



Built On What Matters

Town of Frederick Board of Trustees Agenda

Frederick Town Hall

Board Chambers

401 Locust Street

Wednesday, November 5, 2025

Work Session 6:00 PM

Agenda

Regular Meeting 7:00 PM

Work Session

- A. Bella and Colorado Intersection Project Update

Call to Order – Roll Call

Pledge of Allegiance

Approval of Agenda

Special Presentations

Public Comment

This portion of the agenda is provided to allow members of the audience to provide comments to the Board of Trustees. Please sign in and you will be called. 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

- B. Administrative Report -

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. Approval of Minutes

Action Agenda

- D. Resolution 25-R-57 Amending the 2025 Budget -
Kurtis Adams, Finance Director
- E. **Public Hearing:** 25-R-58, 25-R-59, 25-R-60 Spindle Hill BESS Minor
Subdivision, Conditional Use, MOAPI, Annexation Agreement Amendment -
Bailey Arvizu, Associate Planner
Ali van Deutekom, Planning Manager
Robyn Brown, Development Review Engineer Coordinator
- Open Public Hearing
 - Staff and Applicant Presentation
 - Public Comment
 - Board of Trustees Discussion and Questions
 - Close the Public Hearing
 - Board of Trustees Action on Resolutions 25-R-58, 25-R-59 and
25-R-60.
- F. Resolution 25-R-61 IGA with Central Weld Regarding New Treatment Facility
-
Sarah Watson, Engineer

Mayor and Trustee Reports

Adjournment



Town of Frederick Administrative Report November 5, 2025

Upcoming Board of Trustees Meetings:

The following is the schedule for upcoming meetings, though topics are subject to be changed or rescheduled:

- November 5, 2025 – Regular Meeting
 - December 3, 2025 – Regular Meeting
 - January 7, 2025 – Regular Meeting
 - January 21, 2025 – Regular Meeting
-



Effective, Efficient & Strategic Government Operations

- Town services are moving! The Town is making changes to improve how we serve our residents and community. Beginning December 1, 2025, all Town in-person services will be at one central location at Town Hall. Currently, the Town's two main public-facing buildings, Town Hall and the Administrative Services building, offer different services. While this structure has worked in the past, it can sometimes lead to confusion about where to go for assistance. By centralizing these services, we'll simplify the process, enhance communication, and deliver more efficient service to residents.
- Town Staff recently met with several oil and gas industry partners to identify ways to collaborate on creative ideas and shared long-term solutions within the Town of Frederick.
- Communications & Engagement staff attended recent events and webinars to maintain industry standards and to continue developing best practices, including:
 - "Hype to Help: How to Actually Use AI in Local Government," presented by POLCO.
 - "Explore Municipal Websites: Page Creation," presented by CivicPlus.
 - "Women in Leadership," presented by the Town of Erie.



Community and Economic Vitality

- Communications staff are working in partnership with Economic Development to produce video and complete interviews for the Town's 3rd Annual Business Awards to celebrate

Built on What Matters.

and recognize our business community's contributions to our community. The ceremony will take place in November.

- Staff are collaborating with the Town's Youth Commission representatives to host a new youth event in 2026. Stay tuned for exciting details!
- The Economic Development team is working on production of a fall coupon book as part of our downtown revitalization efforts. This will offer great deals for our residents and attract more people to our downtown businesses!
- A general "Welcome to Downtown Frederick" entryway banner is in the works to bring vibrancy to our downtown.
- Oil & Gas staff are tracking the progress of plugging and abandonment activities occurring on the property adjacent to Frederick High School and north of the Silverstone development. They are also working on raising awareness of remediation sites and issues within the Town and responding to multiple resident concerns regarding alleged new wells being drilled in Town—there are currently no new wells being drilled.
- For a list of all active development applications currently under review by the Town's Planning Department, Engineering Department, Legal Counsel, Frederick-Firestone Fire Protection District, and external review agencies, please follow these links to our ["What's Developing"](#) map and webpage, ["Development Applications Under Review."](#)



Dynamic, Inclusive & Connected Community

- Town event preparation continues as we aim to bring engaging events to our community.
 - 86 sponsor applications
 - 157 Market Vendor applications
- Tiny Terror Town took place on Saturday, October 18. The 2025 event included 48 market and sponsor booths, over 15 entries in the Big Beast Bazaar pet costume contest, a performance by the FHS Rock Band, and many scares in the giant-bug themed haunted house. Additionally, the downtown businesses participated by extending trick-or-treat stations along Fifth Street. Thank you to the many teams who contributed to this event!
- Planning has begun for the 2026 Volunteer Fair, beginning with getting more specific feedback from organizations who have participated in previous years.
- The vibrant 2026 Built on What Matters calendar is now in development. Voting has closed in all categories.
- To further our knowledge of accessibility in the digital space, Communications & Engagement staff are hosting a lunch and learn event for Town staff.
- Communications staff focused on maintaining communication platforms to deliver a monthly newsletter, a weekly electronic newsletter, and daily social media posts to keep residents informed. Topics include park facility reservations, Clean-Up Days, and Go Outdoors Frederick.



Strategic, Reliable and Sustainable Infrastructure

- Public Works updates:

- The Fleet Division has been busy preparing snow equipment for the winter season. They have also had several services for the Police Department, many with new tires and brakes, as well as a few lighting issues. The periods between seasons are often busy, but Fleet is working through it and doing their best to be proactive with maintenance rather than having equipment down in peak season.
- Public Works managers Alan Isaac, Brad Leach, and Matthew Liebing recently completed the American Public Works Association (APWA) Public Works Institutes (PWI) program. This was a year-long program focused on educating public works employees in leadership and management roles.
- Street sweeping operations have increased recently due to the fall season, and crews have begun fall storm drain and inlet cleaning as part of the annual preventative maintenance schedule.
- As winter approaches, Public Works crews are working on completion of asphalt patching in various areas throughout Town, as well as preparation for snow season with safety training and truck preparation.
- Staff continue to work closely with Intrepid Fiber to ensure the fiber installation is completed with care for all properties in Frederick.
- The Oil & Gas Liaison has reviewed the status of many of the outstanding oil and gas remediation sites within Frederick and has also reviewed all the wells which require mechanical integrity testing (MIT) or where the acceptable period to administer an MIT has passed.



Safe and Secure

- Two new lateral police officers joined the department at the beginning of October. Officer Adam Violante comes to us from Thornton PD where he held roles on the SWAT team, as a Field Training Officer, and in their training unit. Officer Ryan Patino hails from Boulder PD where he was part of their Emergency Response Team. Both officers bring unique experiences and skillsets to our department, and we are excited to watch them succeed in our field training program over the next few months and throughout their careers with Frederick PD.
- The Frederick Police Department will be honored in January as North Range Behavioral Health's (NRBH) 2025 Community Champion for Behavioral Health. The department partners with NRBH for our mental health co-responder program that has served numerous Town residents during mental health crises, often putting them in touch with much needed resources and medical help in lieu of entering the criminal justice system. The department was chosen because of our ongoing dedication to mental wellbeing in the Frederick community.
- Communications & Engagement collaborates with the Police Department to share information about the quarterly Neighborhood Watch meetings, respond to resident and media inquiries, share the Outstanding Victim Services Program award, create new brochures, design the Police End of Year Report and Crime scene van graphics, and introduction of new officers to our community. They also recently attended training on a 2019 shooting incident in California and the lessons learned from that tragedy.
- All active oil and gas wells have been inspected within Frederick limits. Currently there are 220 active wells in Town, meaning wells which are currently not plugged and abandoned. Of those 220 active wells, 44 require follow-up visits for compliance issues;

these visits will be conducted within approximately six months. Operators have been notified of all compliance issues observed on their well locations.



Fiscally Responsible Governance

- The Finance Department is concluding assembly of Town, Urban Renewal Authority, and Frederick Metropolitan District proposed 2026 budget documentation.
- Town payroll functions are transitioning from the Finance Department to Human Resources; this transition includes the change to a new payroll service provider, UKG.
- The first round of oil and gas wellhead inspection invoices has been issued and the final round of invoices will be issued shortly.



Town of Frederick Board of Trustees

Meeting Minutes
October 15, 2025

FURA Meeting 5:30 PM

Work Session 5:45 PM

- A. Town Budget Expenses and CIP Presentation
- B. Court Strategic Plan Follow Up
- C. Benefit Renewal Update
- D. Trustee TeVelde Celebration of Service

Call to Order – Roll Call

At 7:18 PM Mayor Crites called the meeting to order and requested a roll call. Present were Mayor Crites, Mayor Pro Tem Brown, Trustees Lamach, March, Mahan, and Padia. Also present were Town Manager Bryan Ostler, Assistant Town Manager Ryan Johnson, Town Attorney Jason Meyers, Town Clerk Tricia David, and Deputy Town Clerk Emily Nltcher.

Pledge of Allegiance

Approval of Agenda

Mr. Ostler indicated there were no changes to the agenda. Mayor Crites requested that the Board of Adjustment item be moved to an earlier time, preceding the Action Agenda and Discussion Agenda items.

Public Comment

This portion of the agenda is provided to allow members of the audience to provide comments to the Board of Trustees. Please sign in and you will be called. 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.

Mayor Crites called for public comment not related to the Board of Adjustment item. No one was signed up to speak.

Staff Reports

- E. Admin Report -

Town Manager Bryan Ostler introduced Assistant Town Manager Ryan Johnson, who informed the Board of Trustees of the resignation of Economic Development Manager Max Daffron. Mr. Johnson noted that staff will begin recruiting to fill the vacancy and requested input from the Board regarding priorities for the position. The Board emphasized the importance of maintaining personal connections with local businesses, providing dedicated attention to both business retention and attraction, continuing

quarterly roundtable meetings to engage the business community, and expanding overall efforts to support and retain existing businesses.

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.

A motion was made by Trustee Brown and seconded by Trustee Lamach to approve Consent Agenda. Upon roll call vote, the motion passed 5-0.

F. Approval of Minutes

G. Resolution 25-R-55 Informed Consent Regarding Special Counsel Representation of the Town -

Action Agenda

H. Youth Commission Request -
Jennifer Haessler, Finance Clerk

Finance Clerk and Youth Commission Staff Liaison Jennifer Haessler presented a request from the Youth Commission and introduced Youth Commissioners Nora Dukart, Annie Meyers, and Eli Robins. The Commissioners addressed Mayor Crites and the Board regarding plans for Youth Day 2026.

A motion was made by Trustee Brown and seconded by Trustee Padia to approve the Youth Commission's request to move forward with planning for Youth Day 2026.

I. Boards, Committees, and Commissions Appointments -

Town Clerk Tricia David provided an update to the Board on current vacancies within the Town's Boards, Commissions, and Committees, and presented recommendations for new appointments for the Board's consideration and approval.

A motion was made by Mayor Pro Tem Brown and seconded by Trustee Mahan to approve Boards, Commissions, and Committees Appointments. Upon roll call vote the motion passed 5-0.

J. Resolution 25-R-56 Agreement with St. Vrain Valley Schools Education Foundation for the Town of Frederick Scholarship -

Town Clerk Tricia David presented a resolution establishing a partnership between the Town and the St. Vrain Valley Schools Education Foundation for the administration of the Town's high school scholarship program.

A motion was made by Mayor Pro Tem Brown and seconded by Trustee March to approve Resolution 25-R-56 Agreement with St. Vrain Valley Schools Education Foundation for the Town of Frederick Scholarship. Upon roll call vote, the motion passed 5-0.

Discussion Agenda

K. 2025 National Community Survey Results

Director of Communications & Engagement Renae Lehr introduced Executive Vice President of Data and Insights with Sonya Wytinck who presented.

Board of Adjustment - Action Item

L. 8546 Silver Birch Appeal -

Before Mayor Crites opened the public hearing, Mayor Pro Tem Brown recused himself from the item due to a potential conflict of interest. Mayor Crites informed those in attendance that the Board of Trustees would be acting as the Board of Adjustment for this hearing and opened the public hearing at 7:59 p.m.

The appellant, Marshall Marquardt and family, addressed the Board. Then, Neighborhood Services Coordinator Justin Ritter presented.

Mayor Crites invited public comment, and the following residents spoke: Denise Shoaf, Bob Chapin, Greg Eichinger, and Nicole Troop.

The public hearing was closed at 8:32 p.m.

A motion was made by Trustee Padia and seconded by Trustee Mahan to approve the Board of Adjustment Action Item – 8546 Silver Birch Appeal. Upon roll call vote, the motion passed 4–1, with one abstention.

Mayor and Trustee Reports

The Board discussed the upcoming November meeting, noting that both the Mayor and Mayor Pro Tem will be unavailable. It was suggested that staff consider scheduling budget-related items for a later meeting.

Staff noted upcoming travel to Washington, D.C. regarding the Town's ZIP code issue.

The Board discussed options for addressing the current Board of Trustees vacancy, including whether to wait until the April election or to advertise the position for interested applicants. Staff provided clarification on the relevant statutory requirements and requested direction from the Board during the meeting. It was the general consensus of the Board to move forward without filling the position until the regular election.

Staff also reminded the Board of upcoming community events, including Tiny Terror Town and the Business Awards, and identified the presenters for the awards ceremony.

Adjournment

There being no further business of the Board of Trustees Mayor Crites adjourned the meeting at 9:52 PM.

Approved by the Board of Trustees:

ATTEST:

Tracie Crites, Mayor

Tricia David, Town Clerk



Built On What Matters

TOWN OF FREDERICK

Board of Trustees

Staff Report

Tracie Crites, Mayor

Kevin Brown, Mayor Pro Tem
Dan March, Trustee
Mark Lamach, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

Resolution 25-R-57 Amending the 2025 Budget

Agenda Date: Board of Trustees November 5, 2025

Attachments: 1. Resolution Budget Amendment 2025

Reviewed By: Bryan Ostler, Town Manager

Action Type

1) Legislative: Actions that relate to subjects of a long term and general applicability; such as the passing of ordinances/resolutions/policies/etc.

Strategic Plan Alignment:



FISCALLY RESPONSIBLE GOVERNANCE– The Town of Frederick plans for, identifies, leverages, and utilizes resources that reflect exemplary stewardship for those who live in Frederick and those who will seek out Frederick in the future.

Summary Statement:

Some programs were not anticipated or identified at the time of the 2025 budget adoption. These program changes require a budget amendment to account for the additional revenues and expenditures within the Capital Facilities Fund.

Detail of Issue/Request:

At the time of the adoption of the 2025 budget, the programming needs from proceeds (revenue) from bond issuance for the construction of the new Public Works facility, nor the cost of bond issuance, nor the initial year of bond debt service, and said additional revenues and expenditures could not be anticipated by the Board of Trustees. The Town Board is asked to modify appropriated expenditures for the 2025 budget to maintain a balanced budget per the Colorado Revised Statute.

Legal Comments:

The budget amendment resolution has been reviewed and approved by the Town Attorney's office.

Alternatives/Options

The Board may choose to approve or deny this request.

Financial Considerations

The Capital Facilities Fund will utilize \$9,091,458 of the bond proceeds to appropriate the additional expenditures for the current 2025 fiscal year.

Staff Recommendation

Staff recommends approval of the resolution as drafted.

Community Impact

The benefits of the new public works facility will level up many program service levels for the community.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 25-R-57**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO,
AMENDING THE ADOPTED 2025 BUDGET FOR THE TOWN OF
FREDERICK AND MAKING SUPPLEMENTAL APPROPRIATIONS OF
MONEY TO PROVIDE FOR ADDITIONAL REVENUES AND
EXPENDITURES IN THE CAPITAL FACILITIES FUND**

WHEREAS, in the 2025 budget, the Town Board of Trustees authorized the appropriation and expenditures of funds from the Capital Facilities Fund; and

WHEREAS, the funds budgeted did not allocate the proceeds (revenue) from bond issuance for the construction of the new Public Works facility, nor the cost of bond issuance, nor the initial year of bond debt service, and said additional revenues and expenditures could not be anticipated by the Board of Trustees at the time of the adoption of the 2025 Budget; and

WHEREAS, the Town Board agrees to modify appropriated expenditures for the 2025 budget, ensuring the budget will be in balance and that authorized budgeted expenditures are amended, pursuant to CRS 29-1-109.

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

Section 1. Capital Facilities Fund: Whereas, during 2025, the Town of Frederick determined that the Capital Facilities Fund did not allocate funds for the future Public Works Facility construction related to proceeds from bond issuance, and the Board of Trustees hereby determines the additional appropriation revenue will be \$46,431,949, for an estimated total budget revenue appropriation of \$48,899,949.

Section 2. Capital Facilities Fund: Whereas, during 2025, the Town of Frederick determined that the Capital Facilities Fund did not allocate funds for the future Public Works Facility construction related to bond debt service, and the Board of Trustees hereby determines the additional appropriation expense will be \$1,071,131.

Section 3. Capital Facilities Fund: Whereas, during 2025, the Town of Frederick determined that the Capital Facilities Fund did not allocate funds for the future Public Works Facility construction related to cost of bond issuance, and the Board of Trustees hereby determines the additional appropriation expense will be \$146,493.

Section 4. Capital Facilities Fund: Whereas, during 2025, the Town of Frederick determined that the Capital Facilities Fund did not allocate funds for the future Public Works Facility construction related to professional services and construction in progress, and the Board of Trustees hereby determines the additional appropriation expense will be \$8,020,327, for an estimated total budget expense appropriation of \$12,159,458.

Section 5. Effective Date. This resolution shall become effective immediately upon adoption.

Section 6. 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 7. 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 AND ADOPTED ON THIS 5th DAY OF NOVEMBER 2025.

ATTEST:

TOWN OF FREDERICK:

Tricia David, Town Clerk

Tracie Crites, Mayor



Built On What Matters

TOWN OF FREDERICK

Board of Trustees

Staff Report

Tracie Crites, Mayor

Kevin Brown, Mayor Pro Tem
Dan March, Trustee
Mark Lamach, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

**Public Hearing: 25-R-58, 25-R-59, 25-R-60 Spindle Hill BESS Minor Subdivision,
Conditional Use, MOAPI, Annexation Agreement Amendment**
- Open Public Hearing
- Staff and Applicant Presentation
- Public Comment
- Board of Trustees Discussion and Questions
- Close the Public Hearing
- Board of Trustees Action on Resolutions 25-R-58, 25-R-59 and 25-R-60

Agenda Date: Board of Trustees November 5, 2025

Attachments:

1. 25-R-58 Conditional Use Resolution
2. 25-R-59 MOAPI Resolution
3. 25-R-60 Annexation Agreement Amendment Resolution
4. 25-PCR-10 signed
5. 25-PCR-11 signed
6. Johnson Farms/Spindle Hill Energy Minor Subdivision
Amendment No. 2
7. FINAL MOAPI_2024 Spindle Hill_Executed JW - 10.16.25
8. Johnson Farms Spindle Hill Annexation Agreement #2
9. Johnson Farms_Spindle Hill Energy_Oct 20 2025_executed
10. Spindle Hill BESS_Annexation Agreement Amendment
11. Spindle Hill BESS BOT Presentation AV 2

Reviewed By: Bryan Ostler, Town Manager

Action Type

3) Quasi-Judicial: Actions of a specific nature or impact to a property interest that require an evidentiary hearing; such as land use applications; may be approved by ordinance or resolution as applicable.

Strategic Plan Alignment:



COMMUNITY AND ECONOMIC VITALITY– Frederick is a community that fosters economic, recreational, cultural, and environmental vitality and builds upon and enhances a variety of economic opportunities. Frederick celebrates its downtown and regards it as a gem in the region.

Summary Statement:

Clearway Energy, the applicant, is seeking approval of a Minor Subdivision plat to site plan the new "Lot 1" as a battery energy storage system development. Clearway Energy is entering into an MOAPI for public improvements associated with the development occurring on the new "Lot 1". Clearway Energy is also seeking a Conditional Use approval to install overhead power lines, which are necessary for the battery energy storage system to function. Clearway Energy is amending the Annexation Agreement to allow for development within the plat boundary as required by the existing Annexation Agreement.

Detail of Issue/Request:

Spindle Battery, LLC, a subsidiary of Clearway Energy Group, LLC, is seeking approval of the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2. Clearway Energy is also seeking approval of a Conditional Use for "Overhead Power Lines" within the Agricultural (A) and Industrial (I) Zoning District. Both applications, the Minor Subdivision and the Conditional Use, are to support the overall project of developing a new battery energy storage facility in coordination with the Public Service Company of Colorado (PSCo) on what would be Lot 1 of the new subdivision if approved.

The applicant is entering into a Memorandum of Agreement for Public Improvements (MOAPI) as part of this Minor Subdivision. The applicant is also amending the Annexation Agreement to allow for development within the Minor Subdivision area.

Clearway Energy seeks to replat Lot 1, 193.979 acres, of Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 1 through the Minor Subdivision process to create a new plat: Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2. They intend to create two lots, Lot 1, 50.981 acres, and Outlot A, 142.998 acres. Lot 1 is currently under review for development as a battery energy storage facility through the administrative site plan process.

To facilitate the connection from the proposed battery energy storage facility to the existing Spindle substation to the northwest, the applicant is seeking a Conditional Use approval to install "Overhead Power Lines" on Lot 1 of the new subdivision, 6300 Wheatland Boulevard, and Lot 1A of Replat A at 6430 Wheatland Boulevard. The

property at 6300 Wheatland Boulevard is zoned Agricultural (A); the property at 6430 Wheatland Boulevard is zoned Industrial (I). "Overhead Power Lines" are conditional in all zone districts.

Should the applicant receive approval of both the Minor Subdivision and Conditional Use applications from the Board of Trustees, Town Staff will complete the administrative Site Plan review and issue approval. The Site Plan will reflect the approved locations and details of the proposed overhead power lines.

Legal Comments:

The project was sufficiently noticed according to the requirements found in the Town of Frederick Land Use Code.

Alternatives/Options

The applicant is not required to complete a plat application to develop the site. However, the applicant is required to site plan the entire site that they are developing. It would be impractical and excessive for the applicant to meet the requirements of developing the entire 193+ acres of Lot 1 of the existing subdivision. In order to minimize the extent of the site plan required to only focus on the area being developed, the applicant has chosen to subdivide.

The Conditional Use application is necessary as the overhead power lines are a necessary part of the overall development. The applicant has not indicated any other possible method to connect the proposed battery energy storage facility to the existing substation.

Financial Considerations

Not Applicable

Staff Recommendation

The Planning Commission recommended approval of the Minor Subdivision application with a vote of 4 to 0, with the following conditions:

1. Revise the dedicatory statement to remove references to public roads and lands.
2. Resolve issues with the title commitment referencing an outdated plat and update general notes 2 and 3 accordingly.
3. Ensure meets and bounds are provided for the 30' public access easement dedicated to the Town or are established by referencing a specific distance from the recorded canal easement.

Condition one (1) is resolved by removing any reference to the dedication of roads. Public lands are being dedicated — this has been kept in the dedication statement. Condition two (2) has been resolved. Condition three (3) was already resolved, as the 30' public access easement references a specific distance from the recorded canal

easement.

The Planning Commission recommended approval of the Conditional Use application with a vote of 4 to 0.

Staff recommends that the Board of Trustees approve the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 and Overhead Power Lines Conditional Use without conditions. Staff also recommends that the Board of Trustees approve the MOAPI and Annexation Agreement Amendment.

Community Impact

Staff believe that these applications, if approved, will have no negative impacts on Town of Frederick residents. Approval of these applications would demonstrate a dedication to pursuing diverse energy solutions for our future. The energy stored as part of this project will be managed by United Power for distribution through their district at their discretion.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 25-R-58**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, APPROVING THE
SPINDLE HILL BATTERY ENERGY STORAGE SYSTEM OVERHEAD POWER
LINES, 8499 CR 14 & 6430 WHEATLAND BOULEVARD CONDITIONAL USE**

WHEREAS, Clearway Energy Group, LLC applied to the Town of Frederick for a Conditional Use under § 4.9.4.c. of the Town of Frederick Land Use Code for the Spindle Hill Battery Energy Storage System Overhead Power Lines at the following (“Subject Properties”):

8499 CR 14 & 6430 Wheatland Boulevard

WHEREAS, on September 18, 2025, the Town of Frederick Planning Commission held a noticed public hearing, and upon conclusion of the hearing, recommended that the Board of Trustees approve the conditional use by Planning Commission Resolution 25-PCR-11; and

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, held a public hearing on the Application on November 5, 2025, pursuant to the published notice; and

WHEREAS, the Board of Trustees finds that the Applicant has demonstrated that the proposal satisfies applicable standards, as set out herein.

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

Section 1. The Frederick Board of Trustees finds that:

- 1.1 Sufficient notice was given according to Section 4.5 of the Frederick Land Use Code.
- 1.2 The Subject Property is zoned I-Industrial.
- 1.3 The conditional use will satisfy all applicable provisions of the Town of Frederick Land Use Code, including the following found in § 4.9.4.c.:
 - 1.3.1 The conditional use will satisfy all applicable provisions if this Code and subdivision regulations.
 - 1.3.2 The conditional use will conform with or further the goals, policies, and strategies set forth in the Comprehensive Plan.
 - 1.3.3 The conditional use will be adequately served with public utilities, services, and facilities, and will not impose an undue burden above and beyond those of the permitted uses in the Industrial zoning district.
 - 1.3.4 The conditional use fits in with existing uses in the immediate area, and will not substantially alter the basic character of the district in which it is

located or jeopardize the development or redevelopment potential of the district.

1.3.5 The conditional use provides for efficient on-site and off-site traffic circulation, which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the Subject Property.

1.3.6 Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been appropriately mitigated.

1.3.7 The applicant has submitted evidence that it will obtain or has obtained all applicable local, state, and federal permits.

Section 2. Approval of the Conditional Use.

The Board of Trustees concludes that, based on the findings of fact in Section 1, above, the proposed conditional use satisfies the criteria set out in § 4.9.4.c. of the Town of Frederick Land Use Code, and thus the conditional use application is approved.

Section 3. Effective Date.

This resolution shall become effective immediately upon adoption.

Section 4. 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 5. Certification.

The Town Clerk shall certify 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 ____ DAY OF _____, 2025.

TOWN OF FREDERICK

ATTEST:

By _____
Tricia David, Town Clerk

By _____
Tracie Crites, Mayor

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 25-R-59**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, APPROVING THE
MINOR SUBDIVISION, AND MEMORANDUM OF AGREEMENT FOR PUBLIC
IMPROVEMENTS FOR JOHNSON FARMS/SPINDLE HILL ENERGY MINOR
SUBDIVISION AMENDMENT NO. 2**

WHEREAS, Clearway Energy Group, LLC (“Applicant”), applied to the Town of Frederick for a minor subdivision (“Application”), for the land described on Exhibit A, attached hereto and incorporated herein by this reference (“Subject Property”); and

WHEREAS, on September 18, 2025, the Town of Frederick Planning Commission held a noticed public hearing to consider this application, and upon conclusion of the hearing, recommended that the Board of Trustees approve the minor subdivision with conditions by Planning Commission Resolution 25-PCR-10; and

WHEREAS, the Applicant has resolved the Planning Commissions conditions, which thus do not need to be included in this approval; and

WHEREAS, concurrently with the minor subdivision, the Applicant wishes to enter into a Memorandum of Agreement for Public Improvements (“MOAPI”) with the Town in order to provide for construction of improvements related to the minor subdivision attached hereto as Exhibit B; and

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, held a public hearing on the Application on November 5, 2025, pursuant to published notice; and

WHEREAS, the Board of Trustees finds that the Applicant has demonstrated that the application and MOAPI terms satisfy applicable standards.

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

Section 1. The Frederick Board of Trustees finds that:

- 1.1 An application for the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 has been submitted.
- 1.2 Said application was found to be complete through the review process.
- 1.3 Said application was considered during a public hearing held November 5, 2025 at which time the public was able to provide testimony.
- 1.4 Sufficient notice was given according to Section 4.5 of the Frederick Land Use Code.

- 1.5 The Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 application conforms with the applicable requirements of Section 4.9.3. of the Frederick Land Use Code, namely:
 - 1.5.1 The subdivision is compatible with and will not have adverse impacts on the surrounding properties.
 - 1.5.2 10 or fewer new lots or blocks are created.
 - 1.5.3 The preliminary plat provides for a functional system of land use and is consistent with the criteria set forth in this Code.
 - 1.5.4 The land use mix within the project conforms to the Town's zoning district map and furthers the following planning objectives:
 - 1.5.4.1 The proposed development promotes the Town's small-town, rural character, or implements a Board-approved sub-area, corridor, or urban renewal plan, however titled;
 - 1.5.4.2 Proposed residential development adds diversity to the Town's housing supply;
 - 1.5.4.3 Proposed commercial development will benefit the Town's economic base;
 - 1.5.4.4 Parks and open space are incorporated into the site design, as appropriate to the proposed principal use or uses of the land;
 - 1.5.4.5 The proposed project protects the Town's environmental quality;
 - 1.5.4.6 The development enhances cultural, historical, educational and/or human service opportunities;
 - 1.5.5 The utility and transportation design is adequate, given existing and planned capacities of those systems;
 - 1.5.6 Negative impacts on adjacent land uses have been identified and satisfactorily mitigated; and
 - 1.5.7 There is a need or desirability within the community for the applicant's development, and the development will help achieve a balance of land use and/or housing types within the Town, according to the Town's goals.

Section 2. Approval of Minor Subdivision and MOAPI.

- a. The Board of Trustees approves the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2.

- b. The Memorandum of Agreement for Public Improvements is approved. This approval shall be memorialized on the MOAPI with the signature of the Mayor, attested by the Town Clerk, at the time of execution of the Minor Subdivision. The fully executed MOAPI shall be recorded with the Minor Subdivision.

Section 3. Effective Date.

This resolution shall become effective immediately upon adoption.

Section 4. 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 5. Certification.

The Town Clerk shall certify 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 _____ DAY OF _____, 2025.

TOWN OF FREDERICK

ATTEST:

By _____
Tricia David, Town Clerk

By _____
Tracie Crites, Mayor

Exhibit A

A PARCEL OF LAND SHOWN AS LOT 1 ON THAT SUBDIVISION AMENDMENT TITLED JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, RECORDED MARCH 24, 2016 AT RECEPTION NO. 4190256 IN THE RECORDS OF THE WELD COUNTY CLERK AND RECORDER'S OFFICE, BEING A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., COUNTY OF WELD, STATE OF COLORADO, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE EAST QUARTER CORNER OF SAID SECTION 33 AS MONUMENTED BY A 3-1/4" ALUMINUM CAP (ILLEGIBLE) SET IN A RANGE BOX IN THE RIGHT-OF-WAY OF COUNTY ROAD 19; THENCE SOUTH 83° 25' 36" WEST, A DISTANCE OF 1784.25 FEET TO A 5/8" REBAR WITH A PLASTIC CAP INSCRIBED "PLS 26600" AND **THE POINT OF BEGINNING**;

THENCE THE FOLLOWING ELEVEN (11) COURSES;
SOUTH 00° 33' 12" EAST, A DISTANCE OF 1953.21 FEET;
NORTH 89° 26' 52" EAST, A DISTANCE OF 1224.38 FEET;
SOUTH 00° 33' 12" EAST, A DISTANCE OF 449.04 FEET;
SOUTH 89° 50' 27" WEST, A DISTANCE OF 2089.91 FEET;
SOUTH 89° 50' 37" WEST, A DISTANCE OF 2590.39 FEET;
NORTH 00° 13' 57" EAST, A DISTANCE OF 1844.80 FEET;
NORTH 89° 51' 35" EAST, A DISTANCE OF 250.08 FEET;
NORTH 00° 13' 57" EAST, A DISTANCE OF 200.01 FEET;
NORTH 89° 51' 35" EAST, A DISTANCE OF 550.00 FEET;
NORTH 00° 13' 57" EAST, A DISTANCE OF 350.00 FEET;
NORTH 89° 51' 31" EAST, A DISTANCE OF 2622.97 FEET TO **THE POINT OF BEGINNING**.

SAID PARCEL CONTAINING 193.979 ACRES OR 8,449,702 SQUARE FEET, MORE OR LESS.

THE BASIS OF BEARINGS FOR THIS DESCRIPTION IS THE EAST/WEST CENTERLINE OF SAID SECTION 33 MONUMENTED BY THE WEST QUARTER CORNER OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, AS MONUMENTED BY A 2-1/2" ALUMINUM CAP INSCRIBED "PLS 38512 2017 609 CONSULTING" LOCATED IN THE RIGHT-OF-WAY OF COUNTY ROAD 17, FROM WHENCE THE EAST QUARTER CORNER OF SAID SECTION BEARS NORTH 89° 51' 35" WEST 5244.77 FEET BY GPS OBSERVATION, AS MONUMENTED BY A FOUND 3-1/4" ALUMINUM CAP (ILLEGIBLE) SET IN A MONUMENT BOX IN THE RIGHT-OF-WAY OF COUNTY ROAD 19, WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.

Exhibit B

JOHNSON FARMS / SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS

THIS AGREEMENT is made and entered this ____ day of _____, 2025, by and between the TOWN OF FREDERICK, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado (“TOWN”), and SPINDLE BATTERY LLC, a Delaware limited liability company, whose address is 4900 N. Scottsdale Road, Suite 5000, Scottsdale, AZ 85251 (“DEVELOPER”) (together, the “parties”).

WHEREAS, DEVELOPER has submitted a combined Final Plat for Johnson Farms / Spindle Hill Energy Minor Subdivision, Amendment No. 2 (“SUBDIVISION” or “DEVELOPMENT”), attached as “Exhibit A” and incorporated herein by reference, which the Planning Commission and TOWN Board of Trustees have reviewed and approved; and

WHEREAS, the subdivision regulations of the TOWN requires that the DEVELOPER enter into a Subdivision Agreement hereafter called a Memorandum of Agreement for Public Improvements (“AGREEMENT” or “MOAPI”) with the TOWN concerning public improvements related to the Development detailed and attached as the “Schedule of Improvements, Exhibit B”, hereinafter called “Exhibit B” and incorporated herein by reference; and

WHEREAS, the parties have modified this standard AGREEMENT as indicated by the addition of certain special provisions, if any, in “Exhibit F”; and

WHEREAS, the TOWN and the DEVELOPER agree that such public improvements are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

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 2.10 and 2.12.
- (b) **Approve:** The Town will review and approve construction plans and the general design of engineered structures 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. DEVELOPER shall be responsible for performance of the covenants set forth herein. DEVELOPER agrees to construct, build, install and develop all improvements required by this AGREEMENT, 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 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 identified in "Exhibit B", attached and incorporated herein by this reference. The engineering services 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 AGREEMENT, 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 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 improvements required by this AGREEMENT, according to plans and specifications reviewed and accepted in writing by the TOWN or by the utility providing the service, and with the approved plat, 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 two (2) years from the date of acceptance. If the DEVELOPER commences or performs any construction after such two (2) year period, the DEVELOPER shall resubmit the project construction plans 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. Traffic impact studies, drainage reports, pavement design reports, etc. for a specific subdivision or parcel of land are valid for a period of one (1) year from date of approval unless significant development or activity has occurred that may impact the previous studies in the opinion of the Town Engineer. If construction documents for any phase or individual lot are not approved within this timeframe, revised reports with updated information are required to be submitted to the Town for review and approval.

- 1.5 Development Coordination.** Unless specifically provided in this AGREEMENT to the contrary, all submittals to the TOWN shall be made to the Planning Department 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 AGREEMENT, 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 public improvements for the Development, 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 the plans set containing sanitary sewer and water system improvements.
- (b) The TOWN shall issue its written acceptance or disapproval of 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 improvements.

- (c) The DEVELOPER shall submit all plans for public improvements as paper documents and by acceptable electronic transfer, approved AutoCAD™ drawing files and PDF files. All written documents shall be submitted as paper documents and by acceptable electronic transfer, as PDF files, 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 proposed 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.

1.7 Incorporation by Reference. All plans, reports, special provisions, and specifications for the public improvements furnished and let pursuant to this AGREEMENT as approved by the TOWN shall be and hereby are made a part of this AGREEMENT by reference as fully as if set out herein in full.

1.8 Insurance. The DEVELOPER shall require, 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 PROPERTY upon the TOWN' 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 improvements described in "Exhibit B" or otherwise required by this MOAPI as shown on the accepted plat, landscape plans, utility plans, construction drawings, reports, and other accepted documents on file with the TOWN including, but not be 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, 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 and electric distribution systems, and any other improvements constructed in relation to the development of the SUBDIVISION (collectively, the "SECURED IMPROVEMENTS").
- (b) The DEVELOPER shall submit to the TOWN an Improvement Guarantee assuring construction of the SECURED IMPROVEMENTS. 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 with automatic extensions for a year; 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).
- (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 all public improvements to be constructed as described on "Exhibit B", except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. For the avoidance of doubt, while the amount of the Improvement Guarantee shall be calculated as described in this subsection (c), the Improvement Guarantee shall nonetheless assure construction of all SECURED IMPROVEMENTS and the TOWN shall not release the Improvement Guarantee until the TOWN has granted final acceptance of the SECURED 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 IMPROVEMENTS, the TOWN shall retain at least ten percent (10%) of the total improvement 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 AGREEMENT and is subject to the provisions of Section 14.1 of this AGREEMENT, 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 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 AGREEMENT, or spend such funds to finish the SECURED IMPROVEMENTS or correct deficiencies in the SECURED IMPROVEMENTS, or it may withhold building permits and certificates of occupancy within the Development, as the TOWN 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 AGREEMENT, or spend such funds to construct or finish the SECURED IMPROVEMENTS, or correct deficiencies in the SECURED IMPROVEMENTS, as the TOWN 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 AGREEMENT, or spend such funds to construct or finish the SECURED IMPROVEMENTS, or correct deficiencies in the SECURED IMPROVEMENTS, and it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.
- (h) If the DEVELOPER fails or refuses to construct the SECURED IMPROVEMENTS, or fails or refuses to finish the construction of the SECURED IMPROVEMENTS, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to construct or finish the SECURED IMPROVEMENTS, or correct deficiencies in the SECURED IMPROVEMENTS, as the TOWN 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 improvements specified in "Exhibit B" and will comply with all additional provisions specified in "Exhibit F". If there is a discrepancy between the quantity or size of improvements shown on any approved plans or drawings and the quantity or size listed in "Exhibit B", then the TOWN shall determine which quantity or size applies in accordance with TOWN standards, specifications, regulations and policies; provided, however, that any increased cost to DEVELOPER attributable to the larger quantity or size may be eligible for reimbursement by adjacent benefitted property as specified in this MOAPI.
- 2.2 **On-site and Off-site Rights-of-way, Easements, Licenses and Permits.** For development of the PROPERTY 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 "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 PROPERTY 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 general or special Warranty Deed 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 develop the PROPERTY, 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.
- (c) The TOWN and the DEVELOPER agree that the acquisition of off-site and on-site rights-of-way, easements, licenses and permit necessary to serve the transportation needs of the PROPERTY are directly related to and generated by development intended to occur within the PROPERTY 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 improvements listed on "Exhibit B", in conformance with the subdivision plat and final development plan, reports, 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 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, then DEVELOPER shall be in default of the AGREEMENT, and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT 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 improvements described on "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 rights-of-way 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 improvements described herein, The DEVELOPER shall take any and all 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 sole 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 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 and other associated permits.

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 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 improvement 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

improvements, the TOWN may conduct the inspection without the approval of the DEVELOPER.

- (b) If 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 improvements completed by the DEVELOPER are not in substantial compliance with the approved public improvement 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 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 AGREEMENT.
- (e) The DEVELOPER shall provide a certified statement of construction costs no later than forty-five (45) days after 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 improvements are completed. These documents shall show "as-built" locations and design details of such improvements. In addition, "as-built" plans and other required drawings for 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 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) 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 improvements in writing 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 any improvements related to the Development, the DEVELOPER shall warrant said improvements and, at its own expense, take all actions necessary to maintain said 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 AGREEMENT.

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 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 or general or 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 public improvements constructed by the DEVELOPER for ownership and administration of 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 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 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 AGREEMENT.
- (e) If any mechanic's liens 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 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 improvements are found not to conform to this AGREEMENT 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 AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.
- (g) The above requirements shall also apply to the sewer and water improvements to be inspected and accepted by the appropriate Special

District. The DEVELOPER shall obtain the final acceptance of the 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 rights-of-way 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) If not transferred to the TOWN at the time of annexation, the DEVELOPER will transfer to the TOWN Colorado Big Thompson water and native water shares to satisfy the water dedication requirement before the issuance of the first building permit for the phase or filing in which the building permit is requested. The water dedication requirement will be calculated by Town staff per Municipal Code Section 13-2-205.
- (b) The TOWN may require the dedication of water for the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN native water shares and all non-tributary and not not-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 SUBDIVISION and that no taking thereby will occur requiring any compensation.

5 **WATER IMPROVEMENTS.**

- 5.1 **Water Service Availability.** The TOWN provides potable water service by an intergovernmental agreement with the Central Weld County Water District. The TOWN does not guarantee the availability of potable water service to the DEVELOPER for any phase of the development from the CWCWD system.

Provided that water service availability is confirmed by a TOWN water system analysis at the time the DEVELOPER requests water taps, the TOWN will provide water service to the DEVELOPER.

5.2 Extension of Water Services.

- (a) The DEVELOPER shall install at his sole cost and expense, all the water mains, trunk lines, pumping and storage facilities and appurtenances necessary to provide service from the TOWN's system 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 his sole cost and expense, all the 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 current 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.
- (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 his sole cost and expense, all 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 his sole cost and expense, all the 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 the District.

6.4 Sanitary Sewer Tap and Plant Investment Fees.

- (a) Sanitary sewer tap and plant investment fees shall be the current District sanitary sewer tap and plant investment fees at the time that the DEVELOPER requests sewer taps.
- (b) The TOWN will 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 drainage improvements for the development in accordance with the master drainage plan for the PROPERTY prepared by the DEVELOPER and reviewed and accepted by the TOWN and the responsible drainage district, if any. These 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. The 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 his sole cost and expense, all the storm water lines, drainage swales, pumping, detention and storm water treatment facilities within the SUBDIVISION. The DEVELOPER shall install at his sole cost and expense, such sedimentation and erosion control measures as are required.
 - (c) The DEVELOPER shall install at his sole cost and expense, such groundwater and foundation drainage system 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 HOA.

- (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 his 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 drainage improvements for the PROPERTY 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 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 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 unless approved by the Town Engineer. 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. Drainage improvements shall be completed and granted conditional acceptance by the TOWN before the issuance of building permits. Completion of the 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.

