town Board of Trustees authorized the appropriation and expenditures of funds from the water fund; and

**NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF  
THE TOWN OF FREDERICK, WELD COUNTY, COLORADO THAT;**

Section 1. The following contracts for the purchase of CBT water rights are hereby ratified and approved:

a. David and Deann Hoskins.; 10 units of CBT water at \$70,000 per unit for a total of \$700,000.

Section 2. The 2022 Budget for the Town of Frederick included funds for C-BT unit purchases.

Section 3. **Effective Date.** This resolution shall be become effective immediately upon adoption.

Section 5. **Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

Section 3.     **Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED, AND ADOPTED THIS 28TH DAY OF JUNE, 2022.**

**ATTEST:**

**TOWN OF FREDERICK**

By \_\_\_\_\_  
Meghan C. Martinez, MMC, Town Clerk

By \_\_\_\_\_  
Tracie Crites, Mayor

**AGREEMENT FOR SALE AND PURCHASE OF UNITS OF  
COLORADO-BIG THOMPSON PROJECT**

This Agreement for Sale and Purchase of Units of Colorado-Big Thompson Project ("Agreement") is made and entered into this \_\_\_\_\_ day of June, 2022 by and between David G. Hoskins and Deann Hoskins ("Seller"), and the Town of Frederick, a Colorado municipal corporation ("Town") (each a "Party" and together the "Parties").

Recitals

- A. The Colorado-Big Thompson Project ("C-BT") is administered by the Northern Colorado Water Conservancy District ("NCWCD").
- B. Seller is the record owner of **10** C-BT units, with such ownership shown on the books of NCWCD ("Seller's C-BT Units"). These units are assigned as follows:
- THE SW 1/4 OF THE SW 1/4 OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO
- EXCEPT THAT PORTION CONVEYED BY DEED RECORDED MAY 21, 1980 IN BOOK 2044 AT PAGE 786
- AND EXCEPT RIGHTS OF WAY FOR COUNTY ROAD 21 AND COUNTY ROAD 4..
- C. NCWCD allocates water to Seller's C-BT Units under a Class **D** Allotment Contract.
- D. Seller wishes to sell, convey, and assign to the Town, and the Town wishes to acquire, Seller's C-BT Units on the terms and conditions given in this Agreement.

For and in consideration of the mutual promises, covenants, and conditions in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the Town agree as follows:

1. Purchase Price. The purchase price for Seller's C-BT Units is **\$70,000** per unit, for a total of **\$700,000** ("Purchase Price").
- 1.1 The Parties agree that Stewart Title Company, 12110 N. Pecos St., Suite 150, Westminster, CO, 80234, will act as the escrow agent for this transaction ("Escrow Agent"), according to the Escrow Agreement and Instructions attached as **Exhibit A**.
- 1.2 No earnest money is required for this transaction.
- 1.3 If all pre-conditions to closing have been met, then on or before the Closing Date, as the term "Closing Date" is defined in paragraph 8 below, the Town shall

deposit the Purchase Price with the Escrow Agent, in immediately available certified funds or cash.

- 1.4 If all pre-conditions to closing have been met, then on or before the Closing Date, the Town also shall deposit with the Escrow Agent the estimated NCWCD Fee and Assessment Credit, as that term is defined in paragraph 4 below, in certified Funds or cash.
  - 1.5 Turner Realty will receive from the Seller a commission of 2% of the total Purchase Price, to be paid from proceeds at closing.
  - 1.6 The Purchase Price, estimated NCWCD Fee and Assessment Credit, and estimated Town's Broker's Fee deposited with the Escrow Agent are the "Escrowed Funds."
  - 1.7 Seller shall pay all escrow and closing fees invoiced by the Escrow Agent, with such fees to be debited to Seller in the closing statement and paid to the Escrow Agent out of the Escrowed Funds.
  - 1.8 Any fee or commission due to a broker engaged by the Seller ("Seller Broker's Fee") will be debited to Seller in the closing statement and paid out of the Escrowed Funds.
  - 1.9 The Town Broker's Fee, if any, will be debited to Town in the closing statement and paid out of the Escrowed Funds.
2. Pre-conditions to closing. The Town's obligation to pay the Purchase Price and close on the transaction is expressly conditioned on each of the following:
- 2.1 Seller must have delivered to Town, at Seller's sole expense and within seven days of the date of this Agreement, copies of all documents in Seller's possession pertaining to Seller's unencumbered title to and right to transfer to the Town Seller's C-BT Units, including without limitation any property records documenting the separation of Seller's C-BT Units from specified real property and any records documenting the termination or release of any liens or encumbrances on or security interests in Seller's C-BT Units.
  - 2.2 If Seller's C-BT Units are used for irrigation of land or are tied to designated land in the records of NCWCD, Seller must have delivered to the Town, no earlier than 21 days and no later than 7 days before the Closing Date, a satisfactory ownership and encumbrance report for all such land ("O&E Report").
  - 2.3 As documented by the O&E Report, the records of NCWCD, and other records pertaining to ownership of Seller's C-BT Units, title to Seller's C-BT Units must

be good and merchantable in Seller as of the Closing Date, with such title free and clear of all liens, encumbrances, assessments, and security interests. The Town shall decide, in the reasonable exercise of its sole discretion, whether and when Seller has documented good and merchantable title to Seller's C-BT Units.

- 2.4 Seller must have completed all requirements of NCWCD for transfer of Seller's C-BT Units to the Town, and the NCWCD Board must have formally approved the transfer in writing.
- 2.5 Seller must have paid, directly to NCWCD, the transfer fee imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
- 2.6 The Town's Board of Trustees must have approved the Town's acquisition of Seller's C-BT Units, including by virtue of directing the Mayor or Town administrators or staff to complete the acquisition.

3. Seller's warranties.

- 3.1 Seller warrants that it has, or that by the Closing Date it will have, good and marketable title to Seller's C-BT Units, along with the right and privilege to sell the same.
- 3.2 Seller warrants that there are, or that by the Closing Date there will be, no outstanding liens, mortgages, or other encumbrances on title to Seller's C-BT Units.
- 3.3 Seller warrants that no NCWCD fees or assessments are, or that by the Closing Date no NCWCD fees or assessments will be, outstanding or due and owing on Seller's C-BT Units.
- 3.4 Seller warrants that no other person or entity holds preemptive rights to purchase or lease Seller's C-BT Units.
- 3.5 Seller warrants that it has not entered into any agreement with a third party with respect to Seller's C-BT Units that may result in liability or expense to the Town based on the Town's acquisition of all or any portion of Seller's C-BT Units.
- 3.6 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any litigation, claim, or proceeding of any type, pending or threatened, that in any matter affects or pertains to Seller's C-BT Units.
- 3.7 Seller warrants that it has received no actual notice of and that Seller has no other knowledge of any existing violation of any federal, state, or local law, code, ordinance, rule, regulation, or requirement pertaining to Seller's C-BT Units.

4. NCWCD assessments. On the Closing Date, the NCWCD fees and assessments documented to have been paid on Seller's C-BT Units for the then-current water year will be pro-rated between the portion of the water year ending on the Closing Date and the portion of the water year remaining as of that date. The NCWCD fees and assessments for the portion of the water year remaining on the Closing Date ("NCWCD Fee and Assessment Credit") will be credited to Seller in the closing statement and paid to Seller out of the Escrowed Funds.
5. Use of water allocated to Seller's C-BT Units. Beginning on the day after the Closing Date, the Town will have sole use of water allocated by NCWCD to Seller's C-BT Units. Before and through the Closing Date, Seller will retain sole use of such water unless Seller and the Town enter into a separate agreement for the Town's temporary use of the water allocated to Seller's C-BT Units.
6. NCWCD requirements.
  - 6.1 The Parties shall promptly execute and deliver to NCWCD all required applications and other documentation required by NCWCD for transfer of Seller's C-BT Units to the Town, including without limitation an Application for a Temporary Use Permit, an Affidavit Regarding Base Water Supply, a completed Application for Change of Class D Allotment Contract, and any other documents required by NCWCD. The Parties shall work cooperatively to meet all deadlines for submittal of such materials for the NCWCD Board's consideration and approval at its next regular meeting.
  - 6.2 Seller shall pay, directly to NCWCD, the transfer fee of \$500 imposed by NCWCD for transfer of Seller's C-BT Units to the Town.
7. Section 1031 exchange. Seller may elect to structure this transaction as an exchange under Section 1031 of the Internal Revenue Code ("1031 Exchange"). In such event, Seller shall give written notice to the Town as provided in paragraph 9 below. The Parties shall confer to determine if a reasonable extension of the Closing Date is necessary for Seller to complete the 1031 Exchange. Any expenses related to a 1031 Exchange will be Seller's sole responsibility, but the Town will cooperate with the Seller in implementing the 1031 Exchange.
8. Closing. The Parties will consummate the transaction at a closing to take place electronically within 5 business days of the date on which all pre-conditions to closing, as described in paragraph 2 above, have been successfully completed.
  - 8.1 Closing Date. The actual date of the closing, which is expected take place on or before August 31, 2022, is the "Closing Date." This date may be extended by

mutual agreement of the parties as may be necessary to meet NCWCD schedule requirements.

- 8.2 Performance of closing. On the Closing Date, the Escrow Agent shall perform as described in the Escrow Agreement and Instructions attached as **Exhibit A**, including without limitation by distributing the total amount due to seller (Purchase Price + final NCWCD Fee and Assessment Credit – escrow and closing fees – any Seller Broker’s Fee ) by wire transfer or in other immediately available funds; by distributing payment of the broker commission described in paragraph 1.5 above directly to Turner Realty by check or wire transfer; and by delivering to the Parties, by FedEx, UPS, or other delivery service with tracking, any final instruments or other documents memorializing the transaction, including without limitation the Bill of Sale and Assignment described in paragraph 8.3 below and Seller’s Certification of Warranties described in paragraph 8.4 below.
- 8.3 Bill of Sale and Assignment. No later than seven days before the Closing Date, Seller shall deliver to the Escrow Agent a good and sufficient Bill of Sale and Assignment acceptable to the Town and substantially in the form of attached **Exhibit B**. Seller shall execute the Bill of Sale and Assignment, but leave it undated; the Escrow Agent shall handwrite in the date on the Closing Date.
- 8.4 Seller’s Certification of Warranties. No earlier than seven days and no later than one day before the Closing Date, Seller shall deliver to the Escrow Agent a written certification that Seller’s warranties given in paragraph 3 above remain true and correct as of the Closing Date. In the event that Seller is unable to certify that one or more of the warranties remains true and correct as of the Closing Date, the Town may, at its sole option, proceed to closing notwithstanding such defects or, upon written notice to Seller, declare this Agreement terminated. In the event of such termination, the Parties will have no further rights or obligations hereunder.
9. Notices. All notices or other documents required to be sent to either Party under this Agreement must be in writing. Such notices or documents will be deemed effective upon receipt following delivery by certified mail, return receipt requested; email; personal delivery; or delivery by FedEx, UPS, or another delivery service with tracking. Notices or documents must be addressed and delivered as follows:

TO SELLER:

David G. & Deann Hoskins  
1600 S County Rd 21  
Berthoud, CO 80513

TO TOWN:

Town of Frederick  
Attn: Kevin Ash, Engineering Director  
P.O. Box 435  
401 Locust Street  
Frederick, CO 80530  
E-mail: [kash@frederickco.gov](mailto:kash@frederickco.gov)

With copies by email only to the following:

Sarah Watson, Civil Engineer, Town of Frederick  
[swatson@frederickco.gov](mailto:swatson@frederickco.gov)

Jason Meyers, Town Attorney  
[jmeyers@frederickco.gov](mailto:jmeyers@frederickco.gov)

Jennifer DiLalla, Special Water Counsel  
[jdilalla@mwhw.com](mailto:jdilalla@mwhw.com)

TO ESCROW AGENT:

Stewart Title Company  
Gina Cruz  
12110 North Pecos St., Suite 150  
Westminster, CO. 80234  
Email: [Gina.Cruz@stewart.com](mailto:Gina.Cruz@stewart.com)

The addresses above may be changed by written notice given in the manner provided above.

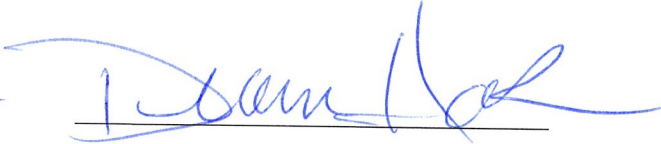
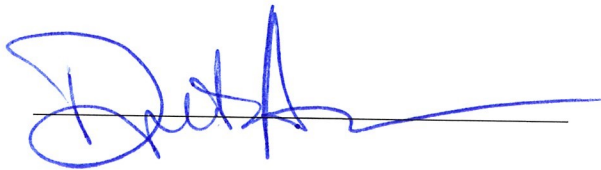
10. Default and remedies. In the event of default, the non-defaulting Party shall notify the defaulting Party in writing of such default, documenting the nature thereof. If such default is not cured within fourteen days, the non-defaulting Party will be entitled to all remedies available at law and in equity, including without limitation the remedy of specific performance and the remedy of damages.
11. Successors and assigns. This Agreement benefits and burdens the Parties and their respective successors and assigns; provided, however, that neither Party may assign its rights or obligations hereunder except with the prior written consent of the other Party.
12. Amendment or modification. This Agreement may be modified only by a signed writing executed by the Parties with the same formality as was this Agreement.
13. Time of the essence. Time is of the essence under this Agreement.

14. Attorney fees and other litigation costs. If either party initiates a court proceeding to enforce any provision of this Agreement, including without limitation an action for specific performance or for damages, the non-prevailing Party shall pay the prevailing Party's costs and fees for the proceeding, including reasonable attorney fees and reasonable expert witness fees.
15. Venue. The sole venue for any action to enforce this Agreement will be the District Court for Weld County, Colorado.
16. No continuing waiver of default. A party's waiver of any instance of default under this Agreement will not constitute a continuing waiver of any subsequent default concerning either the same or any other provision hereof.
17. No waiver of governmental immunity. Nothing in this Agreement constitutes or is to be deemed or construed as constituting a waiver of any privilege or immunity available to the Town under the statutes and constitution of the State of Colorado, including the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101 through -119, as it may be amended.
18. Headings for convenience only. Paragraph headings and titles in this Agreement are intended for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any term of this Agreement.
19. Non-severability. Each paragraph and sub-paragraph of this Agreement is intertwined with the others and is not severable unless by mutual written consent of the Parties.
20. Entire agreement. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and any prior oral or written agreements pertaining to that subject matter have been merged or integrated into this Agreement.
21. Authority to execute Agreement. Each Party represents and warrants that the individual(s) executing this Agreement on that Party's behalf is authorized to do so and to bind such Party to the Agreement's terms. Each Party further represents and warrants that it is legally entitled to enter into this Agreement and to consummate the transaction described herein.
22. Execution in counterparts and electronic scans. This Agreement may be executed in counterparts, and all such executed counterparts together will constitute the Agreement. A legible electronic scan of the original Agreement and signatures in PDF format will be deemed an original, and such electronic scans will be binding for all purposes.