8.6 Modification of Accepted Drainage Improvements. 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 storm water capital expansion fee shall be the current TOWN storm water capital expansion fees at the time that the DEVELOPER receives a building permit for a structure. Storm water capital expansion fees shall be paid when a building permit for a structure is released by 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 Off-site and On-site Rights-of-way, Easements, Licenses and Permits.

- (a) For 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.

9.2 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 to accommodate transportation needs that each phase of the SUBDIVISION development will generate.

9.3 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 benefitted property as specified in this MOAPI.

9.4 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.

9.5 Street Improvements. For the purposes of this AGREEMENT, "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 street improvements shall be constructed and installed pursuant to TOWN accepted plans, specifications, and as detailed in "Exhibit B".

- 9.6 Road Impact Fees.** The road impact fee shall be the current TOWN road impact fees at the time that the DEVELOPER receives a building permit for a structure. Road impact fees shall be paid when a building permit for a structure is released by the TOWN.
- 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. The 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 School Bus Shelters.** The DEVELOPER will install at his sole cost and expense appropriately designed pedestrian shelters at school bus stops within the development. The location of the shelters shall be decided in cooperation with the School District. School bus shelters shall be owned and maintained by the Homeowners Association.
- 9.10 Mail Boxes.** The DEVELOPER shall coordinate with the U.S. Postal Service and bear the cost of installing cluster mailboxes for the subdivision.

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 landscape improvements as required in the landscape and irrigation plans reviewed and accepted by the TOWN and as detailed in "Exhibit B".
- (b) **Private Landscaping Improvements.** For private landscape improvements, 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 AGREEMENT, Default. In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants and undertakings of this AGREEMENT, 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 improvements. 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, and other

matters not within the DEVELOPER'S control shall not be considered a breach of the AGREEMENT.

- 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 AGREEMENT with funds other than the Improvement Guarantee, in which event the DEVELOPER shall reimburse the TOWN 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 AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.
- 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.** 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.** 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 PROPERTY 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 PROPERTY.

14.5 Governmental Immunities Act. The TOWN is relying on, and does not waive or intend to waive by any provision of this AGREEMENT, 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, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

14.6 Recording of AGREEMENT. This AGREEMENT 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 AGREEMENT 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 AGREEMENT.

14.7 Binding Effect of AGREEMENT. This AGREEMENT 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. 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 AGREEMENT obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. 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 DEVELOPER under this AGREEMENT.

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 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.

- 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:

TOWN:

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

DEVELOPER:

Spindle Battery LLC
4900 N. Scottsdale Road, Suite 5000
Scottsdale, Arizona 85251

With copy to:

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

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, or circumstances beyond the reasonable 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 AGREEMENT, 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 AGREEMENT, then this AGREEMENT 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 AGREEMENT.

14.15 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 the DEVELOPER 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.

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 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

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

TOWN OF FREDERICK

By _____
Tracie Crites, Mayor

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

[SEAL]

SPINDLE BATTERY LLC,
a Delaware limited liability company

By: _____
Name: John Woody
Title: Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by John Woody as Vice President of Spindle Battery LLC, a Delaware limited liability company.

Witness my hand and official seal.

Notary Public

[SEAL]

Page 30 of 33

Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On October 16, 2025, before me, S. Key, a Notary Public, personally appeared John Woody, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature



[Notarial Seal]

Exhibit A
(See Attached)

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS

Stronger than before.
Call before you dig.

Westwood
CIVIL ENGINEERING
1000 E. 10TH AVE., SUITE 100
DENVER, CO 80202
(303) 733-1100
www.westwoodcivil.com

NOTICE TO THE PUBLIC
This is to certify that the above described plat was filed for record in the County of Weld, State of Colorado, on the 10th day of September, 2025, at 10:00 AM, and that the same is a true and correct copy of the original as filed with the County Clerk.

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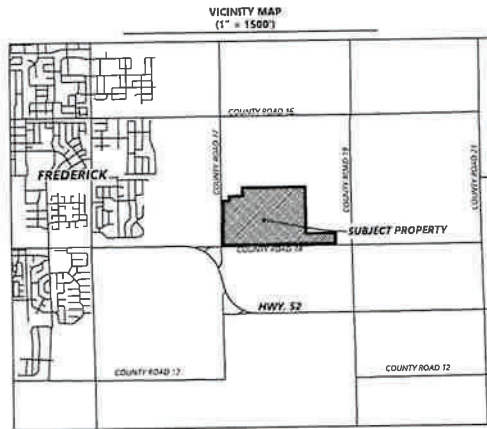
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LAND USE TABLE			
USE	AREA (AC)	PERCENT	REMARKS
AGRICULTURE	193.979	100.00	
TOTAL	193.979	100.00	

OWNER	PREPARED BY	DATE
JOHNSON FARMS/SPINDLE HILL ENERGY	WESTWOOD CIVIL ENGINEERING	09/26/2025

SHEET INDEX

SHEET 1 OF 1
THIS PLAT WAS PREPARED AND CHECKED BY
WESTWOOD CIVIL ENGINEERING
ON 09/26/2025

GENERAL NOTES

1. THE SUBJECT PROPERTY IS LOCATED WITHIN THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
2. THE SUBJECT PROPERTY IS 193.979 ACRES, 2 LOTS.
3. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO COUNTY ROAD 16 TO THE NORTH, COUNTY ROAD 17 TO THE WEST, COUNTY ROAD 12 TO THE EAST, AND HIGHWAY 52 TO THE SOUTH.
4. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
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8. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
9. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
10. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.

DRAFT

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

Clearway

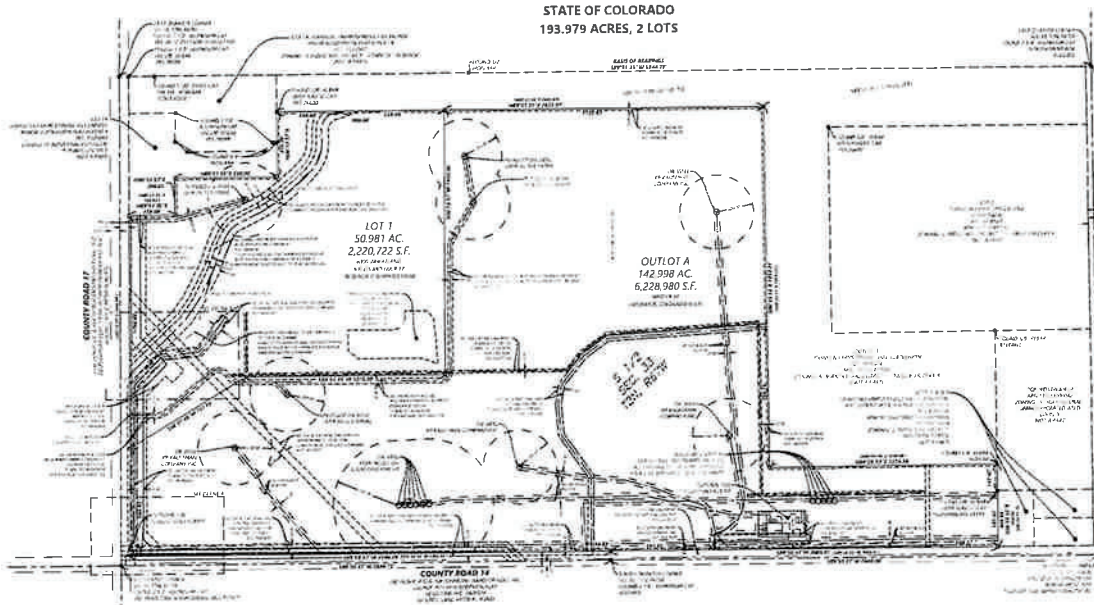
1000 E. 10th Ave., Suite 100
San Francisco, CA 94103

DATE 09/26/2025

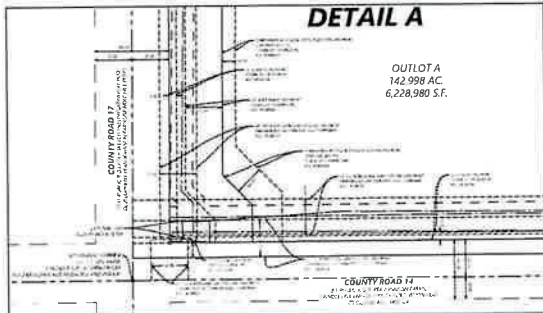
SHEET 01 of 03

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
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TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS



DETAIL A



DETAIL B



Westwood

NO.	DESCRIPTION
1	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision, Amendment No. 2
2	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision, Amendment No. 1
3	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
4	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
5	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
6	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
7	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
8	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
9	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision
10	Survey of Johnson Farms/Spindle Hill Energy Minor Subdivision

LEGEND	
	Survey Boundary
	Easement
	Right-of-Way
	Road
	Water
	Building
	Well
	Pole
	Corner
	Monument
	Iron Pipe
	Concrete Monument
	Wood Monument
	Survey Station
	Section Corner
	Township Corner
	Range Corner
	Meridian Corner

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

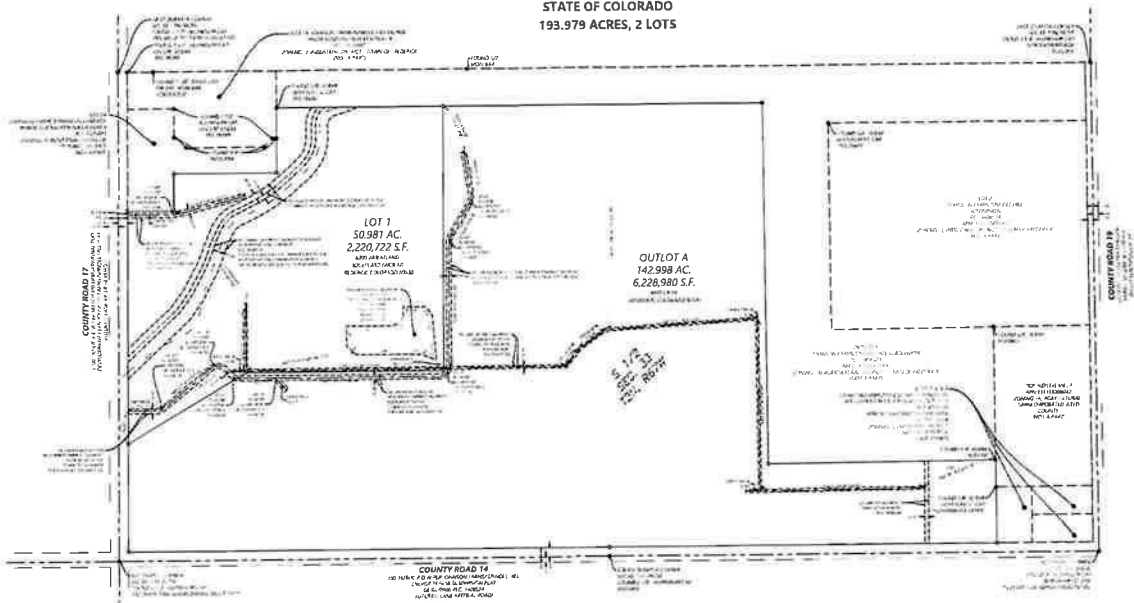
Clearway

100 California Street, Suite 200
San Francisco, CA 94111

DATE 09/26/2025
PAGE 02 of 03

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
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TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS



Lot	Area (Acres)	Area (S.F.)
Lot 1	50.981	2,220,722
Outlot A	142.998	6,226,980
Total	193.979	8,447,702

Westwood

LEGEND

1	10' UTILITY EASEMENT
2	20' UTILITY EASEMENT
3	30' UTILITY EASEMENT
4	10' EASEMENT FOR PROPOSED ROAD
5	20' EASEMENT FOR PROPOSED ROAD
6	30' EASEMENT FOR PROPOSED ROAD

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

Clearway

100' of Road + Curbs 3' and 6' 1/2
Cap 1" 1/2" 1/2" CA 911.1

09/26/2025
03 of 03

Exhibit B
(See Attached)

1159 SPINDLE BESS PROJECT, FREDERICK, CO - SITE WORK AND WATERLINE ESTIMATE - BLATTNER ENERGY

Unit No.	Name and Description of Construction Assembly Unit	No. of Units	U.O.M.	Unit Price	Extended Price
Contractor Services					\$ 412,310.70
1.1	Mob/Demob	2	EA	\$ 70,139.88	\$ 140,279.76
1.2	Project Management	5	MO	\$ 7,423.72	\$ 33,406.75
1.3	Site Survey	1	LS	\$ 18,694.53	\$ 18,694.53
1.4	General Conditions	1	LS	\$ 182,446.88	\$ 182,446.88
Subtotal Contractor Services					\$ 374,827.91
10% Contingency					\$ 37,482.79
Total Contractor Services					\$ 412,310.70
Clearing & Grubbing					\$ 2,365.55
2.1	Clearing & Grubbing	17	Acres	\$ 126.50	\$ 2,150.50
Subtotal Clearing and Grubbing					\$ 2,150.50
10% Contingency					\$ 215.05
Total Clearing and Grubbing					\$ 2,365.55
SWPP & BMPs					\$ 532,586.66
3.1	Bidder to estimate total water usage	1,139	MGAL	\$ -	\$ -
3.2	Furnish & Install Silt Fence	2,878	LF	\$ 5.06	\$ 14,562.68
3.3	Detention Pond Build	1	EA	\$ -	\$ -
3.3.1	Strip & Stockpile Topsoil	-	CY	\$ -	\$ -
3.3.2	Concrete safety end treatments	3	Each	\$ 12,816.55	\$ 38,449.66
3.3.3	Install 18" and 24" RCP	92	LF	\$ 198.90	\$ 18,299.17
3.3.4	Outlet Structure	1	EA	\$ 10,361.05	\$ 10,361.05
3.4	Culverts	42	LF	\$ 158.65	\$ 6,663.47
3.5	Furnish & Install Rip Rap - Silt Fence Relief	8	TN	\$ 177.31	\$ 1,418.46
3.6	Furnish & Install Rip Rap - Detention Pond Slope Protection	350	CY	\$ 169.44	\$ 59,304.35
3.7	5" Thick Concrete Trickle Channel	71	CY	\$ 2,652.97	\$ 188,360.83
3.8	Emergency Concrete Spillway	1	EA	\$ 76,467.72	\$ 76,467.72
3.9	Concrete Washout	1	EA	\$ 4,501.23	\$ 4,501.23
3.10	3x3 Grate Inlets	2	EA	\$ 4,478.96	\$ 8,957.92
3.11	Dust Pallative	13,722	SY	\$ 3.80	\$ 52,074.99
3.12	Pipeline Blister	1	EA	\$ 4,748.17	\$ 4,748.17
Subtotal SWPPP and BMPs					\$ 484,169.69
10% Contingency					\$ 48,416.97
Total SWPPP and BMPs					\$ 532,586.66
Civil Work					\$ 592,973.08
4.1	Topsoil Stripping	4,500	CY	\$ 7.89	\$ 35,500.50
4.1.1	export topsoil	3,000	CY	\$ 17.95	\$ 53,854.50
4.2	Cut - BESS Pad & Pond	10,170	CY	\$ 3.32	\$ 33,800.00
4.3	Fill - BESS Pad & Pond - Native	10,170	CY	\$ 6.97	\$ 70,874.73
4.4	Fill - BESS Pad & Pond - Imported	1,230	CY	\$ 53.54	\$ 65,859.12

1159 SPINDLE BESS PROJECT, FREDERICK, CO - SITE WORK AND WATERLINE ESTIMATE - BLATTNER ENERGY

Unit No.	Name and Description of Construction Assembly Unit	No. of Units	U.O.M.	Unit Price	Extended Price
4.5	F&I Aggregate BESS Pad	1,778	CY	\$ 120.54	\$ 214,325.45
4.6	F&I Aggregate Substation Pad	538	CY	\$ 120.54	\$ 64,852.13
Subtotal Civil Work					\$ 539,066.43
10% Contingency					\$ 53,906.64
Total Civil Work					\$ 592,973.08
Site Roadways					\$ 220,665.55
5.1	Build Road Subgrade	4,750	LF	\$ 4.34	\$ 20,593.63
5.2	F&I Aggregate Roads	2,255	CY	\$ 75.41	\$ 170,039.40
5.3	Grade Approach	1	EA	\$ 1,699.22	\$ 1,699.22
5.4	Gravel Approach	1	EA	\$ 3,393.68	\$ 3,393.68
5.5	Rock Construction Entrance (Stone Tracking Pad)	1	EA	\$ 4,879.12	\$ 4,879.12
Subtotal Site Roadways					\$ 200,605.05
10% Contingency					\$ 20,060.50
Total Site Roadways					\$ 220,665.55
Laydown Yard					\$ 219,649.88
6.1	Grade - Laydown Yard	3	AC	\$ -	\$ -
6.1.1	Strip & Stockpile Topsoil	1,210	CY	\$ 15.36	\$ 18,590.44
6.1.2	Scarify and recompact	14,520	SY	\$ 1.63	\$ 23,711.16
6.2	F&I Aggregate - Laydown Yard	2,183	CY	\$ 72.09	\$ 157,380.11
Subtotal Laydown Yard					\$ 199,681.71
10% Contingency					\$ 19,968.17
Total Laydown Yard					\$ 219,649.88
Water Line					\$ 1,570,363.43
7.1	Mob/Demob - Water Line and Irrigation Line Install	1	EA	\$ 61,872.18	\$ 61,872.18
7.1.0	Install silt fence	10,500	LF	\$ 6.11	\$ 64,109.85
7.1.0.1	Strip and Replace Topsoil	3,703	CY	\$ 12.39	\$ 45,886.82
7.1.1	Install 12" waterline	5,070	LF	\$ 192.39	\$ 975,392.21
7.1.2	Install valves	12	EA	\$ 7,857.62	\$ 94,291.43
7.1.3	Install air vac	2	EA	\$ 14,495.83	\$ 28,991.67
7.1.4	Install sleeve/casing	30	LF	\$ 934.63	\$ 28,038.90
7.1.5	Install 2" blow offs	3	EA	\$ 12,539.28	\$ 37,617.83
7.1.6	Install meter pit (barrel, yoke, hat, no meter)	1	EA	\$ 7,431.33	\$ 7,431.33
7.1.7	pothole, tapping sub, and testing	1	LS	\$ 36,776.84	\$ 36,776.84
7.1.8	Install marker post	19	EA	\$ 1,230.26	\$ 23,374.88
7.1.9	reseeding	7	acres	\$ 3,051.24	\$ 21,358.68
7.2.1	Install marker post	2	EA	\$ 1,230.26	\$ 2,460.51
Subtotal Water Line					\$ 1,427,603.12
10% Contingency					\$ 142,760.31
Total Water Line					\$ 1,570,363.43
7.2 Irrigation Conduit					\$ 82,413.28
7.2	Install 2" HDPE Irrigation Line (Directional Bore)	674	LF	\$ 111.16	\$ 74,921.17
Subtotal Irrigation Conduit					\$ 74,921.17
10% Contingency					\$ 7,492.12

1159 SPINDLE BESS PROJECT, FREDERICK, CO - SITE WORK AND WATERLINE ESTIMATE - BLATTNER ENERGY

Unit No.	Name and Description of Construction Assembly Unit	No. of Units	U.O.M.	Unit Price	Extended Price
	Total Irrigation Conduit				\$ 82,413.28
	Landscaping and Irrigation Scope				\$ 1,188,366.50
8.1	Deciduous Trees	53	EA	\$ 822.64	\$ 43,599.97
8.1.1	Ornamental Trees	73	EA	\$ 662.16	\$ 48,337.57
8.1.2	Evergreen Trees	97	EA	\$ 784.17	\$ 76,064.83
8.1.3	Deciduous Shrubs	1,976	EA	\$ 84.50	\$ 166,975.95
8.1.4	Evergreen Shrubs	245	EA	\$ 71.71	\$ 17,569.93
8.1.5	Native Seed Prep/Installation	746,900	SF	\$ 0.28	\$ 206,144.40
8.1.6	Wood Mulch Plant Rings	21,780	SF	\$ 4.59	\$ 99,937.53
8.1.7	Irrigation Design-Build - See below for cost breakdown	1	LS	\$ 421,703.00	\$ 421,703.00
	Subtotal Landscaping and Irrigation				\$ 1,080,333.19
	10% Contingency				\$ 108,033.32
	Total Landscaping and Irrigation				\$ 1,188,366.50
				Total	\$ 4,821,694.64

Landscaping Design Build - Cost Breakdown

BID ITEM	DESCRIPTION	PAY UNIT	TOTAL QUANTITY	UNIT PRICE	TOTAL BID ITEM COST
	Water Meter Connection Assembly	EA	1	\$1,500.00	\$1,500.00
	Backflow Preventor Assembly 2"	EA	1	\$1,800.00	\$1,800.00
	Irrigation Controller (2-wire decoder type)	EA	1	\$3,500.00	\$3,500.00
	Control Wire 14ga	LF	500	\$0.20	\$100.00
	Tracer Wire	LF	5400	\$0.23	\$1,242.00
	Two-Wire Cable	LF	5600	\$1.20	\$6,720.00
	Master Valve Assembly	EA	1	\$350.00	\$350.00
	Flow Sensor Assembly	EA	1	\$350.00	\$350.00
	Irrigation Mainline Pipe & Fittings - Class 200 PVC, 2"	LF	300	\$7.50	\$2,250.00
	Irrigation Mainline Pipe & Fittings - Class 200 PVC, 2.5"	LF	4200	\$12.00	\$50,400.00
	Irrigation Mainline Pipe & Fittings - Class 200 PVC, 3"	LF	210	\$15.00	\$3,150.00
	Irrigation Mainline Pipe HDPE DR-9, 2"	LF	725	\$14.00	\$10,150.00
	Sleeving Pipe Class 200 PVC, 2"	LF	125	\$7.50	\$937.50
	Sleeving Pipe Class 200 PVC, 6"	LF	125	\$20.00	\$2,500.00
	Gate Valve Assembly, 2"	EA	2	\$350.00	\$700.00
	Gate Valve Assembly, 2.5"	EA	4	\$425.00	\$1,700.00
	Quick Coupler Valve Assembly	EA	7	\$400.00	\$2,800.00
	Overhead Rotator Irrigation (15'-35' Radius) - Seed Mix (Includes control valves and lateral piping)	SF	20000	\$1.25	\$25,000.00
	Overhead Rotor Irrigation (36'-60' Radius) - Seed Mix (Includes control valves and lateral piping)	SF	363328	\$0.60	\$217,996.80
	Dripline Irrigation 18" x 24" - Trees & Shrubs (includes control valves lateral piping and dripline)	SF	88558	\$1.00	\$88,557.60
ESTIMATE TOTAL					\$421,703.90

Exhibit C
(See Attached)

EXHIBIT C

(Sample)
(BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT

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

No.
Date:
Expiration:

To whom it may concern:

We hereby establish our Irrevocable Standby Letter of Credit No. XXXXX in favor of Town of Frederick, hereinafter referred to as "Beneficiary," at the request of Clearway Energy Group LLC for the benefit of Spindle Battery LLC, hereinafter referred to as "Applicant," in an amount not to exceed in the aggregate \$XXXX (Amount in Words and 00/100) U.S. Dollars.

This Letter of Credit shall be drawn upon in accordance with the (Insert the title of the Memorandum of Agreement for Public Improvements)

Funds are available by your draft on us at sight, duly endorsed on the reverse side thereof bearing the clause: "Drawn under [Natixis, New York Branch], Letter of Credit No. XXXXX dated _____ XX, 2025" and accompanied by the following documents:

1. The original Letter of Credit and any amendments thereto. If your demand represents a partial drawing hereunder, we will endorse the original credit and return same to you for possible future claims. If, however, your demand represents a full drawing or if such drawing is presented on the day of the relevant expiration date hereof, we will retain the original and [terminate][cancel] the Letter of Credit.
2. A statement signed by a purported officer/representative of Beneficiary that reads:

"We hereby certify that the draft accompanying this statement drawn under Letter of Credit No. XXXXX represents the amount due us under the terms and conditions of that (Insert the title of the Memorandum of Agreement for Public Improvements)."

It is a condition of this Letter of Credit that it shall be extended automatically without amendment for additional one (1) year periods from the present or any future expiration date, unless at least sixty (60) days prior to the then current expiration date, we notify you in writing by registered mail, certified mail, or overnight courier, at the above address, that we elect not to renew this Letter of Credit for said additional period.

Upon receipt by you of such notice, you may draw hereunder by your draft on us, payable at sight, in an amount up to the current available outstanding balance.

Partial and multiple drawings are permitted.

We hereby represent and affirm that the execution of this Letter of Credit will not constitute a violation of any law or regulation that may limit the amount of credit that can be extended by this Bank to any single borrower or customer.

We hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of documents as specified above, if presented at our office located at [Issuing Bank Address] on or before the expiration date noted above or any extended expiration date.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Brochure No. 600."

Yours, very truly,

By: (signature of authorized bank officer)

Title: (title of signator)

Attest:

Exhibit F
(See Attached)

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 Johnson Farms / Spindle Hill Energy Minor Subdivision Amendment No. 2 by and between the Town of Frederick, a Colorado municipal corporation and Spindle Battery LLC, a Delaware limited liability company (the “DEVELOPER”). In the event of any conflict between any paragraph, sentence or clause of this Exhibit F and similar provisions elsewhere in the MOAPI, the paragraph, sentence or clause of this Exhibit F shall control.

1. Special provisions for **Section 1. General Conditions:**

1.1 Definitions. The following are included as additional Definitions:

- (a) **Approve(d)/Approval:** The Town’s agreement and/or acceptance that, to the best of the TOWN’s knowledge, a design, plan, or other submittal is in general compliance with and consistent with all TOWN standards, codes, regulations, and requirements.
- (b) **Corrective Work:** Those repairs, replacements, construction, or other aspects of the Public Improvements to be completed by the DEVELOPER prior to conditional acceptance and/or final acceptance and as identified by the TOWN as DEVELOPER not being in substantial compliance with the Approved Improvement Plans.
- (c) **Town Design Standards and Construction Specifications (“Town DSCS”)** shall mean the TOWN standards described in *Built on What Matters*, Design Standards and Construction Specifications, 2019 Edition, as amended from time to time, and the Frederick Municipal Code, Chapter 18, Article IV, Design Standards and Construction Specifications, as amended from time to time.
- (d) **Improvement Guarantee** shall mean a form of security, including a warranty bond, cash escrow, assignment of funds, or irrevocable letter of credit, in an appropriate amount and form satisfactory to the TOWN, to guarantee the removal and repair of deficiencies prior to final acceptance by the TOWN.
- (e) **Improvement Plans** shall be defined as the Construction Plans and Drawings and Engineering Reports developed for the Development, referenced by Spindle Hill Battery Energy Storage System that have been reviewed and Approved by the TOWN.

- (f) **Lot 1:** Lot 1, Johnson Farms / Spindle Hill Energy Minor Subdivision, Amendment No. 2, Town of Frederick, County of Weld, State of Colorado.
- (g) **Private Improvements:** Those improvements for the Development that DEVELOPER intends to construct and that are intended to be privately owned and maintained.
- (h) **Public Improvements** shall be as defined as all work in the public right-of-way, Town property, easements dedicated to the Town, private property that will become Town property or an easement to the Town in the future, and projects or utilities that will become the Town's responsibility to maintain, as shown, identified and described in Exhibit B, including site landscaping, and as Approved by the TOWN in the Improvement Plans, that DEVELOPER shall construct in accordance with Town Municipal Code and Town DSCS. Notwithstanding anything in this Agreement to the contrary, the only portion of the Public Improvements the Town will own and maintain is the waterline, as described in Exhibit B.
- (i) **Property:** Johnson Farms / Spindle Hill Energy Minor Subdivision, Amendment No. 2, Town of Frederick, County of Weld, State of Colorado.
- (j) **Secured Improvements:** Those Public Improvements where the performance of the obligations to construct such Public Improvements is guaranteed by the Improvement Guarantee.

1.2 Development Obligation. Section 1.2 remains unaffected by this Agreement, except that for the purposes of this Agreement, the applicable improvements for the Property (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) are the Public Improvements, and references to "public improvements" in this Agreement mean the same.

1.3 Engineering and Surveying Services. Section 1.3 remains unaffected by this Agreement, except that for the purposes of this Agreement, the phrases "standards and specifications for public improvements as established and approved by the TOWN as of the date of submittal to the TOWN," "standards and specifications," "then existing regulations," and "plans and specifications" mean the Town Design Standards and Construction Specifications for Public Improvements, Town Land Use Code, and Town Municipal Code, as of the date of a complete submittal to the TOWN.

1.6 Plan Submission and Acceptance. Section 1.6 remains unaffected by this Agreement, except as otherwise set forth immediately below, and for the purposes of this Agreement, the phrases “plans for public improvements,” “construction plans and drawings,” “project construction plans and drawings,” “approved plans,” “accepted plans,” “plans,” and “original plans,” and related phrases, mean the Improvement Plans.

Subsection (c) is hereby amended as follows:

The DEVELOPER shall submit all plans for public improvements by acceptable electronic transfer, approved AutoCAD™ drawing files, and PDF files, as required by the TOWN. All written documents shall be submitted by acceptable electronic transfer, as PDF files, word processing files, Microsoft Word, latest version, or compatible, as required by the TOWN.

Add subsection (f) as follows:

(f) With respect to Lot 1, DEVELOPER and TOWN acknowledge and agree that such property will be used as a battery energy storage system, and that Lot 1 will require potable water for landscaping and fire service.

Add subsection (g) as follows:

(g) With respect to Lot 1, under Section 2.21 of the Frederick Land Use Code, sanitary sewer is only required for uses that have human occupancy. The Development will not include sanitary sewer Public Improvements so long as the Development does not have human occupancy. In approving this Agreement (and so long as the Development does not have human occupancy), the TOWN hereby waives for Lot 1 any applicable sewer service requirement in Municipal Code Section 13-1-117.

1.11 Financing and Improvement Guarantees.

Subsection (b) is hereby amended to read:

(b) The DEVELOPER shall submit to the TOWN an Improvement Guarantee assuring construction of the SECURED IMPROVEMENTS. 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).

Subsection (c) is hereby amended as follows:

(c) The total amount of the Improvement Guarantee shall be calculated as one hundred percent (100%) of the total estimated cost, including labor and materials, of all Public Improvements to be constructed as described on “Exhibit B”, except those public utilities

to be owned by an entity other than the TOWN and for which a separate surety may be provided. The TOWN shall not release all of the Improvement Guarantee until the TOWN has granted final acceptance of the SECURED IMPROVEMENTS. Partial releases of an Improvement Guarantee may be considered when development is phased, has a clearly defined phasing plan shown and described in the Improvement Plans, and when a phase of the Development has received conditional acceptance. Irrespective of partial releases, at all times during the warranty period on SECURED IMPROVEMENTS, the TOWN shall retain ten percent (10%) of the total improvement costs as an Improvement Guarantee under this section, except where the TOWN in its reasonable discretion may require a higher amount for particular Public Improvements that have high corresponding repair, replacement or maintenance costs. 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".

The first two sentences of subsection (e) are amended as follows:

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 the cost estimates and to require the DEVELOPER to provide an updated estimate of costs, before or after DEVELOPER provides the Improvement Guarantee on each phase of the SUBDIVISION, when the DEVELOPER seeks to commence construction.

2. Special provisions for **Section 2 CONSTRUCTION OF IMPROVEMENTS:**

2.1 Improvements to be Constructed. The first sentence of this paragraph is hereby amended as follows:

In accordance with the Town Design Standards and Construction Specifications, the Improvement Plans, the Town Municipal Code, and the Town Land Use Code, the DEVELOPER shall construct all Public Improvements and will comply with all additional provisions specified in Exhibit F.

2.2 On-site and Off-site Rights-of-way, Easements, Licenses and Permits.

Subsection (a) is hereby amended as follows:

(a) All such conveyances shall be free and clear of monetary liens, taxes (except for ad valorem real property taxes and assessments for the calendar year of conveyance and thereafter) and encumbrances that would materially interfere with the conveyances' intended purpose and shall be by plat dedication or by special warranty deed subject to statutory exceptions 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.

The last sentence in Subsection (b) is hereby amended as follows:

The DEVELOPER shall pay for the TOWN's reasonable, documented acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

2.3 Construction. Subsection (a) is hereby amended as follows:

(a) Construction of Public Improvements shall be completed in accordance with the Approved Improvement Plans and within a reasonable time, not to exceed two calendar years from the date of commencement (subject to force majeure as set forth in Section 14.11 below). The DEVELOPER will cause its 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.

2.9 Testing and Inspection. Subsection (a) is hereby amended as follows:

(a) DEVELOPER shall employ, at its own expense, a licensed and registered testing company, authorized to do business in the State of Colorado, to complete all testing of materials or construction for compliance with the Town Design Standards and Construction Specifications, 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 the TOWN'S review and acceptance under subsection (c) below, before commencement or continuation of construction to which the testing is applicable. The Town will conduct such review and issue any acceptance as expeditiously as reasonably possible.

Subsection (b) is hereby amended as follows:

(b) At all times during construction of the Public Improvements, the TOWN and/or representatives of the affected Special Districts shall have 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 Improvement Plans and the Town Design Standards and Construction Specifications and the construction regulations of any District that must accept or approve the Public Improvements.

In the first sentence of subsection (d), the reference to the number "ten (10)" is hereby amended to be "thirty (30)."

In subsection (d) the "costs incurred by the Town" are to be reasonable and documented.

2.10 Conditional Acceptance of Constructed Public Improvements.

Subsection (c) is hereby amended as follows:

(c) The TOWN will conduct all inspections and reviews, and grant any acceptance as expeditiously as reasonably possible. If the Public Improvements completed by the DEVELOPER are not in substantial compliance with the Approved Improvement Plans, the Town shall provide written notice to the DEVELOPER of the Corrective Work required to receive conditional acceptance. Within thirty (30) days of said notice, weather permitting (and subject to force majeure), or according to a schedule of such repairs the DEVELOPER provides to the Town, if approved by the Town in its reasonable discretion, The DEVELOPER shall complete all needed repairs, replacements, construction, or other work, repair or remove all materials and work not conforming to such Town Municipal Code and Town DSCS and replace the same at DEVELOPER's expense to conform to such Town Municipal Code and Town DSCS. After the DEVELOPER completes the Corrective 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 Corrective Work is acceptable before the TOWN acts to complete any such work at the DEVELOPER's expense as provided in (d) below.

Subsection (d) is hereby amended as follows:

(d) If the DEVELOPER has not completed the Public Improvements on or before the completion date set forth in Section 2.3 herein (subject to force majeure), or if the DEVELOPER does not complete the repairs, replacements, construction, or other work required within the timeframes outlined immediately above, the Town may exercise its rights to secure performance as provided in Section 14.1 of this Agreement.

The following language is hereby added at the end of Subsection (g) in order to amend it as follows:

Notwithstanding the foregoing, the Town acknowledges that with respect to Lot 1, the Town will issue building permits for temporary facilities, right-of-way, civil/grading and oversize/overweight before completion of the on-site water line serving the Development, and the Town will allow construction of the water lines to occur in tandem with the construction and work allowed by the foregoing permits. However, the Town will not issue permits for the BESS commercial building, electrical or substation building until the water lines on-site serving the Development have been issued conditional acceptance.

Subsection (h) remains unaffected by this Agreement, except that any references to Left Hand Water District are hereby deleted, and with respect to Lot 1 only, any reference to sewer improvements is hereby deleted.

2.11 Maintenance and Warranty of Improvements. This Section is hereby amended as follows:

For a two (2) year period, which is the greater of either two (2) years or two (2) winter seasons (winter seasons being from November 1 through April 30), from the date of conditional acceptance for all Public Improvements related to the Development, the DEVELOPER shall warrant said Public Improvements and, at its own expense, make all repairs or replacements that, in the reasonable opinion of the Town, are necessary to maintain said Public Improvements. 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, weather permitting (and subject to force majeure), or per provided schedule by the DEVELOPER, as approved by the TOWN in its reasonable discretion, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.

2.12 Final Acceptance.

Subsection (b) is hereby amended as follows:

(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 or special Warranty Deed subject to statutory exceptions, 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 Public Improvements, as limited by Section 1.1(h) of this Exhibit F, constructed by the DEVELOPER and through the Engineering Department shall issue to the DEVELOPER a letter acknowledging said final acceptance.

The second sentence of subsection (c) is hereby amended as follows:

Specific components of Public Improvements that are considered in the reasonable opinion of the Town Engineer to be Major Improvements that in the reasonable opinion of the Town contain material deficiencies that must be corrected, 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.

Subsection (d) is hereby amended as follows:

(d) If the Developer does not correct all deficiencies and make repairs identified in the final acceptance inspection to the Town's reasonable satisfaction within thirty (30) days after receipt of said notice, weather permitting (and subject to force majeure) or as provided in a schedule by DEVELOPER, as approved by the TOWN in its reasonable discretion, the Town may exercise its rights to secure performance as is provided in Section 14.1 of this Agreement.

Subsection (f) is hereby amended as follows:

(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 (subject to force majeure), then the warranty period shall extend on a month to month basis and the DEVELOPER shall be in default of the Agreement and the Town may exercise its rights under Section 14.1 of this Agreement.

Subsection (g) remains unaffected by this Agreement, except that with respect to Lot 1 only, any reference to sewer improvements is hereby deleted.

3. Special Provisions for **Section 3 PUBLIC USE LAND DEDICATION**. This entire section is hereby amended as follows:

Before the issuance of any building permits, the DEVELOPER shall convey to the Town those certain lands, if any, and public trail easement rights as described or depicted on the subdivision plat, as dedicated to public uses. Said conveyance shall be by way of the plat, a separate easement agreement, or special warranty deed (as applicable), subject to the statutory exceptions, in form and substance satisfactory to the Town Attorney. The DEVELOPER shall, at the DEVELOPER's expense, furnish a title report for the Property at the time of conveyance. The Property shall be free and clear of monetary liens, taxes (except for ad valorem real property taxes and assessments for the calendar year of conveyance and thereafter), and encumbrances that would materially interfere with the conveyances' intended purpose, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and rights-of-way that would be readily apparent from a physical inspection. The Town shall record all title documents at the DEVELOPER's expense.

4. Special provisions for **Section 5 WATER IMPROVEMENTS**

5.2 Extension of Water Services.

Subsection (a) is hereby amended as follows:

(a) The DEVELOPER shall install, at its sole cost and expense, all the water mains, trunk lines, pumping and storage facilities, and appurtenances necessary to provide service

from the Town's system to the Subdivision, as described in Exhibit B, pursuant to the Improvement Plans. These extensions may include the oversizing of lines and pumping and storage facilities for future development of adjacent property.

5. Special Provisions for Section 6 **SANITARY SEWER SERVICES**

Add the following as subsection 6.1(d):

(d) Notwithstanding anything to the contrary in Section 6, with respect to Lot 1, under Section 2.21 of the Frederick Land Use Code, sanitary sewer is only required for uses that have human occupancy. The Development will not have human occupancy, and will therefore not include sanitary sewer Public Improvements. This terms and provisions of this Section 6 are not applicable to Lot 1. In approving this Agreement, the Town hereby waives any applicable sewer service requirement for Lot 1 in Municipal Code Section 13.1-117.

6. Special Provisions for Section 8 **DRAINAGE IMPROVEMENTS**

8.1 **Provision of Storm Water Drainage.** Section 8.1 is hereby amended as follows:

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 set forth in the Town Design Standards and Construction Specifications, Town Municipal Code, and Town Land Use Code.

Subsections (a) through (c) are hereby amended as follows:

(a) The DEVELOPER shall construct the drainage-related Public Improvements for the Development, in accordance with the Improvement Plans for the Property prepared by the DEVELOPER and reviewed and accepted by the TOWN. 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. The 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, the drainage-related Public Improvements and Private Improvements for the Development, including, but not limited to any storm water lines, drainage swales, pumping, detention, and storm water treatment facilities. The DEVELOPER shall install, at its sole cost and expense, such sedimentation and erosion control measures as are required by the Town Design Standards and Construction Specifications, Town Municipal Code, Town Land Use Code, and State of Colorado.

(c) The DEVELOPER shall install, at its sole cost and expense, such groundwater and foundation drainage system-related Public Improvements and Private Improvements for the Development. Operation and maintenance of any such ground water and foundation drainage system shall remain the responsibility of the DEVELOPER until specifically transferred to individual lot owner, metro district, or an HOA, if any.

8.2 Master Drainage Plan.

The last sentence of subsection (d) is hereby amended as follows:

(d) The DEVELOPER shall be responsible for ongoing maintenance of all Public Improvements and Private Improvements related to drainage necessary to transport groundwater to a natural drainageway or storm sewer system accepted by the TOWN.

8.3 Drainage Improvement Construction.

Subsections (a) through (c) are hereby amended as follows:

(a) The DEVELOPER shall construct drainage-related Public Improvements and Private Improvements for the Property as described in Exhibit B, in accordance with the Town's Master Drainage Plan, the Town Design Standards and Construction Specifications, and Approved Improvement Plans and Municipal Code.

(b) The DEVELOPER shall so design and construct all storm drainage-related Public Improvements and Private 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 drainage-related Public Improvements and Private Improvements in an appropriate sequence to meet the demands that development of the Subdivision generates. The DEVELOPER shall meet all Town Design Standards and Construction Specifications in effect at the time of construction.

7. Special Provisions for Section 9 TRANSPORTATION FACILITIES

9.1 Off-site and On-site Rights-of-way, Easements, Licenses, and Permits.

The last sentence in subsection (b) is hereby amended as follows:

The DEVELOPER shall pay for the TOWN's reasonable, documented acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

9.2 On-site and Off-site Transportation Improvements.

Section 9.2 is hereby amended as follows:

For full development of the Subdivision to occur, certain on-site and off-site transportation-related Public Improvements, as identified in the accepted traffic study may be necessary.

The DEVELOPER shall construct the transportation related Public Improvements set forth in Exhibit B in a sequence acceptable to the TOWN to meet the demands that development 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-related Public Improvements to accommodate transportation needs that the Subdivision will generate.

9.3 On-site and Off-site Arterial Street Improvements and Arterial Intersection Improvements.

Section 9.3 is hereby amended as follows:

The DEVELOPER's construction of on-site and off-site arterial street-related Public Improvements and arterial intersection-related Public Improvements in excess of the cost of a collector street and collector street intersection, excluding on-site rights-of-way and site-specific Public Improvements, will be subject to reimbursement by benefitted property as specified in this MOAPI. Notwithstanding the foregoing, there are no such Public Improvements with respect to Lot 1.

9.5 Street Improvements.

Section 9.5 is hereby amended as follows:

For the purposes of this Agreement, "**Street Improvements**" shall be defined to include, but not limited to, all Public 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 Accepted, including individual lot service lines leading in from the main to the property line. All Street Improvements as detailed in Exhibit B shall be constructed and installed pursuant to TOWN Approved Improvement Plans, and the Town Design Standards and Construction Specifications, Town Municipal Code, and Town Land Use Code.

Section 9.8 Street Lights.

Section 9.8 is hereby amended as follows:

The DEVELOPER will install all required street lighting and underground electrical supply, if any.

8. Special Provisions for Section 12 LANDSCAPING.

Section 12 is hereby amended as follows

12.1 Landscape Improvements.

At the end of this Section 12.1, add a subsection (c)

(c) With respect to Lot 1, conditional acceptance of any landscape-related improvements, as detailed in Exhibit B and set forth in the landscape and irrigation Improvement Plans review and Approved by the TOWN, is not a condition of the TOWN's issuance of any building permits for the Development. Final acceptance or a separate Improvement Guaranty covering the cost of labor and materials, including irrigation, at 125% of any landscape-related Improvements is a condition of any certificate of completion or certificate of occupancy.

9. Special Provisions for Section 14 **MISCELLANEOUS TERMS**

14.1 **Breach of Agreement, Default.**

This Section is amended as follows:

In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants, and undertakings of this AGREEMENT, the TOWN shall provide DEVELOPER with written notice specifying such breach and DEVELOPER shall have thirty (30) days from the date it receives notice to cure; provided, that, in the event that such breach cannot be cured within such thirty (30) day period, DEVELOPER shall be granted an additional period of time as DEVELOPER may require (not to exceed an additional sixty (60) days) to cure if DEVELOPER has taken active, diligent steps to cure, in the Town's reasonable opinion. If DEVELOPER fails to cure such breach within the cure period specified herein, then TOWN 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 improvements. Any reasonable, documented 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. DEVELOPER's failure to timely comply with any of the terms, conditions, covenants, and undertakings of this AGREEMENT, including, but not limited to, timely complete construction of Public Improvements, that is solely due to inclement weather, acts of God, material shortages, labor strikes, and other matters not within the DEVELOPER'S control shall not be considered a breach of the AGREEMENT.

14.11 Force Majeure

This Section is amended as follows:

Whenever an agreed upon deadline requires the DEVELOPER to complete construction, maintenance, repair, or replacement of improvements, or any other terms, conditions, covenants, and undertakings of this AGREEMENT, 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, or circumstances beyond the reasonable control of the DEVELOPER.

10. **Special Provision for Right-of-Way Dedication.**

Additional ROW dedication may be required for future arterial roadway improvements and/or trails and shall be dedicated at the time of future development

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 25-R-60**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO, APPROVING A
FIRST AMENDMENT TO THE JOHNSON FARMS/SPINDLE HILL ANNEXATION #2**

WHEREAS, on August 2, 2006, an annexation agreement affecting certain property referred to therein, known as the Johnson Farms/Spindle Hill Annexation #2, was recorded in Weld County records at reception number 3408526 (“Annexation Agreement”); and

WHEREAS, Paragraph D of Exhibit C of the Annexation Agreement, “Special Provisions Applying to the Johnson Farms/Spindle Hill Energy Annexation,” requires that the Annexation Agreement be amended in order to allow for development of Outlot 2, Johnson Farms/Spindle Hill Energy Minor Subdivision Plat (“Outlot 2”); and

WHEREAS, Johnson Farms LLP replatted Outlot 2 as Lot 1, Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 1 (the “Property”) and three other lots (that are not the subject of this Amendment);

WHEREAS, Spindle now owns the Property; and

WHEREAS, Spindle wishes to develop the Property for the purpose of a battery energy storage system and has submitted to the Town an application for development for the Property; and

WHEREAS, the Town supports such development.

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

Section 1. The Frederick Board of Trustees finds that:

The First Amendment to the Annexation Agreement meets applicable Town code and State statute.

Section 2. Approval of Minor Subdivision.

- a. The Board of Trustees approves First Amendment to the Annexation Agreement, attached hereto as Exhibit A.
- b. This approval shall be memorialized with the signature of the Mayor, attested by the Town Clerk, and shall be recorded.

Section 3. Effective Date.

This resolution shall become effective immediately upon adoption.

Section 4. 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 5. Certification.

The Town Clerk shall certify 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 ____ DAY OF _____, 2025.

TOWN OF FREDERICK

ATTEST:

By _____
Tricia David, Town Clerk

By _____
Tracie Crites, Mayor

Exhibit A

First Amendment to Annexation Agreement

**FIRST AMENDMENT TO ANNEXATION AGREEMENT
JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION #2**

This First Amendment to Annexation Agreement, Johnson Farms/Spindle Hill Energy Annexation #2 ("First Amendment") is entered into as of the date last below signed, by and between the Town of Frederick, a Colorado statutory town, whose address is 401 Locust Street, P.O. Box 435, Frederick, Colorado 80530 ("Town"), and Spindle Battery LLC, a Delaware limited liability company, whose legal address is c/o Clearway Energy Group LLC, 4900 N. Scottsdale Road, Suite 5000, Scottsdale, AZ 85251 ("Spindle") and their successors and assigns (collectively, "Parties").

WHEREAS, on August 2, 2006, an annexation agreement affecting certain property referred to therein was recorded in Weld County records at reception number 3408526 ("Annexation Agreement"; **Exhibit A**); and

WHEREAS, Paragraph D of Exhibit C of the Annexation Agreement, "Special Provisions Applying to the Johnson Farms/Spindle Hill Energy Annexation," requires that the Annexation Agreement be amended in order to allow for development of Outlot 2, Johnson Farms/Spindle Hill Energy Minor Subdivision Plat ("Outlot 2"); and

WHEREAS, Johnson Farms LLP replatted Outlot 2 as Lot 1, Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 1 (the "Property") and three other lots (that are not the subject of this Amendment);

WHEREAS, Spindle now owns the Property; and

WHEREAS, Spindle wishes to develop the Property and has submitted to the Town an application for development for the Property; and

WHEREAS, the Town supports such development.

Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Town and Spindle agree to this First Amendment on the terms and conditions set out herein.

1. The Parties hereby incorporate the Recitals above by reference. Paragraph D to Exhibit C of the Annexation Agreement is hereby amended to read:

Development of a portion of the property formerly known as Outlot 2, Johnson Farms/Spindle Hill Energy Minor Subdivision Plat now in its entirety described as Lot 1, Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 1, is authorized by the Town of Frederick under the terms of Town regulations in place at the time of application for Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 (the "New Replat").

2. The Parties acknowledge and agree that once the Town and Spindle execute the Memorandum of Agreement for Public Improvements pertaining to the New Replat, such agreement shall supersede Sections 4, 5, 6, 10(c), 11, 13, 15 and 16 of the Annexation Agreement with respect to the Property, and the Annexation Agreement shall be of no further force or effect as to the Property under those Sections.
3. Except as amended herein, all other terms and conditions of the Annexation Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Town and Spindle Battery LLC execute this FIRST AMENDMENT TO ANNEXATION AGREEMENT, JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION #2, on _____, 2025.

Town of Frederick, Colorado,
a Colorado statutory town

By: _____
Date: _____

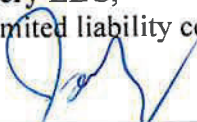
ATTEST

APPROVED AS TO FORM

By: _____
Town Clerk

By: _____
Town Attorney

Spindle Battery LLC,
a Delaware limited liability company

By: 
Name: John Woody
Date: Vice President

STATE OF COLORADO)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by _____, as _____ of _____, a Colorado limited liability company, on behalf thereof.

Notary Public

My commission expires:

SEE ATTACHED

Acknowledgement

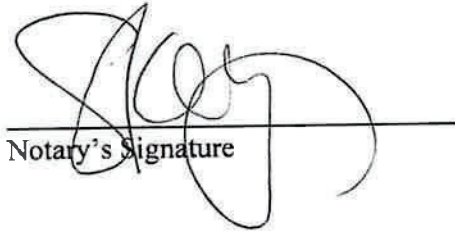
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On October 15, 2025, before me, S. Key, a Notary Public, personally appeared John Woody, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary's Signature



[Notarial Seal]

Exhibit A
Annexation Agreement

14 100

526

ANNEXATION AGREEMENT

Johnson Farms / Spindle Hill Energy Annexation #2

THIS AGREEMENT is made and entered into this 2nd day of August, 2006, by and between Spindle Hill Energy LLC and Susan J. Troudt, Carla Johnson Hobbs, and Investors Independent Trust Company, as personal representative for Marian J. Stratton, formerly known as Marian J. Botinelli, Deceased, hereinafter referred to as the "ANNEXOR," and the Town of Frederick, a municipal corporation of the State of Colorado, hereinafter referred to as "Frederick" or "TOWN".

WITNESSETH:

WHEREAS, the ANNEXOR desires to annex to the Town of Frederick the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof, hereinafter referred to as "PROPERTY" or "the PROPERTY"; and

WHEREAS, the TOWN wishes to control its growth in a planned and orderly fashion, maintaining and improving quality of life and the TOWN's ability to provide and enhance environmental amenities, services and local opportunity for its citizens; and,

WHEREAS, the ANNEXOR wishes to develop an up to 320 MW electrical generating facility and ancillary facilities on the PROPERTY (hereinafter the "PROJECT"); and

WHEREAS, the ANNEXOR acknowledges that upon annexation, the PROPERTY will be subject to all ordinances, resolutions, and other regulations of the Town of Frederick, as they may be amended from time to time; and

WHEREAS, the ANNEXOR has submitted the Johnson Farms/Spindle Hill Energy Center Minor Subdivision Plat concurrently with its petition for annexation; and

WHEREAS, the Lots 1, 2, and 3 and Outlots 2 and 3 as depicted in the Johnson Farms/Spindle Hill Energy Center Minor Subdivision Plat are a part of this Johnson Farms/Spindle Hill Energy Annexation No. 2; and

WHEREAS, the parties mutually recognize and agree that it is necessary and desirable for orderly development that the TOWN be the source of necessary urban services for property to be developed, such as police protection, and local government administration; and

WHEREAS, the parties agree that it is in the public interest of the parties hereto to enter into a written agreement as to the overall plan of development, including location and dedication of public ways and public areas, zoning, dedication of water rights and location and payment regarding roads, utilities and other improvements; and

WHEREAS, the ANNEXOR acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-

way and easements, utility facilities and other public improvements, to the TOWN as contemplated in this AGREEMENT are directly related to and generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation;

NOW, THEREFORE, in consideration of the foregoing covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties as follows:

1. **BASIC INTENT.** The intent of this AGREEMENT is to set forth the requirements for annexation and development of the PROPERTY described above. This AGREEMENT shall be binding upon the parties and may not be modified except by further written agreement.
2. **DEVELOPMENT.** The PROPERTY annexed shall be developed in general conformity with the TOWN comprehensive plans, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements. The TOWN and the ANNEXOR agree that such plans, regulations, codes and other statutory and local requirements are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
 - a. **Zoning.** The ANNEXOR desires I Industrial District zoning for 40.739 acres ("Lot 1 and Lot 2"), P-E Public Established District for 3.15 acres ("Lot 3"), and A-1 Agricultural District for 307.105 acres ("Outlots 2 and 3"), in accordance with the zoning categories contained in Article 3 of the **Frederick Land Use Code**. The parties recognize that it is the intent and desire of the ANNEXOR to develop the PROPERTY in a manner generally consistent with the zoning requested and that the granting of such zoning by the Town of Frederick is a condition to annex the PROPERTY. ANNEXOR shall take all action necessary to permit zoning by the Town of Frederick of the annexed area within the time prescribed by state statutes.
 - b. **Land Use.** All construction will be subject to the types and intensities of land use permitted pursuant to this AGREEMENT and the **Frederick Land Use Code** in effect on the date hereof, or in effect on the date when building permit applications are filed.
3. **MUNICIPAL SERVICES.** The TOWN agrees to provide the PROPERTY with all of the usual municipal services in accordance with this AGREEMENT, and the ordinances and policies of the TOWN, which services shall include, but are not limited to, general government administration, police protection, electricity, and water services and all other services customarily and currently provided by the TOWN in the area to be annexed. The ANNEXOR acknowledges, agrees and accepts that the TOWN does not provide sewer, natural gas services or fire protection services to the area to be annexed. The TOWN and the ANNEXOR agree that the provision or non-provision of such municipal services by the

TOWN or by another entity is directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

- a. The TOWN agrees to allow and to assist the ANNEXOR in obtaining service from other non-municipal entities including, but are not limited to, United Power, Weld County Tri-Area Sanitation District and Central Weld County Water District.
 - b. The ANNEXOR agrees to petition for inclusion of the PROPERTY into the Weld County Tri-Area Sanitation District, Frederick-Firestone Area Fire Protection District, Northern Colorado Water Conservancy District, Weld County School District Re-8, and the Carbon Valley Recreation District within thirty (30) days of the effective date of the annexation, if the PROPERTY is not already included within said districts. The ANNEXOR appoints the Town Clerk as its agent for the purpose of petitioning for inclusion into said special districts, in the event the ANNEXOR fails to do so, and to pay all costs associated therewith.
 - c. Nothing in this Agreement shall provide the ANNEXOR with priority for utility, public safety, and other public services by the TOWN. If utility, public safety, or other public services are not available to coordinate with the ANNEXOR's development schedule, the ANNEXOR shall either delay development until funding becomes available, or fully advance funds necessary to accelerate their availability and priority, according to the TOWN's policies and regulations, and the provisions of this Agreement.
4. **PUBLIC IMPROVEMENTS.** The ANNEXOR agrees to design, construct and install at his sole cost and expense, in accordance with the TOWN reviewed and accepted plans, all public improvements within or adjacent to the PROPERTY and serving the PROPERTY. All public improvements shall be constructed to the Town standards, or where applicable, to the standards of the utility providing the service. All utilities will be placed underground. For the purposes of the PROJECT, the following public improvements are required:
- a. ANNEXOR shall pay to the TOWN at the time of submission of an application for a building permit \$300,000 to be used by the TOWN for the paving of County Road 14 from its intersection with Colorado Highway 52 to its intersection with County Road 19 with an asphalt paved surface. All private roads shall be constructed to the TOWN standards.
 - b. ANNEXOR shall construct and dedicate to the TOWN a 12 inch water main from the existing Town of Frederick water tanks located on Weld County Road 17 along the half section line of Section 33 to Lot 2.

- c. The ANNEXOR agrees to provide to the TOWN, a two (2) year guarantee, from the time of conditional acceptance of construction, for all improvements.
 - d. The ANNEXOR agrees to pay the full cost of relocating existing utilities that may be required by the development of the PROPERTY. All existing overhead utilities within the PROPERTY or in road right-of-ways adjacent to the PROPERTY, including but not limited to electric or telecommunications lines and cables shall be relocated underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.
5. **WATER RIGHTS.** Prior to the approval of a building permit within the PROPERTY, the ANNEXOR shall convey, transfer or assign to the TOWN, free and clear of all liens and encumbrances, 80 CBT (Colorado Big Thompson) units, and shall dedicate to the TOWN all "non-tributary" and "not non-tributary" groundwater appurtenant to the Property. Transfer of said water rights is to be by warranty deed acceptable to the Town Attorney.
6. **LAND DEDICATION.** The dedication of public easements for utilities, rights-of-way for streets and other public ways shall be by plat dedication.
- a. **Conservation Easements.** Upon the approval of the subdivision plat for the PROPERTY, ANNEXOR shall record a conservation easement for the benefit of the TOWN for Outlot 3 in a form acceptable to the Town Attorney. The conservation easement shall limit the use of Outlot 3 to agricultural, parks and open space, underground utility, and access to adjacent property uses and those uses necessary for the PROJECT only.
 - b. **Water Tank Site.** Upon request by the TOWN, ANNEXOR shall dedicate to the TOWN a site of approximately 3.16 acres ("Lot 3") for a water tank in a location determined by the TOWN.
 - c. **Fair Contribution for Public School Sites.** In lieu of land dedication for public school sites, the ANNEXOR shall enter into a Financial Support Agreement with the St. Vrain Valley School District RE 1-J. the Financial Support Agreement shall provide for ANNEXOR to donate to the St. Vrain Valley School District RE 1-J the sum of \$250,000 upon receipt of Use and Occupancy Permit from the TOWN.
7. **WATER SERVICE.** Water service to the PROPERTY shall be provided by the TOWN. If the PROPERTY is not already in the Northern Colorado Water Conservancy District, the ANNEXOR 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. The ANNEXOR hereby acknowledges the TOWN policies with respect to obtaining water service from the TOWN, the dedication of water rights to the TOWN in connection with annexations, the extension of water

lines to the PROPERTY and the provision of and pumping and storage facilities to serve the PROPERTY. The ANNEXOR agrees to comply with TOWN ordinances and policies and with any amendments thereto, including any applicable amendments adopted subsequent to the annexation of the PROPERTY. Water service to the PROJECT will be provided upon compliance with Paragraphs 5 and 7 of this AGREEMENT.

- a. **Extension of Water Services.** The ANNEXOR shall install at his sole cost and expense and dedicate to the TOWN after construction, a 12 inch water distribution line from the existing Town of Frederick water tanks located on Weld County Road 17 along the half section line of Section 33 to Lot 2. The ANNEXOR shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the PROPERTY.
 - b. **Water Connection and Plant Investment Fees.** Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the ANNEXOR requests water service. Water connection and plant investment fees shall be determined and paid at the time a building permit for a structure is requested from the TOWN.
8. **SANITARY SEWER SERVICES.** Sanitary sewer service to the PROJECT will be provided by an on-site septic system approved by the TOWN. At such time as additional development takes place, sanitary sewer service to the PROPERTY will be provided by Weld County Tri-Area Sanitation District, and not by the TOWN. ANNEXOR shall comply at the time of any additional development with the District's requirements for extension of service to the PROPERTY and for payment of sanitary sewer tap and plant investment fees.
9. **ELECTRIC SERVICES.**
 - a. **Provision of Electric Service.** The parties agree that the ANNEXOR will provide its own electrical service.
10. **DRAINAGE.** In conformance with the TOWN standards and specifications, the ANNEXOR shall make provisions to control all storm water runoff greater than that historically generated from the PROPERTY. The ANNEXOR shall not alter historic flows in a manner that would adversely affect upstream or downstream properties.
 - a. **Drainage Plan.** The ANNEXOR, at his sole expense shall prepare a master drainage plan for the PROPERTY. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection and detention facilities. If the master drainage plan results in changes to drainage or irrigation facilities affecting other property or facility owners, the TOWN may require the ANNEXOR to obtain written consent from each property or facility owner for the changes

before the TOWN will accepted the plan. The ANNEXOR shall construct all improvements in an appropriate sequence to meet the demands that development of the PROPERTY generates. The ANNEXOR shall meet all TOWN standards and specifications in effect at the time of construction. The TOWN may require the ANNEXOR to update the master drainage plan for the PROPERTY for the review of each final plat to determine the configuration, timing, and responsibility for the improvements.

- b. **Drainage Improvements.** The master drainage plan, as reviewed and accepted by the TOWN, shall state the ANNEXOR's responsibility for on-site drainage improvements. The master drainage plan may include construction of facilities to convey, collect and detain irrigation and storm water. The master drainage plan shall also state the ANNEXOR's responsibility for off-site improvements.
 - c. **Maintenance of Drainage Facilities.** Detention ponds, private storm sewers, under drains, and other drainage facilities will be owned and maintained by the ANNEXOR.
- 11. **TRANSPORTATION FACILITIES.** The ANNEXOR has provided a traffic study prepared by Harris Kocher Smith Engineers, dated January 6, 2006. Based on this traffic study, no additional traffic improvements are required other than those specified in Paragraph 4.a. above.
- 12. **PARKS AND OPEN SPACE IDENTIFIED IN THE FREDERICK COMPREHENSIVE PLAN.** The Frederick Comprehensive Plan, as amended, identifies park and open space land within the planning area. ANNEXOR shall preserve, construct, develop and dedicate to the TOWN all park and open space areas within, crossing or bordering the PROPERTY as depicted in the Frederick Comprehensive Plan, as amended, at the time of any replatting the PROPERTY.
- 13. **FIRE PROTECTION.** The ANNEXOR shall be solely responsible for installing all fire hydrants and other fire protection measures on the PROPERTY and its perimeter as may be required by the Frederick-Firestone Fire Protection District.
- 14. **COST ALLOCATION AND RECAPTURE OF COSTS FOR PUBLIC AND COMMON IMPROVEMENTS.** The TOWN may require the ANNEXOR to pay for other public improvements that relate to development of the PROPERTY other than the PROJECT. These public improvements may benefit not only the PROPERTY, but also adjacent landowners and the public.
 - a. The TOWN may assure construction of public improvements by requiring the ANNEXOR to execute a Memorandum of Agreement for Public Improvements ("MOAPI"). The TOWN may require financial security by the ANNEXOR before development of all or any applicable phase of development.

- b. Where the ANNEXOR constructs public improvements that will also benefit other property owners and the public, reimbursement to the ANNEXOR shall be according to the Frederick Municipal Code in effect at the time of development, and detailed in the ANNEXOR's MOAPI.
 - c. Where the ANNEXOR's property abuts or benefits from existing public improvements that have been constructed by others (including the TOWN), the ANNEXOR may be required to participate in those public improvements according to the Frederick Municipal Code in effect at the time of development and as detailed in the ANNEXOR's MOAPI.
- 15. **DEVELOPMENT IMPACT FEES.** The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the property upon the TOWN's infrastructure, administration and deliver of governmental services. The ANNEXOR agrees to the payment of these uniform development impact fees upon approval of a building permit for the PROJECT in the following amounts:
 - a. Building Permit Fee: \$110,103.25
 - b. Plan Review Fee: \$71,567.11
 - c. Electrical Permit Fee: \$57,403.35
 - d. General Capital Impact Fee: \$3000
 - e. Electrical Impact Fee: \$500
 - f. Park Improvement Impact Fee: \$2000
 - g. Open Space Impact Fee: \$1000
 - h. Transportation Impact Fee: \$23,761
 - i. Drainage Impact Fee: \$13,962
- 16. **USE TAX.** ANNEXOR agrees to the payment of Use Tax pursuant to the Frederick Municipal Code in the amount of \$506,171.21 upon approval of a building permit for the PROJECT.
- 17. **CONFORMANCE WITH TOWN REGULATIONS.** The ANNEXOR agrees that the design, improvement, construction, development, and use of the PROPERTY shall be in conformance with all TOWN ordinances and resolutions and the TOWN's "Standard Design Criteria and Standard Construction Requirements" including, without limitation, those pertaining to, zoning, streets, storm drainage, utilities, and flood control.

18. **VESTED RIGHTS.** The TOWN and the ANNEXOR agree that only the Final Plat(s) of the PROPERTY, approved by the TOWN in accordance with Article 5 of the **Frederick Land Use Code**, and amendments thereto, constitutes a site specific development plan pursuant to C.R.S. § 24-68-101 et. seq., as amended, (the "Vested Rights Act") for that portion so platted, and in addition, that the rights which vest pursuant to the "Vested Rights Act" shall vest for a period of three (3) years. The ANNEXOR and the TOWN agree that the need for the establishment of this process for the vesting of property rights are directly related to the TOWN's ability to control its growth in a planned and orderly fashion, and is generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
19. **EXCLUSIVITY OF ANNEXATION PETITION.** The ANNEXOR agrees to not sign any other petition for annexation of the PROPERTY or any petition for an annexation election relating to the PROPERTY, except upon request of the TOWN.
20. **THREE-MILE ANNEXATION PLAN.** The Frederick Comprehensive Plan, as amended, encompasses the entire PROPERTY. The Frederick Comprehensive Plan, as amended, along with accompanying maps, plats, charts and descriptive material, has been adopted as the master plan for the three-mile area surrounding the Town of Frederick as required by C.R.S. § 31-12-105 (1) (e). This "Three Mile Annexation Plan" has been amended to the extent necessary to incorporate the above described PROPERTY and to update the Plan by the ordinance annexing the PROPERTY and complies with the requirements of C.R.S. § 31-12-105 (1)(e).
21. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.** The TOWN and the ANNEXOR agree 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 PROPERTY and that no takings thereby will occur requiring any compensation.
22. **MISCELLANEOUS PROVISIONS.**
- a. **Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the TOWN's ordinances or resolutions, or as a waiver of the TOWN's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the TOWN and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the TOWN of any tax or fee.
 - b. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have agreed to the Agreement including each part, section, subsection, sentence, clause or phrase

thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

- c. **Amendments to the Agreement.** This Agreement may be amended, at anytime, upon agreement of the parties hereto. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the PROPERTY subject to the amendment unless otherwise specified in the amendment.
- d. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the PROPERTY, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at the ANNEXOR's expense.
- e. **Indemnification.** ANNEXOR agrees to indemnify and hold harmless the TOWN and the TOWN's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorneys' fees and court costs, which arise out of or are in any manner connected with the annexation of the PROPERTY, or with any other annexation or other action determined necessary or desirable by the TOWN in order to effectuate the annexation of the PROPERTY, or which are in any manner connected with the TOWN's enforcement of this Agreement. The ANNEXOR further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the TOWN's option to pay the attorney's fees for defense counsel of the TOWN's choice for, any such liability, claims, or demands.
- f. **Termination.** If the annexation of the PROPERTY is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.
- g. **No Right or Remedy of Disconnection.** No right or remedy of disconnection of the PROPERTY from the TOWN shall accrue from this Agreement, other than provided by applicable state laws. In the event the PROPERTY or any portion thereof is disconnected at the ANNEXOR's request, the Town of Frederick shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.
- h. **Annexation and Zoning Subject to Legislative Discretion.** The ANNEXOR acknowledges that the annexation and subsequent zoning of the PROPERTY are subject to the legislative discretion of the Board of Trustees of the Town of Frederick.

No assurances of annexation or zoning have been made or relied upon by the ANNEXOR. In the event that the Town of Frederick Board of Trustees, in the exercise of its legislative discretion, does not take any action with respect to the PROPERTY herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the TOWN in accordance with state law, as may be appropriate.

- i. **Legal Discretion in the Case of Challenge.** The Town of Frederick reserves the right to not defend any legal challenge to this annexation, In the event such a challenge occurs prior to any expiration of any statute of limitation, the TOWN may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the ANNEXOR from engaging the TOWN's legal representatives in such a defense, at no cost to the TOWN.
- j. **Application of Town Policies.** Upon annexation, all subsequent development of the PROPERTY shall be subject to and bound by the applicable provisions of the TOWN's ordinances, as amended, including public land dedications, provided however, that changes or amendments to the Frederick Municipal Code, after the date of this Agreement shall in no way limit or impair TOWN's obligation hereunder, except as specifically set forth in this Agreement.
- k. **Amendments to Governing Ordinances, Resolutions and Policies.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any TOWN ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon ANNEXOR.
- l. **Legal Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this Agreement, the defaulting party shall pay the other's reasonable attorney fees and costs incurred in enforcing the provisions of this Agreement.
- m. **Reimbursement for Other Costs.** The ANNEXOR shall reimburse the TOWN for any third party costs necessary for the orderly and proper development of the PROPERTY, including but not limited to consultant fees for planning and engineering, and attorney fees for legal services beyond the normal document review, which is directly linked to the PROPERTY.
- n. **Oil and Gas Access Roads.** All oil and gas access roads located on the PROPERTY will remain where they are or as otherwise agreed to by ANNEXOR and the oil and gas company(s), and will be considered a

current obligation between the ANNEXOR and the oil and gas company(s). The TOWN will not be responsible for any maintenance of any current oil and gas access road.

- o. **Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
 - p. **Timely Submittal of Materials.** The ANNEXOR agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, reports and other documents necessary to accomplish the annexation of the PROPERTY and the other provisions of this Agreement.
 - q. **Compliance with State Law.** The ANNEXOR shall comply with all applicable State law and regulations.
 - r. **Recording of Agreement.** This Agreement shall be recorded in the records of the County Clerk and Recorder, Weld County, Colorado.
 - s. **Choice of Law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Weld County, Colorado.
23. **COMPLETE AGREEMENT.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.
24. **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.

By this acknowledgment, the undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

TOWN OF FREDERICK

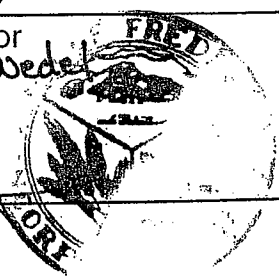
By: *Sue Wedel*

~~Eric E. Deering, Mayor~~

~~Mayor Pro Tem, Sue Wedel~~

ATTEST:

Nanette Starnes



Nanette S. Fornof, Town Clerk

ANNEXOR

SPINDLE HILL ENERGY LLC
A Delaware limited liability company

By: [Signature]
for Douglas B. Carter, Vice President

[Signature]
by Susan J. Troudt

Susan J. Troudt
[Signature]
by Carla Johnson Hobbs
Carla Johnson Hobbs

Investors Independent Trust Company, as
personal representative for Marian J.
Stratton, formerly known as Marian J.
Botinelli, Deceased

By: [Signature]
Name: MICHAEL HAMMER
Personal Representative

STATE OF COLORADO

COUNTY OF Weld

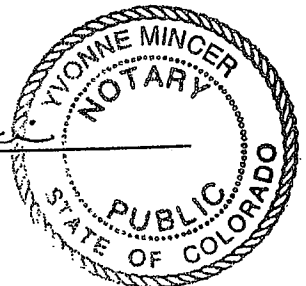
)
) ss.
)

The foregoing instrument was acknowledged before me this 2nd day of August, 2006 by Eric L. Deering as Mayor and Nanette S. Fornof as Town Clerk of the Town of Frederick.

My commission expires: 6/30/07

Witness my hand and official seal.

[Signature]
Notary Public



STATE OF COLORADO

COUNTY OF Weld

)
) ss.
)

INDIVIDUAL ACKNOWLEDGMENT

State of Colorado
County of Weld } ss.

On this the 28 day of April 20 07 before me,

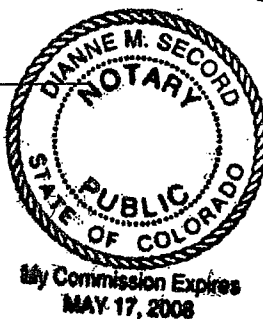
the undersigned Notary Public, personally appeared

Douglas B. Carter
(Name of person signing)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) appeared within instrument

WITNESS my hand and official seal.

Dianne M. Secord
Notary's Signature

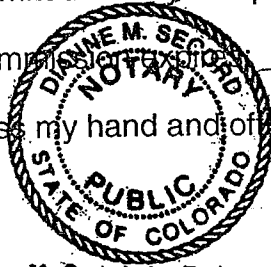


May 17, 2008
My commission expires

The foregoing instrument was acknowledged before me this 28 day of April, 2006 by Douglas B. Carter as Vice President of Spindle Hill Energy LLC, a Delaware limited liability company.

My commission expires May 17, 2008

Witness my hand and official seal.



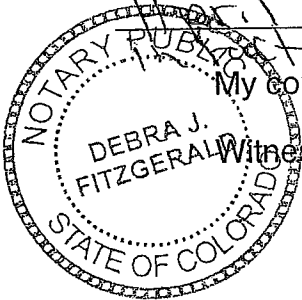
Deanne M Seend
Notary Public

STATE OF COLORADO)
My Commission Expires MAY 17 2008

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Susan J. Trout. John R. Haley as attorney
for Susan J. Trout
My commission expires: 1-30-07

Witness my hand and official seal.



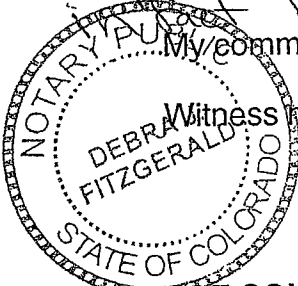
[Signature]
Notary Public

STATE OF COLORADO)

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Carla Johnson Hobbs. John R. Haley as attorney
for Carla Johnson Hobbs
My commission expires: 1-30-07

Witness my hand and official seal.



[Signature]
Notary Public

STATE OF COLORADO)

COUNTY OF Boulder) ss.

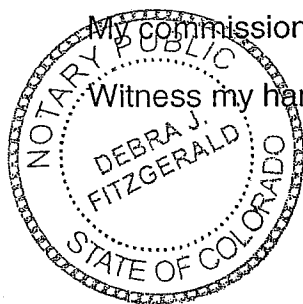
The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Michael E. Lammers, Authorized of officer

Investors Independent Trust Company, as personal representative for Marian J. Stratton, formerly known as Marian J. Botinelli, Deceased _____

My commission expires: _____

1-30-07

Witness my hand and official seal.



Notary Public

EXHIBIT "A"

THE LEGAL DESCRIPTION FOR ANNEXATION NO. 2

A PORTION OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH P.M. AND A PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE 6TH P.M. COUNTY OF WELD, STATE OF COLORADO,

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, NORTH 89°51'36" EAST, A DISTANCE OF 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER AND ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, NORTH 89°51'36" EAST, A DISTANCE OF 5184.77 FEET TO THE WEST RIGHT-OF-WAY OF WELD COUNTY ROAD 19;

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, SOUTH 00°33'11" EAST, AND ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 1419.00 FEET TO THE NORTH LINE OF PARCEL #38 AS DESCRIBED IN DEED RECORDED OCTOBER 29, 1993 AT RECEPTION NO. 2357270;

THENCE ALONG SAID NORTH LINE, SOUTH 89°26'49" WEST, A DISTANCE OF 520.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL;

THENCE ALONG THE WEST LINE OF SAID PARCEL AND ALONG THE WEST LINE OF PARCEL #39 AND PARCEL #35 DESCRIBED ON SAID DEED, SOUTH 00°33'11" EAST, A DISTANCE OF 868.80 FEET TO THE SOUTHWEST CORNER OF PARCEL #35;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL #35, NORTH 89°26'49" EAST, A DISTANCE OF 520.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID WELD COUNTY ROAD 19;

THENCE ALONG THE WEST RIGHT-OF-WAY LINE, SOUTH 00°33'11" EAST, AND ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 325.29 FEET TO THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14;

THENCE SOUTH 00°09'38" EAST, A DISTANCE OF 60.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14;

THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14, SOUTH 89°50'22" WEST, AND ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 2610.11 FEET;

THENCE CONTINUING ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14 SOUTH 89°50'33" WEST, AND ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 40.00 FEET;

THENCE NORTH 00°09'27" WEST, A DISTANCE OF 60.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID WELD COUNTY ROAD 14;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14 SOUTH 89°50'33" WEST, AND ALONG A LINE 30.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2570.52 FEET TO THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17;

THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17, NORTH 00°13'59" EAST, AND ALONG A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2614.81 FEET TO THE POINT OF BEGINNING.

THUS DESCRIBED TRACT CONTAINS 13,306,681 SQ.FT./305.48 ACRES MORE OR LESS.

EXHIBIT "B"

Water Rights Appurtenant to Property.

(Listing of all tributary and non-tributary water rights attached to the property)

Water Rights (Ditch Company, groundwater, etc.)	Number of Shares	Certificate	Yield (cfs or acre/ft)
N/A	N/A	N/A	N/A

EXHIBIT "C"

SPECIAL PROVISIONS APPLYING TO THE JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION

SPECIAL PROVISIONS APPLYING TO THE SPINDLE HILL ENERGY ANNEXATION.

Certain special provisions shall apply to the Johnson Farms/Spindle Hill Energy Annexation as follows:

- A. ANNEXOR agrees that development of Lot 1 and Lot 2 will be limited to the PROJECT and appurtenant facilities as depicted on the approved Site Plan.
- B. ANNEXOR agrees that any redevelopment or additional development of Lot 1 and Lot 2 may take place only after amendment of this AGREEMENT specifically authorizing such redevelopment or additional development.
- C. ANNEXOR agrees that the uses for Outlot 2 shall be limited to agricultural uses until such time as an application for development of Outlot 2 is submitted to the TOWN.
- D. ANNEXOR agrees that any development of Outlot 2 may take place only after amendment of this AGREEMENT specifically authorizing such development and specifying the conditions of such development.
- E. ANNEXOR shall install such landscaping, as approved by the TOWN at the time of approval of the building permit for the PROJECT, on Lot 2 as to provide adequate screening of the PROJECT from other uses in the TOWN.

25-PCR-10

A Resolution of the Planning Commission Recommending Approval of the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2

WHEREAS, Clearway Energy Group, LLC submitted an application for a minor subdivision amendment, no. 2; and

WHEREAS, the Planning Commission heard Clearway Energy Group, LLC's application for minor subdivision amendment at public hearing on September 18, 2025.

NOW THEREFORE, be it resolved by the Planning Commission of the Town of Frederick, Colorado:

Section 1. The Frederick Planning Commission finds that:

- 1.1 An application for the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 has been submitted.
- 1.2 Said application was found to be complete through the review process.
- 1.3 Said application was considered during a public hearing held September 18th, 2025 at which time the public was able to provide testimony.
- 1.4 Sufficient notice was given according to Section 4.5 of the Frederick Land Use Code.
- 1.5 The Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 application conforms with the applicable requirements of Section 4.9.3. of the Frederick Land Use Code, namely:
 - 1.5.1 The subdivision is compatible with and will not have adverse impacts on the surrounding properties.
 - 1.5.2 10 or fewer new lots or blocks are created.
 - 1.5.3 The preliminary plat provides for a functional system of land use and is consistent with the criteria set forth in this Code.
 - 1.5.4 The land use mix within the project conforms to the Town's zoning district map and furthers the following planning objectives:
 - 1.5.4.1 The proposed development promotes the Town's small-town, rural character, or implements a Board-approved sub-area, corridor, or urban renewal plan, however titled;
 - 1.5.4.2 Proposed residential development adds diversity to the Town's housing supply;
 - 1.5.4.3 Proposed commercial development will benefit the Town's economic base;

- 1.5.4.4 Parks and open space are incorporated into the site design, as appropriate to the proposed principal use or uses of the land;
- 1.5.4.5 The proposed project protects the Town's environmental quality;
- 1.5.4.6 The development enhances cultural, historical, educational and/or human service opportunities;
- 1.5.5 The utility and transportation design is adequate, given existing and planned capacities of those systems;
- 1.5.6 Negative impacts on adjacent land uses have been identified and satisfactorily mitigated; and
- 1.5.7 There is a need or desirability within the community for the applicant's development, and the development will help achieve a balance of land use and/or housing types within the Town, according to the Town's goals.

Section 2. The Planning Commission recommendation is based on competent, substantial evidence in the written record and the testimony provided at the public hearing.

Section 3. On the basis of the above, the Town of Frederick Planning Commission recommends that the Board of Trustees approve the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 application with the following condition:

1. Revise the dedicatory statement to remove references to public roads and lands.
2. Resolve issues with the title commitment referencing an outdated plat and update general notes 2 and 3 accordingly.
3. Ensure meets and bounds are provided for the 30' public access easement dedicated to the Town or are established by referencing a specific distance from the recorded canal easement.

This resolution approved this 18th day of September, 2025 by a vote of 4 to 0.



Tracy Moe, Chairperson, Planning Commission

25-PCR-11

A Resolution of the Planning Commission Recommending Approval of the Spindle Hill Battery Energy Storage System Overhead Power Lines, 8499 CR 14 & 6430 Wheatland Boulevard Conditional Use

WHEREAS, Clearway Energy Group, LLC submitted an application for Conditional Use located generally at 8499 CR 14 and 6430 Wheatland Boulevard for the purpose of installation of overhead power lines for a battery energy storage system; and

WHEREAS, the Planning Commission heard Clearway Energy Group, LLC's application for Conditional Use at public hearing on September 18, 2025.

NOW THEREFORE, be it resolved by the Planning Commission of the Town of Frederick, Colorado:

Section 1. The Frederick Planning Commission finds that:

- 1.1 An application for the Spindle Hill Battery Energy Storage System Overhead Power Lines, 8499 CR 14 & 6430 Wheatland Blvd, Conditional Use has been submitted.
- 1.2 Said application was found to be complete through the review process.
- 1.3 Said application was considered during a public hearing held September 18th, 2025.
- 1.4 Proper notice was given according to Section 4.5. of the Frederick Land Use Code.
- 1.5 Said application conforms with the applicable requirements of Section 4.9.4. of the Frederick Land Use Code, namely:
 - a. The conditional use will satisfy all applicable provisions of this Code and subdivision regulations unless a variance is being requested.
 - b. The conditional use will conform with or further the goals, policies and strategies set forth in the Comprehensive Plan; provided, that if a Comprehensive Plan update has not occurred in the five (5) years preceding the application date, the Board may consider instead the impacts of the conditional use on public health, safety, and welfare, including but not limited to its anticipated impacts on the balance of land uses in the Town and the need for the conditional use in the context in which it is proposed.
 - c. The conditional use will be adequately served with public utilities, services and facilities (i.e., water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.)

and not impose an undue burden above and beyond those of the permitted uses of the district.

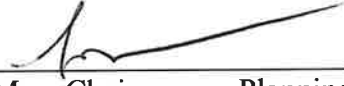
- d. The conditional use will not substantially alter the basic character of the district in which it is located or jeopardize the development or redevelopment potential of the district.
- e. The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
- f. Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods.
- g. The applicant has submitted evidence that all applicable local, state, and federal permits have been or will be obtained.

Section 2.

- 2.1 A public hearing was held and the public was able to provide testimony.
- 2.2 The Planning Commission recommendation is based on competent, substantial evidence in the written record and the testimony provided at the public hearing.

Section 3. On the basis of the above, the Town of Frederick Planning Commission recommends approval of the Conditional Use application.

This resolution was approved this 18th day of September, 2025 by a vote of 4 to 0.