IN WITNESS WHEREOF, the Parties have executed this Agreement in counterparts on the date first written above.

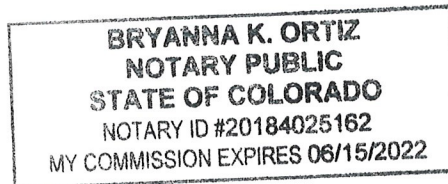
SELLERS: DAVID G. HOSKINS

DEANN HOSKINS



STATE OF COLORADO )

COUNTY OF Larimer ) SS.



The foregoing instrument was acknowledged before me this 26 day of May 2022, by David G. Hoskins.

Witness my hand and official seal.

My commission expires 06/15/2022.



Notary Public

STATE OF COLORADO )

COUNTY OF Larimer ) SS.

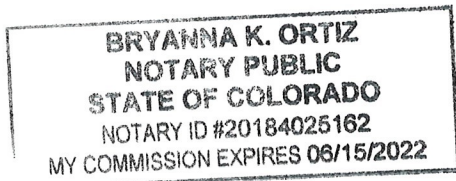
The foregoing instrument was acknowledged before me this 26 day of May 2022, by Deann Hoskins.

Witness my hand and official seal.

My commission expires 06/15/2022.



Notary Public



Signatures continue on next page.





# TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Dan March, Mayor Pro Tem  
Adam Mahan, Trustee  
Kevin R. Brown, Trustee

Tracie Crites, Mayor

Mark Lamach, Trustee  
Windi Padia, Trustee  
Chad teVelde, Trustee

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## Eagle Business Park Fourth and Fifth Amendment to the Memorandum of Agreement for Public Improvements

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**Agenda Date:** Town Board Meeting – June 28, 2022

**Attachments:**

- a. Eagle Business Park Fourth Amendment MOAPI
- b. Eagle Business Park Fifth Amendment MOAPI
- c. Resolution 22-R-57

**Finance Review:** \_\_\_\_\_  
Finance Director

**Submitted by:** \_\_\_\_\_  
Jason Berg  
Civil Engineer

**Approved for Presentation:** \_\_\_\_\_  
Bryan Ostler  
Town Manager

☐ Quasi-Judicial      ☒ Legislative      ☐ Administrative

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### **Strategic Plan Alignment:**

Strategic, Reliable & Sustainable Infrastructure:

This request aligns with the Town's Strategic Plan by investing in existing and future transportation, water, stormwater, and technology while planning for sustainable growth and development.

### **Summary Statement:**

The Agilent facility in the Eagle Business Park is currently undergoing an expansion project covering multiple properties which require additional public improvements which are identified and presented in the Fourth and Fifth Amendments to the Eagle Business Park MOAPI.

**Built on What Matters.**

**Detail of Issue/Request:**

The current Agilent Facility on Lot 1 of the Eagle Business Park is currently undergoing a planned expansion. The impact of the additional square footage of the facility will require additional transportation, water, and stormwater improvements at each of the sites included in the expansion plans. The Agilent expansion project includes development of the Eagle Business Park Filing 3 Lot 1B which will be used as a temporary construction trailer site and Eagle Business Park Subdivision Lot 1, site of the current facility. The temporary construction trailer site will be replaced with a permanent use once the construction of the facility on Lot 1 is complete. Construction of the expansion project is projected to be completed in 3 to 5-years.

The Fourth Amendment to the MOAPI addresses Lot 1B improvements and will allow the temporary use to continue for 3-years with an option to extend that time period to 5-years with approval of the Town with authorization from the Town Manager. As the Lot 1B site will act as a construction trailer site the landscaping requirements and a portion of the sidewalk improvements along will be delayed during the temporary use period. With development at this site Town requires that the Developer construct the identified stormwater improvements and additional off-site auxiliary left turn lane needed on Silver Birch Boulevard at the Carbide Street intersection and within 1-year of approval of the Fourth Amendment. This turn lane will alleviate a portion of the initial increase of traffic impacts generated by the construction of the facility expansion.

The Fifth Amendment to the MOAPI addresses Lot 1 improvements as the expansion of the existing Agilent facility will require additional water and transportation infrastructure. With the larger building footprint and increased facility square footage a water line loop will be required for water service and fire protection. Increased vehicle trips generated by the expansion will trigger additional transportation improvements in the area surrounding the site. This Fifth Amendment will require that the additional off-site roadway transportation improvements generated by the increased traffic attributed to the Agilent facility expansion be installed prior to the Certificate of Occupancy of the facility.

**Legal Comments:**

The Fourth and Fifth MOAPI Amendments were prepared by the Town's Land Use Legal Counsel and resolution prepared by the Town Attorney.

**Alternatives/Options:**

The Board may approve, deny, or change the language of the special provisions proposed within Exhibit F.

**Financial Considerations:**

The Developer will be required to provide Exhibit B – Engineers Cost Estimates for public improvement guarantees prior to construction of the public improvements.

**Staff Recommendation:**

It is staff's recommendation that the Board approve Amendments four and five to the Eagle Business Park MOAPI with the condition that they are not executed until Exhibit B-6 and B-7 for the Fourth and

Fifth Amendments to the MOAPI respectively are updated to include the estimated cost of public improvements.

**FOURTH AMENDMENT TO THE  
EAGLE BUSINESS PARK  
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

**THIS FOURTH AMENDMENT** to the Eagle Business Park Memorandum of Agreement for Public Improvements (“FOURTH AMENDMENT”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Town of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado (“TOWN”), and Agilent Technologies, Inc., a Delaware corporation authorized to conduct business in the State of Colorado, whose address is 7301 Eagle Boulevard, Frederick, Colorado 80504 (“DEVELOPER”).

**WHEREAS**, Developer is the fee-simple owner of that certain real property situated in the Town of Frederick, Weld County, Colorado, legally described as Lot 1B, Eagle Business Park Filing No. 3, and situated north of Carbide Street between Eagle Boulevard and Silver Birch Boulevard (“SUBJECT PROPERTY”); and

**WHEREAS**, Red Mill Development Inc., et al., predecessors in title to Developer, in conjunction with the platting of Eagle Business Park subdivision, entered into a Memorandum of Agreement for Public Improvements (“MOAPI”) on June 25, 2009, said agreement recorded at the Weld County Clerk and Recorder’s office at Reception No. 3633220; and

**WHEREAS**, Shadetree Eagle, LLC subsequently acquired Parcel 1 of the Eagle Business Park subdivision, and then subdivided Parcel 1 into Eagle Business Park Filing No. 2 by way of an Administrative Subdivision Replat, and concurrently entered into that certain First Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated July 31, 2014 and recorded at the Weld County Clerk and Recorder’s office at Reception No. 4035499; and

**WHEREAS**, Shadetree Eagle, LLC replatted Lot 2A and Parcel 1A of Eagle Business Park Filing No. 2 into Eagle Business Park Filing No. 3, creating Lot 1B, Parcels 1B, 2B, and 3B and Outlots 1B, 2B, 3B, and 4B, and concurrently entered into that certain Second Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated November 13, 2018 and recorded at the Weld County Clerk and Recorder’s office at Reception No. 4450406 (“SECOND AMENDMENT”); and

**WHEREAS**, Shadetree Eagle, LLC replatted Parcel 1B of Eagle Business Park Filing No. 3 into Eagle Business Park Filing No. 4A, and replatted Lot 2 of Eagle Business Park Filing No. 4A into Eagle Business Park Filing No. 4B; and

**WHEREAS**, Shadetree Eagle, LLC replatted Parcel 3B of Eagle Business Park Filing No. 3 into Eagle Business Park Filing No. 5, and concurrently entered into that certain Third Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated \_\_\_\_\_, 2002, and recorded at the Weld County Clerk and Recorder’s office at Reception No. \_\_\_\_\_ (“THIRD AMENDMENT”); and

**WHEREAS**, Developer is a successor-in-title to Red Mill Development Inc., and is subject to the terms of the MOAPI, as amended by the Second Amendment; and

**WHEREAS**, Developer seeks to develop the Subject Property to a temporary condition as a parking lot and construction staging area for construction work approved on nearby land owned by Developer, legally described as Lot 1 Eagle Business Park, and then to develop the Subject Property to a permanent condition as a surface parking lot and potentially additional buildings to be used in furtherance of its business activities; and

**WHEREAS**, as contemplated by the MOAPI, Developer and the Town seek to amend the MOAPI to articulate and address their relative rights and obligations with respect to the development of the Subject Property.

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

A. Agilent affirms its obligations under the MOAPI as a successor in title, pursuant to Sections 14.7 and 14.8 therein.

B. The special provisions as contained in the attached Exhibit F-6 shall apply to Lot 1B, Eagle Business Park Filing No. 3.

C. The estimated cost of construction for public improvements for Lot 1B, Eagle Business Park Filing No. 3 is as contained in the attached Exhibit B-6. The attached Exhibit B-6 shall be revised as provided in the attached Exhibit F-6.

D. Except as specifically amended hereby, Town and Developer agree that the MOAPI, as amended by the Second Amendment, continues uninterrupted, shall remain in full force and effect, and shall be binding as amended upon the parties hereto. In the event of any conflict between the MOAPI as amended by the Second Amendment, and the terms of this Fourth Amendment, the terms of this Fourth Amendment shall prevail.

E. This Fourth Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

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

**TOWN OF FREDERICK**  
Town of Frederick, Colorado,  
a Colorado municipal corporation

By: \_\_\_\_\_  
Tracie Crites, Mayor

Attest:

Approved as to form:

By: \_\_\_\_\_  
Meghan C. Martinez,  
Town Clerk

By: \_\_\_\_\_

**DEVELOPER**  
Agilent Technologies, Inc.,  
a Delaware corporation authorized to  
conduct business in the State of  
Colorado

By: \_\_\_\_\_  
Name, Title

State of Colorado                    }  
                                                      } ss:  
County of \_\_\_\_\_            }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, as \_\_\_\_\_ of Agilent Technologies, Inc. a Delaware corporation authorized to conduct business in the State of Colorado, on behalf of the corporation.

[SEAL]

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT B-6**

**Estimated Cost of Construction of Public Improvements**

## **EXHIBIT F-6**

### **Special Provisions Applying to Memorandum of Agreement for Public Improvements**

This Exhibit F-6 is attached to and incorporated into that certain Memorandum of Agreement for Public Improvements for the Eagle Business Park Subdivision, dated June 25, 2009, by and between the Town of Frederick and RedMill Development, Inc., et al., recorded at the Weld County Clerk and Recorder's office at Reception No. 3633220, as amended by that certain Second Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated November 13, 2018, recorded at the Weld County Clerk and Recorder's office at Reception No. 4450406 (collectively, "AGREEMENT"). In the event of any conflict between any section, subsection, paragraph, sentence, or clause of this Exhibit F-6 and similar provisions elsewhere in the Agreement, the section, subsection, paragraph, sentence, or clause of this Exhibit F-6 shall control. Words and phrases that are defined in the Agreement and in the Fourth Amendment to the Agreement shall have the same meanings in this Exhibit F-6.

#### **1. Public Improvements for Temporary and Permanent Use of Subject Property.**

- A. Within 90 days after the effective date of the Fourth Amendment, Developer shall submit to the Town construction plans for a turn lane at Silver Birch Boulevard and Carbide Street as identified in that certain Traffic Impact Study for the Proposed Agilent Endeavor Expansion, dated January 22, 2022, revised March 18, 2022, by CivTrans Engineering. The turn lane shall be constructed by the first anniversary of this Fourth Amendment.
- B. Developer shall construct the stormwater improvements identified in Exhibit B-6 by the first anniversary of the effective date of the Fourth Amendment.
- C. The Subject Property is not subject to the trail obligation set out in the Exhibit F-2 attached to the Second Amendment, including the restriction on building permits set out therein

#### **2. Temporary Use Period and Deferred Improvements.**

- A. Developer is authorized to use the Subject Property as a temporary parking lot and construction management / staging area ("TEMPORARY USE") for its property located at Lot 1 Eagle Business Park a period of three years after the effective date of the Fourth Amendment.
- B. During the period of Temporary Use:

- i. Developer may, at Developer's option, defer the installation of landscaping that is otherwise required by the Town's Land Use Code and Exhibit F2 to the Second Amendment.
  - ii. Developer may, at Developer's option, defer the installation of sidewalks along Silver Birch Boulevard or the eastern segment of Carbide Street between Silver Birch Boulevard and the access point from the Subject Property to Carbide Street that is located approximately halfway between Eagle Boulevard and Silver Birch Boulevard, as shown on Attachment 1 hereto.
- C. The Town, acting through its Town Manager, may approve extensions of the Temporary Use upon good cause shown, provided that the total period of all extensions does not exceed two years. Such extensions may be on such reasonable terms as the Town may require. Extensions in excess of two years are subject to approval by the Board of Trustees.
- D. Deferred landscaping and sidewalk improvements (collectively, "DEFERRED IMPROVEMENTS") shall be installed within one year after the end of the Temporary Use Period, or as provided in Section III, below.