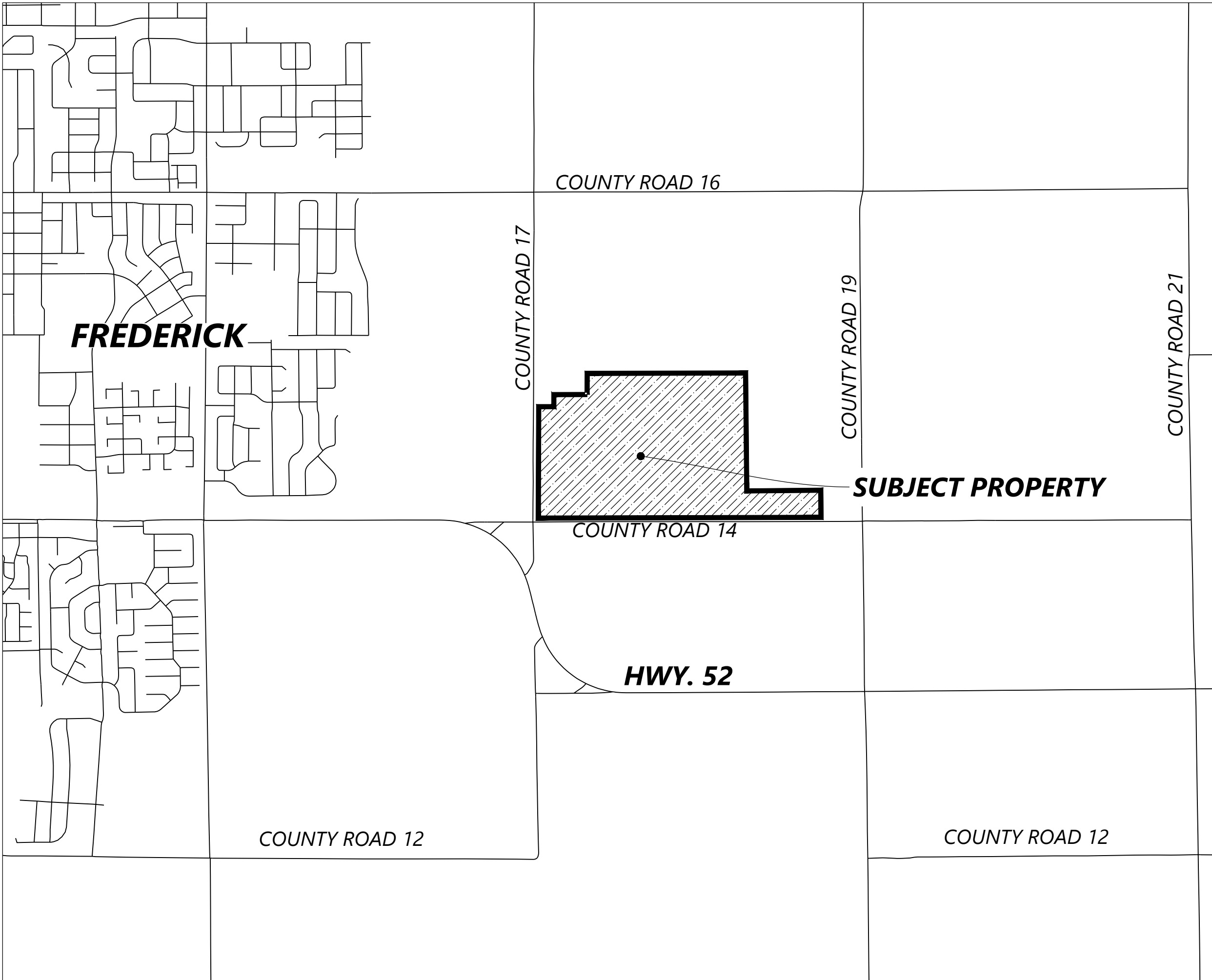


Tracy Moe, Chairperson, Planning Commission

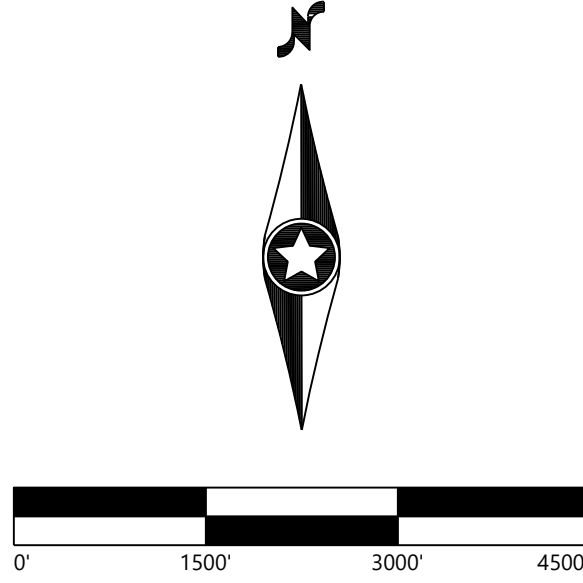
JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS

VICINITY MAP
(1" = 1500')



LAND USE TABLE			
LOT	AREA (AC.)	(SQ. FT.)	LAND USE
LOT 1	50.981	2,220,722	BATTERY ENERGY STORAGE SYSTEMS & OVERHEAD POWER LINES
OUTLOT A	142.998	6,228,980	EXISTING AGRICULTURAL
TOTAL	193.979	8,449,702	



CERTIFICATE OF OWNERSHIP AND DEDICATION:

THE UNDERSIGNED CERTIFIES TO AND FOR THE BENEFIT OF THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, THAT AS OF THE DATE SET FORTH BELOW AND THE DATE OF RECORDING OF THIS DOCUMENT, THE UNDERSIGNED CONSTITUTE ALL OF THE OWNERS OF THE PROPERTY WHICH IS THE SUBJECT OF THIS PLAT, THAT THE UNDERSIGNED HAVE GOOD RIGHT AND FULL POWER TO CONVEY, ENCUMBER AND SUBDIVIDE SAME, AND THAT THE PROPERTY IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, EASEMENTS AND RIGHTS-OF-WAY EXCEPT THE EASEMENTS AND RIGHTS-OF-WAY DEPICTED ON THIS PLAT, AND THE LIENS HELD BY OTHER SIGNATORIES TO THIS DOCUMENT, IN THE EVENT OF A DEFECT IN SAID TITLE WHICH BREACHES THE WARRANTIES IN THIS CERTIFICATE, THE UNDERSIGNED, JOINTLY AND SEVERALLY AGREE(S) TO REMEDY SUCH DEFECT UPON DEMAND BY WELD COUNTY, WHICH REMEDY SHALL NOT BE DEEMED EXCLUSIVE.

KNOW ALL MEN BY THESE PRESENTS THAT SPINDLE BATTERY LLC, BEING THE OWNER(S), MORTGAGEE OR LIENHOLDER OF CERTAIN LANDS IN THE TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, PER THE PLAT RECORDED MARCH 24, 2016 AT RECEPTION NO. 4190256

CONTAINING 193.979 ACRES, MORE OR LESS;

HAVE BY THESE PRESENTS LAID OUT, PLATTED, AND SUBDIVIDED THE SAME INTO LOTS, TRACTS, BLOCKS, STREETS, AND EASEMENTS AS SHOWN ON THIS PLAT UNDER THE NAME AND STYLE OF JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 2, AND DO HEREBY DEDICATE TO THE TOWN OF FREDERICK, ITS SUCCESSORS AND ASSIGNS FOREVER SUCH PUBLIC WAYS AND LANDS SHOWN HEREON, IN FEE-SIMPLE ABSOLUTE, AND DO HEREBY DEDICATE TO THE TOWN OF FREDERICK AND APPROPRIATE UTILITY COMPANIES AND EMERGENCY ASSISTANCE ENTITIES, THE EASEMENTS SHOWN HEREON FOR THE PURPOSES STATED.

THE ENTITIES NAMED ON THE EASEMENT, OR RESPONSIBLE FOR THE SERVICES AND/OR UTILITIES FOR WHICH THE EASEMENTS ARE ESTABLISHED ARE HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTIES FOR THE PURPOSES NAMED ON THE EASEMENT OR FOR THE INSTALLATION, MAINTENANCE AND REPLACEMENT OF UTILITY LINES AND RELATED FACILITIES.

THE SIGNATURE OF ANY REPRESENTATIVE OF ANY PARTNERSHIP OR CORPORATE ENTITY INDICATES THAT ALL REQUIRED PARTNERSHIP OR CORPORATE APPROVALS HAVE BEEN OBTAINED.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS AND SEALS THIS ____ DAY OF _____ A.D., 20____.

JOHN WOODY, VICE PRESIDENT - SPINDLE BATTERY LLC.

STATE OF
COLORADO)
COUNTY OF WELD) SS

THE FOREGOING CERTIFICATE OF OWNERSHIP AND DEDICATION WAS ACKNOWLEDGED BEFORE ME

BY _____, ACTING IN HIS CAPACITY AS _____

THIS ____ DAY OF _____, 20____.

WITNESS MY HAND AND SEAL _____

MY COMMISSION EXPIRES _____

NOTARY PUBLIC

CERTIFICATE OF APPROVAL BY THE BOARD OF TRUSTEES:

THE FINAL PLAT MAP OF THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO.2 IS APPROVED AT THE REGULAR MEETING OF THE BOARD OF TRUSTEES OF FREDERICK, COLORADO, HELD ON _____, 20____. THE DEDICATIONS OF PUBLIC STREETS, PUBLIC RIGHTS-OF-WAY, PUBLIC EASEMENTS AND OTHER PLACES DESIGNATED OR DESCRIBED FOR PUBLIC USES AS SHOWN HEREON, SUCH OTHER EASEMENTS SHOWN HEREON FOR THE PURPOSES SHOWN ARE HEREBY ACCEPTED. ALL CONDITIONS, TERMS, AND SPECIFICATIONS DESIGNATED OR DESCRIBED HEREIN SHALL BE BINDING ON THE OWNER, ITS HEIRS, SUCCESSORS, AND ASSIGNS.

ALL EXPENSES INCURRED WITH RESPECT TO IMPROVEMENTS FOR ALL UTILITY SERVICES, PAVING OF STREETS, GRADING, LANDSCAPING, CURBS, GUTTERS, SIDEWALKS, AND WALKWAYS, ROAD LIGHTING, ROAD SIGNS, FLOOD PROTECTION DEVICES, DRAINAGE STRUCTURES AND OTHER IMPROVEMENTS THAT MAY BE REQUIRED TO SERVICE THE SUBDIVISION SHALL BE THE RESPONSIBILITY OF THE OWNER(S) AND NOT THE TOWN. THE CONSTRUCTION OF IMPROVEMENTS BENEFITING THE SUBDIVISION AND THE ASSUMPTION OF MAINTENANCE RESPONSIBILITY FOR SAID IMPROVEMENTS BY THE TOWN OR OTHER ENTITIES SHALL BE SUBJECT TO A SEPARATE MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS.

THIS ACCEPTANCE OF THE FINAL PLAT DOES NOT GUARANTEE THAT THE SOIL CONDITIONS, SUBSURFACE GEOLOGY, GROUNDWATER CONDITIONS OR FLOODING CONDITIONS OF ANY LOT SHOWN HEREON ARE SUCH THAT A BUILDING PERMIT WILL BE ISSUED FOR THAT LOT.

TRACIE CRITES, MAYOR

ATTEST:

TRICIA DAVID, TOWN CLERK

SHEET INDEX

SHEET, NO. _____	TITLE
SHEET 1	COVER, GENERAL NOTES, DEDICATIONS AND CERTIFICATION
SHEET 2	PARCEL DETAILS
SHEET 3	EASEMENTS TO BE DEDICATED PER PLAT DETAILS

GENERAL NOTES

- THIS LAND TITLE SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY WESTWOOD, PS. FOR MATTERS RELATED TO OWNERSHIP, ENCUMBRANCES, RIGHTS AND INTERESTS, WESTWOOD, PS RELIED UPON THE TITLE COMMITMENT FILE NO. NCT23031353-5 PREPARED BY OLD REPUBLIC TITLE NATIONAL TITLE INSURANCE COMPANY WITH A COMMITMENT DATE OF JULY 8, 2024.
- BEARINGS AND DISTANCES ARE GROUND, BASED ON NAD83(2011), COLORADO STATE PLANE, NORTH ZONE, US SURVEY FEET, VERTICAL DATUM IS NAVD83 (GEOID18). THE COMBINED SCALE FACTOR IS 0.99972399, BASED ON OPUS POST PROCESSING SOLUTION PROCESSED AT N: 1278042.30923772; E: 3171667.26104124; ELEV: 5006.58'.
- THE BASIS OF BEARINGS FOR THIS SURVEY IS THE NORTH LINE OF THE SOUTH 1/2 OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO, BEARING N89°51'35"E, FROM THE WEST QUARTER CORNER OF SAID SECTION 33, BEING MONUMENTED BY A 2 1/2" ALUMINUM CAP, STAMPED "PLS 38512 2017 609 CONSULTING", TO THE EAST QUARTER CORNER OF SAID SECTION 33, BEING MONUMENTED BY A 3 1/4" ALUMINUM CAP, IN MONUMENT BOX, ILLEGIBLE WITH ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO.
- ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT FLOOD INSURANCE RATE MAPS NO. 08123C2082E & 08123C2084E, DATED JANUARY 20, 2016, THIS PROPERTY LIES WITHIN ZONE X (AREA OF MINIMAL FLOOD HAZARD).
- THE INTENT OF THIS MINOR SUBDIVISION PLAT IS TO EXACTLY MIMIC THE PREVIOUSLY RECORDED SUBDIVISION OF JOHNSON FARMS/SPINDLE HILL WITH NO DEVIATION FROM THE ORIGINAL BOUNDARY. NEWLY DEFINED SUBDIVISION LOTS ARE REFLECTED ON SHEET 2.
- DATE OF FIELD SURVEY: JULY 2024.
- WESTWOOD PROJECT NO. 0046720.00.
- OIL AND GAS WELL LOCATIONS ARE BASED ON THE COLORADO EMISSIONS AND CARBON MANAGEMENT COMMISSION GIS DATA DOWNLOADED ON FEBRUARY 24, 2025. BUILDING SETBACKS SHOWN WERE DERIVED FROM SECTION 9.18 OF THE TOWN OF FREDERICK LAND USE CODE. LOCATIONS OF THE PLUGGED AND ABANDONED WELLS ON THE SUBJECT PROPERTY, AS PROVIDED BY THE COLORADO EMISSION AND CARBON MANAGEMENT COMMISSION (ECMC), HAVE BEEN FIELD VERIFIED ON JUNE 17, 2025. RETRACEMENT OF THE ABANDONMENT REPORTS AND OTHER PUBLIC RESEARCH PROVIDED SPECIFIC LOCATIONS WHICH WERE ACCURATELY DETERMINED IN THE FIELD AND CONFIRMED WITH RELIABLE SUB SURFACE METAL LOCATION PROCEDURES.

OIL & GAS WORKING PAD SURFACE	LOT SETBACK	BUILDING SETBACK
FACILITY WITHOUT WELLS	150'	200'
1-4 WELLS	150'	200'
5-14 WELLS	150'	350'
15 OR MORE WELLS	150'	500'

FLOWLINE 15'

ALL ACTIVE EXISTING PRODUCTION FLOWLINES ON SITE ARE SHOWN PER FIELD LOCATED UTILITY MARKINGS AND INFORMATION PROVIDED BY THE OPERATOR. ALL MIDSTREAM GATHERING LINES ON SITE ARE LOCATED IN 30' EASEMENTS AT MINIMUM AND INCLUDE THE RECORDED RECEPTION NUMBER. AFTER DISCUSSION WITH THE TOWN OF FREDERICK OIL AND GAS COUNSEL, IT WAS DECIDED TO ADVANCE THE SUBDIVISION WITHOUT EASEMENTS FOR FLOWLINES AND ACCESS AS LONG AS ALL INFRASTRUCTURE IS PROPERLY DETAILED ON THE PLAT.
- THE TOWN OF FREDERICK TRANSPORTATION MASTER PLAN SHOWS A FUTURE COLLECTOR BETWEEN COUNTY ROAD 14 AND COUNTY ROAD 16, AND COUNTY ROADS 14 AND 17 AS FUTURE 2-LANE ARTERIALS.
- THE OWNER, ITS LEGAL REPRESENTATIVES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS IN INTEREST AND ASSIGNS SHALL BE JOINTLY AND SEVERABLY LIABLE AND RESPONSIBLE FOR MAINTAINING THE STRUCTURAL INTEGRITY AND OPERATIONAL FUNCTIONS OF ALL DRAINAGE FACILITIES LOCATED ON THE PROPERTY SHOWN HEREON UNLESS OTHERWISE SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO PRIVATE DRAINAGE FACILITIES AND PUBLIC AND PRIVATE DRAINAGE EASEMENTS. IN THE EVENT THE OWNER FAILS TO CORRECTLY REPAIR ANY SUCH DRAINAGE FACILITIES WITHIN THIRTY (30) DAYS AFTER WRITTEN NOTICE THEREOF, THEN SAID CORRECTIONS/REPAIRS TO SAID DRAINAGE FACILITIES MAY BE COMMENCED AND COMPLETED BY THE TOWN AND ALL COSTS AND CHARGES BILLED TO AND PAID BY THE OWNER. THE TOWN SHALL HAVE THE PERPETUAL LEGAL RIGHT TO INGRESS AND EGRESS OVER AND ACROSS THE PROPERTY, BY MEANS OF ROADS, LANES, AND PARKING AND LOADING AISLES LOCATED THEREON IF SUCH THERE BE, OTHERWISE BY SUCH ROUTE AS SHALL CAUSE THE LEAST PRACTICAL DAMAGE AND INCONVENIENCE TO THE OWNERS WHILE BEING PRACTICAL AND ACCESSIBLE TO THE TOWN'S EQUIPMENT, TO ACCESS THE DRAINAGE FACILITIES ON THE PROPERTY SHOWN HEREON IN ORDER TO COMMENCE AND COMPLETE SAID CORRECTIONS/REPAIRS. THE TOWN SHALL ALSO HAVE ANY OTHER REMEDIES AVAILABLE TO IT AS AUTHORIZED BY LAW.
- THE CENTERLINE OF STANLEY DITCH, AS SHOWN HEREON, IS BASED ON RECTIFIED ORTHOPHOTOGRAPHY, PHOTOGRAMMETRIC MAPPING AND/OR LIDAR DATA GENERATED TO NATIONAL MAP ACCURACY STANDARDS BY WESTWOOD PROFESSIONAL SERVICES, INC. AND WAS ACQUIRED ON SEPTEMBER 4, 2024.

SURVEYOR'S CERTIFICATE:

I, THOMAS GIRARD, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF COLORADO DO HEREBY CERTIFY THAT THE SURVEY REPRESENTED BY THIS PLAT WAS MADE UNDER MY SUPERVISION AND THE MONUMENTS SHOWN THEREON ACTUALLY EXIST AND THIS PLAT ACCURATELY REPRESENTS SAID SURVEY.

BY: _____
(THOMAS GIRARD, PLS 38151)

DATE: _____

DRAFT

Know what's below.
Call before you dig.

Westwood

Phone (720) 531-8350 10170 Church Ranch Way, Suite #201
Toll Free (888) 937-5150 Westminster, CO 80021
westwoodps.com

Westwood Professional Services, Inc.

REVISIONS:
DATE COMMENT

PREPARED FOR:

Clearway

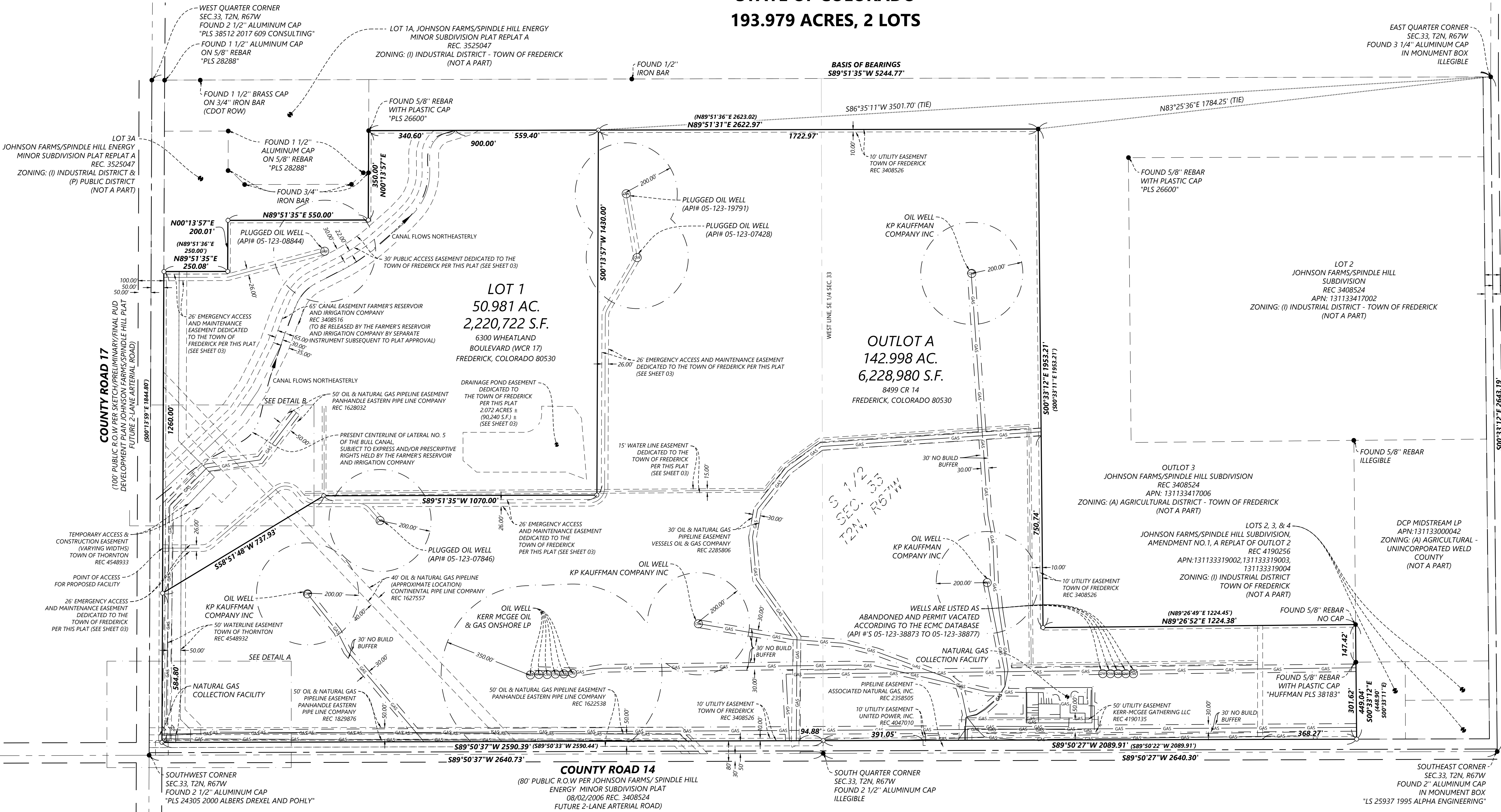
100 California Street, Suite 650
San Francisco, CA 94111

DATE: 09/26/2025

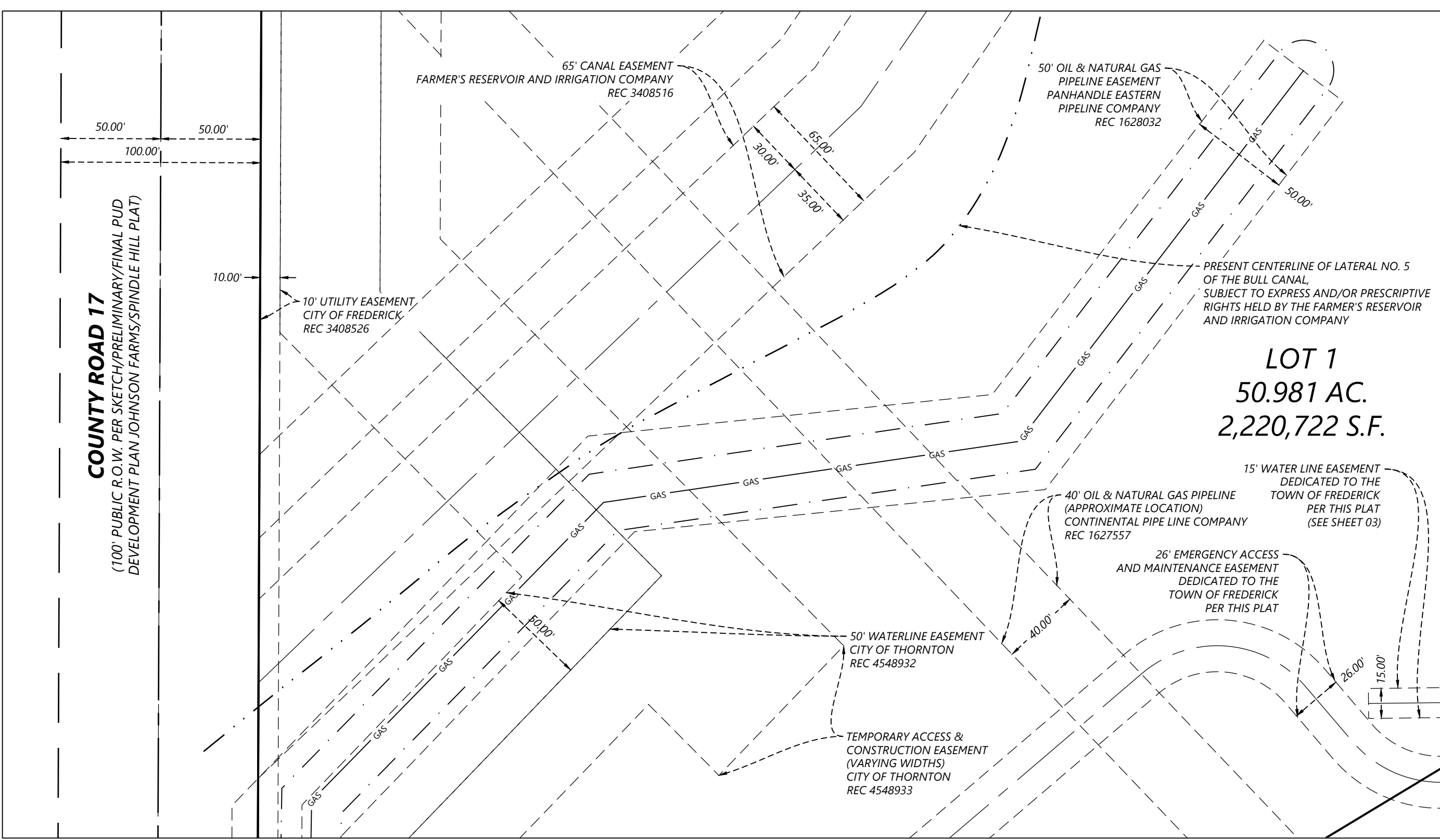
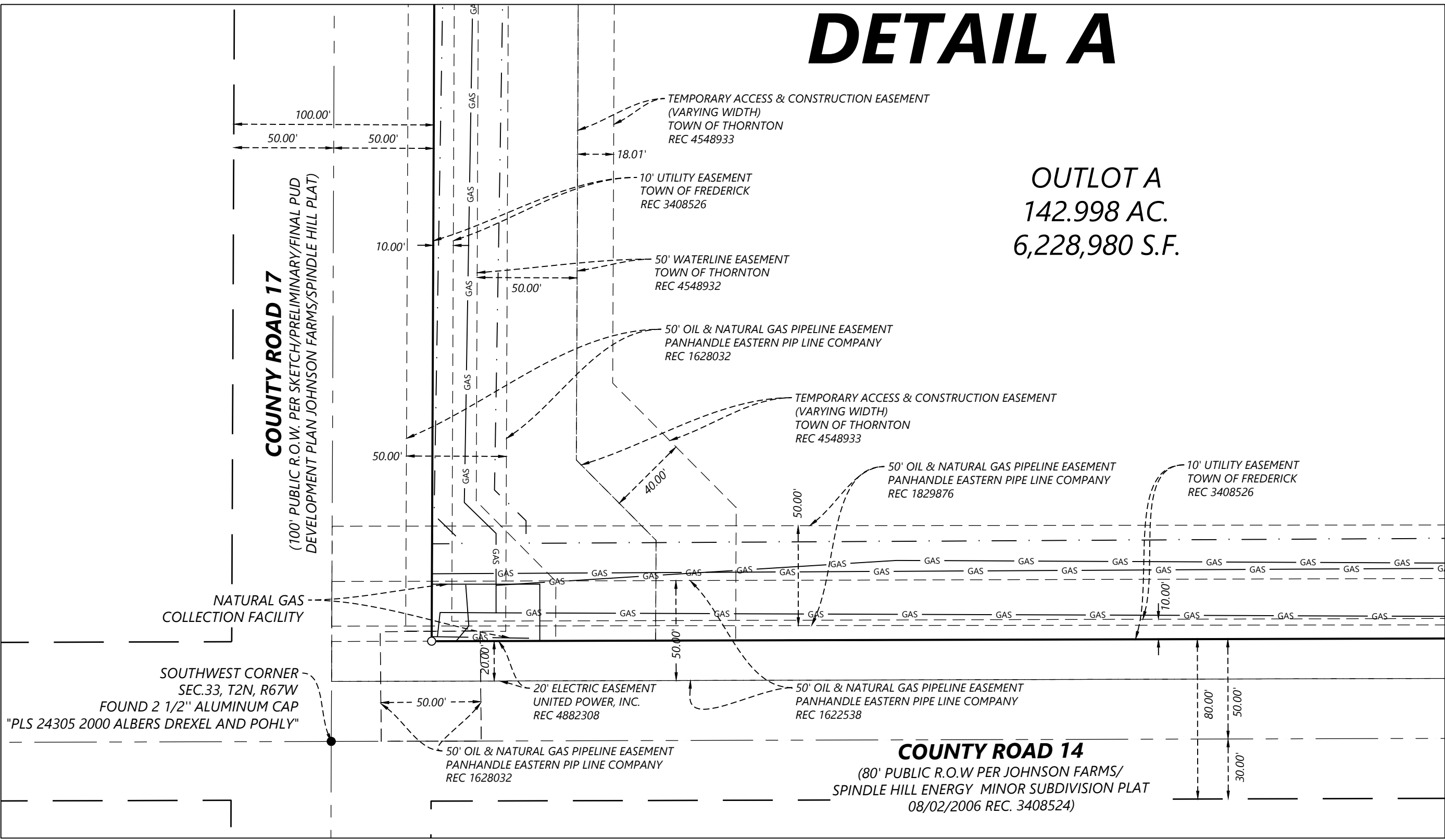
SHEET: 01 of 03

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS



DETAIL B



REVISIONS:

#	DATE	COMMENT

LEGEND:

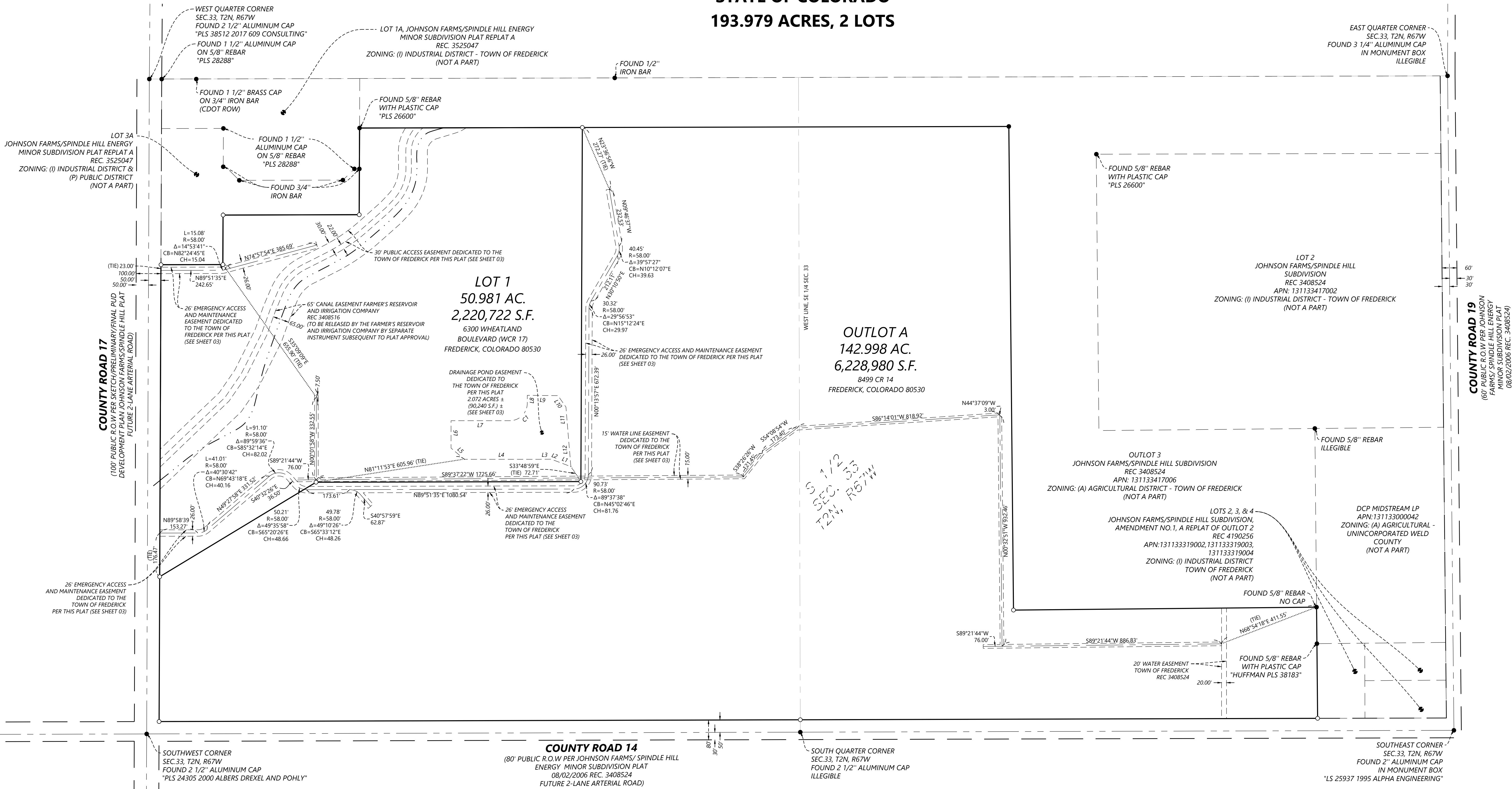
○	FOUND MONUMENT (SEE LABEL)
○ (W)	SET 5/8" REBAR & 2-1/2" CAP
—	OIL & GAS WELL LOCATION
—	BOUNDARY LINE
—	RIGHT-OF-WAY LINE
—	ROAD CENTER LINE
—	ADJOINER PARCEL LINE
—	EASEMENT LINE
—	EASEMENT CENTER LINE
—	CANAL CENTER LINE
—	OIL & GAS FLOWLINE
—	OIL & GAS SETBACK
—	SECTION LINE
—	QUARTER SECTION LINE
—	RECORD MEASUREMENT PER REC. #100258

JOHNSON FARMS/ SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD

STATE OF COLORADO
193.979 ACRES, 2 LOTS



LINE TABLE			CURVE TABLE					
LINE #	BEARING	DISTANCE	CURVE #	RADIUS	CENTRAL ANGLE	ARC LENGTH	CHORD BEARING	CHORD DISTANCE
L1	N69°10'07\"W	66.16'	C1	71.00'	090°00'00\"	111.53'	N 45°00'00\" E	100.41'
L2	N71°23'39\"W	20.00'						
L3	S89°45'21\"W	50.33'						
L4	N90°00'00\"E	299.58'						
L5	N49°44'59\"W	69.91'						
L6	N00°00'00\"E	110.55'						
L7	N90°00'00\"E	237.06'						
L8	N00°00'00\"E	31.55'						
L9	S89°25'13\"E	123.73'						
L10	S35°03'56\"E	56.31'						
L11	S04°38'12\"E	100.61'						
L12	S04°48'14\"E	140.84'						

REVISIONS:		
#	DATE	COMMENT

LEGEND:	
	FOUND MONUMENT (SEE LABEL)
	SET 5/8\" REBAR & 2-1/2\" CAP
	OIL & GAS WELL LOCATION
	BOUNDARY LINE
	RIGHT-OF-WAY LINE
	ROAD CENTER LINE
	ADJOINER PARCEL LINE
	EASEMENT LINE
	EASEMENT CENTER LINE
	CANAL CENTER LINE
	OIL & GAS FLOWLINE
	OIL & GAS SETBACK
	SECTION LINE
	QUARTER SECTION LINE
	RECORD MEASUREMENT PER REC. #150259

JOHNSON FARMS/ SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

JOHNSON FARMS / SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

MEMORANDUM OF AGREEMENT FOR PUBLIC IMPROVEMENTS

THIS AGREEMENT is made and entered this ____ day of _____, 2025, by and between the TOWN OF FREDERICK, a Colorado municipal corporation, whose address is P.O. Box 435, Frederick, Colorado (“TOWN”), and SPINDLE BATTERY LLC, a Delaware limited liability company, whose address is 4900 N. Scottsdale Road, Suite 5000, Scottsdale, AZ 85251 (“DEVELOPER”) (together, the “parties”).

WHEREAS, DEVELOPER has submitted a combined Final Plat for Johnson Farms / Spindle Hill Energy Minor Subdivision, Amendment No. 2 (“SUBDIVISION” or “DEVELOPMENT”), attached as “Exhibit A” and incorporated herein by reference, which the Planning Commission and TOWN Board of Trustees have reviewed and approved; and

WHEREAS, the subdivision regulations of the TOWN requires that the DEVELOPER enter into a Subdivision Agreement hereafter called a Memorandum of Agreement for Public Improvements (“AGREEMENT” or “MOAPI”) with the TOWN concerning public improvements related to the Development detailed and attached as the “Schedule of Improvements, Exhibit B”, hereinafter called “Exhibit B” and incorporated herein by reference; and

WHEREAS, the parties have modified this standard AGREEMENT as indicated by the addition of certain special provisions, if any, in “Exhibit F”; and

WHEREAS, the TOWN and the DEVELOPER agree that such public improvements are directly related to and generated by development intended to occur within the SUBDIVISION and that no taking thereby will occur requiring any compensation.

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 2.10 and 2.12.
- (b) **Approve:** The Town will review and approve construction plans and the general design of engineered structures 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. DEVELOPER shall be responsible for performance of the covenants set forth herein. DEVELOPER agrees to construct, build, install and develop all improvements required by this AGREEMENT, 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 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 identified in "Exhibit B", attached and incorporated herein by this reference. The engineering services 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 AGREEMENT, 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 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 improvements required by this AGREEMENT, according to plans and specifications reviewed and accepted in writing by the TOWN or by the utility providing the service, and with the approved plat, 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 two (2) years from the date of acceptance. If the DEVELOPER commences or performs any construction after such two (2) year period, the DEVELOPER shall resubmit the project construction plans 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. Traffic impact studies, drainage reports, pavement design reports, etc. for a specific subdivision or parcel of land are valid for a period of one (1) year from date of approval unless significant development or activity has occurred that may impact the previous studies in the opinion of the Town Engineer. If construction documents for any phase or individual lot are not approved within this timeframe, revised reports with updated information are required to be submitted to the Town for review and approval.

- 1.5 Development Coordination.** Unless specifically provided in this AGREEMENT to the contrary, all submittals to the TOWN shall be made to the Planning Department 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 AGREEMENT, 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 public improvements for the Development, 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 the plans set containing sanitary sewer and water system improvements.
- (b) The TOWN shall issue its written acceptance or disapproval of 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 improvements.

- (c) The DEVELOPER shall submit all plans for public improvements as paper documents and by acceptable electronic transfer, approved AutoCAD™ drawing files and PDF files. All written documents shall be submitted as paper documents and by acceptable electronic transfer, as PDF files, 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 proposed 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.

1.7 Incorporation by Reference. All plans, reports, special provisions, and specifications for the public improvements furnished and let pursuant to this AGREEMENT as approved by the TOWN shall be and hereby are made a part of this AGREEMENT by reference as fully as if set out herein in full.

1.8 Insurance. The DEVELOPER shall require, 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 PROPERTY upon the TOWN' 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 improvements described in "Exhibit B" or otherwise required by this MOAPI as shown on the accepted plat, landscape plans, utility plans, construction drawings, reports, and other accepted documents on file with the TOWN including, but not be 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, 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 and electric distribution systems, and any other improvements constructed in relation to the development of the SUBDIVISION (collectively, the "SECURED IMPROVEMENTS").
- (b) The DEVELOPER shall submit to the TOWN an Improvement Guarantee assuring construction of the SECURED IMPROVEMENTS. 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 with automatic extensions for a year; 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).
- (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 all public improvements to be constructed as described on "Exhibit B", except those public utilities to be owned by an entity other than the TOWN and for which a separate surety is provided. For the avoidance of doubt, while the amount of the Improvement Guarantee shall be calculated as described in this subsection (c), the Improvement Guarantee shall nonetheless assure construction of all SECURED IMPROVEMENTS and the TOWN shall not release the Improvement Guarantee until the TOWN has granted final acceptance of the SECURED 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 IMPROVEMENTS, the TOWN shall retain at least ten percent (10%) of the total improvement 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 AGREEMENT and is subject to the provisions of Section 14.1 of this AGREEMENT, 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 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 AGREEMENT, or spend such funds to finish the SECURED IMPROVEMENTS or correct deficiencies in the SECURED IMPROVEMENTS, or it may withhold building permits and certificates of occupancy within the Development, as the TOWN 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 AGREEMENT, or spend such funds to construct or finish the SECURED IMPROVEMENTS, or correct deficiencies in the SECURED IMPROVEMENTS, as the TOWN 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 AGREEMENT, or spend such funds to construct or finish the SECURED IMPROVEMENTS, or correct deficiencies in the SECURED IMPROVEMENTS, and it may withhold building permits and certificates of occupancy within the Development, as the TOWN deems appropriate.
- (h) If the DEVELOPER fails or refuses to construct the SECURED IMPROVEMENTS, or fails or refuses to finish the construction of the SECURED IMPROVEMENTS, the TOWN may draw on the Improvement Guarantee and either hold such funds as security for performance of this AGREEMENT, or spend such funds to construct or finish the SECURED IMPROVEMENTS, or correct deficiencies in the SECURED IMPROVEMENTS, as the TOWN 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 improvements specified in "Exhibit B" and will comply with all additional provisions specified in "Exhibit F". If there is a discrepancy between the quantity or size of improvements shown on any approved plans or drawings and the quantity or size listed in "Exhibit B", then the TOWN shall determine which quantity or size applies in accordance with TOWN standards, specifications, regulations and policies; provided, however, that any increased cost to DEVELOPER attributable to the larger quantity or size may be eligible for reimbursement by adjacent benefitted property as specified in this MOAPI.
- 2.2 **On-site and Off-site Rights-of-way, Easements, Licenses and Permits.** For development of the PROPERTY 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 "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 PROPERTY 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 general or special Warranty Deed 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 develop the PROPERTY, 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.
- (c) The TOWN and the DEVELOPER agree that the acquisition of off-site and on-site rights-of-way, easements, licenses and permit necessary to serve the transportation needs of the PROPERTY are directly related to and generated by development intended to occur within the PROPERTY 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 improvements listed on "Exhibit B", in conformance with the subdivision plat and final development plan, reports, 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 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, then DEVELOPER shall be in default of the AGREEMENT, and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT 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 improvements described on "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 rights-of-way 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 improvements described herein, The DEVELOPER shall take any and all 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 sole 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 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 and other associated permits.