### **3. Permanent Use.**

- A. Developer anticipates that upon completion of the period of Temporary Use, it will use the Subject Property as a permanent parking lot, and in addition, may propose to construct one or more buildings on the Subject Property (such uses, or such other uses that the Developer may propose in the alternative, the "PERMANENT USE"). The period of Temporary Use described in Section II, above, shall not be interpreted to limit the filing of applications for the permanent use of the Subject Property, or the commencement of construction of approved permanent improvements on the Subject Property.
- B. If the Permanent Use is approved prior to the expiration of the Temporary Use Period, the cost of the Deferred Improvements, the amount and timing of the security for the improvements, and the timing of the installation of the Deferred Improvements, shall be identified at the time of approval of the Permanent Use.
- C. The Permanent Use may require additional public improvements that are not identified by this Exhibit F-6. Concurrently with the approval of the Permanent Use, such improvements shall be identified in a revised Exhibit B-6, and, as appropriate, a revised Exhibit F-6. The Board of Trustees hereby authorizes the Town Manager to review, approve, and execute necessary amendments that are consistent with this provision.

**FIFTH AMENDMENT TO THE  
EAGLE BUSINESS PARK  
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

**THIS FIFTH AMENDMENT** to the Eagle Business Park Memorandum of Agreement for Public Improvements (“FIFTH AMENDMENT”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Town of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado (“TOWN”), and Agilent Technologies, Inc., a Delaware corporation authorized to conduct business in the State of Colorado, whose address is 7301 Eagle Boulevard, Frederick, Colorado 80504 (“DEVELOPER”).

**WHEREAS**, Developer is the fee-simple owner of that certain real property situated in the Town of Frederick, Weld County, Colorado, legally described as Lot 1, Eagle Business Park, and situated west of Eagle Boulevard in the vicinity of Carbide Street (“SUBJECT PROPERTY”); and

**WHEREAS**, Red Mill Development Inc., et al., predecessors in title to Developer, in conjunction with the platting of Eagle Business Park subdivision, entered into a Memorandum of Agreement for Public Improvements (“MOAPI”) on June 25, 2009, said agreement recorded at the Weld County Clerk and Recorder’s office at Reception No. 3633220; and

**WHEREAS**, Shadetree Eagle, LLC subsequently acquired Parcel 1 of the Eagle Business Park subdivision, and then subdivided Parcel 1 into Eagle Business Park Filing No. 2 by way of an Administrative Subdivision Replat, and concurrently entered into that certain First Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated July 31, 2014 and recorded at the Weld County Clerk and Recorder’s office at Reception No. 4035499; and

**WHEREAS**, Shadetree Eagle, LLC replatted Lot 2A and Parcel 1A of Eagle Business Park Filing No. 2 into Eagle Business Park Filing No. 3, creating Lot 1B, Parcels 1B, 2B, and 3B and Outlots 1B, 2B, 3B, and 4B, and concurrently entered into that certain Second Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated November 13, 2018 and recorded at the Weld County Clerk and Recorder’s office at Reception No. 4450406 (“SECOND AMENDMENT”); and

**WHEREAS**, Shadetree Eagle, LLC replatted Parcel 1B of Eagle Business Park Filing No. 3 into Eagle Business Park Filing No. 4A, and replatted Lot 2 of Eagle Business Park Filing No. 4A into Eagle Business Park Filing No. 4B; and

**WHEREAS**, Shadetree Eagle, LLC replatted Parcel 3B of Eagle Business Park Filing No. 3 into Eagle Business Park Filing No. 5, and concurrently entered into that certain Third Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements dated \_\_\_\_\_, 2022, and recorded at the Weld County Clerk and Recorder’s office at Reception No. \_\_\_\_\_ (“THIRD AMENDMENT”); and

**WHEREAS**, Developer is a successor-in-title to Red Mill Development Inc., and is subject to the terms of the MOAPI; and

**WHEREAS**, Developer and Town entered into that certain Fourth Amendment to Eagle Business Park Memorandum of Agreement for Public Improvements on \_\_\_\_\_, 2022, which is recorded at the Weld County Clerk and Recorder's office at Reception No. \_\_\_\_\_ ("FOURTH AMENDMENT"); and

**WHEREAS**, Developer seeks to expand its facilities on the Subject Property; and

**WHEREAS**, as contemplated by the MOAPI, Developer and the Town seek to amend the MOAPI to articulate and address their relative rights and obligations with respect to the development of the Subject Property.

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

A. Agilent affirms its obligations under the MOAPI as a successor in title, pursuant to Sections 14.7 and 14.8 therein.

B. The special provisions as contained in the attached Exhibit F-7 shall apply to Lot 1, Eagle Business Park.

C. The estimated cost of construction for public improvements for Lot 1, Eagle Business Park is as contained in the attached Exhibit B-7.

D. Except as specifically amended hereby, Town and Developer agree that the MOAPI continues uninterrupted, shall remain in full force and effect, and shall be binding as amended upon the parties hereto. In the event of any conflict between the MOAPI and the terms of this Fifth Amendment, the terms of this Fifth Amendment shall prevail.

E. This Fifth Amendment may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

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

**TOWN OF FREDERICK**  
Town of Frederick, Colorado,  
a Colorado municipal corporation

By: \_\_\_\_\_  
Tracie Crites, Mayor

Attest:

Approved as to form:

By: \_\_\_\_\_  
Meghan C. Martinez,  
Town Clerk

By: \_\_\_\_\_

**DEVELOPER**  
Agilent Technologies, Inc.,  
a Delaware corporation authorized to  
conduct business in the State of  
Colorado

By: \_\_\_\_\_  
Name, Title

State of Colorado                    }  
                                                      } ss:  
County of \_\_\_\_\_            }

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022 by \_\_\_\_\_, as \_\_\_\_\_ of Agilent Technologies, Inc. a Delaware corporation authorized to conduct business in the State of Colorado, on behalf of the corporation.

[SEAL]

My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

**EXHIBIT B-7**

**Estimated Cost of Construction of Public Improvements**

## **EXHIBIT F-7**

### **Special Provisions Applying to Memorandum of Agreement for Public Improvements**

This Exhibit F-7 is attached to and incorporated into that certain Memorandum of Agreement for Public Improvements for the Eagle Business Park Subdivision, dated June 25, 2009, by and between the Town of Frederick and RedMill Development, Inc., et al., recorded at the Weld County Clerk and Recorder's office at Reception No. 3633220 ("AGREEMENT"), and shall apply only to Lot 1, Eagle Business Park. In the event of any conflict between any section, subsection, paragraph, sentence, or clause of this Exhibit F-7 and similar provisions elsewhere in the Agreement, the section, subsection, paragraph, sentence, or clause of this Exhibit F-7 shall control. Words and phrases that are defined in the Agreement and in the Fifth Amendment to the Agreement shall have the same meanings in this Exhibit F-7.

- 1. Public Improvements.** Notwithstanding anything to the contrary in the Agreement, no certificate of occupancy shall be issued for building improvements on the Subject Property until Conditional Acceptance of the public improvements that are identified in Exhibit B-7 has occurred as provided in Section 1.8 of the Agreement.

**TOWN OF FREDERICK, COLORADO  
RESOLUTION NO. 22-R-57**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,  
APPROVING AMENDMENTS TO THE MEMORANDUM OF AGREEMENT  
FOR PUBLIC IMPROVEMENTS FOR EAGLE BUSINESS PARK**

**WHEREAS**, the Town of Frederick entered into the Memorandum of Agreement for Public Improvements (MOAPI) for Eagle Business Park; and

**WHEREAS**, continued development of the Eagle Business Park will require additional transportation, water, and stormwater improvements; and,

**WHEREAS**, amendments to the MOAPI are needed to address temporary site uses, delays in installation of certain improvements, additional water and transportation infrastructure; and,

**WHEREAS**, portions of the Amendments, specifying the estimated cost of public improvements are in the process of being updated, but approval for the amendments is needing to be expedited; and,

**WHEREAS**, the MOAPI Amendments have been detailed in Amendment Four and Amendment Five attached to this resolution.

**BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:**

**Section 1.** The Fourth and Fifth Amendments to the Memorandum of Agreement for Public Improvements for Eagle Business Park attached hereto as Exhibit A and Exhibit B are approved. The mayor is hereby authorized to execute the amendments once updated costs of public improvements (contained in Exhibits B-6 and B-7 of the MOAPI) have been updated and approved by engineering staff.

**Section 2. Effective Date.** This resolution shall become effective immediately upon adoption.

**Section 3. Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

**Section 4. Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED, AND SIGNED 28TH DAY OF JUNE 2022.**

**ATTEST:**

By \_\_\_\_\_  
Meghan C. Martinez, MMC, Town Clerk

**TOWN OF FREDERICK**

By \_\_\_\_\_  
Tracie Crites, Mayor



# TOWN OF FREDERICK BOARD OF TRUSTEES ACTION MEMORANDUM

Tracie Crites, Mayor

Dan March, Mayor Pro Tem  
Adam Mahan, Trustee  
Kevin R. Brown, Trustee

Mark Lamach, Trustee  
Windi Padia, Trustee  
Chad teVelde, Trustee

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## Wyndham Hill Filing 6 Amendment A Memorandum of Agreement for Public Improvements

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**Agenda Date:** Town Board Meeting – June 28, 2022

**Attachments:**

- a. Wyndham Hill Filing 6 Amendment A MOAPI
- b. Exhibit F – Special Provision to the MOAPI
- c. Resolution 22-R-58

**Finance Review:** \_\_\_\_\_  
Finance Director

**Submitted by:** Jason Berg \_\_\_\_\_  
Civil Engineer

**Approved for Presentation:** Bryan Ostler \_\_\_\_\_  
Town Manager

☐ Quasi-Judicial

☒ Legislative

☐ Administrative

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### **Strategic Plan Alignment:**

Strategic, Reliable & Sustainable Infrastructure:

This request aligns with the Town's Strategic Plan by investing in existing and future transportation, water, stormwater, and technology while planning for sustainable growth and development.

### **Summary Statement:**

As a requirement of development within the Town of Frederick, and as a condition of approval of the Final Plat the Developer is required to enter into a Memorandum of Agreement for Public Improvements (MOAPI) with the Town. This document describes the responsibility the Developer has in relation to the public improvements required for the development.

**Built on What Matters.**

**Detail of Issue/Request:**

Pursuant to the Town's Subdivision regulations the Developer for the Wyndahm Hill Filing 6 Amendment A, being the Frederick Firestone Fire Protection District, is required to enter into an MOAPI prior to approval of the Final Plat. Through the development review process, it has been determined that partial responsibility of the Wyndham Hill Filing 6 SCL Health/Exempla Frederick Campus MOAPI will transfer to the FFFPD site for the installation of public improvements in order to serve the property. This includes the extension of the existing, partial Glacier Way roadway section including curb and gutter, asphalt, sidewalk and landscape improvements adjacent to the property to the eastern curb return at the site access point. The existing Glacier Way "Emergency Access" will be closed and the developer will install a gate to restrict public access at this point. This is in line with the Board's previous direction to staff after an executive session on the matter and by the Colorado Department of Transportation (CDOT), who controls access to the frontage road Right-of-Way, to close the access. When the remainder of Wyndham Hill Filing 6 begins to be developed, the access on Glacier Way to the I-25 Frontage Road will require application to CDOT and compliance with CDOT requirements for access.

Following discussions between Town staff and the Developer, three special provisions to the MOAPI has been requested and is presented within Exhibit F:

1. Section 3 of the MOAPI is hereby deleted as not applicable to the Frederick-Firestone Fire Protection District. In the event the DEVELOPMENT is ultimately developed by another entity or person, the TOWN may require the new developer to comply with Section 3.
2. Section 9.1 has been complied with as to the Frederick-Firestone Fire Protection District's responsibilities for the DEVELOPMENT. In the event Lot 1 is not developed as a fire station or for ancillary uses thereto in substantial compliance with the current site plan, the TOWN may require that a new traffic study that complies with Section 9.1 be prepared and submitted.
3. All direct and indirect financial obligations of a party under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations.

**Legal Comments:**

The MOAPI and resolution have been reviewed by the Town Attorney and Land Use Attorneys.

**Alternatives/Options:**

The Board may approve, deny, or change the language of the special provisions proposed within Exhibit F.

**Financial Considerations:**

None to the Town.

**Staff Recommendation:**

Staff recommends approval of the Wyndham Hill Filing 6 Amendment A MOAPI and Resolution 22-R-58.

**WYNDHAM HILL FILING NO. 6, AMENDMENT A SUBDIVISION  
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

**THIS AGREEMENT** (“District MOAPI”) is made and entered this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Town of Frederick, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, CO 80550 (“TOWN”), and Frederick-Firestone Fire Protection District, a political subdivision of the State of Colorado, whose address is 8426 Kosmerl Place, Frederick, CO 80504 (“DEVELOPER”).

**WHEREAS**, Town and Sisters of Charity of Leavenworth Health System, Inc., a Kansas non-profit corporation, who address is 500 Eldorado Boulevard, Suite 4300, Broomfield, CO 80021 (“SCLHS”), are parties to that certain SCLHS/Exempla Frederick Medical Campus Memorandum of Agreement for Public Improvements dated September 29, 2012 and recorded October 2, 2012 at Reception No. 3877845 in the Office of the Clerk and Recorder of Weld County, Colorado (“SCL MOAPI”);

**WHEREAS**, the SCL MOAPI requires SCLHS to complete certain public improvements related to the development of certain vacant land legally described as Wyndham Hill Filing No. 6 – SCLHS/EXEMPLA FREDERICK MEDIAL CAMPUS FINAL PLAT recorded October 2, 2012 at Reception No. 3877847 in the Office of the Clerk and Recorder of Weld County, Colorado (“SCL Parcel”);

**WHEREAS**, SCLHS’s obligations to complete certain public improvements related to the SCL Parcel under the SCL MOAPI include public improvements on or related to that parcel of vacant land to be legally described as Lot 1 of Wyndham Hills Filing No. 6, Amendment A (“Lot 1” or (“SUBDIVISION” or “DEVELOPMENT”) according to the plat thereof, a copy of which is attached hereto as Exhibit A (“Amendment A Plat”), which lot is located entirely within the SCL Parcel;

**WHEREAS**, as of even date herewith, SCLHS is causing the Amendment A Plat to be recorded in the Office of Clerk and Recorder of Weld County, Colorado and is conveying Lot 1 to DEVELOPER;

**WHEREAS**, as of even date herewith, the TOWN, SCLHS, and the DEVELOPER are entering into that certain Partial Release and Assignment of SCLHS/Exempla Frederick Medical Campus Memorandum of Agreement for Public Improvements, pursuant to which SCLHS will assign certain of its obligations related to Lot 1 to the District as more particularly described therein (“Partial Release and Assignment”);

**WHEREAS**, Developer seeks to develop Lot 1;

**WHEREAS**, the subdivision regulations of the TOWN require that the DEVELOPER enter into this District MOAPI with the TOWN concerning public improvements related to Lot 1 detailed and attached as the “Schedule of Improvements, Exhibit B,” hereinafter called “Exhibit B” and incorporated herein by reference (“Public Improvements”); and

**WHEREAS**, the TOWN and the DEVELOPER agree that the Public Improvements are directly related to and generated by development intended to occur within Lot 1 and that no taking thereby will occur requiring any compensation.