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 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 improvement 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

improvements, the TOWN may conduct the inspection without the approval of the DEVELOPER.

- (b) If 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 improvements completed by the DEVELOPER are not in substantial compliance with the approved public improvement 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 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 AGREEMENT.
- (e) The DEVELOPER shall provide a certified statement of construction costs no later than forty-five (45) days after 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 improvements are completed. These documents shall show "as-built" locations and design details of such improvements. In addition, "as-built" plans and other required drawings for 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 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) 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 improvements in writing 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 any improvements related to the Development, the DEVELOPER shall warrant said improvements and, at its own expense, take all actions necessary to maintain said 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 AGREEMENT.

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 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 or general or 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 public improvements constructed by the DEVELOPER for ownership and administration of 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 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 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 AGREEMENT.
- (e) If any mechanic's liens 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 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 improvements are found not to conform to this AGREEMENT 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 AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.
- (g) The above requirements shall also apply to the sewer and water improvements to be inspected and accepted by the appropriate Special

District. The DEVELOPER shall obtain the final acceptance of the 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 rights-of-way 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) If not transferred to the TOWN at the time of annexation, the DEVELOPER will transfer to the TOWN Colorado Big Thompson water and native water shares to satisfy the water dedication requirement before the issuance of the first building permit for the phase or filing in which the building permit is requested. The water dedication requirement will be calculated by Town staff per Municipal Code Section 13-2-205.
- (b) The TOWN may require the dedication of water for the irrigation of park and open space. The DEVELOPER shall by Special Warranty Deed acceptable to the TOWN convey to the TOWN native water shares and all non-tributary and not not-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 SUBDIVISION and that no taking thereby will occur requiring any compensation.

5 **WATER IMPROVEMENTS.**

- 5.1 **Water Service Availability.** The TOWN provides potable water service by an intergovernmental agreement with the Central Weld County Water District. The TOWN does not guarantee the availability of potable water service to the DEVELOPER for any phase of the development from the CWCWD system.

Provided that water service availability is confirmed by a TOWN water system analysis at the time the DEVELOPER requests water taps, the TOWN will provide water service to the DEVELOPER.

5.2 Extension of Water Services.

- (a) The DEVELOPER shall install at his sole cost and expense, all the water mains, trunk lines, pumping and storage facilities and appurtenances necessary to provide service from the TOWN's system 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 his sole cost and expense, all the 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 current 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.
- (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 his sole cost and expense, all 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 his sole cost and expense, all the 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 the District.

6.4 Sanitary Sewer Tap and Plant Investment Fees.

- (a) Sanitary sewer tap and plant investment fees shall be the current District sanitary sewer tap and plant investment fees at the time that the DEVELOPER requests sewer taps.
- (b) The TOWN will 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 drainage improvements for the development in accordance with the master drainage plan for the PROPERTY prepared by the DEVELOPER and reviewed and accepted by the TOWN and the responsible drainage district, if any. These 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. The 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 his sole cost and expense, all the storm water lines, drainage swales, pumping, detention and storm water treatment facilities within the SUBDIVISION. The DEVELOPER shall install at his sole cost and expense, such sedimentation and erosion control measures as are required.
 - (c) The DEVELOPER shall install at his sole cost and expense, such groundwater and foundation drainage system 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 HOA.

- (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 his 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 drainage improvements for the PROPERTY 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 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 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 unless approved by the Town Engineer. 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. Drainage improvements shall be completed and granted conditional acceptance by the TOWN before the issuance of building permits. Completion of the 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.

8.6 Modification of Accepted Drainage Improvements. 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 storm water capital expansion fee shall be the current TOWN storm water capital expansion fees at the time that the DEVELOPER receives a building permit for a structure. Storm water capital expansion fees shall be paid when a building permit for a structure is released by 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 Off-site and On-site Rights-of-way, Easements, Licenses and Permits.

- (a) For 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.

- 9.2 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 to accommodate transportation needs that each phase of the SUBDIVISION development will generate.
- 9.3 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 benefitted property as specified in this MOAPI.
- 9.4 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.
- 9.5 Street Improvements.** For the purposes of this AGREEMENT, "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 street improvements shall be constructed and installed pursuant to TOWN accepted plans, specifications, and as detailed in "Exhibit B".

- 9.6 Road Impact Fees.** The road impact fee shall be the current TOWN road impact fees at the time that the DEVELOPER receives a building permit for a structure. Road impact fees shall be paid when a building permit for a structure is released by the TOWN.
- 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. The 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 School Bus Shelters.** The DEVELOPER will install at his sole cost and expense appropriately designed pedestrian shelters at school bus stops within the development. The location of the shelters shall be decided in cooperation with the School District. School bus shelters shall be owned and maintained by the Homeowners Association.
- 9.10 Mail Boxes.** The DEVELOPER shall coordinate with the U.S. Postal Service and bear the cost of installing cluster mailboxes for the subdivision.

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 landscape improvements as required in the landscape and irrigation plans reviewed and accepted by the TOWN and as detailed in "Exhibit B".
- (b) **Private Landscaping Improvements.** For private landscape improvements, 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 AGREEMENT, Default. In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants and undertakings of this AGREEMENT, 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 improvements. 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, and other

matters not within the DEVELOPER'S control shall not be considered a breach of the AGREEMENT.

- 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 AGREEMENT with funds other than the Improvement Guarantee, in which event the DEVELOPER shall reimburse the TOWN 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 AGREEMENT and the TOWN may exercise its rights under Section 14.1 of this AGREEMENT.
- 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.** 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.** 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 PROPERTY 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 PROPERTY.

14.5 Governmental Immunities Act. The TOWN is relying on, and does not waive or intend to waive by any provision of this AGREEMENT, 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, its officers, agents, employees, attorneys, engineers, planners, indemnifiers and insurers.

14.6 Recording of AGREEMENT. This AGREEMENT 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 AGREEMENT 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 AGREEMENT.

14.7 Binding Effect of AGREEMENT. This AGREEMENT 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. 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 AGREEMENT obligations to any successor, as well as arrangements, if any, for delegation of the improvement obligations hereunder. 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 DEVELOPER under this AGREEMENT.

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 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.

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:

TOWN:

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

DEVELOPER:

Spindle Battery LLC
4900 N. Scottsdale Road, Suite 5000
Scottsdale, Arizona 85251

With copy to:

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

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, or circumstances beyond the reasonable 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 AGREEMENT, 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 AGREEMENT, then this AGREEMENT 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 AGREEMENT.

14.15 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 the DEVELOPER 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.

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 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

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

TOWN OF FREDERICK

By _____
Tracie Crites, Mayor

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

[SEAL]

SPINDLE BATTERY LLC,
a Delaware limited liability company

By: _____
Name: John Woody
Title: Vice President

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by John Woody as Vice President of Spindle Battery LLC, a Delaware limited liability company.

Witness my hand and official seal.

Notary Public

[SEAL]

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Acknowledgement

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On October 16, 2025, before me, S. Key, a Notary Public, personally appeared John Woody, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary's Signature



[Notarial Seal]

Exhibit A
(See Attached)

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS

Stronger than before.
Call before you dig.

Westwood
SPECIALTY SURVEYING
1000 E. 10TH AVE., SUITE 100
DENVER, CO 80202
(303) 733-1100
WWW.WESTWOODSURVEYING.COM

STATEMENT OF PREPARER AND CERTIFICATIONS

I, the undersigned, being a duly qualified and licensed Professional Engineer in the State of Colorado, do hereby certify that I am the author of the foregoing plat, and that it was prepared by me or under my direct supervision and that I am a duly qualified and licensed Professional Engineer in the State of Colorado.

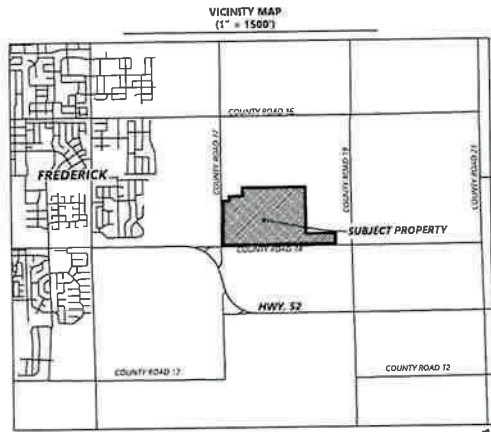
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LAND USE TABLE			
NO.	DESCRIPTION	ACRES	PERCENTAGE
1	AGRICULTURE	193.979	100.000
2	RESIDENTIAL	0.000	0.000
3	COMMERCIAL	0.000	0.000
4	INDUSTRIAL	0.000	0.000
5	UNDEVELOPED	0.000	0.000

OWNER		PREPARED BY		CHECKED BY	
JOHNSON FARMS/SPINDLE HILL ENERGY		WESTWOOD SURVEYING		WESTWOOD SURVEYING	
193.979 ACRES		193.979 ACRES		193.979 ACRES	
100.000 PERCENT		100.000 PERCENT		100.000 PERCENT	

SHEET INDEX

SHEET 1 OF 1
THIS PLAT WAS PREPARED BY WESTWOOD SURVEYING, INC. ON 09/26/2025.
DRAWN BY: [Name]
CHECKED BY: [Name]

GENERAL NOTES

1. THE SUBJECT PROPERTY IS LOCATED WITHIN THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
2. THE SUBJECT PROPERTY IS 193.979 ACRES, 2 LOTS.
3. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO COUNTY ROAD 16 TO THE NORTH, COUNTY ROAD 17 TO THE WEST, COUNTY ROAD 12 TO THE SOUTH, AND HIGHWAY 52 TO THE EAST.
4. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
5. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
6. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
7. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
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9. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.
10. THE SUBJECT PROPERTY IS BOUNDARY ADJACENT TO THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, A REPLAT OF OUTLOT 2, A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M., TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO.

DRAFT

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

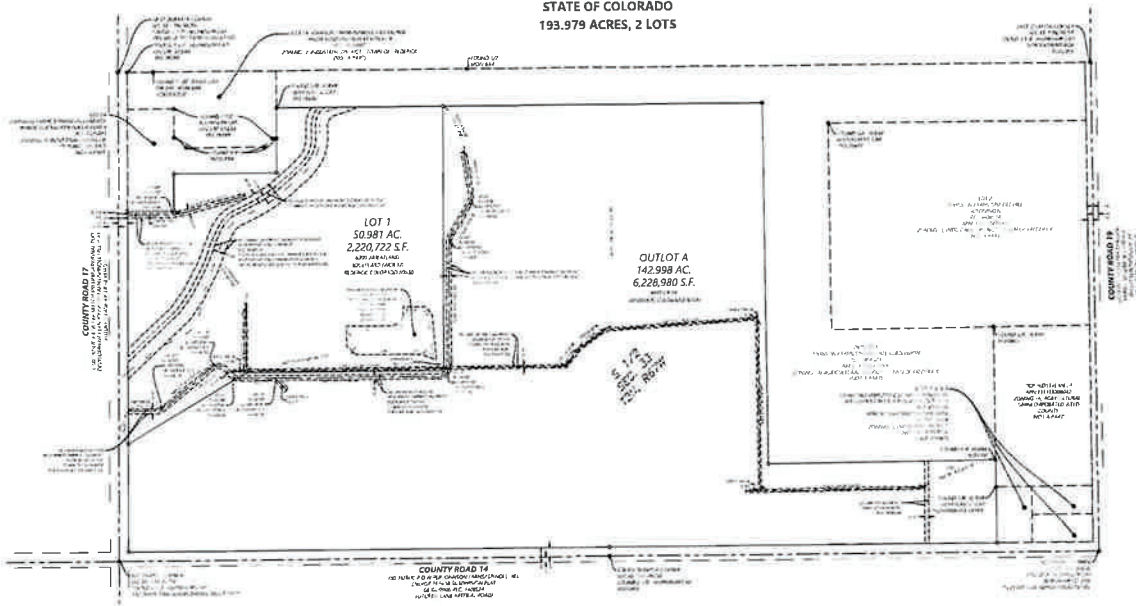
Clearway

1000 E. 10TH AVE., SUITE 100
DENVER, CO 80202
(303) 733-1100
WWW.CLEARWAYSURVEYING.COM

DATE 09/26/2025
PAGE 01 of 03

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS



Lot	Area (Acres)	Area (S.F.)
1	50.981	2,220,722
A	142.998	6,226,980
Total	193.979	8,447,702

Westwood

LEGEND

- 1. Easement
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- 100. Easement

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION,
AMENDMENT NO. 2,
TOWN OF FREDERICK, COUNTY OF WELD COUNTY, COLORADO

Clearway

100' of Survey & Survey 3 and 4
Cap 1: 1000' CA 101.1

09/26/2025
03 of 03

Exhibit B
(See Attached)

1159 SPINDLE BESS PROJECT, FREDERICK, CO - SITE WORK AND WATERLINE ESTIMATE - BLATTNER ENERGY

Unit No.	Name and Description of Construction Assembly Unit	No. of Units	U.O.M.	Unit Price	Extended Price
Contractor Services					\$ 412,310.70
1.1	Mob/Demob	2	EA	\$ 70,139.88	\$ 140,279.76
1.2	Project Management	5	MO	\$ 7,423.72	\$ 33,406.75
1.3	Site Survey	1	LS	\$ 18,694.53	\$ 18,694.53
1.4	General Conditions	1	LS	\$ 182,446.88	\$ 182,446.88
Subtotal Contractor Services					\$ 374,827.91
10% Contingency					\$ 37,482.79
Total Contractor Services					\$ 412,310.70
Clearing & Grubbing					\$ 2,365.55
2.1	Clearing & Grubbing	17	Acres	\$ 126.50	\$ 2,150.50
Subtotal Clearing and Grubbing					\$ 2,150.50
10% Contingency					\$ 215.05
Total Clearing and Grubbing					\$ 2,365.55
SWPP & BMPs					\$ 532,586.66
3.1	Bidder to estimate total water usage	1,139	MGAL	\$ -	\$ -
3.2	Furnish & Install Silt Fence	2,878	LF	\$ 5.06	\$ 14,562.68
3.3	Detention Pond Build	1	EA	\$ -	\$ -
3.3.1	Strip & Stockpile Topsoil	-	CY	\$ -	\$ -
3.3.2	Concrete safety end treatments	3	Each	\$ 12,816.55	\$ 38,449.66
3.3.3	Install 18" and 24" RCP	92	LF	\$ 198.90	\$ 18,299.17
3.3.4	Outlet Structure	1	EA	\$ 10,361.05	\$ 10,361.05
3.4	Culverts	42	LF	\$ 158.65	\$ 6,663.47
3.5	Furnish & Install Rip Rap - Silt Fence Relief	8	TN	\$ 177.31	\$ 1,418.46
3.6	Furnish & Install Rip Rap - Detention Pond Slope Protection	350	CY	\$ 169.44	\$ 59,304.35
3.7	5" Thick Concrete Trickle Channel	71	CY	\$ 2,652.97	\$ 188,360.83
3.8	Emergency Concrete Spillway	1	EA	\$ 76,467.72	\$ 76,467.72
3.9	Concrete Washout	1	EA	\$ 4,501.23	\$ 4,501.23
3.10	3x3 Grate Inlets	2	EA	\$ 4,478.96	\$ 8,957.92
3.11	Dust Pallative	13,722	SY	\$ 3.80	\$ 52,074.99
3.12	Pipeline Blister	1	EA	\$ 4,748.17	\$ 4,748.17
Subtotal SWPPP and BMPs					\$ 484,169.69
10% Contingency					\$ 48,416.97
Total SWPPP and BMPs					\$ 532,586.66
Civil Work					\$ 592,973.08
4.1	Topsoil Stripping	4,500	CY	\$ 7.89	\$ 35,500.50
4.1.1	export topsoil	3,000	CY	\$ 17.95	\$ 53,854.50
4.2	Cut - BESS Pad & Pond	10,170	CY	\$ 3.32	\$ 33,800.00
4.3	Fill - BESS Pad & Pond - Native	10,170	CY	\$ 6.97	\$ 70,874.73
4.4	Fill - BESS Pad & Pond - Imported	1,230	CY	\$ 53.54	\$ 65,859.12

1159 SPINDLE BESS PROJECT, FREDERICK, CO - SITE WORK AND WATERLINE ESTIMATE - BLATTNER ENERGY

Unit No.	Name and Description of Construction Assembly Unit	No. of Units	U.O.M.	Unit Price	Extended Price
4.5	F&I Aggregate BESS Pad	1,778	CY	\$ 120.54	\$ 214,325.45
4.6	F&I Aggregate Substation Pad	538	CY	\$ 120.54	\$ 64,852.13
Subtotal Civil Work					\$ 539,066.43
10% Contingency					\$ 53,906.64
Total Civil Work					\$ 592,973.08
Site Roadways					\$ 220,665.55
5.1	Build Road Subgrade	4,750	LF	\$ 4.34	\$ 20,593.63
5.2	F&I Aggregate Roads	2,255	CY	\$ 75.41	\$ 170,039.40
5.3	Grade Approach	1	EA	\$ 1,699.22	\$ 1,699.22
5.4	Gravel Approach	1	EA	\$ 3,393.68	\$ 3,393.68
5.5	Rock Construction Entrance (Stone Tracking Pad)	1	EA	\$ 4,879.12	\$ 4,879.12
Subtotal Site Roadways					\$ 200,605.05
10% Contingency					\$ 20,060.50
Total Site Roadways					\$ 220,665.55
Laydown Yard					\$ 219,649.88
6.1	Grade - Laydown Yard	3	AC	\$ -	\$ -
6.1.1	Strip & Stockpile Topsoil	1,210	CY	\$ 15.36	\$ 18,590.44
6.1.2	Scarify and recompact	14,520	SY	\$ 1.63	\$ 23,711.16
6.2	F&I Aggregate - Laydown Yard	2,183	CY	\$ 72.09	\$ 157,380.11
Subtotal Laydown Yard					\$ 199,681.71
10% Contingency					\$ 19,968.17
Total Laydown Yard					\$ 219,649.88
Water Line					\$ 1,570,363.43
7.1	Mob/Demob - Water Line and Irrigation Line Install	1	EA	\$ 61,872.18	\$ 61,872.18
7.1.0	Install silt fence	10,500	LF	\$ 6.11	\$ 64,109.85
7.1.0.1	Strip and Replace Topsoil	3,703	CY	\$ 12.39	\$ 45,886.82
7.1.1	Install 12" waterline	5,070	LF	\$ 192.39	\$ 975,392.21
7.1.2	Install valves	12	EA	\$ 7,857.62	\$ 94,291.43
7.1.3	Install air vac	2	EA	\$ 14,495.83	\$ 28,991.67
7.1.4	Install sleeve/casing	30	LF	\$ 934.63	\$ 28,038.90
7.1.5	Install 2" blow offs	3	EA	\$ 12,539.28	\$ 37,617.83
7.1.6	Install meter pit (barrel, yoke, hat, no meter)	1	EA	\$ 7,431.33	\$ 7,431.33
7.1.7	pothole, tapping sub, and testing	1	LS	\$ 36,776.84	\$ 36,776.84
7.1.8	Install marker post	19	EA	\$ 1,230.26	\$ 23,374.88
7.1.9	reseeding	7	acres	\$ 3,051.24	\$ 21,358.68
7.2.1	Install marker post	2	EA	\$ 1,230.26	\$ 2,460.51
Subtotal Water Line					\$ 1,427,603.12
10% Contingency					\$ 142,760.31
Total Water Line					\$ 1,570,363.43
7.2 Irrigation Conduit					\$ 82,413.28
7.2	Install 2" HDPE Irrigation Line (Directional Bore)	674	LF	\$ 111.16	\$ 74,921.17
Subtotal Irrigation Conduit					\$ 74,921.17
10% Contingency					\$ 7,492.12

1159 SPINDLE BESS PROJECT, FREDERICK, CO - SITE WORK AND WATERLINE ESTIMATE - BLATTNER ENERGY

Unit No.	Name and Description of Construction Assembly Unit	No. of Units	U.O.M.	Unit Price	Extended Price
	Total Irrigation Conduit				\$ 82,413.28
	Landscaping and Irrigation Scope				\$ 1,188,366.50
8.1	Deciduous Trees	53	EA	\$ 822.64	\$ 43,599.97
8.1.1	Ornamental Trees	73	EA	\$ 662.16	\$ 48,337.57
8.1.2	Evergreen Trees	97	EA	\$ 784.17	\$ 76,064.83
8.1.3	Deciduous Shrubs	1,976	EA	\$ 84.50	\$ 166,975.95
8.1.4	Evergreen Shrubs	245	EA	\$ 71.71	\$ 17,569.93
8.1.5	Native Seed Prep/Installation	746,900	SF	\$ 0.28	\$ 206,144.40
8.1.6	Wood Mulch Plant Rings	21,780	SF	\$ 4.59	\$ 99,937.53
8.1.7	Irrigation Design-Build - See below for cost breakdown	1	LS	\$ 421,703.00	\$ 421,703.00
	Subtotal Landscaping and Irrigation				\$ 1,080,333.19
	10% Contingency				\$ 108,033.32
	Total Landscaping and Irrigation				\$ 1,188,366.50
				Total	\$ 4,821,694.64

Landscaping Design Build - Cost Breakdown

BID ITEM	DESCRIPTION	PAY UNIT	TOTAL QUANTITY	UNIT PRICE	TOTAL BID ITEM COST
	Water Meter Connection Assembly	EA	1	\$1,500.00	\$1,500.00
	Backflow Preventor Assembly 2"	EA	1	\$1,800.00	\$1,800.00
	Irrigation Controller (2-wire decoder type)	EA	1	\$3,500.00	\$3,500.00
	Control Wire 14ga	LF	500	\$0.20	\$100.00
	Tracer Wire	LF	5400	\$0.23	\$1,242.00
	Two-Wire Cable	LF	5600	\$1.20	\$6,720.00
	Master Valve Assembly	EA	1	\$350.00	\$350.00
	Flow Sensor Assembly	EA	1	\$350.00	\$350.00
	Irrigation Mainline Pipe & Fittings - Class 200 PVC, 2"	LF	300	\$7.50	\$2,250.00
	Irrigation Mainline Pipe & Fittings - Class 200 PVC, 2.5"	LF	4200	\$12.00	\$50,400.00
	Irrigation Mainline Pipe & Fittings - Class 200 PVC, 3"	LF	210	\$15.00	\$3,150.00
	Irrigation Mainline Pipe HDPE DR-9, 2"	LF	725	\$14.00	\$10,150.00
	Sleeving Pipe Class 200 PVC, 2"	LF	125	\$7.50	\$937.50
	Sleeving Pipe Class 200 PVC, 6"	LF	125	\$20.00	\$2,500.00
	Gate Valve Assembly, 2"	EA	2	\$350.00	\$700.00
	Gate Valve Assembly, 2.5"	EA	4	\$425.00	\$1,700.00
	Quick Coupler Valve Assembly	EA	7	\$400.00	\$2,800.00
	Overhead Rotator Irrigation (15'-35' Radius) - Seed Mix (Includes control valves and lateral piping)	SF	20000	\$1.25	\$25,000.00
	Overhead Rotor Irrigation (36'-60' Radius) - Seed Mix (Includes control valves and lateral piping)	SF	363328	\$0.60	\$217,996.80
	Dripline Irrigation 18" x 24" - Trees & Shrubs (includes control valves lateral piping and dripline)	SF	88558	\$1.00	\$88,557.60
ESTIMATE TOTAL					\$421,703.90

Exhibit C
(See Attached)

EXHIBIT C

(Sample)
(BANK LETTERHEAD)

IRREVOCABLE LETTER OF CREDIT

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

No.
Date:
Expiration:

To whom it may concern:

We hereby establish our Irrevocable Standby Letter of Credit No. XXXXX in favor of Town of Frederick, hereinafter referred to as "Beneficiary," at the request of Clearway Energy Group LLC for the benefit of Spindle Battery LLC, hereinafter referred to as "Applicant," in an amount not to exceed in the aggregate \$XXXX (Amount in Words and 00/100) U.S. Dollars.

This Letter of Credit shall be drawn upon in accordance with the (Insert the title of the Memorandum of Agreement for Public Improvements)

Funds are available by your draft on us at sight, duly endorsed on the reverse side thereof bearing the clause: "Drawn under [Natixis, New York Branch], Letter of Credit No. XXXXX dated _____ XX, 2025" and accompanied by the following documents:

1. The original Letter of Credit and any amendments thereto. If your demand represents a partial drawing hereunder, we will endorse the original credit and return same to you for possible future claims. If, however, your demand represents a full drawing or if such drawing is presented on the day of the relevant expiration date hereof, we will retain the original and [terminate][cancel] the Letter of Credit.
2. A statement signed by a purported officer/representative of Beneficiary that reads:

"We hereby certify that the draft accompanying this statement drawn under Letter of Credit No. XXXXX represents the amount due us under the terms and conditions of that (Insert the title of the Memorandum of Agreement for Public Improvements)."

It is a condition of this Letter of Credit that it shall be extended automatically without amendment for additional one (1) year periods from the present or any future expiration date, unless at least sixty (60) days prior to the then current expiration date, we notify you in writing by registered mail, certified mail, or overnight courier, at the above address, that we elect not to renew this Letter of Credit for said additional period.

Upon receipt by you of such notice, you may draw hereunder by your draft on us, payable at sight, in an amount up to the current available outstanding balance.

Partial and multiple drawings are permitted.

We hereby represent and affirm that the execution of this Letter of Credit will not constitute a violation of any law or regulation that may limit the amount of credit that can be extended by this Bank to any single borrower or customer.

We hereby agree that draft(s) drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation and delivery of documents as specified above, if presented at our office located at [Issuing Bank Address] on or before the expiration date noted above or any extended expiration date.

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the "Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce, Brochure No. 600."

Yours, very truly,

By: (signature of authorized bank officer)

Title: (title of signator)

Attest:

Exhibit F
(See Attached)

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 Johnson Farms / Spindle Hill Energy Minor Subdivision Amendment No. 2 by and between the Town of Frederick, a Colorado municipal corporation and Spindle Battery LLC, a Delaware limited liability company (the “DEVELOPER”). In the event of any conflict between any paragraph, sentence or clause of this Exhibit F and similar provisions elsewhere in the MOAPI, the paragraph, sentence or clause of this Exhibit F shall control.

1. Special provisions for **Section 1. General Conditions:**

1.1 Definitions. The following are included as additional Definitions:

- (a) **Approve(d)/Approval:** The Town’s agreement and/or acceptance that, to the best of the TOWN’s knowledge, a design, plan, or other submittal is in general compliance with and consistent with all TOWN standards, codes, regulations, and requirements.
- (b) **Corrective Work:** Those repairs, replacements, construction, or other aspects of the Public Improvements to be completed by the DEVELOPER prior to conditional acceptance and/or final acceptance and as identified by the TOWN as DEVELOPER not being in substantial compliance with the Approved Improvement Plans.
- (c) **Town Design Standards and Construction Specifications (“Town DSCS”)** shall mean the TOWN standards described in *Built on What Matters*, Design Standards and Construction Specifications, 2019 Edition, as amended from time to time, and the Frederick Municipal Code, Chapter 18, Article IV, Design Standards and Construction Specifications, as amended from time to time.
- (d) **Improvement Guarantee** shall mean a form of security, including a warranty bond, cash escrow, assignment of funds, or irrevocable letter of credit, in an appropriate amount and form satisfactory to the TOWN, to guarantee the removal and repair of deficiencies prior to final acceptance by the TOWN.
- (e) **Improvement Plans** shall be defined as the Construction Plans and Drawings and Engineering Reports developed for the Development, referenced by Spindle Hill Battery Energy Storage System that have been reviewed and Approved by the TOWN.

- (f) **Lot 1:** Lot 1, Johnson Farms / Spindle Hill Energy Minor Subdivision, Amendment No. 2, Town of Frederick, County of Weld, State of Colorado.
- (g) **Private Improvements:** Those improvements for the Development that DEVELOPER intends to construct and that are intended to be privately owned and maintained.
- (h) **Public Improvements** shall be as defined as all work in the public right-of-way, Town property, easements dedicated to the Town, private property that will become Town property or an easement to the Town in the future, and projects or utilities that will become the Town's responsibility to maintain, as shown, identified and described in Exhibit B, including site landscaping, and as Approved by the TOWN in the Improvement Plans, that DEVELOPER shall construct in accordance with Town Municipal Code and Town DSCS. Notwithstanding anything in this Agreement to the contrary, the only portion of the Public Improvements the Town will own and maintain is the waterline, as described in Exhibit B.
- (i) **Property:** Johnson Farms / Spindle Hill Energy Minor Subdivision, Amendment No. 2, Town of Frederick, County of Weld, State of Colorado.
- (j) **Secured Improvements:** Those Public Improvements where the performance of the obligations to construct such Public Improvements is guaranteed by the Improvement Guarantee.

1.2 Development Obligation. Section 1.2 remains unaffected by this Agreement, except that for the purposes of this Agreement, the applicable improvements for the Property (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) are the Public Improvements, and references to "public improvements" in this Agreement mean the same.

1.3 Engineering and Surveying Services. Section 1.3 remains unaffected by this Agreement, except that for the purposes of this Agreement, the phrases "standards and specifications for public improvements as established and approved by the TOWN as of the date of submittal to the TOWN," "standards and specifications," "then existing regulations," and "plans and specifications" mean the Town Design Standards and Construction Specifications for Public Improvements, Town Land Use Code, and Town Municipal Code, as of the date of a complete submittal to the TOWN.

1.6 Plan Submission and Acceptance. Section 1.6 remains unaffected by this Agreement, except as otherwise set forth immediately below, and for the purposes of this Agreement, the phrases “plans for public improvements,” “construction plans and drawings,” “project construction plans and drawings,” “approved plans,” “accepted plans,” “plans,” and “original plans,” and related phrases, mean the Improvement Plans.

Subsection (c) is hereby amended as follows:

The DEVELOPER shall submit all plans for public improvements by acceptable electronic transfer, approved AutoCAD™ drawing files, and PDF files, as required by the TOWN. All written documents shall be submitted by acceptable electronic transfer, as PDF files, word processing files, Microsoft Word, latest version, or compatible, as required by the TOWN.

Add subsection (f) as follows:

(f) With respect to Lot 1, DEVELOPER and TOWN acknowledge and agree that such property will be used as a battery energy storage system, and that Lot 1 will require potable water for landscaping and fire service.

Add subsection (g) as follows:

(g) With respect to Lot 1, under Section 2.21 of the Frederick Land Use Code, sanitary sewer is only required for uses that have human occupancy. The Development will not include sanitary sewer Public Improvements so long as the Development does not have human occupancy. In approving this Agreement (and so long as the Development does not have human occupancy), the TOWN hereby waives for Lot 1 any applicable sewer service requirement in Municipal Code Section 13-1-117.

1.11 Financing and Improvement Guarantees.

Subsection (b) is hereby amended to read:

(b) The DEVELOPER shall submit to the TOWN an Improvement Guarantee assuring construction of the SECURED IMPROVEMENTS. 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).

Subsection (c) is hereby amended as follows:

(c) The total amount of the Improvement Guarantee shall be calculated as one hundred percent (100%) of the total estimated cost, including labor and materials, of all Public Improvements to be constructed as described on “Exhibit B”, except those public utilities

to be owned by an entity other than the TOWN and for which a separate surety may be provided. The TOWN shall not release all of the Improvement Guarantee until the TOWN has granted final acceptance of the SECURED IMPROVEMENTS. Partial releases of an Improvement Guarantee may be considered when development is phased, has a clearly defined phasing plan shown and described in the Improvement Plans, and when a phase of the Development has received conditional acceptance. Irrespective of partial releases, at all times during the warranty period on SECURED IMPROVEMENTS, the TOWN shall retain ten percent (10%) of the total improvement costs as an Improvement Guarantee under this section, except where the TOWN in its reasonable discretion may require a higher amount for particular Public Improvements that have high corresponding repair, replacement or maintenance costs. 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".

The first two sentences of subsection (e) are amended as follows:

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 the cost estimates and to require the DEVELOPER to provide an updated estimate of costs, before or after DEVELOPER provides the Improvement Guarantee on each phase of the SUBDIVISION, when the DEVELOPER seeks to commence construction.

2. Special provisions for **Section 2 CONSTRUCTION OF IMPROVEMENTS:**

2.1 Improvements to be Constructed. The first sentence of this paragraph is hereby amended as follows:

In accordance with the Town Design Standards and Construction Specifications, the Improvement Plans, the Town Municipal Code, and the Town Land Use Code, the DEVELOPER shall construct all Public Improvements and will comply with all additional provisions specified in Exhibit F.

2.2 On-site and Off-site Rights-of-way, Easements, Licenses and Permits.

Subsection (a) is hereby amended as follows:

(a) All such conveyances shall be free and clear of monetary liens, taxes (except for ad valorem real property taxes and assessments for the calendar year of conveyance and thereafter) and encumbrances that would materially interfere with the conveyances' intended purpose and shall be by plat dedication or by special warranty deed subject to statutory exceptions 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.

The last sentence in Subsection (b) is hereby amended as follows:

The DEVELOPER shall pay for the TOWN's reasonable, documented acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

2.3 Construction. Subsection (a) is hereby amended as follows:

(a) Construction of Public Improvements shall be completed in accordance with the Approved Improvement Plans and within a reasonable time, not to exceed two calendar years from the date of commencement (subject to force majeure as set forth in Section 14.11 below). The DEVELOPER will cause its 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.

2.9 Testing and Inspection. Subsection (a) is hereby amended as follows:

(a) DEVELOPER shall employ, at its own expense, a licensed and registered testing company, authorized to do business in the State of Colorado, to complete all testing of materials or construction for compliance with the Town Design Standards and Construction Specifications, 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 the TOWN'S review and acceptance under subsection (c) below, before commencement or continuation of construction to which the testing is applicable. The Town will conduct such review and issue any acceptance as expeditiously as reasonably possible.

Subsection (b) is hereby amended as follows:

(b) At all times during construction of the Public Improvements, the TOWN and/or representatives of the affected Special Districts shall have 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 Improvement Plans and the Town Design Standards and Construction Specifications and the construction regulations of any District that must accept or approve the Public Improvements.

In the first sentence of subsection (d), the reference to the number "ten (10)" is hereby amended to be "thirty (30)."

In subsection (d) the "costs incurred by the Town" are to be reasonable and documented.

2.10 Conditional Acceptance of Constructed Public Improvements.

Subsection (c) is hereby amended as follows:

(c) The TOWN will conduct all inspections and reviews, and grant any acceptance as expeditiously as reasonably possible. If the Public Improvements completed by the DEVELOPER are not in substantial compliance with the Approved Improvement Plans, the Town shall provide written notice to the DEVELOPER of the Corrective Work required to receive conditional acceptance. Within thirty (30) days of said notice, weather permitting (and subject to force majeure), or according to a schedule of such repairs the DEVELOPER provides to the Town, if approved by the Town in its reasonable discretion, The DEVELOPER shall complete all needed repairs, replacements, construction, or other work, repair or remove all materials and work not conforming to such Town Municipal Code and Town DSCS and replace the same at DEVELOPER's expense to conform to such Town Municipal Code and Town DSCS. After the DEVELOPER completes the Corrective 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 Corrective Work is acceptable before the TOWN acts to complete any such work at the DEVELOPER's expense as provided in (d) below.

Subsection (d) is hereby amended as follows:

(d) If the DEVELOPER has not completed the Public Improvements on or before the completion date set forth in Section 2.3 herein (subject to force majeure), or if the DEVELOPER does not complete the repairs, replacements, construction, or other work required within the timeframes outlined immediately above, the Town may exercise its rights to secure performance as provided in Section 14.1 of this Agreement.

The following language is hereby added at the end of Subsection (g) in order to amend it as follows:

Notwithstanding the foregoing, the Town acknowledges that with respect to Lot 1, the Town will issue building permits for temporary facilities, right-of-way, civil/grading and oversize/overweight before completion of the on-site water line serving the Development, and the Town will allow construction of the water lines to occur in tandem with the construction and work allowed by the foregoing permits. However, the Town will not issue permits for the BESS commercial building, electrical or substation building until the water lines on-site serving the Development have been issued conditional acceptance.

Subsection (h) remains unaffected by this Agreement, except that any references to Left Hand Water District are hereby deleted, and with respect to Lot 1 only, any reference to sewer improvements is hereby deleted.

2.11 Maintenance and Warranty of Improvements. This Section is hereby amended as follows:

For a two (2) year period, which is the greater of either two (2) years or two (2) winter seasons (winter seasons being from November 1 through April 30), from the date of conditional acceptance for all Public Improvements related to the Development, the DEVELOPER shall warrant said Public Improvements and, at its own expense, make all repairs or replacements that, in the reasonable opinion of the Town, are necessary to maintain said Public Improvements. 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, weather permitting (and subject to force majeure), or per provided schedule by the DEVELOPER, as approved by the TOWN in its reasonable discretion, the TOWN may exercise its rights to secure performance as provided in Section 14.1 of this AGREEMENT.

2.12 Final Acceptance.

Subsection (b) is hereby amended as follows:

(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 or special Warranty Deed subject to statutory exceptions, 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 Public Improvements, as limited by Section 1.1(h) of this Exhibit F, constructed by the DEVELOPER and through the Engineering Department shall issue to the DEVELOPER a letter acknowledging said final acceptance.

The second sentence of subsection (c) is hereby amended as follows:

Specific components of Public Improvements that are considered in the reasonable opinion of the Town Engineer to be Major Improvements that in the reasonable opinion of the Town contain material deficiencies that must be corrected, 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.

Subsection (d) is hereby amended as follows:

(d) If the Developer does not correct all deficiencies and make repairs identified in the final acceptance inspection to the Town's reasonable satisfaction within thirty (30) days after receipt of said notice, weather permitting (and subject to force majeure) or as provided in a schedule by DEVELOPER, as approved by the TOWN in its reasonable discretion, the Town may exercise its rights to secure performance as is provided in Section 14.1 of this Agreement.

Subsection (f) is hereby amended as follows:

(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 (subject to force majeure), then the warranty period shall extend on a month to month basis and the DEVELOPER shall be in default of the Agreement and the Town may exercise its rights under Section 14.1 of this Agreement.

Subsection (g) remains unaffected by this Agreement, except that with respect to Lot 1 only, any reference to sewer improvements is hereby deleted.

3. Special Provisions for **Section 3 PUBLIC USE LAND DEDICATION**. This entire section is hereby amended as follows:

Before the issuance of any building permits, the DEVELOPER shall convey to the Town those certain lands, if any, and public trail easement rights as described or depicted on the subdivision plat, as dedicated to public uses. Said conveyance shall be by way of the plat, a separate easement agreement, or special warranty deed (as applicable), subject to the statutory exceptions, in form and substance satisfactory to the Town Attorney. The DEVELOPER shall, at the DEVELOPER's expense, furnish a title report for the Property at the time of conveyance. The Property shall be free and clear of monetary liens, taxes (except for ad valorem real property taxes and assessments for the calendar year of conveyance and thereafter), and encumbrances that would materially interfere with the conveyances' intended purpose, but subject to all easements, right-of-way, reservations, restrictions, or other title burdens of record, or those easements and rights-of-way that would be readily apparent from a physical inspection. The Town shall record all title documents at the DEVELOPER's expense.

4. Special provisions for **Section 5 WATER IMPROVEMENTS**

5.2 Extension of Water Services.

Subsection (a) is hereby amended as follows:

(a) The DEVELOPER shall install, at its sole cost and expense, all the water mains, trunk lines, pumping and storage facilities, and appurtenances necessary to provide service

from the Town's system to the Subdivision, as described in Exhibit B, pursuant to the Improvement Plans. These extensions may include the oversizing of lines and pumping and storage facilities for future development of adjacent property.

5. Special Provisions for Section 6 **SANITARY SEWER SERVICES**

Add the following as subsection 6.1(d):

(d) Notwithstanding anything to the contrary in Section 6, with respect to Lot 1, under Section 2.21 of the Frederick Land Use Code, sanitary sewer is only required for uses that have human occupancy. The Development will not have human occupancy, and will therefore not include sanitary sewer Public Improvements. This terms and provisions of this Section 6 are not applicable to Lot 1. In approving this Agreement, the Town hereby waives any applicable sewer service requirement for Lot 1 in Municipal Code Section 13.1-117.

6. Special Provisions for Section 8 **DRAINAGE IMPROVEMENTS**

8.1 **Provision of Storm Water Drainage.** Section 8.1 is hereby amended as follows:

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 set forth in the Town Design Standards and Construction Specifications, Town Municipal Code, and Town Land Use Code.

Subsections (a) through (c) are hereby amended as follows:

(a) The DEVELOPER shall construct the drainage-related Public Improvements for the Development, in accordance with the Improvement Plans for the Property prepared by the DEVELOPER and reviewed and accepted by the TOWN. 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. The 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, the drainage-related Public Improvements and Private Improvements for the Development, including, but not limited to any storm water lines, drainage swales, pumping, detention, and storm water treatment facilities. The DEVELOPER shall install, at its sole cost and expense, such sedimentation and erosion control measures as are required by the Town Design Standards and Construction Specifications, Town Municipal Code, Town Land Use Code, and State of Colorado.

(c) The DEVELOPER shall install, at its sole cost and expense, such groundwater and foundation drainage system-related Public Improvements and Private Improvements for the Development. Operation and maintenance of any such ground water and foundation drainage system shall remain the responsibility of the DEVELOPER until specifically transferred to individual lot owner, metro district, or an HOA, if any.

8.2 Master Drainage Plan.

The last sentence of subsection (d) is hereby amended as follows:

(d) The DEVELOPER shall be responsible for ongoing maintenance of all Public Improvements and Private Improvements related to drainage necessary to transport groundwater to a natural drainageway or storm sewer system accepted by the TOWN.

8.3 Drainage Improvement Construction.

Subsections (a) through (c) are hereby amended as follows:

(a) The DEVELOPER shall construct drainage-related Public Improvements and Private Improvements for the Property as described in Exhibit B, in accordance with the Town's Master Drainage Plan, the Town Design Standards and Construction Specifications, and Approved Improvement Plans and Municipal Code.

(b) The DEVELOPER shall so design and construct all storm drainage-related Public Improvements and Private 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 drainage-related Public Improvements and Private Improvements in an appropriate sequence to meet the demands that development of the Subdivision generates. The DEVELOPER shall meet all Town Design Standards and Construction Specifications in effect at the time of construction.

7. Special Provisions for Section 9 TRANSPORTATION FACILITIES

9.1 Off-site and On-site Rights-of-way, Easements, Licenses, and Permits.

The last sentence in subsection (b) is hereby amended as follows:

The DEVELOPER shall pay for the TOWN's reasonable, documented acquisition costs, including any court costs and attorneys' fees, the TOWN may incur in providing assistance.

9.2 On-site and Off-site Transportation Improvements.

Section 9.2 is hereby amended as follows:

For full development of the Subdivision to occur, certain on-site and off-site transportation-related Public Improvements, as identified in the accepted traffic study may be necessary.

The DEVELOPER shall construct the transportation related Public Improvements set forth in Exhibit B in a sequence acceptable to the TOWN to meet the demands that development 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-related Public Improvements to accommodate transportation needs that the Subdivision will generate.

9.3 On-site and Off-site Arterial Street Improvements and Arterial Intersection Improvements.

Section 9.3 is hereby amended as follows:

The DEVELOPER's construction of on-site and off-site arterial street-related Public Improvements and arterial intersection-related Public Improvements in excess of the cost of a collector street and collector street intersection, excluding on-site rights-of-way and site-specific Public Improvements, will be subject to reimbursement by benefitted property as specified in this MOAPI. Notwithstanding the foregoing, there are no such Public Improvements with respect to Lot 1.

9.5 Street Improvements.

Section 9.5 is hereby amended as follows:

For the purposes of this Agreement, "Street Improvements" shall be defined to include, but not limited to, all Public 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 Accepted, including individual lot service lines leading in from the main to the property line. All Street Improvements as detailed in Exhibit B shall be constructed and installed pursuant to TOWN Approved Improvement Plans, and the Town Design Standards and Construction Specifications, Town Municipal Code, and Town Land Use Code.

Section 9.8 Street Lights.

Section 9.8 is hereby amended as follows:

The DEVELOPER will install all required street lighting and underground electrical supply, if any.

8. Special Provisions for Section 12 LANDSCAPING.

Section 12 is hereby amended as follows

12.1 Landscape Improvements.

At the end of this Section 12.1, add a subsection (c)

(c) With respect to Lot 1, conditional acceptance of any landscape-related improvements, as detailed in Exhibit B and set forth in the landscape and irrigation Improvement Plans review and Approved by the TOWN, is not a condition of the TOWN's issuance of any building permits for the Development. Final acceptance or a separate Improvement Guaranty covering the cost of labor and materials, including irrigation, at 125% of any landscape-related Improvements is a condition of any certificate of completion or certificate of occupancy.

9. Special Provisions for Section 14 **MISCELLANEOUS TERMS**

14.1 **Breach of Agreement, Default.**

This Section is amended as follows:

In the event that the DEVELOPER should fail to timely comply with any of the terms, conditions, covenants, and undertakings of this AGREEMENT, the TOWN shall provide DEVELOPER with written notice specifying such breach and DEVELOPER shall have thirty (30) days from the date it receives notice to cure; provided, that, in the event that such breach cannot be cured within such thirty (30) day period, DEVELOPER shall be granted an additional period of time as DEVELOPER may require (not to exceed an additional sixty (60) days) to cure if DEVELOPER has taken active, diligent steps to cure, in the Town's reasonable opinion. If DEVELOPER fails to cure such breach within the cure period specified herein, then TOWN 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 improvements. Any reasonable, documented 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. DEVELOPER's failure to timely comply with any of the terms, conditions, covenants, and undertakings of this AGREEMENT, including, but not limited to, timely complete construction of Public Improvements, that is solely due to inclement weather, acts of God, material shortages, labor strikes, and other matters not within the DEVELOPER'S control shall not be considered a breach of the AGREEMENT.

14.11 Force Majeure

This Section is amended as follows:

Whenever an agreed upon deadline requires the DEVELOPER to complete construction, maintenance, repair, or replacement of improvements, or any other terms, conditions, covenants, and undertakings of this AGREEMENT, 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, or circumstances beyond the reasonable control of the DEVELOPER.

10. **Special Provision for Right-of-Way Dedication.**

Additional ROW dedication may be required for future arterial roadway improvements and/or trails and shall be dedicated at the time of future development

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ANNEXATION AGREEMENT

Johnson Farms / Spindle Hill Energy Annexation #2

THIS AGREEMENT is made and entered into this 2nd day of August, 2006, by and between Spindle Hill Energy LLC and Susan J. Troudt, Carla Johnson Hobbs, and Investors Independent Trust Company, as personal representative for Marian J. Stratton, formerly known as Marian J. Botinelli, Deceased, hereinafter referred to as the "ANNEXOR," and the Town of Frederick, a municipal corporation of the State of Colorado, hereinafter referred to as "Frederick" or "TOWN".

WITNESSETH:

WHEREAS, the ANNEXOR desires to annex to the Town of Frederick the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof, hereinafter referred to as "PROPERTY" or "the PROPERTY"; and

WHEREAS, the TOWN wishes to control its growth in a planned and orderly fashion, maintaining and improving quality of life and the TOWN's ability to provide and enhance environmental amenities, services and local opportunity for its citizens; and,

WHEREAS, the ANNEXOR wishes to develop an up to 320 MW electrical generating facility and ancillary facilities on the PROPERTY (hereinafter the "PROJECT"); and

WHEREAS, the ANNEXOR acknowledges that upon annexation, the PROPERTY will be subject to all ordinances, resolutions, and other regulations of the Town of Frederick, as they may be amended from time to time; and

WHEREAS, the ANNEXOR has submitted the Johnson Farms/Spindle Hill Energy Center Minor Subdivision Plat concurrently with its petition for annexation; and

WHEREAS, the Lots 1, 2, and 3 and Outlots 2 and 3 as depicted in the Johnson Farms/Spindle Hill Energy Center Minor Subdivision Plat are a part of this Johnson Farms/Spindle Hill Energy Annexation No. 2; and

WHEREAS, the parties mutually recognize and agree that it is necessary and desirable for orderly development that the TOWN be the source of necessary urban services for property to be developed, such as police protection, and local government administration; and

WHEREAS, the parties agree that it is in the public interest of the parties hereto to enter into a written agreement as to the overall plan of development, including location and dedication of public ways and public areas, zoning, dedication of water rights and location and payment regarding roads, utilities and other improvements; and

WHEREAS, the ANNEXOR acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-

way and easements, utility facilities and other public improvements, to the TOWN as contemplated in this AGREEMENT are directly related to and generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation;

NOW, THEREFORE, in consideration of the foregoing covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties as follows:

1. **BASIC INTENT.** The intent of this AGREEMENT is to set forth the requirements for annexation and development of the PROPERTY described above. This AGREEMENT shall be binding upon the parties and may not be modified except by further written agreement.
2. **DEVELOPMENT.** The PROPERTY annexed shall be developed in general conformity with the TOWN comprehensive plans, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements. The TOWN and the ANNEXOR agree that such plans, regulations, codes and other statutory and local requirements are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
 - a. **Zoning.** The ANNEXOR desires I Industrial District zoning for 40.739 acres ("Lot 1 and Lot 2"), P-E Public Established District for 3.15 acres ("Lot 3"), and A-1 Agricultural District for 307.105 acres ("Outlots 2 and 3"), in accordance with the zoning categories contained in Article 3 of the **Frederick Land Use Code**. The parties recognize that it is the intent and desire of the ANNEXOR to develop the PROPERTY in a manner generally consistent with the zoning requested and that the granting of such zoning by the Town of Frederick is a condition to annex the PROPERTY. ANNEXOR shall take all action necessary to permit zoning by the Town of Frederick of the annexed area within the time prescribed by state statutes.
 - b. **Land Use.** All construction will be subject to the types and intensities of land use permitted pursuant to this AGREEMENT and the **Frederick Land Use Code** in effect on the date hereof, or in effect on the date when building permit applications are filed.
3. **MUNICIPAL SERVICES.** The TOWN agrees to provide the PROPERTY with all of the usual municipal services in accordance with this AGREEMENT, and the ordinances and policies of the TOWN, which services shall include, but are not limited to, general government administration, police protection, electricity, and water services and all other services customarily and currently provided by the TOWN in the area to be annexed. The ANNEXOR acknowledges, agrees and accepts that the TOWN does not provide sewer, natural gas services or fire protection services to the area to be annexed. The TOWN and the ANNEXOR agree that the provision or non-provision of such municipal services by the

TOWN or by another entity is directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

- a. The TOWN agrees to allow and to assist the ANNEXOR in obtaining service from other non-municipal entities including, but are not limited to, United Power, Weld County Tri-Area Sanitation District and Central Weld County Water District.
 - b. The ANNEXOR agrees to petition for inclusion of the PROPERTY into the Weld County Tri-Area Sanitation District, Frederick-Firestone Area Fire Protection District, Northern Colorado Water Conservancy District, Weld County School District Re-8, and the Carbon Valley Recreation District within thirty (30) days of the effective date of the annexation, if the PROPERTY is not already included within said districts. The ANNEXOR appoints the Town Clerk as its agent for the purpose of petitioning for inclusion into said special districts, in the event the ANNEXOR fails to do so, and to pay all costs associated therewith.
 - c. Nothing in this Agreement shall provide the ANNEXOR with priority for utility, public safety, and other public services by the TOWN. If utility, public safety, or other public services are not available to coordinate with the ANNEXOR's development schedule, the ANNEXOR shall either delay development until funding becomes available, or fully advance funds necessary to accelerate their availability and priority, according to the TOWN's policies and regulations, and the provisions of this Agreement.
4. **PUBLIC IMPROVEMENTS.** The ANNEXOR agrees to design, construct and install at his sole cost and expense, in accordance with the TOWN reviewed and accepted plans, all public improvements within or adjacent to the PROPERTY and serving the PROPERTY. All public improvements shall be constructed to the Town standards, or where applicable, to the standards of the utility providing the service. All utilities will be placed underground. For the purposes of the PROJECT, the following public improvements are required:
- a. ANNEXOR shall pay to the TOWN at the time of submission of an application for a building permit \$300,000 to be used by the TOWN for the paving of County Road 14 from its intersection with Colorado Highway 52 to its intersection with County Road 19 with an asphalt paved surface. All private roads shall be constructed to the TOWN standards.
 - b. ANNEXOR shall construct and dedicate to the TOWN a 12 inch water main from the existing Town of Frederick water tanks located on Weld County Road 17 along the half section line of Section 33 to Lot 2.

- c. The ANNEXOR agrees to provide to the TOWN, a two (2) year guarantee, from the time of conditional acceptance of construction, for all improvements.
 - d. The ANNEXOR agrees to pay the full cost of relocating existing utilities that may be required by the development of the PROPERTY. All existing overhead utilities within the PROPERTY or in road right-of-ways adjacent to the PROPERTY, including but not limited to electric or telecommunications lines and cables shall be relocated underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.
5. **WATER RIGHTS.** Prior to the approval of a building permit within the PROPERTY, the ANNEXOR shall convey, transfer or assign to the TOWN, free and clear of all liens and encumbrances, 80 CBT (Colorado Big Thompson) units, and shall dedicate to the TOWN all "non-tributary" and "not non-tributary" groundwater appurtenant to the Property. Transfer of said water rights is to be by warranty deed acceptable to the Town Attorney.
6. **LAND DEDICATION.** The dedication of public easements for utilities, rights-of-way for streets and other public ways shall be by plat dedication.
- a. **Conservation Easements.** Upon the approval of the subdivision plat for the PROPERTY, ANNEXOR shall record a conservation easement for the benefit of the TOWN for Outlot 3 in a form acceptable to the Town Attorney. The conservation easement shall limit the use of Outlot 3 to agricultural, parks and open space, underground utility, and access to adjacent property uses and those uses necessary for the PROJECT only.
 - b. **Water Tank Site.** Upon request by the TOWN, ANNEXOR shall dedicate to the TOWN a site of approximately 3.16 acres ("Lot 3") for a water tank in a location determined by the TOWN.
 - c. **Fair Contribution for Public School Sites.** In lieu of land dedication for public school sites, the ANNEXOR shall enter into a Financial Support Agreement with the St. Vrain Valley School District RE 1-J. the Financial Support Agreement shall provide for ANNEXOR to donate to the St. Vrain Valley School District RE 1-J the sum of \$250,000 upon receipt of Use and Occupancy Permit from the TOWN.
7. **WATER SERVICE.** Water service to the PROPERTY shall be provided by the TOWN. If the PROPERTY is not already in the Northern Colorado Water Conservancy District, the ANNEXOR 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. The ANNEXOR hereby acknowledges the TOWN policies with respect to obtaining water service from the TOWN, the dedication of water rights to the TOWN in connection with annexations, the extension of water

lines to the PROPERTY and the provision of and pumping and storage facilities to serve the PROPERTY. The ANNEXOR agrees to comply with TOWN ordinances and policies and with any amendments thereto, including any applicable amendments adopted subsequent to the annexation of the PROPERTY. Water service to the PROJECT will be provided upon compliance with Paragraphs 5 and 7 of this AGREEMENT.

- a. **Extension of Water Services.** The ANNEXOR shall install at his sole cost and expense and dedicate to the TOWN after construction, a 12 inch water distribution line from the existing Town of Frederick water tanks located on Weld County Road 17 along the half section line of Section 33 to Lot 2. The ANNEXOR shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the PROPERTY.
 - b. **Water Connection and Plant Investment Fees.** Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the ANNEXOR requests water service. Water connection and plant investment fees shall be determined and paid at the time a building permit for a structure is requested from the TOWN.
8. **SANITARY SEWER SERVICES.** Sanitary sewer service to the PROJECT will be provided by an on-site septic system approved by the TOWN. At such time as additional development takes place, sanitary sewer service to the PROPERTY will be provided by Weld County Tri-Area Sanitation District, and not by the TOWN. ANNEXOR shall comply at the time of any additional development with the District's requirements for extension of service to the PROPERTY and for payment of sanitary sewer tap and plant investment fees.
9. **ELECTRIC SERVICES.**
 - a. **Provision of Electric Service.** The parties agree that the ANNEXOR will provide its own electrical service.
10. **DRAINAGE.** In conformance with the TOWN standards and specifications, the ANNEXOR shall make provisions to control all storm water runoff greater than that historically generated from the PROPERTY. The ANNEXOR shall not alter historic flows in a manner that would adversely affect upstream or downstream properties.
 - a. **Drainage Plan.** The ANNEXOR, at his sole expense shall prepare a master drainage plan for the PROPERTY. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection and detention facilities. If the master drainage plan results in changes to drainage or irrigation facilities affecting other property or facility owners, the TOWN may require the ANNEXOR to obtain written consent from each property or facility owner for the changes

before the TOWN will accepted the plan. The ANNEXOR shall construct all improvements in an appropriate sequence to meet the demands that development of the PROPERTY generates. The ANNEXOR shall meet all TOWN standards and specifications in effect at the time of construction. The TOWN may require the ANNEXOR to update the master drainage plan for the PROPERTY for the review of each final plat to determine the configuration, timing, and responsibility for the improvements.

- b. **Drainage Improvements.** The master drainage plan, as reviewed and accepted by the TOWN, shall state the ANNEXOR's responsibility for on-site drainage improvements. The master drainage plan may include construction of facilities to convey, collect and detain irrigation and storm water. The master drainage plan shall also state the ANNEXOR's responsibility for off-site improvements.
 - c. **Maintenance of Drainage Facilities.** Detention ponds, private storm sewers, under drains, and other drainage facilities will be owned and maintained by the ANNEXOR.
- 11. **TRANSPORTATION FACILITIES.** The ANNEXOR has provided a traffic study prepared by Harris Kocher Smith Engineers, dated January 6, 2006. Based on this traffic study, no additional traffic improvements are required other than those specified in Paragraph 4.a. above.
 - 12. **PARKS AND OPEN SPACE IDENTIFIED IN THE FREDERICK COMPREHENSIVE PLAN.** The Frederick Comprehensive Plan, as amended, identifies park and open space land within the planning area. ANNEXOR shall preserve, construct, develop and dedicate to the TOWN all park and open space areas within, crossing or bordering the PROPERTY as depicted in the Frederick Comprehensive Plan, as amended, at the time of any replatting the PROPERTY.
 - 13. **FIRE PROTECTION.** The ANNEXOR shall be solely responsible for installing all fire hydrants and other fire protection measures on the PROPERTY and its perimeter as may be required by the Frederick-Firestone Fire Protection District.
 - 14. **COST ALLOCATION AND RECAPTURE OF COSTS FOR PUBLIC AND COMMON IMPROVEMENTS.** The TOWN may require the ANNEXOR to pay for other public improvements that relate to development of the PROPERTY other than the PROJECT. These public improvements may benefit not only the PROPERTY, but also adjacent landowners and the public.
 - a. The TOWN may assure construction of public improvements by requiring the ANNEXOR to execute a Memorandum of Agreement for Public Improvements ("MOAPI"). The TOWN may require financial security by the ANNEXOR before development of all or any applicable phase of development.

- b. Where the ANNEXOR constructs public improvements that will also benefit other property owners and the public, reimbursement to the ANNEXOR shall be according to the Frederick Municipal Code in effect at the time of development, and detailed in the ANNEXOR's MOAPI.
 - c. Where the ANNEXOR's property abuts or benefits from existing public improvements that have been constructed by others (including the TOWN), the ANNEXOR may be required to participate in those public improvements according to the Frederick Municipal Code in effect at the time of development and as detailed in the ANNEXOR's MOAPI.
- 15. **DEVELOPMENT IMPACT FEES.** The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the property upon the TOWN's infrastructure, administration and deliver of governmental services. The ANNEXOR agrees to the payment of these uniform development impact fees upon approval of a building permit for the PROJECT in the following amounts:
 - a. Building Permit Fee: \$110,103.25
 - b. Plan Review Fee: \$71,567.11
 - c. Electrical Permit Fee: \$57,403.35
 - d. General Capital Impact Fee: \$3000
 - e. Electrical Impact Fee: \$500
 - f. Park Improvement Impact Fee: \$2000
 - g. Open Space Impact Fee: \$1000
 - h. Transportation Impact Fee: \$23,761
 - i. Drainage Impact Fee: \$13,962
- 16. **USE TAX.** ANNEXOR agrees to the payment of Use Tax pursuant to the Frederick Municipal Code in the amount of \$506,171.21 upon approval of a building permit for the PROJECT.
- 17. **CONFORMANCE WITH TOWN REGULATIONS.** The ANNEXOR agrees that the design, improvement, construction, development, and use of the PROPERTY shall be in conformance with all TOWN ordinances and resolutions and the TOWN's "Standard Design Criteria and Standard Construction Requirements" including, without limitation, those pertaining to, zoning, streets, storm drainage, utilities, and flood control.

18. **VESTED RIGHTS.** The TOWN and the ANNEXOR agree that only the Final Plat(s) of the PROPERTY, approved by the TOWN in accordance with Article 5 of the **Frederick Land Use Code**, and amendments thereto, constitutes a site specific development plan pursuant to C.R.S. § 24-68-101 et. seq., as amended, (the "Vested Rights Act") for that portion so platted, and in addition, that the rights which vest pursuant to the "Vested Rights Act" shall vest for a period of three (3) years. The ANNEXOR and the TOWN agree that the need for the establishment of this process for the vesting of property rights are directly related to the TOWN's ability to control its growth in a planned and orderly fashion, and is generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
19. **EXCLUSIVITY OF ANNEXATION PETITION.** The ANNEXOR agrees to not sign any other petition for annexation of the PROPERTY or any petition for an annexation election relating to the PROPERTY, except upon request of the TOWN.
20. **THREE-MILE ANNEXATION PLAN.** The Frederick Comprehensive Plan, as amended, encompasses the entire PROPERTY. The Frederick Comprehensive Plan, as amended, along with accompanying maps, plats, charts and descriptive material, has been adopted as the master plan for the three-mile area surrounding the Town of Frederick as required by C.R.S. § 31-12-105 (1) (e). This "Three Mile Annexation Plan" has been amended to the extent necessary to incorporate the above described PROPERTY and to update the Plan by the ordinance annexing the PROPERTY and complies with the requirements of C.R.S. § 31-12-105 (1)(e).
21. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.** The TOWN and the ANNEXOR agree 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 PROPERTY and that no takings thereby will occur requiring any compensation.
22. **MISCELLANEOUS PROVISIONS.**
 - a. **Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the TOWN's ordinances or resolutions, or as a waiver of the TOWN's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the TOWN and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the TOWN of any tax or fee.
 - b. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have agreed to the Agreement including each part, section, subsection, sentence, clause or phrase

thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

- c. **Amendments to the Agreement.** This Agreement may be amended, at anytime, upon agreement of the parties hereto. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the PROPERTY subject to the amendment unless otherwise specified in the amendment.
- d. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the PROPERTY, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at the ANNEXOR's expense.
- e. **Indemnification.** ANNEXOR agrees to indemnify and hold harmless the TOWN and the TOWN's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorneys' fees and court costs, which arise out of or are in any manner connected with the annexation of the PROPERTY, or with any other annexation or other action determined necessary or desirable by the TOWN in order to effectuate the annexation of the PROPERTY, or which are in any manner connected with the TOWN's enforcement of this Agreement. The ANNEXOR further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the TOWN's option to pay the attorney's fees for defense counsel of the TOWN's choice for, any such liability, claims, or demands.
- f. **Termination.** If the annexation of the PROPERTY is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.
- g. **No Right or Remedy of Disconnection.** No right or remedy of disconnection of the PROPERTY from the TOWN shall accrue from this Agreement, other than provided by applicable state laws. In the event the PROPERTY or any portion thereof is disconnected at the ANNEXOR's request, the Town of Frederick shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.
- h. **Annexation and Zoning Subject to Legislative Discretion.** The ANNEXOR acknowledges that the annexation and subsequent zoning of the PROPERTY are subject to the legislative discretion of the Board of Trustees of the Town of Frederick.

No assurances of annexation or zoning have been made or relied upon by the ANNEXOR. In the event that the Town of Frederick Board of Trustees, in the exercise of its legislative discretion, does not take any action with respect to the PROPERTY herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the TOWN in accordance with state law, as may be appropriate.

- i. **Legal Discretion in the Case of Challenge.** The Town of Frederick reserves the right to not defend any legal challenge to this annexation, In the event such a challenge occurs prior to any expiration of any statute of limitation, the TOWN may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the ANNEXOR from engaging the TOWN's legal representatives in such a defense, at no cost to the TOWN.
- j. **Application of Town Policies.** Upon annexation, all subsequent development of the PROPERTY shall be subject to and bound by the applicable provisions of the TOWN's ordinances, as amended, including public land dedications, provided however, that changes or amendments to the Frederick Municipal Code, after the date of this Agreement shall in no way limit or impair TOWN's obligation hereunder, except as specifically set forth in this Agreement.
- k. **Amendments to Governing Ordinances, Resolutions and Policies.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any TOWN ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon ANNEXOR.
- l. **Legal Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this Agreement, the defaulting party shall pay the other's reasonable attorney fees and costs incurred in enforcing the provisions of this Agreement.
- m. **Reimbursement for Other Costs.** The ANNEXOR shall reimburse the TOWN for any third party costs necessary for the orderly and proper development of the PROPERTY, including but not limited to consultant fees for planning and engineering, and attorney fees for legal services beyond the normal document review, which is directly linked to the PROPERTY.
- n. **Oil and Gas Access Roads.** All oil and gas access roads located on the PROPERTY will remain where they are or as otherwise agreed to by ANNEXOR and the oil and gas company(s), and will be considered a

current obligation between the ANNEXOR and the oil and gas company(s). The TOWN will not be responsible for any maintenance of any current oil and gas access road.

- o. **Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
 - p. **Timely Submittal of Materials.** The ANNEXOR agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, reports and other documents necessary to accomplish the annexation of the PROPERTY and the other provisions of this Agreement.
 - q. **Compliance with State Law.** The ANNEXOR shall comply with all applicable State law and regulations.
 - r. **Recording of Agreement.** This Agreement shall be recorded in the records of the County Clerk and Recorder, Weld County, Colorado.
 - s. **Choice of Law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Weld County, Colorado.
23. **COMPLETE AGREEMENT.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.
24. **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.

By this acknowledgment, the undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

TOWN OF FREDERICK

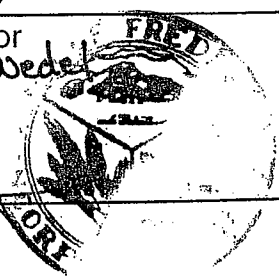
By: *Sue Wedel*

~~Eric E. Deering, Mayor~~

~~Mayor Pro Tem, Sue Wedel~~

ATTEST:

Nanette Starnes



Nanette S. Fornof, Town Clerk

ANNEXOR

SPINDLE HILL ENERGY LLC
A Delaware limited liability company

By: [Signature]
for Douglas B. Carter, Vice President

[Signature]
by Susan J. Troudt

[Signature]
by Carla Johnson Hobbs
Carla Johnson Hobbs

Investors Independent Trust Company, as
personal representative for Marian J.
Stratton, formerly known as Marian J.
Botinelli, Deceased

By: [Signature]
Name: MICHAEL HAMMER
Personal Representative

STATE OF COLORADO

COUNTY OF Weld

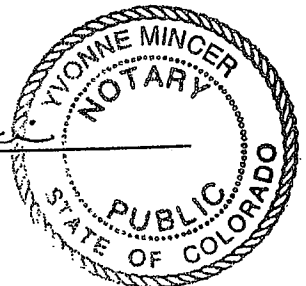
)
) ss.
)

The foregoing instrument was acknowledged before me this 2nd day of August, 2006 by Eric L. Deering as Mayor and Nanette S. Fornof as Town Clerk of the Town of Frederick.

My commission expires: 6/30/07

Witness my hand and official seal.

[Signature]
Notary Public



STATE OF COLORADO

COUNTY OF Weld

)
) ss.
)

INDIVIDUAL ACKNOWLEDGMENT

State of Colorado
County of Weld } ss.

On this the 28 day of April 20 07 before me,

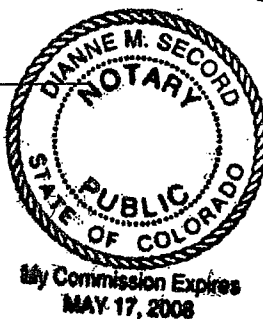
the undersigned Notary Public, personally appeared

Douglas B. Carter
(Name of person signing)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) appeared within instrument

WITNESS my hand and official seal.

Dianne M. Secord
Notary's Signature

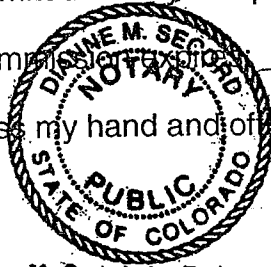


May 17, 2008
My commission expires

The foregoing instrument was acknowledged before me this 28 day of April, 2006 by Douglas B. Carter as Vice President of Spindle Hill Energy LLC, a Delaware limited liability company.

My commission expires May 17, 2008

Witness my hand and official seal.



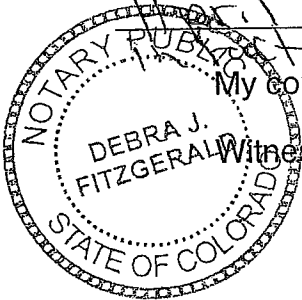
Deanne M Seend
Notary Public

My Commission Expires MAY 17 2008
STATE OF COLORADO

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Susan J. Trout. John R. Haley as attorney for Susan J. Trout
My commission expires: 1-30-07

Witness my hand and official seal.



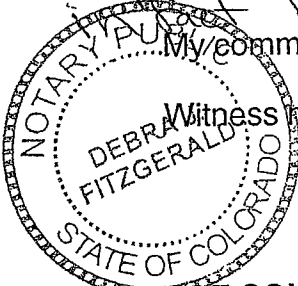
[Signature]
Notary Public

STATE OF COLORADO

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Carla Johnson Hobbs. John R. Haley as attorney for Carla Johnson Hobbs
My commission expires: 1-30-07

Witness my hand and official seal.



[Signature]
Notary Public

STATE OF COLORADO

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Michael E Lammers, Authorized of officer

Investors Independent Trust Company, as personal representative for Marian J. Stratton, formerly known as Marian J. Botinelli, Deceased _____

My commission expires: _____

1-30-07

Witness my hand and official seal.



Notary Public

EXHIBIT "A"

THE LEGAL DESCRIPTION FOR ANNEXATION NO. 2

A PORTION OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH P.M. AND A PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE 6TH P.M. COUNTY OF WELD, STATE OF COLORADO,

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, NORTH 89°51'36" EAST, A DISTANCE OF 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER AND ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, NORTH 89°51'36" EAST, A DISTANCE OF 5184.77 FEET TO THE WEST RIGHT-OF-WAY OF WELD COUNTY ROAD 19;

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, SOUTH 00°33'11" EAST, AND ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 1419.00 FEET TO THE NORTH LINE OF PARCEL #38 AS DESCRIBED IN DEED RECORDED OCTOBER 29, 1993 AT RECEPTION NO. 2357270;

THENCE ALONG SAID NORTH LINE, SOUTH 89°26'49" WEST, A DISTANCE OF 520.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL;

THENCE ALONG THE WEST LINE OF SAID PARCEL AND ALONG THE WEST LINE OF PARCEL #39 AND PARCEL #35 DESCRIBED ON SAID DEED, SOUTH 00°33'11" EAST, A DISTANCE OF 868.80 FEET TO THE SOUTHWEST CORNER OF PARCEL #35;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL #35, NORTH 89°26'49" EAST, A DISTANCE OF 520.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID WELD COUNTY ROAD 19;

THENCE ALONG THE WEST RIGHT-OF-WAY LINE, SOUTH 00°33'11" EAST, AND ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 325.29 FEET TO THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14;

THENCE SOUTH 00°09'38" EAST, A DISTANCE OF 60.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14;

THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14, SOUTH 89°50'22" WEST, AND ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 2610.11 FEET;

THENCE CONTINUING ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14 SOUTH 89°50'33" WEST, AND ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 40.00 FEET;

THENCE NORTH 00°09'27" WEST, A DISTANCE OF 60.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID WELD COUNTY ROAD 14;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14 SOUTH 89°50'33" WEST, AND ALONG A LINE 30.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2570.52 FEET TO THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17;

THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17, NORTH 00°13'59" EAST, AND ALONG A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2614.81 FEET TO THE POINT OF BEGINNING.

THUS DESCRIBED TRACT CONTAINS 13,306,681 SQ.FT./305.48 ACRES MORE OR LESS.

EXHIBIT "B"

Water Rights Appurtenant to Property.

(Listing of all tributary and non-tributary water rights attached to the property)

Water Rights (Ditch Company, groundwater, etc.)	Number of Shares	Certificate	Yield (cfs or acre/ft)
N/A	N/A	N/A	N/A

EXHIBIT "C"

SPECIAL PROVISIONS APPLYING TO THE JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION

SPECIAL PROVISIONS APPLYING TO THE SPINDLE HILL ENERGY ANNEXATION.

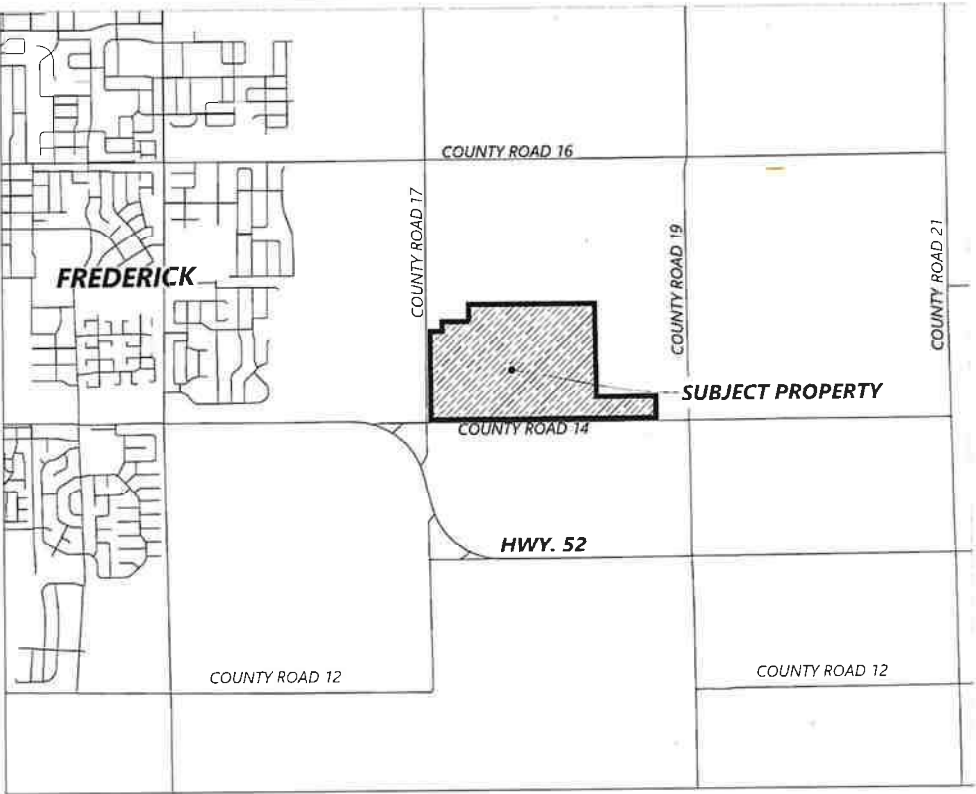
Certain special provisions shall apply to the Johnson Farms/Spindle Hill Energy Annexation as follows:

- A. ANNEXOR agrees that development of Lot 1 and Lot 2 will be limited to the PROJECT and appurtenant facilities as depicted on the approved Site Plan.
- B. ANNEXOR agrees that any redevelopment or additional development of Lot 1 and Lot 2 may take place only after amendment of this AGREEMENT specifically authorizing such redevelopment or additional development.
- C. ANNEXOR agrees that the uses for Outlot 2 shall be limited to agricultural uses until such time as an application for development of Outlot 2 is submitted to the TOWN.
- D. ANNEXOR agrees that any development of Outlot 2 may take place only after amendment of this AGREEMENT specifically authorizing such development and specifying the conditions of such development.
- E. ANNEXOR shall install such landscaping, as approved by the TOWN at the time of approval of the building permit for the PROJECT, on Lot 2 as to provide adequate screening of the PROJECT from other uses in the TOWN.

JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO
193.979 ACRES, 2 LOTS

VICINITY MAP
(1" = 1500')



GENERAL NOTES

- 1. THIS LAND TITLE SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY WESTWOOD, P.S. FOR MATTERS I OWNERSHIP, ENCUMBRANCES, RIGHTS AND INTERESTS, WESTWOOD, P.S. RELIED UPON THE TITLE COM NO. NC12301353-5 PREPARED BY OLD REPUBLIC TITLE NATIONAL TITLE INSURANCE COMPANY WITH DATE OF JULY 6, 2024.
2. BEARINGS AND DISTANCES ARE GROUND, BASED ON NAD83(2011), COLORADO STATE PLANE, NORTH SURVEY FEET. VERTICAL DATUM IS NAVD83 (GEOID18). THE COMBINED SCALE FACTOR IS 0.99972399. E POST PROCESSING SOLUTION PROCESSED AT N: 1276042.30923772; E: 3171667.26104124; ELEV. 5006.
3. THE BASIS OF BEARINGS FOR THIS SURVEY IS THE NORTH LINE OF THE SOUTH 1/2 OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH PRINCIPAL MERIDIAN, WELD COUNTY, COLORADO, BEARING N89°57'35"E WEST QUARTER CORNER OF SAID SECTION 33, BEING MONUMENTED BY A 3 1/2" ALUMINUM CAP, 57/38512 2017 609 CONSULTING, TO THE EAST QUARTER CORNER OF SAID SECTION 33, BEING MONUMENTED BY A 3 1/2" ALUMINUM CAP, IN MONUMENT BOX, BELEGIBLE WITH ALL BEARINGS CONTAINED HEREIN RELATIVE TO THE SURVEY.
4. ACCORDING TO THE FEDERAL EMERGENCY MANAGEMENT FLOOD INSURANCE RATE MAPS NO. 08123/08123C/2084E, DATED JANUARY 20, 2016, THIS PROPERTY LIES WITHIN ZONE X (AREA OF MINIMAL FLOODING).
5. THE INTENT OF THIS MINOR SUBDIVISION PLAT IS TO EXACTLY MIMIC THE PREVIOUSLY RECORDED SUBDIVISION PLAT NO. 004672000, DATED JANUARY 20, 2016, WITH NO DEVIATION FROM THE ORIGINAL BOUNDARY. NEWLY DEFINED LOTS ARE REFLECTED ON SHEET 2.
6. DATE OF FIELD SURVEY: JULY 2024.
7. WESTWOOD PROJECT NO. 004672000.
8. OIL AND GAS WELL LOCATIONS ARE BASED ON THE COLORADO EMISSIONS AND CARBON MANAGEMENT COMMISSION GIS DATA DOWNLOADED ON FEBRUARY 24, 2025. BUILDING SETBACKS SHOWN WERE DEDICATED TO THE TOWN OF FREDERICK LAND USE CODE. LOCATIONS OF THE PLUGGED AND ABANDONED OIL AND GAS WELLS, AS PROVIDED BY THE COLORADO EMISSIONS AND CARBON MANAGEMENT COMMISSION, HAVE BEEN FIELD VERIFIED ON JUNE 17, 2025. RETRACTION OF THE ABANDONMENT REPORT: PUBLIC RESEARCH PROVIDED SPECIFIC LOCATIONS WHICH WERE ACCURATELY DETERMINED IN THE FIELD CONFIRMED WITH RELIABLE SURFACE METAL LOCATION PROCEDURES.
OIL & GAS WORKING PAD SURFACE LOT SETBACK BUILDING SETBACK
FACILITY WITHOUT WELLS 150' 200'
1-4 WELLS 150' 350'
5-14 WELLS 150' 500'
15 OR MORE WELLS 150' 500'
FLOWLINE 15'
9. THE TOWN OF FREDERICK TRANSPORTATION MASTER PLAN SHOWS A FUTURE COLLECTOR BETWEEN COUNTY ROAD 16 AND COUNTY ROAD 17 AS FUTURE 2-LANE ARTERIALS.
10. THE OWNER, ITS LEGAL REPRESENTATIVES, HEIRS, EXECUTORS, ADMINISTRATORS, SUCCESSORS IN INTEREST, AND ASSIGNS SHALL BE JOINTLY AND SEVERALLY LIABLE AND RESPONSIBLE FOR MAINTAINING THE STRUCTURAL AND OPERATIONAL FUNCTIONS OF ALL DRAINAGE FACILITIES LOCATED ON THE PROPERTY SHOWN HEREIN AND OTHERWISE SPECIFIED HEREIN, INCLUDING BUT NOT LIMITED TO PRIVATE DRAINAGE FACILITIES AND PRIVATE DRAINAGE EASEMENTS. IN THE EVENT THE OWNER FAILS TO CORRECTLY REPAIR ANY SUCH DRAINAGE FACILITIES WITHIN THIRTY (30) DAYS AFTER WRITTEN NOTICE THEREOF, THEN SAID CORRECTIONS/REPAIRS SHALL BE COMPLETED AND COMPLETED BY THE TOWN AND ALL COSTS AND CHARGES SHALL BE PAID BY THE OWNER. THE TOWN SHALL HAVE THE PERPETUAL LEGAL RIGHT TO INGRESS AND EGRESS ACROSS THE PROPERTY BY MEANS OF ROADS, LANES, AND PARKING AND LOADING AREAS LOCATED ON THE PROPERTY, WHETHER BY SUCH ROUTE AS SHALL CAUSE THE LEAST PRACTICAL DAMAGE AND INJURY TO THE OWNERS WHILE BEING PRACTICAL AND ACCESSIBLE TO THE TOWN'S EQUIPMENT, TO ACCESS FACILITIES ON THE PROPERTY SHOWN HEREON IN ORDER TO COMMENCE AND COMPLETE SAID CORRECTIONS/REPAIRS. THE TOWN SHALL ALSO HAVE ANY OTHER REMEDIES AVAILABLE TO IT AS AUTHORIZED BY LAW.
11. THE CENTERLINE OF STANLEY DITCH, AS SHOWN HEREON, IS BASED ON RECTIFIED ORTHOPHOTOGRAPHIC DATA GENERATED BY WESTWOOD PROFESSIONAL SERVICES, INC. AND WAS ACQUIRED ON SEPTEMBER 4, 2024.

CERTIFICATE OF OWNERSHIP AND DEDICATION

THE UNDERSIGNED CERTIFIES TO AND FOR THE BENEFIT OF THE BOARD OF TRUSTEES OF THE TOWN OF FREDERICK, COLORADO, THAT AS OF THE DATE SET FORTH BELOW AND THE DATE OF RECORDING OF THIS DOCUMENT, THE UNDERSIGNED CONSTITUTE ALL OF THE OWNERS OF THE PROPERTY WHICH IS THE SUBJECT OF THIS PLAT, THAT THE UNDERSIGNED HAVE GOOD RIGHT AND FULL POWER TO CONVEY, ENCUMBER AND SUBDIVIDE SAME, AND THAT THE PROPERTY IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES, EASEMENTS AND RIGHTS-OF-WAY EXCEPT THE EASEMENTS AND RIGHTS-OF-WAY DEPICTED ON THIS PLAT, AND THE LIENS HELD BY OTHER SIGNATORIES TO THIS DOCUMENT, IN THE EVENT OF A DEFECT IN SAID TITLE WHICH BREACHES THE WARRANTIES IN THIS CERTIFICATE, THE UNDERSIGNED, JOINTLY AND SEVERALLY, AGREE(S) TO REMEDY SUCH DEFECT UPON DEMAND BY WELD COUNTY, WHICH REMEDY SHALL NOT BE DEEMED EXCLUSIVE.