**WHEREAS**, as contemplated by this District MOAPI, DEVELOPER and the TOWN seek to enter into this MOAPI to articulate and address their relative rights and obligations with respect to the development of the Lot 1.

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

**1. GENERAL CONDITIONS.**

**1.1 Definitions:**

- a. **Accept:** The Town accepts Public Improvements after they have been constructed and inspected. Conditional Acceptance and Final Acceptance are the times when the warranty period begins and when the warranty period ends. Conditional and Final Acceptance by the Town must be in writing to be valid, as described in Sections 1.8, 1.9, and 1.10.
- b. **Approve:** The Town will review and approve construction plans and the general design of engineered structures of the Public Improvements to ensure that they are in compliance with the Town’s Design Standards and Construction Specifications. However, the Town does not design these structures and any failure due to faulty engineering is the liability of the design engineer who stamped the plans.
- c. **Major Improvements:** Streets, including curb, gutter and sidewalk, and concrete structures that are built in place, such as detention pond outlet structures and box culverts.

**1.2 Development Obligation.** The DEVELOPER shall be responsible for performance of the covenants set forth herein. The DEVELOPER agrees to construct, build, install and develop all Public Improvements required by this District MOAPI, including but not limited to all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, curbs, gutter, sidewalks, landscaping, pedestrian and non-motorized paths and trails, street median/boulevard and subdivision entryway landscaping, street lighting, park improvements, irrigation systems, gas services, electric services, telephone services, cable television services and any other improvements constructed in relation to the development of the SUBDIVISION set forth in Exhibit B in complete conformity with the TOWN's construction standards and specifications and with the construction plans and drawings that have been reviewed and Approved by the TOWN.

**1.3 Engineering and Surveying Services.** The DEVELOPER agrees to furnish, at its expense, all necessary engineering and surveying services relating to the design and construction of the Development and the Public Improvements. The engineering services for the Public Improvements shall be performed by or under the supervision of a Registered Professional Engineer licensed by the State of Colorado in accordance with the applicable Colorado law; and except as otherwise provided in this District MOAPI, shall conform to the standards and specifications for public improvements as established and approved by the TOWN as of the date of submittal to the TOWN.

The surveying services for the Development shall be performed by or under the supervision of a Registered Land Surveyor, licensed by the State of Colorado in accordance with the applicable Colorado law and shall include, but not be limited to, the monumentation of the subdivision as provided by law.

**1.4 Construction Standards.** The DEVELOPER shall construct all Public Improvements required by this District MOAPI, according to plans and specifications reviewed and accepted in writing by the TOWN or by the utility providing the service, as applicable, and in full conformity with the TOWN's construction specifications applicable at the time of construction plan acceptance. Such acceptance shall continue in effect for one (1) year from the date of acceptance. If the DEVELOPER commences or performs any construction after such one (1) year period, the DEVELOPER shall resubmit the project construction plans for the Public Improvements to the TOWN for reexamination.

The TOWN may require the DEVELOPER to comply with the TOWN standards and specifications that are in effect at the time of resubmittal.

**1.5 Development Coordination.** Unless specifically provided in this District MOAPI to the contrary, all submittals to the TOWN shall be made to the TOWN Clerk with a copy to the TOWN Engineer, as may be designated by the TOWN. The TOWN Engineer, or the Engineer's designee shall render those acceptances required of the TOWN in connection with this District MOAPI, except those requiring formal action by the Board of Trustees in the form of a resolution or ordinance, and shall have general responsibility for coordinating development with DEVELOPER.

**1.6 Plan Submission and Acceptance.**

- a. The DEVELOPER shall furnish the TOWN complete plans for the Public Improvements, and obtain written acceptance of such plans by the TOWN before the commencement of any construction work thereon. DEVELOPER shall submit all sanitary sewer plans to and shall acquire the written acceptance by the St. Vrain Sanitation District, the Left Hand Water District, and the Central Weld County Water District as required before the commencement of any construction work on such improvements. Acceptance shall be indicated by the signature of the appropriate district representative on each drawing in such plans set containing sanitary sewer and water system improvements.
- b. The TOWN shall issue its written acceptance or disapproval of the Public Improvement plans as expeditiously as reasonably possible. Said acceptance or disapproval shall be based upon the standards and specifications for public improvements as established by the TOWN, and the TOWN shall notify DEVELOPER of all deficiencies that must be corrected before plan acceptance. All deficiencies shall be corrected and DEVELOPER shall resubmit the plans for review and acceptance by the TOWN before the construction of any of the Public Improvements.
- c. The DEVELOPER shall submit all plans for the Public Improvements as paper documents and by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or newer). All written documents shall be submitted as paper documents and by acceptable electronic transfer, as word processing files, Microsoft Word, latest version, or compatible.

- d. Amendments to the approved plans shall be submitted to the TOWN for review and approval in the same manner as for the original plans. Approval of amendments shall be in writing.
- e. The DEVELOPER shall cause to be furnished to the Town Engineer a construction schedule for the Public Improvements and obtain his written approval for such schedule at least five (5) days prior to the commencement of construction work. The construction schedule shall be updated each month until conditional acceptance of the construction is given. The construction schedule shall be provided to the Town Engineer electronically, in Microsoft Project Manager, or a similar program.

**1.7 Incorporation by Reference.** All plans, special provisions, proposals, specifications and contracts for the Public Improvements furnished pursuant to this District MOAPI shall be and hereby are made a part of this District MOAPI by reference as fully as if set out herein in full.

**1.8 Insurance.** The DEVELOPER shall guarantee, and upon written request by the TOWN, furnish proof to the TOWN that all employees and contractors engaged in the construction of improvements are covered by adequate Workers' Compensation Insurance and Public Liability Insurance through contract requirements and other normal means.

**1.9 OSHA Compliance.** The DEVELOPER shall require, and upon written request by the TOWN furnish proof to the TOWN, all contractors engaged in the construction of PUBLIC IMPROVEMENTS to faithfully comply with all provisions of the Federal Occupational Safety and Health Act (OSHA).

**1.10 Development Impact Fees.** The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the DEVELOPMENT upon the TOWN'S infrastructure, administration and delivery of governmental services. The DEVELOPER agrees to the payment of these uniform development impact fees as established by the TOWN. The TOWN and the DEVELOPER further agree that the TOWN may amend the development impact fees from time to time as needed to address changing affects upon the TOWN's infrastructure, administration and deliver of governmental services as a result of development occurring within the TOWN. The development impact fees are to be paid at the then current rate upon subdivision of the property and/or the issuance of building permits whichever is applicable for that particular development impact fee.

### **1.11 Financing and Improvement Guarantees.**

- a. Except as otherwise specifically agreed herein, the DEVELOPER agrees to install and pay for all Public Improvements as described in “Exhibit B”.
- b. The DEVELOPER shall submit to the TOWN an Improvement Guarantee for all Public Improvements related to the Development. The term of the guarantee shall be for a time sufficient to cover the completion of construction of the Public Improvements and the warranty period through final acceptance; in no case shall the term of the guarantee be for fewer than two years. The guarantee may be in cash, certified check, or a letter of credit in form and substance as shown on “Exhibit C” attached hereto and incorporated herein by reference. The guarantee shall be subject to approval by the Town Attorney. The guarantee, if a letter of credit, shall not expire during the winter season (November 1- April 30). The Improvement Guarantee shall include all Public Improvements, including, without limitation, all water system improvements, sanitary sewer collection lines, sanitary sewer lift stations, storm sewer lines and catch basins, storm drainage swales, storm drainage detention ponds and other improvements, streets, signing and striping, curb, gutter, sidewalk, landscaping, pedestrian and non-motorized paths and trails, street median, boulevard and subdivision entryway landscaping, street lighting, park improvements, irrigation systems, gas services, electric services, telephone services, cable television services, to the extent applicable.
- c. The total amount of the guarantee shall be calculated as one hundred percent (100%) of the total estimated cost, including labor and materials, of the Public Improvements as described in “Exhibit B”, except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. TOWN shall not release the Improvement Guarantee until the TOWN has granted final acceptance of the Public Improvements. Partial releases of an Improvement Guarantee may be considered when development is phased and a phase has received conditional acceptance. Irrespective of partial releases, at all times during the warranty period on secured Public Improvements, the TOWN shall retain at least ten percent (10%) of the total Public Improvements costs as an Improvement Guarantee under this section. The costs established in

“Exhibit B” shall be reviewed and approved by the Town Engineer; however, partial release of the Improvement Guarantee, as set forth herein, shall not require amendment to the costs set forth in “Exhibit B”.

- d. If the DEVELOPER has not submitted or fails to maintain the Improvement Guarantee, then the DEVELOPER is in default of this District MOAPI and is subject to the provisions of Section 14.1 of this District MOAPI, and the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- e. The estimated cost of completion of the Public Improvements to be constructed as described on “Exhibit B” may increase in the future. Accordingly, the TOWN reserves the right to review and adjust the cost estimates at any time in the future, or to require the DEVELOPER to provide an updated estimate of costs, before or after DEVELOPER provides the Improvement Guarantee. The TOWN will make adjusted cost estimates according to changes in the Construction Cost Index as published by the ***Engineering News Record***. If the TOWN adjusts cost estimates for the Public Improvements, the TOWN shall give written notice to the DEVELOPER. The DEVELOPER shall, within thirty days after receipt of said written notice, give the TOWN a new or amended Improvement Guarantee in the amount of the adjusted cost estimates. If the DEVELOPER refuses or fails to so give the TOWN a new or amended Improvement Guarantee, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this District MOAPI, or spend such funds to finish the Public Improvements or correct deficiencies in the Public Improvements, or it may withhold building permits and certificates of occupancy within the Development, as the TOWN reasonably deems appropriate.
- f. If an Improvement Guarantee is to expire within thirty (30) calendar days and the DEVELOPER has not yet provided a satisfactory replacement, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this District MOAPI, or spend such funds to construct or finish the Public Improvements, or correct deficiencies in the Public Improvements, as the TOWN reasonably deems appropriate.

- g. If the Improvement Guarantee expires or the entity issuing the Improvement Guarantee becomes non-qualifying, then the TOWN shall furnish written notice to the DEVELOPER of the condition, and within thirty (30) days of receipt of such notice the DEVELOPER shall give the TOWN a substituted qualifying Improvement Guarantee, or augment the deficient security as necessary to bring the security into compliance with the requirements of this section. If the DEVELOPER refuses or fails to give the TOWN a substitute qualifying Improvement Guarantee, or augment the deficient security, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this District MOAPI, or spend such funds to construct or finish the Public Improvements, or correct deficiencies in the Public Improvements, and it may withhold building permits and certificates of occupancy within the Development, as the TOWN reasonably deems appropriate.
- h. If the DEVELOPER fails or refuses to construct the Public Improvements listed in “Exhibit B” or fails or refuses to finish the construction of the Public Improvements, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this District MOAPI, or spend such funds to construct or finish the Public Improvements, or correct deficiencies in the Public Improvements, as the TOWN reasonably deems appropriate.

## **2. CONSTRUCTION OF IMPROVEMENTS.**

- 2.1 Improvements to be Constructed.** In accordance with the policies and ordinances of the TOWN, the DEVELOPER shall construct all of the Public Improvements specified in “Exhibit B” and will comply with all additional provisions specified in “Exhibit F”. If there is a discrepancy between the Public Improvements shown on any approved plans or drawings and as listed in Exhibit B, then the larger quantity or more expensive improvement shall be required.
- 2.2 On-site and Off-site Rights-of-way, Easements, Licenses and Permits.** For full development of the DEVELOPMENT to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site Public Improvements as identified in “Exhibit B” and the approved development plans and convey the same to the TOWN. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the DEVELOPMENT shall be the

DEVELOPER's sole responsibility, subject to reimbursement as detailed in this MOAPI.

- a. All such conveyances shall be free and clear of liens, taxes and encumbrances and shall be by plat dedication or by Special Warranty in form and substance acceptable to the TOWN Attorney. The TOWN at the DEVELOPER's expense shall record all title documents. The DEVELOPER shall also furnish, at its own expense, an ALTA title policy for all interest(s) so conveyed, subject to approval by the TOWN Attorney.
- b. If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to construct the Public Improvements, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including court costs and attorneys' fees, the TOWN may incur in providing assistance.
- c. The TOWN and the DEVELOPER agree that the acquisition of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the transportation needs of the DEVELOPMENT are directly related to and generated by development intended to occur within the DEVELOPMENT and that no taking thereby will occur requiring any compensation.

### **2.3 Construction.**

- a. The DEVELOPER shall furnish and install, at its own expense, the Public Improvements listed in "Exhibit B" in conformance with the subdivision plat and final development plan, and with the construction plans, specifications and drawings approved by the TOWN. The Developer will cause his contractors to furnish the Town Engineer with a project schedule of proposed operations at least five (5) days prior to their commencement of construction work. Construction of the Public Improvements shall be completed within a reasonable time, not to exceed two calendar years from the date of commencement.

- b. If the DEVELOPER does not meet the above obligations in Section 2.3(a), then DEVELOPER shall be in default of the District MOAPI, and the TOWN may exercise its rights under Section 14.1 of this District MOAPI including the suspension of development activities by the TOWN including, but not limited to, withholding the issuance of building permits and certificates of occupancy.

**2.4 Utility Coordination and Installation.** In addition to the Public Improvements described in “Exhibit B” that are the DEVELOPER’s responsibility to construct, install and develop, the DEVELOPER shall also be responsible for coordination of and payment for installation of on-site and off-site electric, street lights, natural gas, telephone, cable television and other utilities required to serve the Development. All utilities within the Development shall be placed underground to the extent required by the *Frederick Municipal Code*.

**2.5 Utility Relocation.** The DEVELOPER shall pay the full cost of relocating existing utilities that the development of the SUBDIVISION may require. The DEVELOPER shall relocate all existing overhead utilities within the SUBDIVISION or in road right-of-ways adjacent to the SUBDIVISION, including but not limited to electric or telecommunications lines and cables, underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.

**2.6 Trash, Debris, Mud, Wind and Water Erosion.**

- a. **Erosion and Sediment Control Plan.** The DEVELOPER shall provide a wind and stormwater erosion and sediment control plan for review and acceptance by the TOWN. The plan shall address the existing and potential erosion and sediment problems to be created by the proposed development. Conservation measures used to mitigate these concerns shall be in accordance with standards and specifications in effect at the time of construction and may include by way of illustration, restrictions on the acreage of land stripped of vegetation, temporary seeding with grass cover, the use of geo-textile and erosion control mats, sprinkling of exposed ground, berms and sedimentation fences, chiseling exposed ground, etc. If applicable, The DEVELOPER shall consult the Soil Conservation District regarding erosion and sediment control.

- b. The DEVELOPER agrees that during construction of the development and the Public Improvements, the DEVELOPER shall take any and all reasonable steps necessary to control trash, debris and wind or water erosion in the development. If the TOWN determines that said trash, debris or wind or water erosion causes damage or injury or creates a nuisance, the DEVELOPER agrees to abate said nuisance and/or to correct any damage or injury within five (5) working days after notification by the TOWN. If the DEVELOPER does not abate said nuisance or if an emergency exists, to be determined by the TOWN in its reasonable discretion, the TOWN may abate the nuisance and/or correct any damage or injury without notice to the DEVELOPER, at the DEVELOPER's expense.
- c. The DEVELOPER agrees to take any and all reasonable steps necessary to prevent the transfer of mud or debris from the construction site onto public rights-of-way and to immediately remove such mud and debris from public rights-of-way after notification by the TOWN. If the DEVELOPER does not abate such mud or debris, or if an emergency exists, the TOWN may abate the same at the DEVELOPER's expense.

**2.7 State Stormwater Discharge Permit Required.** The DEVELOPER shall obtain, if required by state or local statutes or policies, a CDPS "General Permit for Stormwater Discharges Associated with Construction Activity" required during construction.

**2.8 Operation of Construction Equipment.**

- a. The DEVELOPER shall prohibit the operation of construction equipment outside an enclosed structure between the hours of 8:00 p.m. and the hour of 7:00 a.m. on weekdays, or the hour of 8:00 a.m. on legal holidays and weekends. The Town Engineer may, upon written application, alter the hours of operation for good cause.
- b. The operation of construction equipment for grading or constructing either surface improvements or underground utilities, either public or private, shall be prohibited between the hours of 8:00 p.m. and 7:00 a.m. on weekdays and 4:00 p.m. and 8:00 a.m. on legal holidays and weekends. Upon written request the Town Engineer may alter the hours of operations.

## **2.9 Testing and Inspection.**

- a. The DEVELOPER shall employ, at its own expense, a licensed and registered testing company, authorized to do business in the State of Colorado, to do all testing of materials or construction that the TOWN may reasonably require, including but not limited to compaction testing for embankment fills, structural backfills, pipe bedding, trench backfills, subgrade, road base course and asphalt, and concrete strength testing, and shall furnish copies of test results to the TOWN on a timely basis for TOWN review and acceptance before commencement or continuation of construction to which the testing is applicable. The DEVELOPER shall repair or remove all materials and work not conforming to such regulations, plans and specifications and replace the same at DEVELOPER's expense to conform to such regulations, plans and specifications.
- b. At all times during construction of the Public Improvements the TOWN and/or representatives of the affected Special Districts shall have reasonable access to inspect the materials and workmanship of said construction, determine the progress of the work, and determine compliance of the work with the accepted plans and the TOWN's and Districts' construction regulations. The TOWN Engineer or District's Engineer shall be present to inspect the pressure leakage testing of potable water lines conducted by the DEVELOPER. The TOWN may collect and deliver a water sample to Weld County Health Department for bacteriological tests of the potable water lines after the DEVELOPER has disinfected said lines according to the TOWN's or District's construction regulations, or the Town may require that the DEVELOPER shall employ, at the DEVELOPER's expense, a testing laboratory acceptable to the TOWN or District to conduct said bacteriological tests.
- c. All work shown on the accepted Public Improvements plans shall be subject to inspection by the TOWN Engineer. Inspection by the TOWN Engineer shall not relieve the DEVELOPER from compliance with the accepted plans and specifications or the TOWN's construction regulations. Inspection services requiring the presence of the TOWN Engineer are provided Monday through Friday, except legal holidays, from 9:00 a.m. to 4:00 p.m. During the hours listed above, inspections shall be scheduled a minimum of seventy-two (72) hours in advance with the TOWN Engineer. Requests for inspection services beyond the hours listed above, shall be

submitted a minimum of seventy-two (72) hours in advance to the TOWN Engineer for approval. All requests for after-hours inspection services shall be made in writing to the TOWN Engineer. If TOWN approves the request, the DEVELOPER shall reimburse the TOWN for all direct costs of the after-hours inspection services. If TOWN denies the request, the work shall not continue after the time requested until an inspection has been done during the hours listed above. The DEVELOPER shall comply with all notification and inspection requirements of the St. Vrain Sanitation District regarding sanitary sewer improvements.

- d. The Developer shall pay the Town for all costs incurred by the Town in the performance of the above said services within ten (10) days of the Town submitting an invoice for said services. Failure by the Developer to pay within the specified time shall be cause for the Town to deny future building permits and/or order cessation of all activities on the DEVELOPMENT.

## **2.10 Conditional Acceptance of Constructed Public Improvements.**

- a. No later than fourteen (14) days after Public Improvements are completed for each phase or for the entirety of the Development, the DEVELOPER shall request inspection by the TOWN. If the DEVELOPER does not request this inspection within fourteen (14) days of completion of the Public Improvements, the TOWN may conduct the inspection without the approval of the DEVELOPER.
- b. If the Public Improvements completed by the DEVELOPER are in substantial compliance with the approved Public Improvement plans, the TOWN shall grant “conditional acceptance,” which shall be subject to “final acceptance” as set forth herein. Through its Engineering Department, the TOWN shall issue to the DEVELOPER a letter acknowledging said conditional acceptance.
- c. If the Public Improvements completed by the DEVELOPER are not in substantial compliance with the approved Public Improvements plans, the TOWN shall provide written notice to the DEVELOPER of the repairs, replacements, construction or other work required to receive “conditional acceptance.” The DEVELOPER shall complete all needed repairs, replacements, construction or other work within thirty (30) days of said notice, weather permitting. After the DEVELOPER completes the repairs,

replacements, construction, or other work required, the DEVELOPER shall request of the TOWN a reinspection of such work to decide if the TOWN can grant “conditional acceptance.” The TOWN reserves the right to schedule reinspections, depending upon scope of deficiencies. The TOWN shall provide written notice to the DEVELOPER as to whether or not the work is acceptable before the TOWN acts to complete any such work at the DEVELOPER’s expense as provided in (d) below.

- d. If the DEVELOPER has not completed the Public Improvements on or before the completion dates set forth in “Exhibit B” herein, or if the DEVELOPER does not complete the repairs, replacements, construction or other work required within thirty (30) of said notice, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this District MOAPI.
- e. The DEVELOPER shall provide a certified statement of construction costs no later than forty-five (45) days after the Public Improvements are completed.
- f. The DEVELOPER shall provide the Town Engineer certified Record Plan Transparencies on Black Image Diazo Reverse Mylars (as-built) plans and other required drawings upon completion of the construction of Public Improvements, and other documents as required by the TOWN no later than forty-five (45) days after the Public Improvements are completed. These documents shall show “as-built” locations and design details of such Public Improvements. In addition, “as-built” plans and other required drawings for the Public Improvements shall be submitted by acceptable electronic transfer, AutoCAD™ drawing files (release 14, or later). Failure to provide the required as-built drawings may result in the suspension of development activities by the TOWN including, but not limited to, the issuance of building permits and certificates of occupancy.
- g. The TOWN shall issue no building permit for the construction of any structure in the Development until all the water lines, fire hydrants, sanitary sewer lines (if required), storm sewer facilities (including but not limited to storm sewers, catch basins and stormwater detention ponds) and streets (including but not limited to the curb, gutter and sidewalk, the street with top mat completed, and striping and signing installed) that are part of the Public Improvements serving such structure have been completed and granted conditional acceptance.

- h. The above requirements also apply to sewer and water improvements to be inspected and accepted by the appropriate Special District. The DEVELOPER shall obtain conditional acceptance of the relevant Public Improvements in writing from the appropriate Special District and provide a copy of the same to the TOWN.

**2.11 Maintenance and Warranty of Improvements.** For a two (2) year period, which is the greater of either two (2) years or two (2) winter seasons, from the date of conditional acceptance of the Public Improvements, the DEVELOPER shall warrant said Public Improvements and, at its own expense, take all actions necessary to maintain said Public Improvements and make all needed repairs or replacements that, in the reasonable opinion of the TOWN, shall become necessary. If within thirty (30) days after the DEVELOPER's receipt of written notice from the TOWN requesting replacement or repairs to the Public Improvements, the DEVELOPER has not completed such repairs, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this District MOAPI.

**2.12 Final Acceptance.**

- a. At least thirty (30) days before two (2) years have elapsed from the issuance of conditional acceptance, or as soon thereafter as weather permits, the DEVELOPER shall request a "final acceptance" inspection. The TOWN shall inspect the Public Improvements and shall notify the DEVELOPER in writing of all deficiencies and necessary repairs, if any.
- b. If there are no deficiencies, and after clear title to on-site and off-site right-of-ways and easements have been transferred to the Town by plat dedication special Warranty Deed, and after all licenses and permits necessary for the development of the SUBDIVISION and obtained by the DEVELOPER have been transferred to the TOWN, the TOWN shall accept streets, right-of-ways and other public ways, easements, open spaces, parks and other lands dedicated on the plat and accept the Public Improvements constructed by the DEVELOPER for ownership and maintenance by the TOWN and through the Engineering Department shall issue to the DEVELOPER a letter acknowledging said final acceptance.
- c. If there are deficiencies of the Public Improvements, the TOWN shall provide a written notice identifying the deficiencies and the DEVELOPER shall correct all deficiencies at the DEVELOPER's expense. Deficiencies

of Public Improvements that are considered in the sole opinion of the Town Engineer to be Major Improvements as defined in Section 1.1(c) shall be subjected to an additional two-year warranty period and shall not be granted final acceptance following the DEVELOPER's correction of the deficiencies. In the event that the warranty period is extended by an additional two years, the letter of credit or other improvement guarantee provided by the DEVELOPER shall be reevaluated for sufficiency by the TOWN, and the guarantee must be extended such that it does not expire during any additional warranty period. Corrections to Public Improvements that are not Major Improvements shall be eligible for final acceptance at the end of the initial two-year warranty period and shall not be subject to an additional warranty period.

- d. If the DEVELOPER does not correct all deficiencies and make repairs identified in the "final acceptance" inspection to the TOWN's satisfaction within thirty (30) days after receipt of said notice, weather permitting, the TOWN may exercise its rights to secure performance as is provided in Section 14.1 of this District MOAPI.
- e. If any mechanic's lien have been filed with respect to the Public Improvements, the TOWN may retain all or part of the Improvement Guarantee up to the amount of such liens until said liens have been released by the claimant or discharged by judicial action.
- f. If the DEVELOPER fails to submit the Public Improvements for the "final acceptance" inspection and obtain the Town's acceptance of the Public Improvements within two (2) years of the date of the issuance of conditional acceptance, or if any Public Improvements are found not to conform to this District MOAPI or to applicable TOWN standards and specifications, then the warranty period shall extend on a month to month basis and the DEVELOPER shall be in default of the District MOAPI and the TOWN may exercise its rights under Section 14.1 of this District MOAPI.
- g. The above requirements shall also apply to the sewer and water improvements that are part of the Public Improvements to be inspected and accepted by the appropriate Special District. The DEVELOPER shall obtain the final acceptance of the such Public Improvements in writing and provide a copy of the same to the TOWN.

3. **PUBLIC USE LAND DEDICATION.** Before the issuance of any building permits, the DEVELOPER shall convey to the TOWN those certain lands as described or depicted on the subdivision plat as dedicated to public uses. Said conveyance shall be by General or Special Warranty Deed in form and substance satisfactory to the Town Attorney. The DEVELOPER shall, at the DEVELOPER's expense, furnish a commitment for title insurance on the property at the time of conveyance. The property shall be free and clear of liens, taxes and encumbrances, except for ad valorem real property taxes for the calendar year of conveyance and thereafter, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and right-of-ways that would be readily apparent from a physical inspection. The TOWN shall record all title documents at the DEVELOPER's expense.

4. **WATER RIGHTS.**

4.1 **Water Rights.**

- a. It is agreed by the parties that the DEVELOPMENT will receive domestic water service from the (Left Hand Water District *or* Central Weld County Water District), and not from the TOWN. The DEVELOPER shall comply with the District's water right dedication requirements. The TOWN shall require proof of purchase of a water tap for the building site before TOWN will issue a building permit for the site.
- b. The TOWN may require the dedication of irrigation water rights that are to be used in the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN all non-tributary and not non-tributary groundwater as defined by C.R.S. § 37-90-103, whether adjudicated, unadjudicated, permitted or unpermitted, underlying the property.
- c. The TOWN and the DEVELOPER agree that the water rights dedications are directly related to and generated by development intended to occur within the DEVELOPMENT and that no taking thereby will occur requiring any compensation.

5. **WATER IMPROVEMENTS.**

- 5.1 **Water Service Availability.** The TOWN provides water service by an intergovernmental agreement with the Central Weld County Water District ("CWCWD"). The TOWN does not guarantee the availability of water service to

the DEVELOPER for any phase of the development from the CWCWD system. A determination of water service availability by the TOWN shall be made by a water system analysis at the time the DEVELOPER requests water taps.