KNOW ALL MEN BY THESE PRESENTS THAT SPINDLE BATTERY LLC, BEING THE OWNER(S), MORTGAGEE OR LIENHOLDER OF CERTAIN LANDS IN THE TOWN OF FREDERICK, COUNTY OF WELD, STATE OF COLORADO, DESCRIBED AS FOLLOWS:

LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 1, PER THE PLAT RECORDED MARCH 24, 2016 AT RECEPTION NO. 4190256

CONTAINING 193.979 ACRES, MORE OR LESS;

HAVE BY THESE PRESENTS LAID OUT, PLATTED, AND SUBDIVIDED THE SAME INTO LOTS, TRACTS, BLOCKS, STREETS, AND EASEMENTS AS SHOWN ON THIS PLAT UNDER THE NAME AND STYLE OF JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 2, AND DO HEREBY DEDICATE TO THE TOWN OF FREDERICK, ITS SUCCESSORS AND ASSIGNS FOREVER SUCH PUBLIC WAYS AND LANDS SHOWN HEREON, IN FEE-SIMPLE ABSOLUTE, AND DO HEREBY DEDICATE TO THE TOWN OF FREDERICK AND APPROPRIATE UTILITY COMPANIES AND EMERGENCY ASSISTANCE ENTITIES, THE EASEMENTS SHOWN HEREON FOR THE PURPOSES STATED.

THE ENTITIES NAMED ON THE EASEMENT, OR RESPONSIBLE FOR THE SERVICES AND/OR UTILITIES FOR WHICH THE EASEMENTS ARE ESTABLISHED ARE HEREBY GRANTED THE PERPETUAL RIGHT OF INGRESS AND EGRESS FROM AND TO ADJACENT PROPERTIES FOR THE PURPOSES NAMED ON THE EASEMENT OR FOR THE INSTALLATION, MAINTENANCE AND REPLACEMENT OF UTILITY LINES AND RELATED FACILITIES.

THE SIGNATURE OF ANY REPRESENTATIVE OF ANY PARTNERSHIP OR CORPORATE ENTITY INDICATES THAT ALL REQUIRED PARTNERSHIP OR CORPORATE APPROVALS HAVE BEEN OBTAINED.

IN WITNESS WHEREOF, WE HAVE HEREUNTO SET OUR HANDS AND SEALS THIS 20th day of October, A.D., 2025.

JOHN WOODY, VICE PRESIDENT - SPINDLE BATTERY LLC

ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

On 10/20/2025, before me, Marian K. Villa, personally appeared John Woody, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature (Seal)



Table with 4 columns: LOT, AREA (AC.), (SQ. FT.), LAND USE. Rows include LOT 1, OUTLOT A, and TOTAL.

CERTIFICATE OF APPROVAL BY THE BOARD OF TRUSTEES

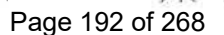
THE FINAL PLAT MAP OF THE JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION, AMENDMENT NO. 2 IS APPROVED AT THE REGULAR MEETING OF THE BOARD OF TRUSTEES OF FREDERICK, COLORADO, HELD ON 20, 2025. THE DEDICATIONS OF PUBLIC STREETS, PUBLIC RIGHTS-OF-WAY, PUBLIC EASEMENTS AND OTHER PLACES DESIGNATED OR DESCRIBED BY THIS PLAT, SUCH OTHER EASEMENTS SHOWN HEREON FOR THE PURPOSES SHOWN ARE HEREBY ACCEPTED. ALL CONDITIONS, TERMS, AND SPECIFICATIONS DESIGNATED OR DESCRIBED HEREIN SHALL BE BINDING ON THE OWNER, ITS HEIRS, SUCCESSORS, AND ASSIGNS.

OWNER:
SPINDLE BATTERY LLC
C/O CLEARWAY ENERGY GROUP LLC
4900 N. SCOTTSDALE ROAD, SUITE 5000
SCOTTSDALE, AZ 85251

ENGINEERS:
CLEARWAY ENERGY GROUP LLC
EVAN WELD
PROJECT MANAGER
100 CALIFORNIA ST., SUITE 640
SAN FRANCISCO, CA 94111

SURVEYOR:
WESTWOOD PROFESSIONAL SERVICES
THOMAS GIRARD, PLS 38151
SURVEY MANAGER
10170 CHURCH RANCH WAY, SUITE 201
WESTMINSTER, CO 80221

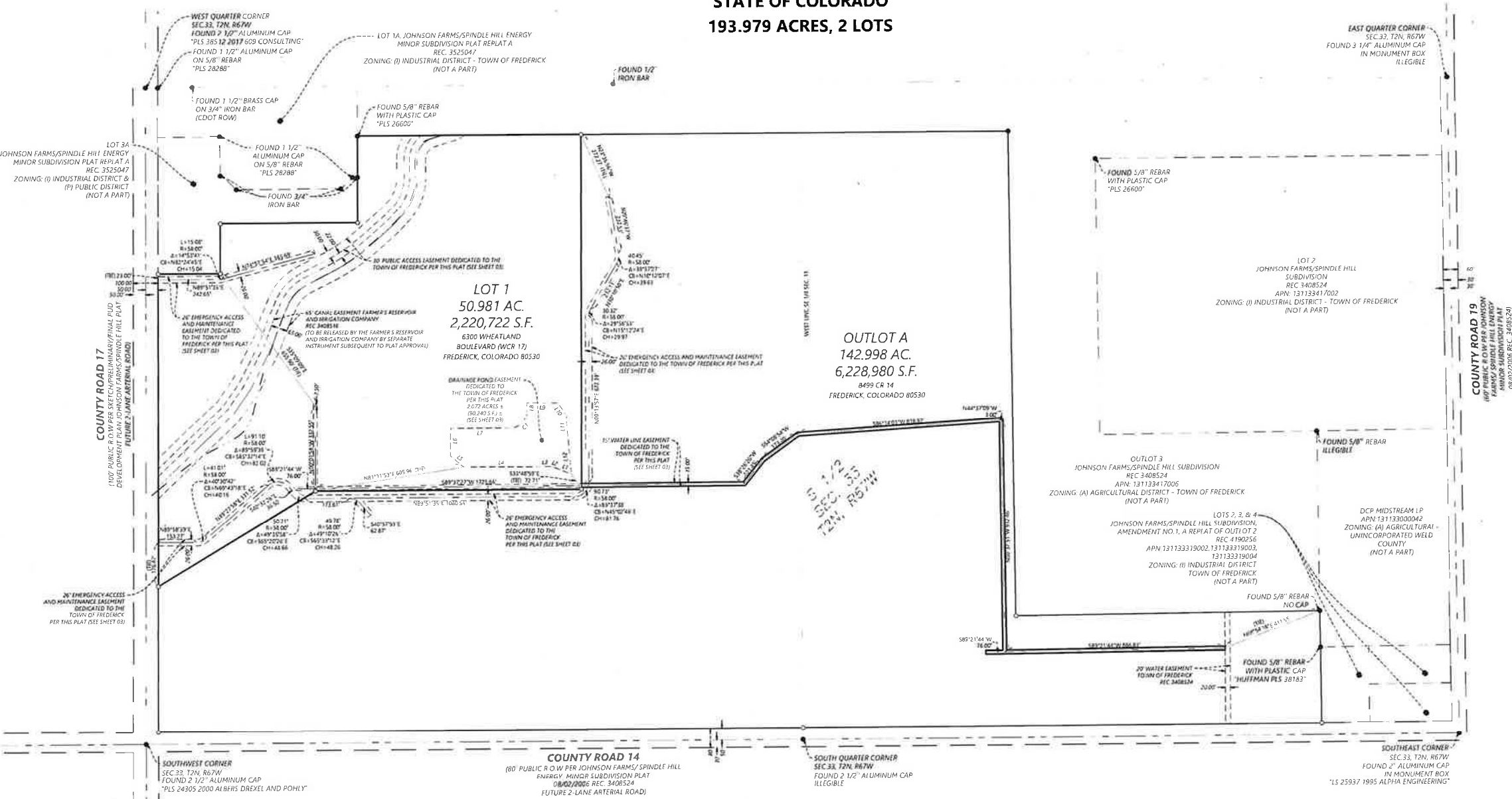
193.979 ACRES, 2 LOTS



JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 2

A REPLAT OF LOT 1, JOHNSON FARMS/SPINDLE HILL ENERGY MINOR SUBDIVISION
AMENDMENT NO. 1, A REPLAT OF OUTLOT 2
A PART OF THE SOUTH HALF OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST, 6TH P.M.
TOWN OF FREDERICK, COUNTY OF WELD
STATE OF COLORADO

193.979 ACRES, 2 LOTS



**FIRST AMENDMENT TO ANNEXATION AGREEMENT
JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION #2**

This First Amendment to Annexation Agreement, Johnson Farms/Spindle Hill Energy Annexation #2 ("First Amendment") is entered into as of the date last below signed, by and between the Town of Frederick, a Colorado statutory town, whose address is 401 Locust Street, P.O. Box 435, Frederick, Colorado 80530 ("Town"), and Spindle Battery LLC, a Delaware limited liability company, whose legal address is c/o Clearway Energy Group LLC, 4900 N. Scottsdale Road, Suite 5000, Scottsdale, AZ 85251 ("Spindle") and their successors and assigns (collectively, "Parties").

WHEREAS, on August 2, 2006, an annexation agreement affecting certain property referred to therein was recorded in Weld County records at reception number 3408526 ("Annexation Agreement"; **Exhibit A**); and

WHEREAS, Paragraph D of Exhibit C of the Annexation Agreement, "Special Provisions Applying to the Johnson Farms/Spindle Hill Energy Annexation," requires that the Annexation Agreement be amended in order to allow for development of Outlot 2, Johnson Farms/Spindle Hill Energy Minor Subdivision Plat ("Outlot 2"); and

WHEREAS, Johnson Farms LLP replatted Outlot 2 as Lot 1, Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 1 (the "Property") and three other lots (that are not the subject of this Amendment);

WHEREAS, Spindle now owns the Property; and

WHEREAS, Spindle wishes to develop the Property and has submitted to the Town an application for development for the Property; and

WHEREAS, the Town supports such development.

Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Town and Spindle agree to this First Amendment on the terms and conditions set out herein.

1. The Parties hereby incorporate the Recitals above by reference. Paragraph D to Exhibit C of the Annexation Agreement is hereby amended to read:

Development of a portion of the property formerly known as Outlot 2, Johnson Farms/Spindle Hill Energy Minor Subdivision Plat now in its entirety described as Lot 1, Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 1, is authorized by the Town of Frederick under the terms of Town regulations in place at the time of application for Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 (the "New Replat").

2. The Parties acknowledge and agree that once the Town and Spindle execute the Memorandum of Agreement for Public Improvements pertaining to the New Replat, such agreement shall supersede Sections 4, 5, 6, 10(c), 11, 13, 15 and 16 of the Annexation Agreement with respect to the Property, and the Annexation Agreement shall be of no further force or effect as to the Property under those Sections.
3. Except as amended herein, all other terms and conditions of the Annexation Agreement shall remain unchanged and in full force and effect.

IN WITNESS WHEREOF, Town and Spindle Battery LLC execute this FIRST AMENDMENT TO ANNEXATION AGREEMENT, JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION #2, on _____, 2025.

Town of Frederick, Colorado,
a Colorado statutory town

By: _____
Date: _____

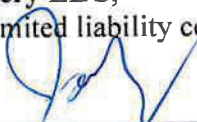
ATTEST

APPROVED AS TO FORM

By: _____
Town Clerk

By: _____
Town Attorney

Spindle Battery LLC,
a Delaware limited liability company

By: 
Name: John Woody
Date: Vice President

STATE OF COLORADO)
) ss.
County of _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2025, by _____, as _____ of _____, a Colorado limited liability company, on behalf thereof.

Notary Public

My commission expires:

SEE ATTACHED

Acknowledgement

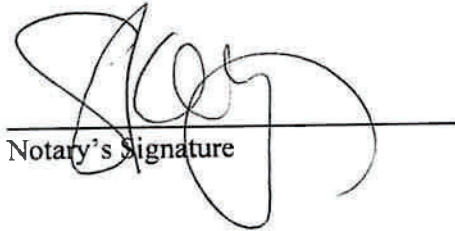
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN FRANCISCO)

On October 15, 2025, before me, S. Key, a Notary Public, personally appeared John Woody, who proved to me on the basis of satisfactory evidence to be the **person(s)** whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Notary's Signature



[Notarial Seal]

Exhibit A
Annexation Agreement

10 100

526

ANNEXATION AGREEMENT

Johnson Farms / Spindle Hill Energy Annexation #2

THIS AGREEMENT is made and entered into this 2nd day of August, 2006, by and between Spindle Hill Energy LLC and Susan J. Troudt, Carla Johnson Hobbs, and Investors Independent Trust Company, as personal representative for Marian J. Stratton, formerly known as Marian J. Botinelli, Deceased, hereinafter referred to as the "ANNEXOR," and the Town of Frederick, a municipal corporation of the State of Colorado, hereinafter referred to as "Frederick" or "TOWN".

WITNESSETH:

WHEREAS, the ANNEXOR desires to annex to the Town of Frederick the property more particularly described on Exhibit "A," which is attached hereto, incorporated herein, and made a part hereof, hereinafter referred to as "PROPERTY" or "the PROPERTY"; and

WHEREAS, the TOWN wishes to control its growth in a planned and orderly fashion, maintaining and improving quality of life and the TOWN's ability to provide and enhance environmental amenities, services and local opportunity for its citizens; and,

WHEREAS, the ANNEXOR wishes to develop an up to 320 MW electrical generating facility and ancillary facilities on the PROPERTY (hereinafter the "PROJECT"); and

WHEREAS, the ANNEXOR acknowledges that upon annexation, the PROPERTY will be subject to all ordinances, resolutions, and other regulations of the Town of Frederick, as they may be amended from time to time; and

WHEREAS, the ANNEXOR has submitted the Johnson Farms/Spindle Hill Energy Center Minor Subdivision Plat concurrently with its petition for annexation; and

WHEREAS, the Lots 1, 2, and 3 and Outlots 2 and 3 as depicted in the Johnson Farms/Spindle Hill Energy Center Minor Subdivision Plat are a part of this Johnson Farms/Spindle Hill Energy Annexation No. 2; and

WHEREAS, the parties mutually recognize and agree that it is necessary and desirable for orderly development that the TOWN be the source of necessary urban services for property to be developed, such as police protection, and local government administration; and

WHEREAS, the parties agree that it is in the public interest of the parties hereto to enter into a written agreement as to the overall plan of development, including location and dedication of public ways and public areas, zoning, dedication of water rights and location and payment regarding roads, utilities and other improvements; and

WHEREAS, the ANNEXOR acknowledges that the need for conveyances and dedication of certain property, including but not limited to property for streets, rights-of-

way and easements, utility facilities and other public improvements, to the TOWN as contemplated in this AGREEMENT are directly related to and generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation;

NOW, THEREFORE, in consideration of the foregoing covenants, promises and agreements of each of the parties hereto, to be kept and performed by each of them, it is agreed by and between the parties as follows:

1. **BASIC INTENT.** The intent of this AGREEMENT is to set forth the requirements for annexation and development of the PROPERTY described above. This AGREEMENT shall be binding upon the parties and may not be modified except by further written agreement.
2. **DEVELOPMENT.** The PROPERTY annexed shall be developed in general conformity with the TOWN comprehensive plans, subdivision regulations, zoning code, building codes and other applicable statutory and local requirements. The TOWN and the ANNEXOR agree that such plans, regulations, codes and other statutory and local requirements are directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
 - a. **Zoning.** The ANNEXOR desires I Industrial District zoning for 40.739 acres ("Lot 1 and Lot 2"), P-E Public Established District for 3.15 acres ("Lot 3"), and A-1 Agricultural District for 307.105 acres ("Outlots 2 and 3"), in accordance with the zoning categories contained in Article 3 of the **Frederick Land Use Code**. The parties recognize that it is the intent and desire of the ANNEXOR to develop the PROPERTY in a manner generally consistent with the zoning requested and that the granting of such zoning by the Town of Frederick is a condition to annex the PROPERTY. ANNEXOR shall take all action necessary to permit zoning by the Town of Frederick of the annexed area within the time prescribed by state statutes.
 - b. **Land Use.** All construction will be subject to the types and intensities of land use permitted pursuant to this AGREEMENT and the **Frederick Land Use Code** in effect on the date hereof, or in effect on the date when building permit applications are filed.
3. **MUNICIPAL SERVICES.** The TOWN agrees to provide the PROPERTY with all of the usual municipal services in accordance with this AGREEMENT, and the ordinances and policies of the TOWN, which services shall include, but are not limited to, general government administration, police protection, electricity, and water services and all other services customarily and currently provided by the TOWN in the area to be annexed. The ANNEXOR acknowledges, agrees and accepts that the TOWN does not provide sewer, natural gas services or fire protection services to the area to be annexed. The TOWN and the ANNEXOR agree that the provision or non-provision of such municipal services by the

TOWN or by another entity is directly related to and generated by development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.

- a. The TOWN agrees to allow and to assist the ANNEXOR in obtaining service from other non-municipal entities including, but are not limited to, United Power, Weld County Tri-Area Sanitation District and Central Weld County Water District.
 - b. The ANNEXOR agrees to petition for inclusion of the PROPERTY into the Weld County Tri-Area Sanitation District, Frederick-Firestone Area Fire Protection District, Northern Colorado Water Conservancy District, Weld County School District Re-8, and the Carbon Valley Recreation District within thirty (30) days of the effective date of the annexation, if the PROPERTY is not already included within said districts. The ANNEXOR appoints the Town Clerk as its agent for the purpose of petitioning for inclusion into said special districts, in the event the ANNEXOR fails to do so, and to pay all costs associated therewith.
 - c. Nothing in this Agreement shall provide the ANNEXOR with priority for utility, public safety, and other public services by the TOWN. If utility, public safety, or other public services are not available to coordinate with the ANNEXOR's development schedule, the ANNEXOR shall either delay development until funding becomes available, or fully advance funds necessary to accelerate their availability and priority, according to the TOWN's policies and regulations, and the provisions of this Agreement.
4. **PUBLIC IMPROVEMENTS.** The ANNEXOR agrees to design, construct and install at his sole cost and expense, in accordance with the TOWN reviewed and accepted plans, all public improvements within or adjacent to the PROPERTY and serving the PROPERTY. All public improvements shall be constructed to the Town standards, or where applicable, to the standards of the utility providing the service. All utilities will be placed underground. For the purposes of the PROJECT, the following public improvements are required:
- a. ANNEXOR shall pay to the TOWN at the time of submission of an application for a building permit \$300,000 to be used by the TOWN for the paving of County Road 14 from its intersection with Colorado Highway 52 to its intersection with County Road 19 with an asphalt paved surface. All private roads shall be constructed to the TOWN standards.
 - b. ANNEXOR shall construct and dedicate to the TOWN a 12 inch water main from the existing Town of Frederick water tanks located on Weld County Road 17 along the half section line of Section 33 to Lot 2.

- c. The ANNEXOR agrees to provide to the TOWN, a two (2) year guarantee, from the time of conditional acceptance of construction, for all improvements.
 - d. The ANNEXOR agrees to pay the full cost of relocating existing utilities that may be required by the development of the PROPERTY. All existing overhead utilities within the PROPERTY or in road right-of-ways adjacent to the PROPERTY, including but not limited to electric or telecommunications lines and cables shall be relocated underground. Facilities designed for the transmission or distribution of electric energy at voltages greater than 15,000 volts shall be exempt from this requirement.
5. **WATER RIGHTS.** Prior to the approval of a building permit within the PROPERTY, the ANNEXOR shall convey, transfer or assign to the TOWN, free and clear of all liens and encumbrances, 80 CBT (Colorado Big Thompson) units, and shall dedicate to the TOWN all "non-tributary" and "not non-tributary" groundwater appurtenant to the Property. Transfer of said water rights is to be by warranty deed acceptable to the Town Attorney.
6. **LAND DEDICATION.** The dedication of public easements for utilities, rights-of-way for streets and other public ways shall be by plat dedication.
- a. **Conservation Easements.** Upon the approval of the subdivision plat for the PROPERTY, ANNEXOR shall record a conservation easement for the benefit of the TOWN for Outlot 3 in a form acceptable to the Town Attorney. The conservation easement shall limit the use of Outlot 3 to agricultural, parks and open space, underground utility, and access to adjacent property uses and those uses necessary for the PROJECT only.
 - b. **Water Tank Site.** Upon request by the TOWN, ANNEXOR shall dedicate to the TOWN a site of approximately 3.16 acres ("Lot 3") for a water tank in a location determined by the TOWN.
 - c. **Fair Contribution for Public School Sites.** In lieu of land dedication for public school sites, the ANNEXOR shall enter into a Financial Support Agreement with the St. Vrain Valley School District RE 1-J. the Financial Support Agreement shall provide for ANNEXOR to donate to the St. Vrain Valley School District RE 1-J the sum of \$250,000 upon receipt of Use and Occupancy Permit from the TOWN.
7. **WATER SERVICE.** Water service to the PROPERTY shall be provided by the TOWN. If the PROPERTY is not already in the Northern Colorado Water Conservancy District, the ANNEXOR 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. The ANNEXOR hereby acknowledges the TOWN policies with respect to obtaining water service from the TOWN, the dedication of water rights to the TOWN in connection with annexations, the extension of water

lines to the PROPERTY and the provision of and pumping and storage facilities to serve the PROPERTY. The ANNEXOR agrees to comply with TOWN ordinances and policies and with any amendments thereto, including any applicable amendments adopted subsequent to the annexation of the PROPERTY. Water service to the PROJECT will be provided upon compliance with Paragraphs 5 and 7 of this AGREEMENT.

- a. **Extension of Water Services.** The ANNEXOR shall install at his sole cost and expense and dedicate to the TOWN after construction, a 12 inch water distribution line from the existing Town of Frederick water tanks located on Weld County Road 17 along the half section line of Section 33 to Lot 2. The ANNEXOR shall install at his sole cost and expense, all the water lines, fire hydrants and appurtenances within the PROPERTY.
 - b. **Water Connection and Plant Investment Fees.** Water connection and plant investment fees shall be the existing TOWN water connection and plant investment fees at the time that the ANNEXOR requests water service. Water connection and plant investment fees shall be determined and paid at the time a building permit for a structure is requested from the TOWN.
8. **SANITARY SEWER SERVICES.** Sanitary sewer service to the PROJECT will be provided by an on-site septic system approved by the TOWN. At such time as additional development takes place, sanitary sewer service to the PROPERTY will be provided by Weld County Tri-Area Sanitation District, and not by the TOWN. ANNEXOR shall comply at the time of any additional development with the District's requirements for extension of service to the PROPERTY and for payment of sanitary sewer tap and plant investment fees.
9. **ELECTRIC SERVICES.**
 - a. **Provision of Electric Service.** The parties agree that the ANNEXOR will provide its own electrical service.
10. **DRAINAGE.** In conformance with the TOWN standards and specifications, the ANNEXOR shall make provisions to control all storm water runoff greater than that historically generated from the PROPERTY. The ANNEXOR shall not alter historic flows in a manner that would adversely affect upstream or downstream properties.
 - a. **Drainage Plan.** The ANNEXOR, at his sole expense shall prepare a master drainage plan for the PROPERTY. The master drainage plan shall show the location and extent of all drainage system improvements, including but not limited to collection and detention facilities. If the master drainage plan results in changes to drainage or irrigation facilities affecting other property or facility owners, the TOWN may require the ANNEXOR to obtain written consent from each property or facility owner for the changes

before the TOWN will accepted the plan. The ANNEXOR shall construct all improvements in an appropriate sequence to meet the demands that development of the PROPERTY generates. The ANNEXOR shall meet all TOWN standards and specifications in effect at the time of construction. The TOWN may require the ANNEXOR to update the master drainage plan for the PROPERTY for the review of each final plat to determine the configuration, timing, and responsibility for the improvements.

- b. **Drainage Improvements.** The master drainage plan, as reviewed and accepted by the TOWN, shall state the ANNEXOR's responsibility for on-site drainage improvements. The master drainage plan may include construction of facilities to convey, collect and detain irrigation and storm water. The master drainage plan shall also state the ANNEXOR's responsibility for off-site improvements.
 - c. **Maintenance of Drainage Facilities.** Detention ponds, private storm sewers, under drains, and other drainage facilities will be owned and maintained by the ANNEXOR.
- 11. **TRANSPORTATION FACILITIES.** The ANNEXOR has provided a traffic study prepared by Harris Kocher Smith Engineers, dated January 6, 2006. Based on this traffic study, no additional traffic improvements are required other than those specified in Paragraph 4.a. above.
 - 12. **PARKS AND OPEN SPACE IDENTIFIED IN THE FREDERICK COMPREHENSIVE PLAN.** The Frederick Comprehensive Plan, as amended, identifies park and open space land within the planning area. ANNEXOR shall preserve, construct, develop and dedicate to the TOWN all park and open space areas within, crossing or bordering the PROPERTY as depicted in the Frederick Comprehensive Plan, as amended, at the time of any replatting the PROPERTY.
 - 13. **FIRE PROTECTION.** The ANNEXOR shall be solely responsible for installing all fire hydrants and other fire protection measures on the PROPERTY and its perimeter as may be required by the Frederick-Firestone Fire Protection District.
 - 14. **COST ALLOCATION AND RECAPTURE OF COSTS FOR PUBLIC AND COMMON IMPROVEMENTS.** The TOWN may require the ANNEXOR to pay for other public improvements that relate to development of the PROPERTY other than the PROJECT. These public improvements may benefit not only the PROPERTY, but also adjacent landowners and the public.
 - a. The TOWN may assure construction of public improvements by requiring the ANNEXOR to execute a Memorandum of Agreement for Public Improvements ("MOAPI"). The TOWN may require financial security by the ANNEXOR before development of all or any applicable phase of development.

- b. Where the ANNEXOR constructs public improvements that will also benefit other property owners and the public, reimbursement to the ANNEXOR shall be according to the Frederick Municipal Code in effect at the time of development, and detailed in the ANNEXOR's MOAPI.
 - c. Where the ANNEXOR's property abuts or benefits from existing public improvements that have been constructed by others (including the TOWN), the ANNEXOR may be required to participate in those public improvements according to the Frederick Municipal Code in effect at the time of development and as detailed in the ANNEXOR's MOAPI.
- 15. **DEVELOPMENT IMPACT FEES.** The TOWN has established certain uniform development impact fees that directly address the effect of development intended to occur within the property upon the TOWN's infrastructure, administration and deliver of governmental services. The ANNEXOR agrees to the payment of these uniform development impact fees upon approval of a building permit for the PROJECT in the following amounts:
 - a. Building Permit Fee: \$110,103.25
 - b. Plan Review Fee: \$71,567.11
 - c. Electrical Permit Fee: \$57,403.35
 - d. General Capital Impact Fee: \$3000
 - e. Electrical Impact Fee: \$500
 - f. Park Improvement Impact Fee: \$2000
 - g. Open Space Impact Fee: \$1000
 - h. Transportation Impact Fee: \$23,761
 - i. Drainage Impact Fee: \$13,962
- 16. **USE TAX.** ANNEXOR agrees to the payment of Use Tax pursuant to the Frederick Municipal Code in the amount of \$506,171.21 upon approval of a building permit for the PROJECT.
- 17. **CONFORMANCE WITH TOWN REGULATIONS.** The ANNEXOR agrees that the design, improvement, construction, development, and use of the PROPERTY shall be in conformance with all TOWN ordinances and resolutions and the TOWN's "Standard Design Criteria and Standard Construction Requirements" including, without limitation, those pertaining to, zoning, streets, storm drainage, utilities, and flood control.

18. **VESTED RIGHTS.** The TOWN and the ANNEXOR agree that only the Final Plat(s) of the PROPERTY, approved by the TOWN in accordance with Article 5 of the **Frederick Land Use Code**, and amendments thereto, constitutes a site specific development plan pursuant to C.R.S. § 24-68-101 et. seq., as amended, (the "Vested Rights Act") for that portion so platted, and in addition, that the rights which vest pursuant to the "Vested Rights Act" shall vest for a period of three (3) years. The ANNEXOR and the TOWN agree that the need for the establishment of this process for the vesting of property rights are directly related to the TOWN's ability to control its growth in a planned and orderly fashion, and is generated by the development intended to occur within the PROPERTY and that no taking thereby will occur requiring any compensation.
19. **EXCLUSIVITY OF ANNEXATION PETITION.** The ANNEXOR agrees to not sign any other petition for annexation of the PROPERTY or any petition for an annexation election relating to the PROPERTY, except upon request of the TOWN.
20. **THREE-MILE ANNEXATION PLAN.** The Frederick Comprehensive Plan, as amended, encompasses the entire PROPERTY. The Frederick Comprehensive Plan, as amended, along with accompanying maps, plats, charts and descriptive material, has been adopted as the master plan for the three-mile area surrounding the Town of Frederick as required by C.R.S. § 31-12-105 (1) (e). This "Three Mile Annexation Plan" has been amended to the extent necessary to incorporate the above described PROPERTY and to update the Plan by the ordinance annexing the PROPERTY and complies with the requirements of C.R.S. § 31-12-105 (1)(e).
21. **DEVELOPMENT REQUIREMENTS AND EXACTIONS NOT A TAKINGS.** The TOWN and the ANNEXOR agree 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 PROPERTY and that no takings thereby will occur requiring any compensation.
22. **MISCELLANEOUS PROVISIONS.**
- a. **Interpretation.** Nothing in this Agreement shall constitute or be interpreted as a repeal of the TOWN's ordinances or resolutions, or as a waiver of the TOWN's legislative, governmental, or police powers to promote and protect the health, safety, and welfare of the TOWN and its inhabitants, nor shall this Agreement prohibit the enactment or increase by the TOWN of any tax or fee.
 - b. **Severability.** If any part, section, subsection, sentence, clause or phrase of this Agreement is for any reason held to be invalid, such invalidity shall not affect the validity of the remaining sections of the Agreement. The parties hereby declare that they would have agreed to the Agreement including each part, section, subsection, sentence, clause or phrase

thereof, irrespective of the fact that one or more parts, sections, subsections, sentence, clauses or phrases be declared invalid.

- c. **Amendments to the Agreement.** This Agreement may be amended, at anytime, upon agreement of the parties hereto. Such amendments shall be in writing, shall be recorded with the County Clerk & Recorder of Weld County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the PROPERTY subject to the amendment unless otherwise specified in the amendment.
- d. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of and be binding upon the parties, their successors in interest, or their legal representatives, including all developers, purchasers and subsequent owners of any lots or parcels within the PROPERTY, and shall constitute covenants running with the land. This Agreement shall be recorded with the County Clerk & Recorder of Weld County, Colorado, at the ANNEXOR's expense.
- e. **Indemnification.** ANNEXOR agrees to indemnify and hold harmless the TOWN and the TOWN's officers, employees, agents, and contractors, from and against all liability, claims, and demands, including attorneys' fees and court costs, which arise out of or are in any manner connected with the annexation of the PROPERTY, or with any other annexation or other action determined necessary or desirable by the TOWN in order to effectuate the annexation of the PROPERTY, or which are in any manner connected with the TOWN's enforcement of this Agreement. The ANNEXOR further agrees to investigate, handle, respond to, and to provide defense for and defend against or at the TOWN's option to pay the attorney's fees for defense counsel of the TOWN's choice for, any such liability, claims, or demands.
- f. **Termination.** If the annexation of the PROPERTY is, for any reason, not completed then this Agreement shall be null and void and of no force and effect whatsoever.
- g. **No Right or Remedy of Disconnection.** No right or remedy of disconnection of the PROPERTY from the TOWN shall accrue from this Agreement, other than provided by applicable state laws. In the event the PROPERTY or any portion thereof is disconnected at the ANNEXOR's request, the Town of Frederick shall have no obligation to serve the disconnected property or portion thereof and this Agreement shall be void and of no further force and effect as to such property or portion thereof.
- h. **Annexation and Zoning Subject to Legislative Discretion.** The ANNEXOR acknowledges that the annexation and subsequent zoning of the PROPERTY are subject to the legislative discretion of the Board of Trustees of the Town of Frederick.

No assurances of annexation or zoning have been made or relied upon by the ANNEXOR. In the event that the Town of Frederick Board of Trustees, in the exercise of its legislative discretion, does not take any action with respect to the PROPERTY herein contemplated, then the sole and exclusive remedy for the breach hereof accompanied by the exercise of such discretion shall be the disconnection from the TOWN in accordance with state law, as may be appropriate.

- i. **Legal Discretion in the Case of Challenge.** The Town of Frederick reserves the right to not defend any legal challenge to this annexation, In the event such a challenge occurs prior to any expiration of any statute of limitation, the TOWN may, at its discretion, choose to legally fight the challenge or allow the challenge to proceed without defense. This does not restrict the ANNEXOR from engaging the TOWN's legal representatives in such a defense, at no cost to the TOWN.
- j. **Application of Town Policies.** Upon annexation, all subsequent development of the PROPERTY shall be subject to and bound by the applicable provisions of the TOWN's ordinances, as amended, including public land dedications, provided however, that changes or amendments to the Frederick Municipal Code, after the date of this Agreement shall in no way limit or impair TOWN's obligation hereunder, except as specifically set forth in this Agreement.
- k. **Amendments to Governing Ordinances, Resolutions and Policies.** As used in this Agreement, unless otherwise specifically provided herein, any reference to any provision of any TOWN ordinance, resolution, or policy is intended to refer to any subsequent amendments or revisions to such ordinance, resolution, or policy, and the parties agree that such amendments or revisions shall be binding upon ANNEXOR.
- l. **Legal Fees.** In the event that either party finds it necessary to retain an attorney in connection with a default by the other as to any of the provisions contained in this Agreement, the defaulting party shall pay the other's reasonable attorney fees and costs incurred in enforcing the provisions of this Agreement.
- m. **Reimbursement for Other Costs.** The ANNEXOR shall reimburse the TOWN for any third party costs necessary for the orderly and proper development of the PROPERTY, including but not limited to consultant fees for planning and engineering, and attorney fees for legal services beyond the normal document review, which is directly linked to the PROPERTY.
- n. **Oil and Gas Access Roads.** All oil and gas access roads located on the PROPERTY will remain where they are or as otherwise agreed to by ANNEXOR and the oil and gas company(s), and will be considered a

current obligation between the ANNEXOR and the oil and gas company(s). The TOWN will not be responsible for any maintenance of any current oil and gas access road.

- o. **Cooperation.** The parties agree that they will cooperate with one another in accomplishing the terms, conditions, and provisions of the Agreement, and will execute such additional documents as necessary to effectuate the same.
 - p. **Timely Submittal of Materials.** The ANNEXOR agrees to provide legal documents, surveys, engineering work, newspaper publication, maps, reports and other documents necessary to accomplish the annexation of the PROPERTY and the other provisions of this Agreement.
 - q. **Compliance with State Law.** The ANNEXOR shall comply with all applicable State law and regulations.
 - r. **Recording of Agreement.** This Agreement shall be recorded in the records of the County Clerk and Recorder, Weld County, Colorado.
 - s. **Choice of Law.** In all litigation arising out of the contract, the statutory and common law of the State of Colorado shall be controlling, and venue shall be in the District Court of Weld County, Colorado.
23. **COMPLETE AGREEMENT.** This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided herein there shall be no modifications of this Agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein this Agreement may be enforced in any court of competent jurisdiction.
24. **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.

By this acknowledgment, the undersigned hereby certify that the above Agreement is complete and true and entered into of their own free will and volition.

TOWN OF FREDERICK

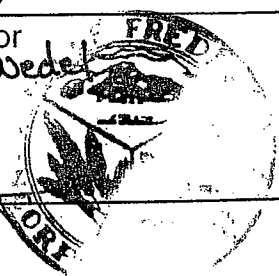
By: *Sue Wedel*

~~Eric E. Deering, Mayor~~

~~Mayor Pro Tem, Sue Wedel~~

ATTEST:

Nanette Starnes



Nanette S. Fornof, Town Clerk

ANNEXOR

SPINDLE HILL ENERGY LLC
A Delaware limited liability company

By: [Signature]
for Douglas B. Carter, Vice President

[Signature]
by Susan J. Troudt
by [Signature] POA

Susan J. Troudt
[Signature]
by [Signature] POA
Carla Johnson Hobbs

Investors Independent Trust Company, as
personal representative for Marian J.
Stratton, formerly known as Marian J.
Botinelli, Deceased

By: [Signature]
Name: MICHAEL HAMMER
Personal Representative

STATE OF COLORADO

COUNTY OF Weld

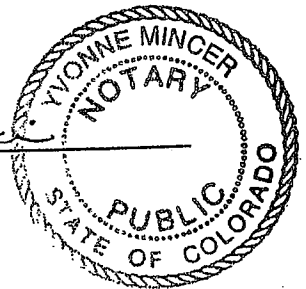
)
) ss.
)

The foregoing instrument was acknowledged before me this 2nd day of August, 2006 by Eric L. Deering as Mayor and Nanette S. Fornof as Town Clerk of the Town of Frederick.

My commission expires: 6/30/07

Witness my hand and official seal.

[Signature]
Notary Public



STATE OF COLORADO

COUNTY OF Weld

)
) ss.
)

INDIVIDUAL ACKNOWLEDGMENT

State of Colorado
County of Weld } ss.

On this the 28 day of April 20 07 before me,

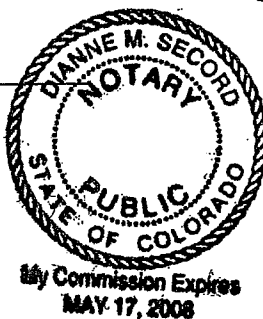
the undersigned Notary Public, personally appeared

Douglas B. Carter
(Name of person signing)

- ☐ personally known to me
☒ proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) appeared within instrument

WITNESS my hand and official seal.

Dianne M. Secord
Notary's Signature

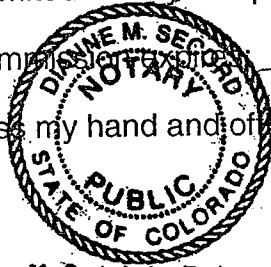


May 17, 2008
My commission expires

The foregoing instrument was acknowledged before me this 28 day of April, 2006 by Douglas B. Carter as Vice President of Spindle Hill Energy LLC, a Delaware limited liability company.

My commission expires May 17, 2008

Witness my hand and official seal.



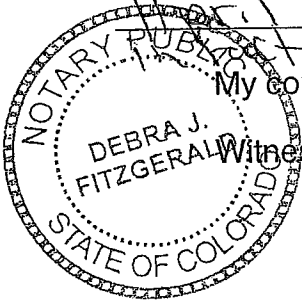
Deanne M Seend
Notary Public

My Commission Expires MAY 17 2008
STATE OF COLORADO

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Susan J. Trout. John R. Haley as attorney for Susan J. Trout
My commission expires: 1-30-07

Witness my hand and official seal.



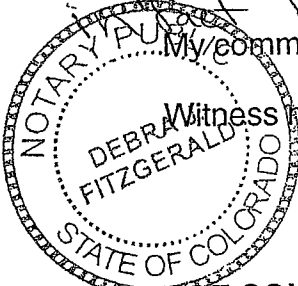
[Signature]
Notary Public

STATE OF COLORADO

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Carla Johnson Hobbs. John R. Haley as attorney for Carla Johnson Hobbs
My commission expires: 1-30-07

Witness my hand and official seal.



[Signature]
Notary Public

STATE OF COLORADO

COUNTY OF Boulder) ss.

The foregoing instrument was acknowledged before me this 28th day of April, 2006 by Michael E. Lammers, Authorized officer

Investors Independent Trust Company, as personal representative for Marian J. Stratton, formerly known as Marian J. Botinelli, Deceased _____

My commission expires: _____

1-30-07

Witness my hand and official seal.



Notary Public

EXHIBIT "A"

THE LEGAL DESCRIPTION FOR ANNEXATION NO. 2

A PORTION OF THE SOUTHEAST QUARTER AND THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 2 NORTH, RANGE 67 WEST OF THE 6TH P.M. AND A PORTION OF THE NORTHEAST QUARTER AND THE NORTHWEST QUARTER OF SECTION 4, TOWNSHIP 1 NORTH, RANGE 67 WEST OF THE 6TH P.M. COUNTY OF WELD, STATE OF COLORADO,

COMMENCING AT THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 33;

THENCE ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, NORTH 89°51'36" EAST, A DISTANCE OF 30.00 FEET TO THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17, SAID POINT ALSO BEING THE POINT OF BEGINNING;

THENCE CONTINUING ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER AND ALONG THE NORTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, NORTH 89°51'36" EAST, A DISTANCE OF 5184.77 FEET TO THE WEST RIGHT-OF-WAY OF WELD COUNTY ROAD 19;

THENCE ALONG SAID WEST RIGHT-OF-WAY LINE, SOUTH 00°33'11" EAST, AND ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 1419.00 FEET TO THE NORTH LINE OF PARCEL #38 AS DESCRIBED IN DEED RECORDED OCTOBER 29, 1993 AT RECEPTION NO. 2357270;

THENCE ALONG SAID NORTH LINE, SOUTH 89°26'49" WEST, A DISTANCE OF 520.00 FEET TO THE NORTHEAST CORNER OF SAID PARCEL;

THENCE ALONG THE WEST LINE OF SAID PARCEL AND ALONG THE WEST LINE OF PARCEL #39 AND PARCEL #35 DESCRIBED ON SAID DEED, SOUTH 00°33'11" EAST, A DISTANCE OF 868.80 FEET TO THE SOUTHWEST CORNER OF PARCEL #35;

THENCE ALONG THE SOUTH LINE OF SAID PARCEL #35, NORTH 89°26'49" EAST, A DISTANCE OF 520.00 FEET TO THE WEST RIGHT-OF-WAY LINE OF SAID WELD COUNTY ROAD 19;

THENCE ALONG THE WEST RIGHT-OF-WAY LINE, SOUTH 00°33'11" EAST, AND ALONG A LINE 30.00 FEET WEST OF AND PARALLEL WITH THE EAST LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 33, A DISTANCE OF 325.29 FEET TO THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14;

THENCE SOUTH 00°09'38" EAST, A DISTANCE OF 60.00 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14;

THENCE ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14, SOUTH 89°50'22" WEST, AND ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 4, A DISTANCE OF 2610.11 FEET;

THENCE CONTINUING ALONG THE SOUTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14 SOUTH 89°50'33" WEST, AND ALONG A LINE 30.00 FEET SOUTH OF AND PARALLEL WITH THE NORTH LINE OF THE NORTHWEST QUARTER OF SAID SECTION 4, A DISTANCE OF 40.00 FEET;

THENCE NORTH 00°09'27" WEST, A DISTANCE OF 60.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID WELD COUNTY ROAD 14;

THENCE ALONG THE NORTH RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 14 SOUTH 89°50'33" WEST, AND ALONG A LINE 30.00 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2570.52 FEET TO THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17;

THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF WELD COUNTY ROAD 17, NORTH 00°13'59" EAST, AND ALONG A LINE 30.00 FEET EAST OF AND PARALLEL WITH THE WEST LINE OF THE SOUTHWEST QUARTER OF SAID SECTION 33, A DISTANCE OF 2614.81 FEET TO THE POINT OF BEGINNING.