## **5.2 Extension of Water Services.**

- a. The DEVELOPER shall install at its sole cost and expense all of the Public Improvements that constitute water mains, trunk lines, pumping and storage facilities and appurtenances necessary to provide service from the CWCWD system or the Left Hand Water District to the SUBDIVISION pursuant to the TOWN accepted plans, specifications, and as described in “Exhibit B.” These extensions may include the oversizing of lines and pumping and storage facilities for future development of adjacent property.
- b. The DEVELOPER shall install at its sole cost and expense, all of the Public Improvements that constitute water lines, fire hydrants and appurtenances within the SUBDIVISION. Water lines lying within the dedicated right-of-way and utility easements shall be dedicated to the TOWN after construction.
- c. Any reimbursements to the DEVELOPER for oversizing of water lines and other water facilities will be as specified by the TOWN.

## **5.3 Water Connection and Plant Investment Fees.**

- a. Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the DEVELOPER receives a building permit for a structure. Water connection and plant investment fees shall be paid when a building permit for a structure is released by the TOWN. Colorado Big Thompson (“CBT”) water shares are acceptable in lieu of cash payment for the CBT water share portion of the water tap fee for each water tap.
- b. If the SUBDIVISION is not already in the Northern Colorado Water Conservancy District, the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.

- c. If the subdivision is not already in the Municipal Subdistrict of the Northern Colorado Water Conservatory District, the DEVELOPER agrees to petition for inclusion in said Subdistrict and to the payment of any fees and taxes levied by the Subdistrict as a condition of said inclusion.

## **6. SANITARY SEWER SERVICES**

### **6.1 Provision of Sanitary Sewer Service.**

- a. The TOWN provides sewer service by an intergovernmental agreement with the St. Vrain Sanitation District. The DEVELOPER shall comply at the time of development with the District's requirements.
- b. If the SUBDIVISION is not already in the St. Vrain Sanitation District the DEVELOPER agrees to petition for inclusion in said District and to the payment of any fees and taxes levied by the District as a condition of said inclusion.
- c. The TOWN shall require proof of purchase of a sewer tap for a building site before the TOWN will issue a building permit for the site.

### **6.2 Extension of Sanitary Sewer Services.**

- a. The DEVELOPER shall install at its sole cost and expense, all of the Public Improvements that constitute the sewer mains, trunk lines, pumping facilities and appurtenances necessary to provide service from the District's system to the SUBDIVISION pursuant to District accepted plans, specifications, and as described in "Exhibit B." These extensions may include the oversizing of lines and pumping facilities for future development of adjacent property.
- b. The DEVELOPER shall install at its sole cost and expense, all of the Public Improvements that the constitute sewer lines and appurtenances within the SUBDIVISION. Sewer lines lying within the dedicated right-of-way and non-exclusive utility easements shall be dedicated to District after construction.
- c. Any reimbursements to the DEVELOPER for oversizing of sewer lines and other sewer facilities will be as specified by the District.

**6.3 Sanitary Sewer Service Availability.** The TOWN does not warrant the availability of sanitary sewer service to the DEVELOPER for any phase of development. A determination of sanitary sewer service availability by the District shall be made by a system analysis at the time the DEVELOPER requests sanitary sewer taps.

**6.4 Sanitary Sewer Tap and Plant Investment Fees.**

- a. Sanitary sewer tap and plant investment fees shall be paid to the existing District sanitary sewer tap and plant investment fees at the time that the DEVELOPER requests sewer taps.
- b. The TOWN shall require proof of payment of the sewer tap and plant investment fees for a building site before the TOWN will issue a building permit for the site.

**7. ELECTRIC SERVICES.**

**7.1 Provision of Electric Service.** The parties agree that the SUBDIVISION will receive electric service from the applicable utility. The DEVELOPER shall comply at the time of development with the utility's requirements for the extension of main feeder lines, internal subdivision distribution systems, service connections and the payment of any system capital investment fees required by the utility to the utility at the time that the DEVELOPER requests electric service. All electric facilities serving the SUBDIVISION and constructed by the DEVELOPER shall be dedicated to the utility prior to final acceptance.

**8. DRAINAGE IMPROVEMENTS**

**8.1 Provision of Storm Water Drainage.** It is agreed by the parties that the SUBDIVISION will participate in the storm water drainage system provided by the TOWN. The DEVELOPER shall comply at the time of development with the Town's requirements.

- a. The DEVELOPER shall construct all of the Public Improvements that constitute the drainage improvements for the development in accordance with the master drainage plan for the DEVELOPMENT prepared by the DEVELOPER and reviewed and accepted by the TOWN and the responsible drainage district, if any. These Public Improvements may consist of on-site and off-site improvements, including but not limited to,

storm water lines, drainage swales, pumping, detention facilities and storm water treatment facilities. These Public Improvements may include the oversizing of facilities to accommodate future development of adjacent property or to accommodate pass-through of historical flows from adjacent property.

- b. The DEVELOPER shall install at its sole cost and expense, all of the Public Improvements that constitute the storm water lines, drainage swales, pumping, detention and storm water treatment facilities within the SUBDIVISION. The DEVELOPER shall install at its sole cost and expense, such sedimentation and erosion control measures as are required.
- c. The DEVELOPER shall install at its sole cost and expense, all of the Public Improvements that constitute groundwater and foundation drainage systems as may be required for development of the SUBDIVISION. Operation Maintenance of any such ground water and foundation drainage system shall remain the responsibility of the DEVELOPER until specifically transferred to individual lot owner or an owners' association.
- d. Any reimbursements to the DEVELOPER for oversizing of storm sewer lines and other storm water facilities, or the construction of off-site facilities will be as specified in this MOAPI.

## **8.2 Master Drainage Plan.**

- a. The DEVELOPER, at its sole expense shall prepare a master drainage plan for the SUBDIVISION. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection, detention and treatment facilities for on-site storm water and the pass-through of off-site historical storm water flows based on the 100-year storm flows. If the master drainage plan results in changes to drainage affecting other property or facility owners, the TOWN may require the DEVELOPER to obtain written consent from each property or facility owner for the changes before the TOWN will accept the plan.
- b. Storm water discharges and runoff shall be designed to discharge into the TOWN accepted drainage ways and facilities, and shall, to the maximum extent possible, avoid conveying storm water discharges in irrigation ditches. In the event that storm water discharges into an irrigation ditch, the DEVELOPER shall by separate agreement obtain the written consent

of the owner(s) of the irrigation facility to accept said storm water. A copy of the agreement shall be provided to the TOWN before the TOWN will accept the master drainage plan.

- c. The master drainage plan shall define the DEVELOPER's responsibility for on-site surface drainage improvements. The master drainage plan shall include construction of facilities to convey, collect and detain storm water and to remove pollutants from it.
- d. The master drainage plan shall define the DEVELOPER's responsibility for groundwater and foundation drainage improvements, if any. Groundwater and foundation drainage improvements shall not discharge into public storm water facilities or improvements without prior written acceptance by the TOWN. The DEVELOPER shall be responsible for obtaining all state and federal permits that may be required for the discharge of this groundwater to the state waters. Any groundwater drainage system facilities to be located within Town rights-of-way shall require the Town's approval of a License Agreement. The DEVELOPER shall be responsible for ongoing maintenance of all improvements necessary to transport groundwater to a natural drainageway or storm sewer system approved by the TOWN.
- e. The master drainage plan shall define the DEVELOPER's responsibility for off-site improvements including the oversizing of facilities.
- f. The TOWN may require the DEVELOPER to update the master drainage plan for the SUBDIVISION for the review of each final plat of a phased project to determine the design, timing, and responsibility for the improvements.

### **8.3 Drainage Improvement Construction.**

- a. The DEVELOPER shall construct all of the Public Improvements that constitute the drainage improvements for the DEVELOPMENT in accordance with the Town's Master Drainage Plan and plans and construction specifications accepted by the TOWN and as described in "Exhibit B."
- b. The DEVELOPER shall so design and construct all storm drainage facilities that are part of the Public Improvements as to control all

stormwater runoff greater than that historically generated from the SUBDIVISION. The DEVELOPER shall not alter historic flows in a way that would adversely affect upstream or downstream properties.

- c. The DEVELOPER shall construct all such Public Improvements in an appropriate sequence to meet the demands that development of the SUBDIVISION generates. The DEVELOPER shall meet all TOWN standards and specifications in effect at the time of construction.

**8.4 Overlot Grading of the SUBDIVISION.** DEVELOPER shall initiate no overlot grading until the TOWN issues written acceptance of utility plans. The DEVELOPER shall provide temporary erosion control during overlot grading until the drainage improvements are completed.

**8.5 Drainage Improvement Completion Before Issuance of Building Permits.** That portion of the Public Improvements that constitute drainage improvements shall be completed and granted conditional acceptance by the TOWN before the issuance of building permits. Completion of such Public Improvements shall include the certification by a licensed professional engineer that the DEVELOPER has constructed the drainage facilities that serve the development in conformity with the plans reviewed by the TOWN. Any deviation from the accepted plans shall be the responsibility of the DEVELOPER to correct. Said certification shall be submitted to the TOWN at least two (2) weeks before the date of issuance for any subsequent building permit.

**8.6 Modification of Accepted Drainage Improvements.** That portion of the Public Improvements that constitute drainage improvements for each lot shall be constructed by the DEVELOPER in accordance with plans Approved by the TOWN. Said plans shall conform to the TOWN's then existing regulations. The DEVELOPER shall furnish copies of accepted plans to subsequent purchasers of lots and record a disclosure with all lots sold that it shall be the responsibility of the fee title holder to maintain the stormwater drainage improvements as constructed. Any changes from the Approved plans with respect to grade elevation, storm drainage facility design, or landscaping that will change, modify, impede or otherwise block the flow of stormwater on or across any private property, that occur as a result of the construction of houses and/or other development of lots, whether by the DEVELOPER or other parties, shall require the acceptance of the TOWN. The TOWN may withhold the issuance of building permits and certificates of occupancy until the TOWN has reviewed and

determined that such changes are acceptable for the safe and efficient delivery of storm drainage water.

**8.7 Storm Water Capital Expansion Fees.** The DEVELOPER shall pay any storm water capital expansion fees to the TOWN.

**8.8 Areas of Special Flood Hazard.** Construction within a FEMA designated “area of special flood hazard” is prohibited except as may be allowed in accordance with Article 8 of the Frederick Land Use Code. If any portion of the SUBDIVISION lies within an area of special flood hazard, including unmapped areas of special flood hazard, as defined by the Federal Emergency Management Agency (FEMA), the DEVELOPER is responsible for all the necessary design and the submittal of an application to FEMA for proposed changes to the designation to enable development of the SUBDIVISION within said areas. The TOWN must review and accept any submittal to FEMA before it is submitted to FEMA. FEMA shall approve any change in the area of special flood hazard designation before they will permit the DEVELOPER to undertake development activities within the area affected by the proposed change.

## **9. TRANSPORTATION FACILITIES**

**9.1 Traffic Impact Study.** The DEVELOPER shall provide the TOWN a traffic impact study prepared by a transportation professional with adequate experience in transportation engineering and planning, in accordance with the criteria specified by the TOWN at the time of submittal of a final plat, unless the TOWN waives the requirement. The traffic impact study shall give special consideration to the use of traffic calming techniques and alternative modes of transportation in the design of the transportation facilities.

### **9.2 Off-site and On-site Rights-of-way, Easements, Licenses and Permits.**

- a. For full development of the SUBDIVISION to occur, the DEVELOPER may need to acquire certain off-site and on-site rights-of-way, easements, licenses and permits for the construction of off-site and on-site improvements, as identified in the accepted traffic study or future updates to the study. All acquisition costs of off-site and on-site rights-of-way, easements, licenses and permits necessary to serve the SUBDIVISION shall be the DEVELOPER’s sole responsibility, subject to reimbursement as detailed in this MOAPI.

- b. If the DEVELOPER cannot acquire an off-site or on-site easement or rights-of-way necessary to develop the SUBDIVISION, the DEVELOPER may request the TOWN's assistance in getting the easements or rights-of-way. Such assistance by the TOWN shall be in compliance with Colorado law authorizing the TOWN's use of eminent domain. The DEVELOPER shall advance to the TOWN all acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

**9.3 On-site and Off-site Transportation Improvements.** For full development of the SUBDIVISION to occur, certain on-site and off-site transportation improvements, as identified in the accepted traffic study, may be necessary. The DEVELOPER shall construct the improvements in a sequence acceptable to the TOWN to meet the demands that development of each phase of the SUBDIVISION will generate. The DEVELOPER shall follow all applicable provisions and standards of the Frederick Municipal Code. The DEVELOPER agrees to construct or contribute to the construction of all on-site and off-site transportation improvements shown to accommodate transportation needs that each phase of the SUBDIVISION development will generate.

**9.4 On-site and Off-site Arterial Street Improvements and Arterial Intersection Improvements.** The DEVELOPER's construction of on-site and off-site arterial street improvements and arterial intersection improvements in excess of the cost of a collector street and collector street intersection, excluding on-site rights-of-way and site-specific improvements, will be subject to reimbursement by the TOWN or adjacent benefitted property as specified in this MOAPI.

**9.5 On-site Transportation Improvements.** The DEVELOPER is solely responsible for construction of all transportation improvements to accommodate development of the SUBDIVISION that do not directly benefit other properties. The TOWN will not provide for reimbursement to the DEVELOPER for these expenses.

**9.6 Street Improvements.** For the purposes of this District MOAPI, "street improvements" shall be defined to include, but not limited to, all improvements within the right-of-way such as bridges, sub-base preparation, road base, asphalt, concrete, seal coat, curb and gutter, medians, entryways, traffic calming features, underground utilities, sidewalks, bicycle and pedestrian paths, traffic signs, street lighting, street name signs, landscaping, irrigation systems and drainage improvements. Street improvements other than curbs, gutters, sidewalks and signs, shall not be installed until all utility lines to be placed within the right-of-way have been completely installed, including individual lot service lines leading

in from the main to the property line. All streets shall be constructed and installed pursuant to TOWN accepted plans, specifications, and as detailed in “Exhibit B.”

**9.7 Street Signs, Traffic Signs and Striping.** The DEVELOPER will install the striping, street name signs, stop signs, speed limit signs and other regulatory signs on all internal streets and on those off-site streets as determined appropriate by the TOWN. DEVELOPER shall install signs and striping in accordance with the Model Traffic Code, as from time to time amended, and other applicable legal requirements.

**9.8 Street Lights.** The DEVELOPER will install all required street lighting and underground electrical supply.

**9.9 Mail Boxes.** The DEVELOPER shall coordinate with the U.S. Postal Service and bear the cost of installing cluster mailboxes for the subdivision, if applicable.