THUS DESCRIBED TRACT CONTAINS 13,306,681 SQ.FT./305.48 ACRES MORE OR LESS.

EXHIBIT "B"

Water Rights Appurtenant to Property.

(Listing of all tributary and non-tributary water rights attached to the property)

Water Rights (Ditch Company, groundwater, etc.)	Number of Shares	Certificate	Yield (cfs or acre/ft)
N/A	N/A	N/A	N/A

EXHIBIT "C"

SPECIAL PROVISIONS APPLYING TO THE JOHNSON FARMS/SPINDLE HILL ENERGY ANNEXATION

SPECIAL PROVISIONS APPLYING TO THE SPINDLE HILL ENERGY ANNEXATION.

Certain special provisions shall apply to the Johnson Farms/Spindle Hill Energy Annexation as follows:

- A. ANNEXOR agrees that development of Lot 1 and Lot 2 will be limited to the PROJECT and appurtenant facilities as depicted on the approved Site Plan.
- B. ANNEXOR agrees that any redevelopment or additional development of Lot 1 and Lot 2 may take place only after amendment of this AGREEMENT specifically authorizing such redevelopment or additional development.
- C. ANNEXOR agrees that the uses for Outlot 2 shall be limited to agricultural uses until such time as an application for development of Outlot 2 is submitted to the TOWN.
- D. ANNEXOR agrees that any development of Outlot 2 may take place only after amendment of this AGREEMENT specifically authorizing such development and specifying the conditions of such development.
- E. ANNEXOR shall install such landscaping, as approved by the TOWN at the time of approval of the building permit for the PROJECT, on Lot 2 as to provide adequate screening of the PROJECT from other uses in the TOWN.

Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2, Overhead Power
Lines Conditional Use,
Memorandum of Agreement for Public Improvements (MOAPI), and Annexation Agreement
Amendment

Ali van Deutekom, Planning Manager

BUILT ON WHAT MATTERS



Strategic Plan Alignment



COMMUNITY AND ECONOMIC VITALITY

Frederick is a community that fosters economic, recreational, cultural, and environmental vitality and builds upon and enhances a variety of economic opportunities.

Built on What Matters.



Request

Applicant: Clearway Energy

Owner: Spindle Battery, LLC.

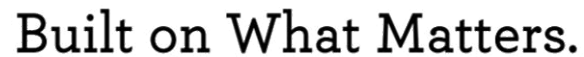
Request for 4 Planning Actions:

1. Johnson Farms/Spindle Hill Minor Subdivision Amendment No. 2
2. Conditional Use for Overhead Power Lines in the Agricultural (A) zone district.
3. Memorandum of Agreement for Public Improvements (MOAPI)
4. Annexation Agreement Amendment

Purpose:

Development of “Lot 1” of the Johnson Farms/Spindle Hill Minor Subdivision Amendment No. 2 as a Battery Energy Storage System through an administrative site plan.

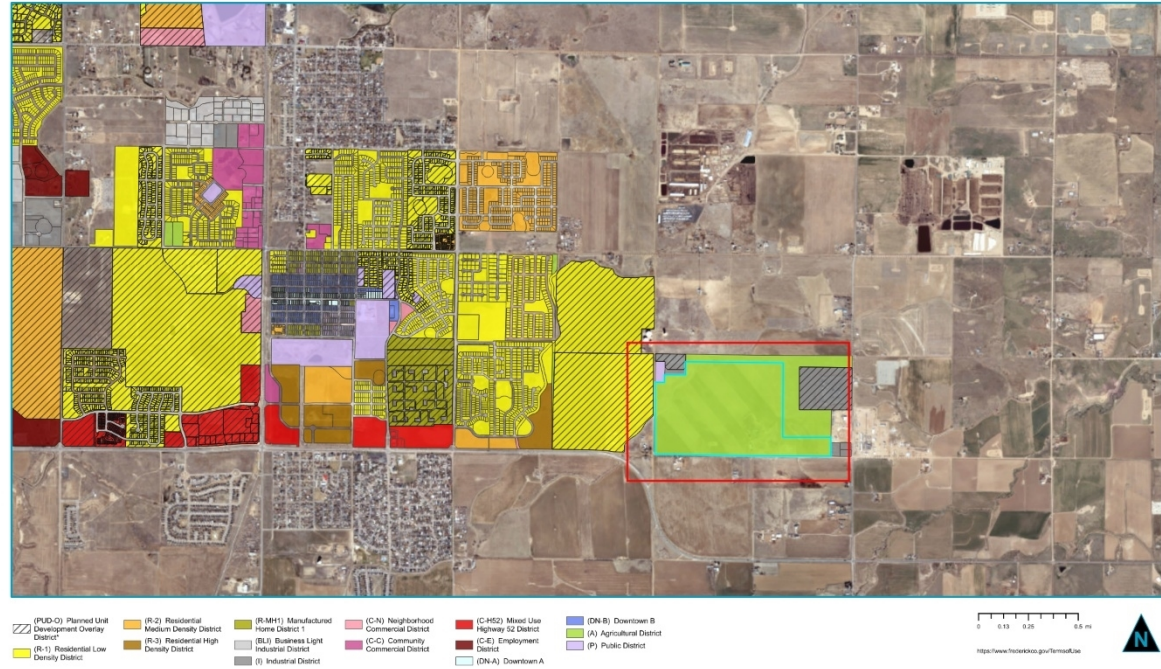
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Project Zoning



Johnson Farm/Spindle Hill Energy Minor Subdivision



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Project Location



Johnson Farms/Spindle Hill Energy Minor Subdivision



 Property Information
 FREDERICK
 Weld County

0 0.04 0.08 0.17 mi

<https://www.frederickco.gov/termsandcon>



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Minor Subdivision Details

Land Use Table			
Lot	Area (AC.)	(SQ. FT.)	Land Use
Lot 1	50.981	2,220,722	Battery Energy Storage Facility with Overhead Power Lines
Outlot A	142.998	6,228,980	Existing Agricultural
Total	193.979	8,449,702	

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Project Agreements

1. Memorandum of Agreement for Public Improvement (MOAPI)
 - a. Construction of a Waterline
 - b. Drainage Infrastructure
 - c. Landscaping
2. Annexation Agreement Amendment
 - a. An amendment as required by the existing agreement.

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Minor Subdivision Review Criteria

- (1) The preliminary plat provides for a functional system of land use and is consistent with the criteria set forth in this Code.
- (2) The application is consistent with the approved sketch plan and incorporates the Planning Commission's recommendations and conditions of approval.
- (3) The land use mix within the project conforms to the Town's zoning district map and furthers the following planning objectives:
 - (a) The proposed development promotes the Town's small-town, rural character, or implements a Board-approved sub-area, corridor, or urban renewal plan, however titled;
 - (b) Proposed residential development adds diversity to the Town's housing supply;
 - (c) Proposed commercial development will benefit the Town's economic base;
 - (d) Parks and open space are incorporated into the site design, as appropriate to the proposed principal use or uses of the land;
 - (e) The proposed project protects the Town's environmental quality; and
 - (f) The development enhances cultural, historical, educational and/or human service opportunities.
- (4) The utility and transportation design is adequate, given existing and planned capacities of those systems.
- (5) Negative impacts on adjacent land uses have been identified and satisfactorily mitigated.
- (6) There is a need or desirability within the community for the applicant's development, and the development will help achieve a balance of land use and/or housing types within the Town, according to the Town's goals.



Conditional Use Details

“Overhead Power Lines (110 kV or more)” are a Conditional Use in all zone districts except prohibited in Downtown.

Limitations:

(1) If required by the Colorado Public Utilities Commission (“PUC”), a certificate of need from the PUC (or an exemption certification) has been issued.

PUC has not requested this.

(2) To the extent practicable, new transmission lines shall be located within existing transmission easements or routed outside of the Town.

Applicant is securing access rights via their interconnection agreement with the Public Service Company of Colorado in lieu of an easement.

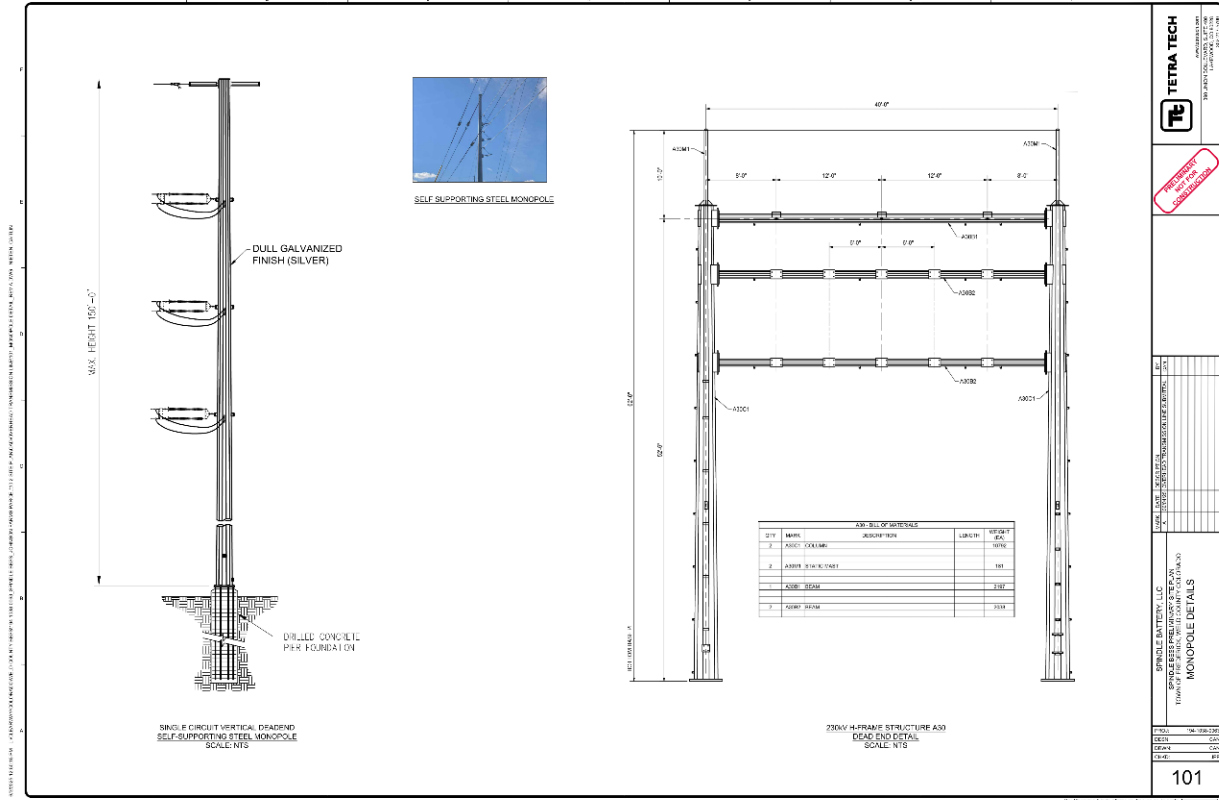
(3) New transmission lines that are not located within existing transmission easements shall be routed to minimize the impact of poles and lines on existing development through spacing between the transmission line and the following uses or infrastructure:

- a) Three hundred feet from dwelling units, schools (all types), and places of assembly; and
- b) Five hundred feet from arterial streets.

Power lines will be located outside these specified buffers. Town staff is verifying/ensuring through the Site Plan application review.

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Conditional Use Details



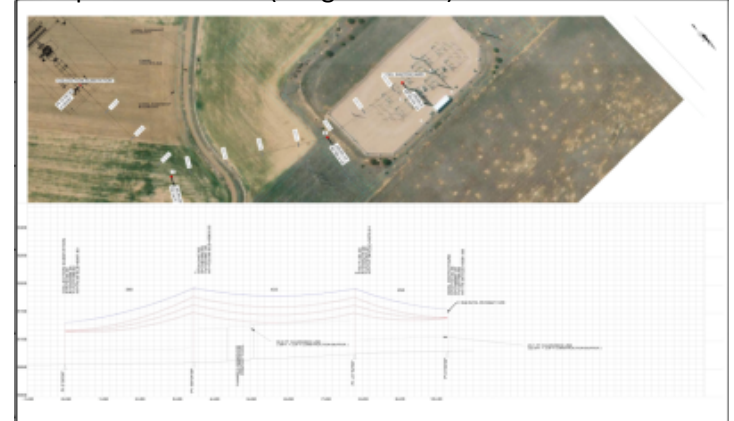
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Conditional Use Details

 Existing Condition



Proposed locations (image rotated)



- Overhead power lines are intended to facilitate the connection between existing Spindle BESS facility to proposed substation.
- Approximately 0.2 miles in total length.

Built on What Matters.



Conditional Use Review Criteria

- (1) The conditional use will satisfy all applicable provisions of this Code and subdivision regulations unless a variance is being requested.
- (2) The conditional use will conform with or further the goals, policies and strategies set forth in the Comprehensive Plan; provided, that if a Comprehensive Plan update has not occurred in the five (5) years preceding the application date, the Board may consider instead the impacts of the conditional use on public health, safety, and welfare, including but not limited to its anticipated impacts on the balance of land uses in the Town and the need for the conditional use in the context in which it is proposed.
- (3) The conditional use will be adequately served with public utilities, services and facilities (i.e., water, sewer, electric, schools, street system, fire protection, public transit, storm drainage, refuse collection, parks system, etc.) and not impose an undue burden above and beyond those of the permitted uses of the district.
- (4) The conditional use will not substantially alter the basic character of the district in which it is located or jeopardize the development or redevelopment potential of the district.
- (5) The conditional use will result in efficient on- and off-site traffic circulation which will not have a significant adverse impact on the adjacent uses or result in hazardous conditions for pedestrians or vehicles in or adjacent to the site.
- (6) Potential negative impacts of the conditional use on the rest of the neighborhood or of the neighborhood on the conditional use have been mitigated through setbacks, architecture, screen walls, landscaping, site arrangement or other methods. The applicant shall satisfactorily address the following impacts:
 - (a) Traffic;
 - (b) Activity levels;
 - (c) Light;
 - (d) Noise;
 - (e) Odor;
 - (f) Building type, style and scale;
 - (g) Hours of operation;
 - (h) Dust; and
 - (i) Erosion control.
- (7) The applicant has submitted evidence that all applicable local, state, and federal permits have been or will be obtained.



Notifications and Public Comment

- The Neighborhood Meeting was held on October 28, 2024.
 - No members of the public joined.
- The project was sufficiently noticed according to the requirements found in the Town of Frederick Land Use Code.
 - Mailed notice – 500 ft. buffer
 - Neighborhood meeting
 - Application submittal
 - PC and BOT public hearings
 - Posted notice
 - Published notice
- Public Comment
 - No public comment to the PC.
 - No public comment received for the BOT.



Planning Commission

The Planning Commission was held on September 18th, 2025

The Planning Commission recommended approval of the Minor Subdivision application with a vote of 4 to 0 with the following conditions:

1. Revise the dedicatory statement to remove references to public roads and lands.
– **Resolved.** Removed reference to dedication of roads. Dedication of lands is kept due to easements being dedicated.
2. Resolve issues with the title commitment referencing an outdated plat and update general notes 2 and 3 accordingly. – **Resolved.**
3. Ensure meets and bounds are provided for the 30' public access easement dedicated to the Town or are established by referencing a specific distance from the recorded canal easement. – **Resolved.** Easement references a specific distance from the recorded canal easement.

The Planning Commission recommended approval of the Conditional Use application with a vote of 4 to 0.



Staff Recommendation – LUC Section 4.6.9.c

Staff recommends approval of the Minor Subdivision, Conditional Use, MOAPI, and Annexation Agreement Amendment.

Built on What Matters.



Recommended Motions – Minor Subdivision & MOAPI

Approval:

I move to approve Resolution No. 25-R-59, which approves the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 and MOAPI.

Approval with Conditions:

I move to approve the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 and MOAPI and direct staff to draft a Resolution of approval with the following conditions: (list conditions)

Denial:

I move to deny the Johnson Farms/Spindle Hill Energy Minor Subdivision Amendment No. 2 and MOAPI and direct staff to draft a resolution of denial (list criteria not met).



Recommended Motions – Conditional Use

Approval:

I move to approve Resolution No. 25-R-58, which approves the Overhead Power Lines of 110 kV or more as a Conditional Use.

Approval with Conditions:

I move to approve the Overhead Power Lines 110 kV or more Conditional Use and direct staff to draft a resolution of approval with the following conditions: (list conditions)

Denial:

I move to deny the Overhead Power Lines 110 kV or more Conditional Use and direct staff to draft a resolution of denial (list criteria not met).

Built on What Matters.



Recommended Motions – Annexation Agreement Amendment

Approval:

I move to approve Resolution No. 25-R-60, approves the Annexation Agreement Amendment.

Approval with Conditions:

I move to approve the Annexation Agreement Amendment and direct staff to draft a resolution of approval with the following conditions: (list conditions)

Denial:

I move to deny the Annexation Agreement Amendment and direct staff to draft a resolution of denial (list criteria not met).



Project Next Steps

1. Administrative Site Plan Approval for Lot 1 (Battery Energy Storage Facility)
2. Building Permits & Construction

Built on What Matters.

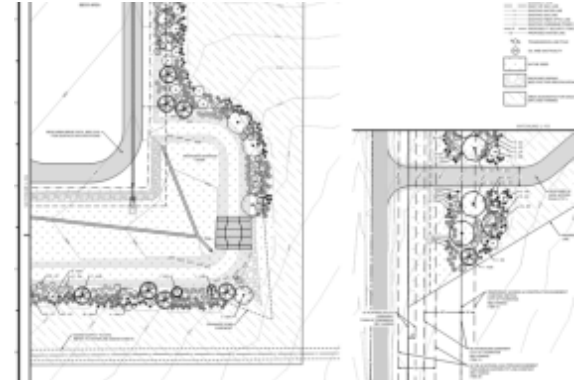
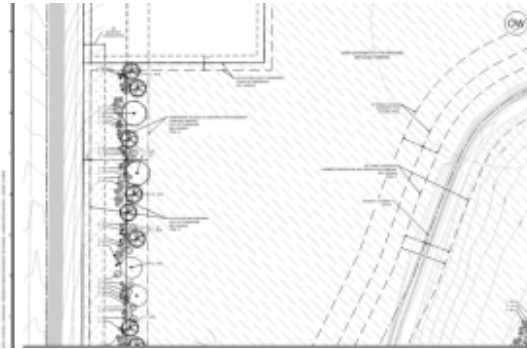
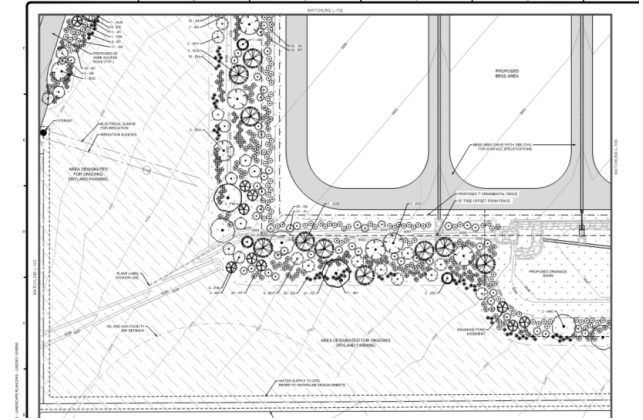
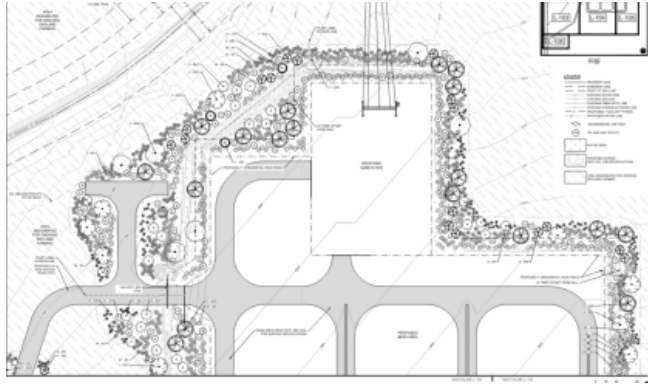


Next Steps

Applicant presentation
BOT Questions

BUILT ON WHAT MATTERS

Spindle Hill BESS Site Landscaping



Built on What Matters.



Built On What Matters

TOWN OF FREDERICK

Board of Trustees

Staff Report

Tracie Crites, Mayor

Kevin Brown, Mayor Pro Tem
Dan March, Trustee
Mark Lamach, Trustee

Adam Mahan, Trustee
Windi Padia, Trustee
Chad teVelde, Trustee

Resolution 25-R-61 IGA with Central Weld Regarding New Treatment Facility

Agenda Date: Board of Trustees November 5, 2025

Attachments:

1. 25-R-61 Reso RE IGA CWCWD Water Treatment
2. Legal Services Funding IGA
3. IGA treatment authority 11-5-25 Presentation

Reviewed By: Bryan Ostler, Town Manager

Action Type

1) Legislative: Actions that relate to subjects of a long term and general applicability; such as the passing of ordinances/resolutions/policies/etc.

Strategic Plan Alignment:



STRATEGIC, RELIABLE & SUSTAINABLE INFRASTRUCTURE–

This request aligns with the Town's Strategic, Reliable and Sustainable Infrastructure goal. The Town is dedicated to investing in existing and future transportation, water, stormwater, and technology while planning for sustainable growth and development.

Summary Statement:

Water suppliers within the region have begun meeting to discuss a potential jointly owned treatment facility. Town Staff have been included in those initial discussions and

to move forward the Town will need to participate in the investigation of the creation of a water authority and a treatment feasibility study.

Detail of Issue/Request:

The Town will need an additional treated water supply in the future in order to meet the demands of a growing community. Currently, the Town receives treated water through an agreement with Central Weld County Water District (CWCWD). CWCWD has initiated discussions with regional water suppliers regarding the construction of a new water treatment facility on property purchased for that purpose.

The group of potential partners includes:

- Left Hand Water District
- Little Thompson Water District
- CWCWD
- Johnstown
- Evans
- Berthoud
- Dacono
- Milliken

The participating entities will be bringing multiple water sources to the treatment plant. Because multiple sources will be treated at the future facility, a detailed analysis is required. This future study will evaluate:

- Water quality differences between sources
- Potential impacts when sources are blended
- Constituents of concern
- Appropriate treatment technologies to ensure high-quality drinking water

This study, scheduled for 2026, will be the first step in securing water treatment for a significant portion of the Town's future supply. Participation provides the Town with the opportunity to:

- Help shape the technical approach and treatment technology
- Secure a role as a partner in the future treatment authority
- Ensure representation in long-term planning for water quality and supply

By joining the study and early discussions, the Town will position itself as a partner in this regional facility and secure a seat at the table for decisions that will impact its future water supply. The first step for the group is to enter into a joint IGA with CWCWD to fund an Attorney who will work primarily on creating a future IGA for the water treatment study funding, developing authority establishing contract documents, and review and provide support for the future water treatment study contract. This IGA is proposed to

support services in 2025 and 2026. The cost of services in 2025 will be paid out of the professional services budget, and the 2026 services will be paid out of the requested budget item for the treatment study pending budget adoption in December 2025. The legal and water study fees were proposed to be paid under a combined IGA, but since there is a delay in the water treatment study consultant selection due to data collection, the water user group is requesting to push the IGA for legal services first. The cost of legal services described above will be capped at \$25,000.00 for all participants.

Legal Comments:

The IGA and resolution have been reviewed by the Town Attorney's Office.

Alternatives/Options

The Town may decide to not partner in this authority investigation and will need to continue to investigate additional options for future water treatment.

Financial Considerations

The 2026 Budget request includes \$100,000 for the study and investigation and is subject to formal adoption and appropriation in December 2025. Funds required in 2025 equal \$25,000, which will be shared equally between all participants, will be paid for from the professional services budget.

Staff Recommendation

Staff recommends approval of the proposed IGA.

Community Impact

Planning for the future water needs of the community is critical to ensuring continuity of service delivery in the future. The various long-term studies the Town has completed in recent years will be used as the basis to help determine how much capacity is anticipated based on different growth scenarios. By participating in a joint effort within the region, this reduces the upfront costs that the Town would likely incur if we completed this analysis on our own.

**TOWN OF FREDERICK, COLORADO
RESOLUTION NO. 25-R-61**

**A RESOLUTION OF THE TOWN OF FREDERICK, COLORADO
APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH
CENTRAL WELD COUNTY WATER DISTRICT REGARDING WATER
TREATMENT**

WHEREAS, the Board of Trustees of the Town of Frederick, Colorado, pursuant to Colorado statute, is vested with the authority of administering the affairs of Frederick, Colorado, and;

WHEREAS, the Town of Frederick will need to treat allocated water once it becomes available, and;

WHEREAS, water suppliers have begun meeting to discuss potential treatment of water at a jointly owned treatment plant, and;

WHEREAS, the Town of Frederick desires to be included in those initial discussions, and;

WHEREAS, the Town of Frederick will need to participate in the creation of a water authority and a treatment feasibility study in order to move forward, and;

WHEREAS, the Town of Frederick has determined that the need for the Intergovernmental Agreement with Central Weld County Water District is timely and essential to proactive consideration of future water treatment within the Town and the Town should move forward with the Agreement.

NOW THEREFORE, BE IT RESOLVED by the Board of Trustees of the Town of Frederick, Colorado:

- 1) The Intergovernmental Agreement with Central Weld County Water District, attached hereto as Exhibit A, is hereby approved.
- 2) The Town Manager is authorized to execute the agreement.

**INTRODUCED, READ, PASSED, AND ADOPTED THIS 5TH DAY OF NOVEMBER
2025.**

ATTEST:

TOWN OF FREDERICK

By: _____
Tricia David, Town Clerk

By: _____
Tracie Crites, Mayor

INTERGOVERNMENTAL AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into effective _____, 2025, by and among CENTRAL WELD COUNTY WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Central Weld"), The TOWN OF BERTHOUD, COLORADO, a municipal corporation and political subdivision of the State of Colorado ("Berthoud"), the CITY OF DACONO, COLORADO, a home rule municipal corporation and political subdivision of the State of Colorado ("Dacono"), the CITY OF EVANS, COLORADO, a home rule municipal corporation and political subdivision of the State of Colorado ("Evans"), the TOWN OF FREDERICK, COLORADO, a municipal corporation and political subdivision of the State of Colorado ("Frederick"), the TOWN OF JOHNSTOWN, COLORADO a municipal corporation and political subdivision of the State of Colorado ("Johnstown"), the TOWN OF MILLIKEN, COLORADO a municipal corporation and political subdivision of the State of Colorado ("Milliken"), LEFT HAND WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado ("Left Hand"), LITTLE THOMPSON WATER DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado and a duly organized and existing special district pursuant to Title 32, Article 1, Colorado Revised Statutes ("Little Thompson"). Central Weld, Berthoud, Dacono, Evans, Frederick, Johnstown, Milliken, Left Hand and Little Thompson may herein be collectively called the "Parties" or each individually a "Party."

BACKGROUND and RECITALS

A. The Parties are encouraged and empowered to agree about the subject matter of this Agreement under the terms of Title 29, Article 1, Part 2, of the Colorado Revised Statutes. This Agreement is made under the terms of Section 29-1-203, Colorado Revised Statutes.

B. Each Party owns and operates a separate potable water system to serve its respective residents, customers or users and the Parties are exploring possible projects, possible contracts, possible joint cooperation and/or possible cost sharing matters regarding such water systems ("Possible Water System Projects").

C. The Parties recognize that **legal services and support costs and expenses** will be incurred in exploring the formation of a Regional Water Authority, and Possible Water System Projects and agree to equally share in such costs and expenses.

D. The Parties currently estimate that such initial **legal services and support costs** and expenses will not exceed **twenty-five thousand dollars (\$25,000.00)** ("Initial Legal Costs and Expenses") and the Parties desire to confirm their equal sharing of such Initial Costs and Expenses in accordance with the terms and conditions of this Agreement. The scope of this work is outlined in the attached "Exhibit A", a Contract for Legal Services, between Central Weld and Hoffmann, Parker, Wilson & Carberry, P.C. dated October 16, 2025.

AGREEMENT:

Now, therefore, in consideration of the foregoing Background and Recitals and the mutual promises and agreements made in this Agreement, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. **Background and Recitals.** The foregoing Background and Recitals constitute substantive terms of this Agreement and are incorporated into this Agreement by this reference.

2. **Equal Sharing of Initial Legal Costs and Expenses.** The Parties hereby agree and acknowledge that they shall equally share the Initial Legal Costs and Expenses. The Parties further agree that Central Weld shall pay the various contractors, vendors and others for the costs and expenses comprising the Initial Legal Costs and Expenses and Central Weld will notify the other Parties of the amounts paid by Central Weld and the equal share amount due from each Party. Central Weld will provide to each Party copies of all invoices, billings or other documents containing the Initial Legal Costs and Expenses. Each Party shall forthwith pay Central Weld for such Party's equal share of the Initial Legal Costs and Expenses.

3. **Additional Costs and Expenses.** If costs and expenses exceed the Initial Legal Costs and Expenses, the Parties shall mutually discuss the status of the Regional Water Authority and Possible Water System Projects and determine whether to proceed. If any of the Parties determine to proceed, such Parties shall mutually execute an amendment to this Agreement regarding additional costs and expenses or execute additional agreements or document(s) regarding additional costs and expenses to be incurred by the Parties prior to incurring any costs and expenses above the Initial Legal Costs and Expenses. If any of the Parties determine not to proceed, such amendment will remove such Parties from this Agreement.

4. **Default.** In addition to any other remedies allowed by law, the provisions of the Agreement may be specifically enforced in a court of competent jurisdiction, and in any such judicial action, the unsuccessful party shall pay all costs and expenses incurred by the successful Party or Parties including reasonable attorneys fees. Venue for any disputes concerning this Agreement shall be in the Weld County, Colorado, District Court.

5. **Miscellaneous.**

a. **No Joint Venture.** The sole purpose of this Agreement is to provide for the cooperation of the Parties regarding the sharing of the Initial Legal Costs and Expenses regarding the formation of a Regional Water Treatment Authority and Possible Water System Projects. Nothing contained in this Agreement is intended to create a partnership or joint venture between the Parties, and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not provide for the joint exercise by the Parties of any activity, function or service, nor does it create a joint enterprise or any other separate legal entity, nor does it authorize any Party hereto to act as an agent for another Party hereto for any purpose whatsoever.

b. **Nonwaiver of Immunity.** This Agreement shall not be construed to waive any of the privileges, defenses, or immunities of any Party hereto including but not limited to the Colorado Governmental Immunity Act, §24-10-101 et seq., as amended, and any other privilege, defense, or immunity of any Party.

c. **Invalidity.** The invalidity or unenforceability of any provision of this Agreement shall not affect or impair any other provision of this Agreement.

d. **No Assignment.** No Party may assign or transfer all or any part of this Agreement without the prior written consent of all other Parties.

e. Paragraph Titles. The paragraph titles of this Agreement are for reference only and are not to be construed as a material part of the Agreement.

f. Notice. All written notices given hereunder shall be delivered to the Parties at the addresses listed on the signature pages.

IN WITNESS WHEREOF, the Parties have hereunto executed this Agreement the day and year first above written.

CENTRAL WELD COUNTY WATER DISTRICT

By: _____
Stan Linker, General Manager

Attn: General Manager
Central Weld County Water District
2235 2nd Avenue
Greeley, CO 80631

TOWN OF BERTHOUD

By: _____
Christopher Kirk, Town Administrator

Attn: Town Administrator
Town of Berthoud
807 Mountain Avenue
Berthoud, CO 80513

CITY OF DAcono

By: _____
Jennifer Krieger, City Manager

Attn: City Manager
City of Dacono
512 Cherry Avenue
Dacono, CO 80514

CITY OF EVANS

By: _____
Cody R. Sims, City Manager

Attn: City Manager
City of Evans
1100 37th Street
Evans, Colorado 80620

TOWN OF FREDRICK

By: _____
Bryan Ostler, Town Manager

Attn: Town Manager
Town of Frederick
PO Box 435
Frederick, CO 80530

TOWN OF JOHNSTOWN

By: _____
Matt LeCerf, Town Manager

Attn: Town Manager
Town of Johnstown
450 South Parish Avenue
Johnstown, CO 80534

TOWN OF MILLIKEN

By: _____
Cheryl Powell, Town Administrator

Attn: Town Administrator
Town of Milliken
PO Box 290
Milliken, CO 80543

LEFT HAND WATER DISTRICT

By: _____
Chris Smith, General Manager

Attn: General Manager
Left Hand Water District
6800 Nimbus Road,
Longmont, CO 80503

LITTLE THOMPSON WATER DISTRICT

By:

Amber Kauffman, District Manager

Attn: District Manager

Little Thompson Water District

835 E State Highway 56

Berthoud, CO 80513-9237

EXHIBIT A

CONTRACT FOR LEGAL SERVICES

THIS CONTRACT FOR LEGAL SERVICES is made effective October 16, 2025, by and between Hoffmann, Parker, Wilson & Carberry, P.C., Attorneys at Law (hereinafter called "Attorney"), and the Central Weld County Water District (hereinafter called the "District").

RECITALS

1. The District is desirous of contracting for legal services on behalf of a coalition of regional partners seeking to form a new regional water authority (the "Coalition").
2. Hoffmann, Parker, Wilson & Carberry, P.C., are attorneys authorized to practice law in the State of Colorado.

AGREEMENT

1. Attorney shall furnish legal services required by the Coalition as set forth in Exhibit A, attached hereto and incorporated herein, and, to the extent necessary, Attorney shall be responsible for coordinating duties with other legal specialists as may be authorized or required by the Coalition.
2. Attorney will supply secretarial and other support staff services necessary to render the services the Coalition requires by this Contract.
3. Attorney shall maintain professional liability insurance in an amount no less than two million dollars (\$2,000,000.00).
4. Attorney is acting as an independent contractor; therefore, the District will not be responsible for F.I.C.A. taxes, health or life insurance, or vacation or sick time.
5. Attorney agrees to:
 - a. As directed, attend meetings of the Coalition.
 - b. As directed, attend meetings and conferences with Coalition staff and consultants.
 - c. Perform all duties required by state and federal law and applicable rules and regulations to work toward formation of a new regional water authority.
 - d. Provide timely attention to and advise with regard to compliance with all applicable law.
 - e. As directed, represent the Coalition in its dealings with others.
 - g. As directed, provide reports to the Coalition on the status and progress of projects assigned to the Attorney.

6. The District shall pay for Attorney's legal services at a rate of \$275 per hour, payable monthly. To the extent incurred, paralegal services will be billed at a rate of \$135.00 per hour. Legal services under this Contract shall not exceed \$25,000.00 without the District's prior written authorization. Attorney will provide written notice to the District at such time as monthly invoicing reaches 75% of this not-to-exceed amount, or \$18,750.00. At any time the District may choose to authorize in writing work in addition to the scope of services set forth in Exhibit A and/or a different not-to-exceed amount.

- a. Travel time will be billed at half the attorney rate, or one way.
- b. All payments shall be following Attorney's submission of itemized statements to the District, which figures shall be subject to review by the parties as necessary.
- c. The District may seek cost-sharing or reimbursement from the Coalition, but that process will occur separately and will not affect the District's payment of Attorney.

7. The District will pay, in addition to payment of legal fees as set forth above, any filing fees, bonds, witness fees, deposition costs, reproduction costs, and computer research costs incurred by Attorney on behalf of the Coalition.

8. This Contract may be terminated by either party upon thirty (30) days written notice.

9. This Contract shall become effective upon execution for an indefinite term at the pleasure of the District.

IN WITNESS WHEREOF, the parties hereto have set their hands the day and year first above written.

**CENTRAL WELD COUNTY WATER
DISTRICT**

By: _____

**HOFFMANN, PARKER, WILSON
& CARBERRY, P.C.**

By: _____

Hilary M. Graham

EXHIBIT A
Scope of Services

Attorney shall work with the District and the Coalition to develop a draft establishing contract for formation of a new regional water authority by and among the Coalition. The Coalition consists of the following entities (each a "Stakeholder"):

The District, Town of Berthoud, City of Dacono; City of Evans;
Town of Frederick; Town of Johnstown; Left Hand Water District;
Little Thompson Water District; and Town of Milliken.

It is anticipated that the drafting and formation process, which will include monthly meetings with the Coalition, as well as potential meetings with individual Stakeholders will take approximately 8 months.

In addition, Attorney shall work with the District and the Coalition to finalize an intergovernmental agreement among the Coalition regarding shared water engineering services necessary for formation of the new authority. The engineering services shall be obtained by the District on behalf of the Coalition following a request for proposals process.

Attorney shall work the District and the Coalition to define and finalize the request for proposal process as well as to finalize the engineering services agreement ultimately entered into by and between the selected engineer and the District on behalf of the Coalition.

Additional services may be added in writing by the District.



IGA with CWCWB for Treatment Authority

Sarah Watson, PE

BUILT ON WHAT MATTERS



Strategic Plan



Strategic, Reliable & Sustainable Infrastructure

Built on What Matters.

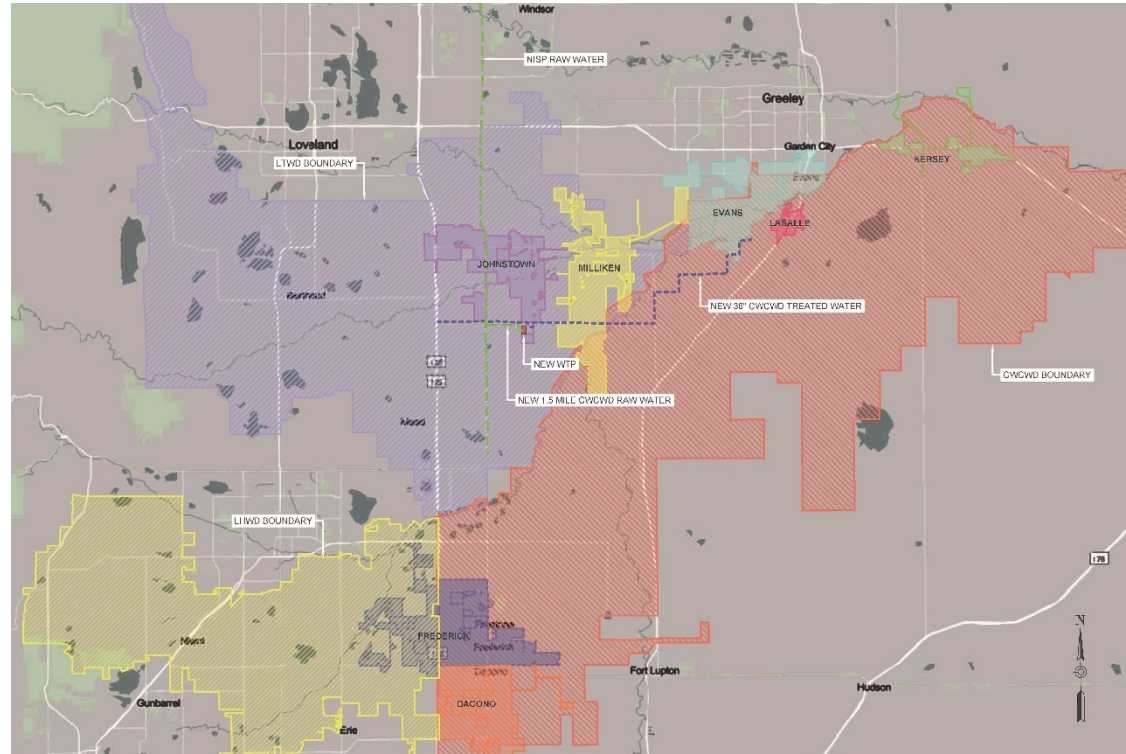


Outline

1. Background
2. IGA Request
3. Alternatives
4. Community Impact
5. Next Steps
6. Recommendation

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Background



Map of potential WTP and partners, Ally Utility Consulting

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Intergovernmental Agreement

This IGA will be between Central Weld County Water District and the other water suppliers that are exploring forming a water authority for a new water treatment facility east of I-25.

Partners:

- Left Hand Water District
- Little Thompson Water District
- CWCWD
- Johnstown
- Evans
- Berthoud
- Dacono
- Milliken



Carter Lake

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Alternatives

- Continue to investigate as the Town, additional opportunities for water treatment.
- Express that the Town is not ready to participate at this time, but that may impact the opportunity to participate in the future.



Photo by Angela Wilson

Community Impact

- Treating water as a partner in a treatment plant will come with cost benefits of scale.
 - Lower costs for treatment will mean lower rates and tap fees for our residents and future development.
- This is an opportunity for the Town to have more control over its future water treatment with less additional infrastructure that will be funded entirely by the Town.



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Next Steps



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Questions?

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Recommendation

Approval of the Intergovernmental Agreement (Staff Recommendation):

I move to approve Resolution 25-R-61 as presented.

Approval with conditions:

I move to approve Resolution 25-R-61, with the following conditions

No action:

I recommend to take no action on Resolution 25-R-61.

Built on What Matters.