## **10. PARKS AND OPENSOURCE**

### **10.1 Park and Open Space Improvements.**

- a. **Park Master Plan.** Park and open space improvements for the development shall be designed by a professional park planner employed by the DEVELOPER, or by the TOWN at the DEVELOPER’s sole cost, and constructed in accordance with the resulting master plan accepted by the TOWN (and the Carbon Valley Recreation District, if the park and/or open space is to be dedicated to the District) and as detailed in “Exhibit B”. These improvements may include but not be limited to, the development of passive use open spaces and active use parks and open space and playgrounds.
- b. The DEVELOPER shall construct, develop and install at his sole cost and expense, all landscaping, irrigation systems, ballfields, courts, skate parks, playgrounds, picnic shelters, restrooms, nature observation stations, trails and walkways within the SUBDIVISION in accordance with the master park plan.
- c. Any reimbursements to the DEVELOPER for the construction of facilities to be shared by other developments will be as specified in this MOAPI.

**11. FIRE PROTECTION FACILITIES.** The DEVELOPER shall be solely responsible for installing all fire hydrants and other fire protection facilities in the SUBDIVISION and on its perimeter as may be required by the Frederick-Firestone Fire Protection District.

## **12. LANDSCAPING.**

### **12.1 Public and Private Landscape Improvements.**

- a. **Public Landscaping Improvements.** The DEVELOPER shall employ a qualified landscape planner or architect to design landscape improvements for public lands and rights-of-way within the development. The DEVELOPER shall construct all of the Public Improvements that constitute landscape improvements as required in the landscape plan reviewed and accepted by the TOWN and as detailed in "Exhibit B."
- b. **Private Landscaping Improvements.** For private landscape and irrigation improvements, excluding single family detached residential lots, the DEVELOPER shall furnish a final landscape plan to the TOWN for review and acceptance before installation of landscape improvements.

## **13. DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.**

The TOWN and the DEVELOPER agreed that in all instances the requirements and exactions contained in this agreement are directly related to and generated by the development intended to occur within the SUBDIVISION and that no takings thereby will occur requiring any compensation.

## **14. MISCELLANEOUS TERMS**

- 14.1 Breach of District MOAPI, Default.** In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants and undertakings of this District MOAPI, the TOWN in its sole discretion may declare the DEVELOPER in default and after giving thirty (30) days written notice may call the security provided in Section 1.12 and exercise all other remedies available to the TOWN. The TOWN may withhold any additional building permits, certificates of occupancy, or provision of new utilities, fixtures or services until the completion of the Public Improvements as set forth herein. Any cost incurred by the TOWN including, but not limited to, administrative costs and reasonable attorneys' fees, in pursuit of any remedies due to the breach by the DEVELOPER shall be paid by the DEVELOPER. The TOWN may deduct these costs from the Improvement Guarantee. Failure to timely complete construction of improvements that is solely due to inclement weather, acts of God, material shortages, labor strikes, pandemics or epidemics (including supply chain issues and governmental orders resulting therefrom) and other matters not within

the DEVELOPER'S control shall not be considered a breach of the District MOAPI.

**14.2 Reimbursement to TOWN.** The TOWN may complete construction, repairs, replacements, or other work for the DEVELOPER pursuant to Sections 1.8, 1.9, 1.10, or 14.1 of this District MOAPI with funds other than the Improvement Guarantee, in which event the DEVELOPER shall reimburse the TOWN for all costs and expenses within thirty (30) days after receipt of written demand and supporting documentation from the TOWN. If the DEVELOPER fails to so reimburse TOWN, then the DEVELOPER shall be in default of the District MOAPI and the TOWN may exercise its rights under Section 14.1 of this District MOAPI.

**14.3 Access to Public Street Required for Building Permit.** The TOWN shall issue no building permits for any structure located more than five hundred feet from a single point of access.

**14.4 Indemnification and Release of Liability.**

- a. **General Liability.** To the extent permitted by law, the DEVELOPER agrees to indemnify and hold harmless the TOWN, its officers, employees, agents, and servants, and to pay any judgments rendered against said persons because of any suit, action, or claim caused by, arising from, or due to acts or omissions by the DEVELOPER, its officers, employees, agents, consultants, contractors, and subcontractors, and to pay to the TOWN and said persons their reasonable expenses, including, but not limited to, reasonable attorneys' fees and reasonable expert witness fees, incurred in defending any such suit, action or claim; provided, however, that the DEVELOPER's obligation herein shall not apply to the extent said suit, action or claim results from any acts or omissions of officers, employees, agents or servants of the TOWN or conformance with requirements imposed by the TOWN. Said obligation of the DEVELOPER shall be limited to suits, actions or claims based upon conduct before "final acceptance" by the TOWN of the construction work. The DEVELOPER acknowledges that the TOWN's review and approval of plans for development of the property is done in furtherance of the general public's health, safety and welfare and that no immunity is waived and that no specific relationship with, or duty of care to, the DEVELOPER or third party is assumed by such review or approval.

- b. **Drainage Liability.** To the extent permitted by law, the DEVELOPER shall indemnify and hold harmless the TOWN for any liability the latter may have or account of any change in the nature, direction, quantity, or quality of historical drainage flow resulting from the development of this DEVELOPMENT or from the construction of streets or storm sewers therein. In addition, the DEVELOPER promises to reimburse the TOWN for any costs including, but not limited to, reasonable attorneys' fees, which the TOWN incurs in acquiring or condemning any rights-of-way or easements that the DEVELOPER requires the TOWN to acquire or condemn, or which the TOWN is held to have acquired or condemned for drainage, because of the development of this DEVELOPMENT.

**14.5 Governmental Immunities Act.** The TOWN and the DEVELOPER are relying on, and do not waive or intend to waive by any provision of this District MOAPI, the monetary limitations or any rights, immunities and protection provided by the Colorado Governmental Immunities Act (C.R.S. 24-10-101 et seq.) as from time to time amended, or otherwise available to the TOWN or the DEVELOPER, or any of their officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

**14.6 Recording of District MOAPI.** This District MOAPI shall be recorded with the Weld County Clerk and Recorder and shall be a covenant running with the land herein described in order to put prospective purchasers or other interested parties on notice as to the terms and provisions hereof. The DEVELOPER shall include on the final plat a "plat note" noting the existence of the District MOAPI and its attached Exhibits by reference to its reception number as recorded by the Weld County Clerk and Recorder. All recording fees shall be paid by the DEVELOPER. The TOWN shall retain the recorded District MOAPI.

**14.7 Binding Effect of District MOAPI.** This District MOAPI shall run with the land included within the SUBDIVISION and shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

**14.8 Assignment, Delegation and Notice.** The DEVELOPER shall provide to the TOWN for approval, written notice of any proposed transfer of title to any portion of the Development and of the District MOAPI obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. The DEVELOPER and successor shall, until written TOWN approval of the proposed transfer of title and delegation of obligations, be jointly and

severally liable for the obligations of the DEVELOPER under this District MOAPI.

**EXCEPTION:** The DEVELOPER may sell individual developed lots, commercial lots or single units in a multi-family development without the TOWN's approval.

**14.9 Modification and Waiver.** No modification of the terms of this District MOAPI shall be valid unless in writing and executed with the same formality as this District MOAPI, and no waiver of the breach of the provisions of any section of this District MOAPI shall be construed as a waiver of any subsequent breach of the same section or any other sections that are contained herein.

**14.10 Addresses for Notice.** Any notice or communication required or permitted hereunder shall be given in writing and shall be personally delivered, or sent by United States mail, postage prepaid, registered or certified mail, return receipt requested, addressed as follows:

|                                                                                                           |                                                                                                                                                    |
|-----------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>TOWN:</b><br>Town of Frederick<br>c/o Town Clerk<br>P.O. Box 435<br>Frederick, Colorado 80530          | <b>DEVELOPER:</b><br>Frederick-Firestone Fire Protection<br>District<br>Attn: Fire Chief<br>8426 Kosmerl Place<br>Frederick, CO 80504              |
| With copy to:<br>Fairfield and Woods, P.C.<br>1801 California Street, Suite 2600<br>Denver, CO 80202-2645 | With a copy to:<br>Ireland Stapleton Pryor & Pascoe, PC<br>Attn: Elizabeth Woodward<br>717 17 <sup>th</sup> Street, Suite 2800<br>Denver, CO 80401 |

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

**14.11. Force Majeure.** Whenever an agreed upon deadline requires the DEVELOPER to complete construction, maintenance, repair, or replacement of improvements, said deadline shall be extended for a reasonable time if the performance cannot be completed in a timely manner due to Acts of God, or other circumstances

constituting force majeure (including those conditions listed in Section 14.1), or circumstances beyond the control of the DEVELOPER.

- 14.12. Approvals or Acceptance.** Whenever approval or acceptance of a matter is required or requested of the TOWN pursuant to any provisions of this District MOAPI, the TOWN shall act reasonably in responding to such matter.
- 14.13. Previous Agreements.** All previous written and recorded agreements between the parties, their successors, and assigns, including, but not limited to, any Annexation Agreement, shall remain in full force and effect and shall control this Development. If any prior agreements conflict with this District MOAPI, then this District MOAPI controls.
- 14.14. Title and Authority.** The DEVELOPER warrants to the TOWN that it is the record owner for the property within the Development or is acting in accordance with the currently valid and unrevoked power of attorney of the record owner hereto attached. The undersigned further warrant to have full power and authority to enter this District MOAPI.
- 14.15. Severability.** This District MOAPI is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of the DEVELOPER or any agent thereof, any provision of the District MOAPI is held to violate municipal, state, or federal laws and thereby rendered unenforceable, the TOWN, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.
- 14.16. Original Counterparts.** This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.
- 14.17. Choice of Law and Venue.** This District MOAPI is to be governed and construed according to the laws of the State of Colorado. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State courts located in the County of Weld, State of Colorado. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in

accordance with this paragraph, and stipulates that the State courts located in the County of Weld, State of Colorado shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

- 14.18.** Developer affirms that the obligations set forth herein are the obligations SCLHS is assigning to it pursuant to the Partial Release and Assignment, as successor in title to SCLHS for Lot 1.
- 14.19.** The special provisions as contained in the attached Exhibit F shall apply to Lot 1.
- 14.20.** The estimated cost of construction for public improvements for Lot is as contained in the attached Exhibit B.
- 14.21.** In the event of any conflict between the SCL MOAPI and the terms of this District MOAPI with regard to Lot 1, the terms of this District MOAPI shall prevail as to Lot 1.
- 14.22.** This District MOAPI may be executed in any number of counterparts, each of which shall be deemed to be an original and all such counterparts taken together shall be deemed to constitute one and the same instrument.

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

**TOWN OF FREDERICK**

**DEVELOPER**

By \_\_\_\_\_  
Tracie Crites, Mayor

By \_\_\_\_\_  
Name, Title

**ATTEST:**

By \_\_\_\_\_  
Meghan C. Martinez, Town Clerk

STATE OF COLORADO)

) SS:

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_ as Mayor and \_\_\_\_\_ as Town Clerk  
of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

STATE OF COLORADO)

) SS:

COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20\_\_ by \_\_\_\_\_(signatory's name) as \_\_\_\_\_  
(position/title).

My commission expires:

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**EXHIBIT A**

**MAP AND LEGAL DESCRIPTION**

## **EXHIBIT B**

### **PUBLIC IMPROVEMENTS TO BE CONSTRUCTED**

**Project Name: Frederick Firestone Firestation #5**Probable Cost for **Public Infrastructure** as it relates to the above referenced project

| DESCRIPTION                                  | UNITS OF MEASURE | ESTIMATED QUANTITY<br>(PROVIDED BY THE PROJECT ENGINEER) | INFRASTRUCTURE<br>CONSTRUCTION COST PER<br>UNIT OF MEASURE | TOTAL ESTIMATED<br>INFRASTRUCTURE<br>COST |
|----------------------------------------------|------------------|----------------------------------------------------------|------------------------------------------------------------|-------------------------------------------|
| <b>Sanitary Sewer System</b>                 |                  |                                                          |                                                            |                                           |
| Clearing & Grubbing General                  | LS               | 1                                                        | \$2,500.00                                                 | \$2,500.00                                |
| Sanitary Sewer Main (Pipe/Bedding)           | L.F.             | 512                                                      | \$37.00                                                    | \$18,936.60                               |
| Tap Manhole                                  | EACH             | 1                                                        | \$1,400.00                                                 | \$1,400.00                                |
| Manhole                                      | EACH             | 2                                                        | \$4,250.00                                                 | \$8,500.00                                |
| Sewer Service Line Stub                      | EACH             | 1                                                        | \$470.00                                                   | \$470.00                                  |
| <b>Sanitary Sewer Cost</b>                   |                  |                                                          |                                                            | <b>\$31,806.60</b>                        |
| <b>Water System</b>                          |                  |                                                          |                                                            |                                           |
| Tee Assembly & Thrust Block                  | EACH             | 1                                                        | \$3,750.00                                                 | \$3,750.00                                |
| Water Main                                   | L.F.             | 256                                                      | \$42.00                                                    | \$10,747.80                               |
| Bends w/ Thrust Block                        | EACH             | 2                                                        | \$380.00                                                   | \$760.00                                  |
| Water Service Line Stub                      | EACH             | 1                                                        | \$470.00                                                   | \$470.00                                  |
| Fire Hydrant                                 | EACH             | 1                                                        | \$5,200.00                                                 | \$5,200.00                                |
| Valves                                       | EACH             | 3                                                        | \$950.00                                                   | \$2,850.00                                |
| Meter Pit (1 1/2")                           | EACH             | 1                                                        | \$3,250.00                                                 | \$3,250.00                                |
| <b>Water Cost</b>                            |                  |                                                          |                                                            | <b>\$27,027.80</b>                        |
| <b>Public Storm Sewer System</b>             |                  |                                                          |                                                            |                                           |
| Reinforced Concrete Pipe (Outlet Pipe & Bed) | L.F.             | 190                                                      | \$52.00                                                    | \$9,880.00                                |
| Flared End Section (FES)                     | EACH             | 1                                                        | \$1,100.00                                                 | \$1,100.00                                |
| Detention Pond (w/ outlet structure)         | AC               | 0.12                                                     | \$90,000.00                                                | \$10,800.00                               |
| Riprap                                       | TON              | 40                                                       | \$100.00                                                   | \$4,000.00                                |
| <b>Storm Cost</b>                            |                  |                                                          |                                                            | <b>\$25,780.00</b>                        |
| <b>Street System/ Trench</b>                 |                  |                                                          |                                                            |                                           |
| Pavement Removal & Haul                      | S.Y.             | 611                                                      | \$4.00                                                     | \$2,444.44                                |
| Grading                                      | L.S.             | 1                                                        | \$2,000.00                                                 | \$2,000.00                                |
| Pavement (Including Utility Patch)           | S.Y.             | 344                                                      | \$52.00                                                    | \$17,911.11                               |
| Curb & Gutter                                | L.F.             | 337                                                      | \$50.00                                                    | \$16,850.00                               |
| Detached Sidewalk                            | L.F.             | 141                                                      | \$62.00                                                    | \$8,742.00                                |
| Pedestrian Ramps                             | L.F.             | 12                                                       | \$175.00                                                   | \$2,100.00                                |
| Apron / Pan                                  | S.Y.             | 94                                                       | \$92.00                                                    | \$8,688.89                                |
| Gates                                        | L.S.             | 2                                                        | \$2,800.00                                                 | \$5,600.00                                |
| Landscaping                                  | S.F.             | 750                                                      | \$6.25                                                     | \$4,687.50                                |
| <b>Street Cost</b>                           |                  |                                                          |                                                            | <b>\$69,023.94</b>                        |
| <b>Base Cost</b>                             |                  |                                                          |                                                            | <b>\$153,638.34</b>                       |
| 15% Contingency                              |                  |                                                          |                                                            | <b>\$ 23,045.75</b>                       |
| <b>TOTAL PUBLIC INFRASTRUCTURE COST</b>      |                  |                                                          |                                                            | <b>\$ 176,684.10</b>                      |

Note, costs and quantities are estimates and are approximate. They are based off of best available information at the time of the estimate.  
Lamp Rynearson does not warrant or guarantee the quantities or costs indicated in this document.

## EXHIBIT C

(Sample)

(BANK LETTERHEAD)

### IRREVOCABLE LETTER OF CREDIT

Town of Frederick  
P.O. Box 435  
Frederick, CO 80530

No.  
Date:  
Expiration:

Gentlemen:

We hereby authorize you to draw on us for the account of \_\_\_\_\_ (Insert the name and account number of the DEVELOPER) up to an aggregate amount of \$ \_\_\_\_\_ (100% of estimated cost of improvements) available by your drafts at sight for one hundred percent (100%) face value accompanied by your signed statement that the above is drawn in payment of public improvements pursuant to:

(Insert the title of the Memorandum of Agreement for Public Improvements)

Each draft presented under this letter of credit must state that it is drawn under \_\_\_\_\_ (Title of Bank and identification of the Letter of Credit) and the amount endorsed on this letter of credit.

We hereby agree the drawers, endorsers and bona fide holders of all drafts drawn under and in compliance with the terms of this credit that such drafts will be duly honored upon the presentation to the drawee.

Yours, very truly,

By: (signature of authorized bank officer)

Title: (title of signator)

Attest:

## **EXHIBIT F**

### **SPECIAL PROVISIONS APPLYING TO MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

This Exhibit F is attached to and incorporated into that certain Memorandum of Agreement for Public Improvements for the Wyndham Hill Filing 6, Amendment A subdivision by and between the Town of Frederick, a Colorado municipal corporation and Frederick-Firestone Fire Protection District, whose address is 8426 Kosmerl Place, Frederick, CO 80504 (“DEVELOPER”). In the Event of any conflict between any paragraph, sentence or clause of the Exhibit F and similar provisions elsewhere in the MOAPI, the paragraph, sentence or clause of the Exhibit F shall control.

1. Section 3 of the MOAPI is hereby deleted as not applicable to the Frederick-Firestone Fire Protection District. In the event the DEVELOPMENT is ultimately developed by another entity or person, the TOWN may require the new developer to comply with Section 3.
2. Section 9.1 has been complied with as to the Frederick-Firestone Fire Protection District’s responsibilities for the DEVELOPMENT. In the event Lot 1 is not developed as a fire station or for ancillary uses thereto in substantial compliance with the current site plan, the TOWN may require that a new traffic study that complies with Section 9.1 be prepared and submitted.
3. All direct and indirect financial obligations of a party under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations.

**PARTIAL RELEASE AND ASSIGNMENT OF  
SCLHS/EXEMPLA FREDERICK MEDICAL CAMPUS  
MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS**

This Partial Release and Assignment of SCLHS/EXEMPLA Frederick Medical Campus Memorandum of Agreement for Public Improvements (“Agreement”) is made and entered this \_\_\_ day of \_\_\_\_\_, 2022, by and between the Town of Frederick, a Colorado municipal corporation, who address is P.O. Box 435, Frederick, Colorado (“Town”), Sisters of Charity of Leavenworth Health System, Inc., a Kansas non-profit corporation, who address is 500 Eldorado Boulevard, Suite 4300, Broomfield, CO 80021 (“SCLHS”), and Frederick-Firestone Fire Protection District, a political subdivision of the State of Colorado, whose address is 8426 Kosmerl Place, Frederick, CO 80504 (“District”) (collectively, the “Parties”).

**RECITALS**

**WHEREAS**, Town and SCLHS are parties to that certain SCLHS/Exempla Frederick Medical Campus Memorandum of Agreement for Public Improvements dated September 29, 2012 and recorded October 2, 2012 at Reception No. 3877845 in the Office of the Clerk and Recorder of Weld County, Colorado (“SCL MOAPI”);

**WHEREAS**, the SCL MOAPI requires SCLHS to complete certain public improvements related to the development of certain vacant land legally described as Wyndham Hill Filing No. 6 – SCLHS/EXEMPLA FREDERICK MEDIAL CAMPUS FINAL PLAT recorded October 2, 2012 at Reception No. 3877847 in the Office of the Clerk and Recorder of Weld County, Colorado (“SCL Parcel”);

**WHEREAS**, SCLHS’s obligations to complete certain public improvements related to the SCL Parcel under the SCL MOAPI include public improvements on or related to that parcel of vacant land to be legally described as Lot 1 of Wyndham Hill Filing No. 6, Amendment A (“Lot 1”) according to the plat thereof (“Amendment A Plat”), which lot is located entirely within the SCL Parcel;

**WHEREAS**, as of even date herewith, SCLHS is causing the Amendment A Plat to be recorded in the Office of Clerk and Recorder of Weld County, Colorado and is conveying Lot 1 to the District;

**WHEREAS**, as of even date herewith, the TOWN and the District are entering into that certain Memorandum of Agreement of Public Improvements for Lot 1 related to the construction of certain improvements by the District in connection with the development of Lot 1, as more particularly described therein (“District MOAPI”);

**WHEREAS**, certain obligations currently held by SCLHS for Lot 1, and set forth in the District MOAPI, will now be assigned to the District, thereby releasing SCLHS from those obligations.

**NOW, THEREFORE**, in consideration of the foregoing and the respective Agreements of the Parties contained herein, the Parties agree as follows:

### **COVENANTS AND AGREEMENTS**

1. SCLHS Affirmation of Obligations. Pursuant to Sections 14.7 and 14.8 of the SCL MOAPI, SCLHS expressly affirms its continuing obligations.

2. Assignment and Assumption of Obligations. SCLHS hereby assigns its obligations under the SCL MOAPI, but only to the extent such obligations are set forth in the District MOAPI, to the District as a successor in title to SCLHS, pursuant to Sections 14.7 and 14.8 of the SCL MOAPI. The District assumes SCLHS's obligations under the SCL MOAPI but only to the extent such obligations are set forth in the District MOAPI. SCLHS affirms that all other obligations set forth in the SCL MOAPI that are not also set forth in the District MOAPI remain the obligation of SCLHS.

3. Representations. SCLHS and District, each for themselves, hereby represent and warrant to and for the benefit of the Town that it has the full power and legal authority to enter into this Agreement. These representations and warranties are made as of the date hereof and shall be deemed continually made by the SCLHS and District to the Town for the entire term of this Agreement.

4. Release. Subject to Paragraph 5 below, SCLHS is hereby released from those obligations set forth in the District MOAPI.

5. Termination. In the event Lot 1 is not developed as a fire station or for ancillary uses thereto in substantial compliance with the current site plan such that Lot 1 reverts to SCLHS pursuant to that certain Special Warranty Deed pursuant to which SCLHS conveyed title to Lot 1 to the District, this assignment shall terminate and SCLHS shall remain responsible for all items in the SCL MOAPI.

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

**TOWN:**

Town of Frederick  
c/o Town Clerk  
P.O. Box 435  
Frederick, Colorado 80530

**DISTRICT:**

Frederick-Firestone Fire Protection  
District  
Attn: Fire Chief  
8426 Kosmerl Place  
Frederick, CO 80504

**With copy to:**

Fairfield and Woods, P.C.  
1801 California Street, Suite 2600  
Denver, CO 80202-2645

**With a copy to:**

Ireland Stapleton Pryor & Pascoe, PC  
Attn: Elizabeth Woodward  
717 17<sup>th</sup> Street, Suite 2800  
Denver, CO 80401

**SCLHS:**

Attn: Legal  
500 Eldorado Boulevard  
Suite 4300  
Broomfield, CO 80021

**With a copy to:**

Tiemeier & Stich, P.C.  
Attn: Max S. Stich, Esq.  
1000 East 16th Avenue  
Denver, CO 80218

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

7. Assignment. This Agreement shall not be assigned.

8. Breach of Agreement, Default. In the event that SCLHS or District should fail to timely comply with any of the terms, conditions, covenants, and undertakings of this Agreement, the Town shall have the remedies set forth in the SCL MOAPI, as against SCLHS for a breach or default by SCLHS, and the remedies set forth in District MOAPI, as against the District for a breach or default by the District.

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

10. Severability. This Agreement is to be governed and construed according to the laws of the State of Colorado. In the event that upon request of SCLHS or District or any agent thereof, any provision of the Agreement is held to violate municipal, state, or federal laws and thereby rendered unenforceable, the Town, in its sole discretion, may determine whether the remaining provisions will or will not remain in force.

11. Original Counterparts. This Agreement may be executed in counterparts, each of which will be an original, but all of which together shall constitute one and the same instrument.

12. Choice of Law and Venue. This Agreement is to be governed and construed according to the laws of the State of Colorado. The parties hereto agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the State courts located in the County of Weld, State of Colorado. The aforementioned choice of venue is intended by the parties to be mandatory and not permissive in nature, thereby precluding the possibility of litigation between the parties with respect to or arising out of this Agreement in any jurisdiction other than that specified in this paragraph. Each party hereby waives any right it may have to assert the doctrine of forum non conveniens or similar doctrine or to object to venue with respect to any proceeding brought in accordance with this paragraph, and stipulates that the State courts located in the County of Weld, State of Colorado shall have in personam jurisdiction and venue over each of them for the purpose of litigating any dispute, controversy, or proceeding arising out of or related to this Agreement.

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

**TOWN OF FREDERICK**

**DISTRICT**

By \_\_\_\_\_  
Tracie Crites, Mayor

By \_\_\_\_\_

**ATTEST:**

By \_\_\_\_\_  
Meghan C. Martinez, Town Clerk

**STATE OF COLORADO)**

) **SS:**

**COUNTY OF \_\_\_\_\_)**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by \_\_\_\_\_ as Mayor and as Town Clerk of the Town of Frederick.

My commission expires:

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**STATE OF COLORADO)**

) **SS:**

**COUNTY OF \_\_\_\_\_)**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_ by \_\_\_\_\_ (signatory's name) as \_\_\_\_\_ (position/title).

My commission expires:

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**SCLHS**

By \_\_\_\_\_

**STATE OF COLORADO)**

**) SS:**

**COUNTY OF \_\_\_\_\_)**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
20 \_\_\_\_ by \_\_\_\_\_(signatory's name) as \_\_\_\_\_  
\_\_\_\_\_ (position/title).

My commission expires:

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

**TOWN OF FREDERICK, COLORADO  
RESOLUTION NO. 22-R-58**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,  
APPROVING AN AMENDMENT TO THE MEMORANDUM OF  
AGREEMENT FOR PUBLIC IMPROVEMENTS FOR WYNDHAM HILL  
FILING 6**

**WHEREAS**, the Town of Frederick entered into the Memorandum of Agreement for Public Improvements (MOAPI) for Wyndham Hill Filing 6; and

**WHEREAS**, the MOAPI requires the full build out of roadways that provide service to the development; and,

**WHEREAS**, the Frederick Firestone Fire Protection District (FFFPD) is in the process of obtaining property within the Wyndham Hill Filing 6 site for the construction of additional FFFPD facilities to provide service to the area; and,

**WHEREAS**, the FFFPD's costs will be significantly increased if they are required to build the full buildout of Glacier Way as contemplated under the MOAPI; and,

**WHEREAS**, requiring the FFFPD to fully build out Glacier Way will impair or prohibit the expansion of the FFFPD facilities to provide increased fire protection services to the area; and,

**WHEREAS**, the Town of Frederick is willing to allow the obligations of the MOAPI to be amended to allow the FFFPD property to be exempt from portions of the MOAPI requirements so long as the requirements of the MOAPI will be met by the developer(s) of the Wyndham Hill Filing 6 property; and,

**WHEREAS**, an amendment to the MOAPI is needed to reflect these changes.

**BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, AS FOLLOWS:**

**Section 1.** The Amendment A to the Memorandum of Agreement for Public Improvements for Wyndham Hill Filing 6 attached hereto as Exhibit A is approved. The mayor is hereby authorized to execute the agreement.

**Section 2. Effective Date.** This resolution shall become effective immediately upon adoption.

**Section 3. Repealer.** All resolutions, or parts thereof, in conflict with this resolution are hereby repealed, provided that such repealer shall not repeal the repealer clauses of such resolution nor revive any resolution thereby.

**Section 4. Certification.** The Town Clerk shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED, AND SIGNED 28TH DAY OF JUNE 2022.**

**ATTEST:**

**TOWN OF FREDERICK**

By \_\_\_\_\_  
Meghan C. Martinez, MMC, Town Clerk

By \_\_\_\_\_  
Tracie Crites, Mayor