



Town of Frederick
Frederick Urban Renewal Authority
Frederick Town Hall
Board Chambers
401 Locust Street
Wednesday, April 1, 2020

5:00 P.M.
Regular Meeting

In order to promote social distancing and to protect the health and safety of our Authority Members, staff, and community this meeting will be conducted via Zoom Video Communications. Interested parties are encouraged to access the meeting either via the web or by telephone. The meeting information is as follows:

Join Zoom Meeting
<https://zoom.us/j/976968118>

Meeting ID: 976 968 118

One tap mobile
+13462487799,,976968118# US (Houston)
+16699006833,,976968118# US (San Jose)

Dial by your location
+1 346 248 7799 US (Houston)
+1 669 900 6833 US (San Jose)
+1 312 626 6799 US (Chicago)
+1 929 436 2866 US (New York)
+1 253 215 8782 US
+1 301 715 8592 US

Meeting ID: 976 968 118
Find your local number: <https://zoom.us/u/ab4ZsIx0wD>

Public Comment will be accepted. To sign up to speak during Public Comment please contact the Authority Secretary Meghan Martinez at mmartinez@frederickco.gov and provide your comments. The Secretary will read your name, address and comments into the record. Members of the public may also utilize the chat feature in the Zoom Meeting but comments will only be taken up until the designated public comment time.

Please contact Assistant Meghan Martinez for questions regarding the meeting. 720-382-5581 or mmartinez@frederickco.gov



Town of Frederick
Urban Renewal Authority
Frederick Town Hall
401 Locust Street
Tuesday, April 1, 2020

5:00 P.M.

Call to Order – Roll Call:

Approval of Agenda:

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

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 an Authority 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. December 10, 2019 Minutes – Meghan Martinez, Assistant Secretary
- B. Resolution 20-FURA-01 Establishing Emergency Meeting Procedures – Rick Samson, Frederick Town Attorney

Action Agenda:

- C. Resolution 20-FURA-02 Authorizing the Executive Director to Deliver a Combined Notice of Termination and Default as provided in the Amended Agreement with BAS Colorado, LLC and to take Further Action as Appropriate– Bryan Ostler, Executive Director
- D. Resolution 20-FURA-03 Approving the Purchase and Sale Agreement with QuikTrip Corporation, an Oklahoma Corporation – Bryan Ostler, Executive Director
- E. Resolution 20-FURA-04 Approving the Purchase and Sale Agreement with 3258 State Highway 52, LLC – Bryan Ostler, Executive Director
- F. Resolution 20-FURA-05 Approving an Agreement with the Colorado Department of Transportation – Bryan Ostler, Executive Director

Adjournment:

Built on What Matters.



Frederick Urban Renewal Authority

Meeting Minutes

Frederick Town Hall, 401 Locust Street

December 10, 2019

Call to Order: At 5:30 p.m. Chairman Carey called the meeting to order and requested roll call.

Roll Call: Present were Chairman Carey and Commissioners Moreno, O'Neal, Figurilli, Crites, Vigil, and March. Commissioner DeSantis and Vice Chair Brown were not present. Also present was Authority Attorney Paul Benedetti, Bryan Ostler, and Assistant Secretary Meghan Martinez.

Approval of Agenda: Item F was removed from the agenda.

Public Comment:

Chairman Carey announced that no one had signed up for Public Comment.

Consent Agenda:

Item B was removed from the consent agenda.

Motion by Commissioner March and seconded by Commissioner Crites to approve the consent agenda which contained the following items:

- November 8, 2018 Minutes
- Resolution 19-FURA-02 Establishing the Posting Places for Frederick Urban Renewal Authority Meeting Agendas for 2020

Upon roll call vote, motion passed unanimously.

Resolution 19-FURA-01 Ratifying the Administrative Action Approving the Talbert Building URA Development Plan: Jason Hepp, 528 A Street Berthoud, addressed the authority. Motion by Commissioner Crites and seconded by Commissioner Moreno to approve 19-FURA-01. Upon roll call vote, motion passed 6-1 with Commissioner Figurilli voting no.

Action Agenda:

Resolution 19-FURA-03 Appoint an Executive Director/Secretary: Assistant Secretary Meghan Martinez presented the proposed resolution. Motion by Commissioner Figurilli and seconded by Commissioner Crites to approve Resolution 19-FURA-03. Upon roll call vote, motion passed unanimously.

Resolution 19-FURA-04 Acknowledging Receipt of FY 2020 Preliminary Budget: Finance Director Jason Leslie presented the proposed resolution. Motion by Commissioner Crites and seconded by Commissioner O'Neal to approve Resolution 19-FURA-04. Upon roll call vote, motion passed unanimously.

Public Hearing Resolution 19-FURA-05 Adopting the Annual Budget and Appropriating Expenditures for the Frederick Urban Renewal Authority for Fiscal Year 2020: Finance Director Jason Leslie presented the proposed resolution.

At 5:36 Chairman Carey opened the public hearing.

At 5:36 Chairman Carey closed the public hearing.

Motion by Commissioner Crites and seconded by Commissioner March to approve Resolution 19-FURA-05. Upon roll call vote, motion passed unanimously.

Resolution 19-FURA-06 Combined Notice of Termination and Default with BAS Colorado LLC: Executive Director Bryan Ostler presented the proposed Resolution. Motion by Commissioner Moreno and seconded by Commissioner O'Neal to table the item to the January 15, 2020 FURA Meeting at 4:00. Upon roll call vote, motion passed unanimously.

At 5:45 Vice Chair Brown joined the meeting.

Resolution 19-FURA-07 Approving the Amendment No. 2 to the Redevelopment and Reimbursement Agreement with Meadowlark Industrial, LLC: Deputy Executive Director Kirstyn Jovanovich presented the proposed resolution. Motion by Commissioner Crites and seconded by Commissioner March to approve Resolution 19-FURA-07. Upon roll call vote, motion passed unanimously.

There being no further business of the Authority, Chairman Carey closed the meeting at 5:50 p.m.

Approved by the Frederick Urban Renewal Authority

Tony Carey, Chair

ATTEST:

Meghan C. Martinez, Assistant Secretary



TOWN OF FREDERICK Urban Renewal Authority Action Memorandum

Tony Carey, Chair

Laura Brown, Vice Chair
Rocky Figurilli, Authority Member
Salvatore "Sam" DeSantis, Authority Member
Chris Vigil, Authority Member
Dan March, Authority Member

Steve Moreno, Authority Member
Tracie Crites, Authority Member
Chico Garcia, Authority Member
Rusty O'Neal, Authority Member
Vacant, Authority Member

A Resolution Establishing Emergency Procedures for the Urban Renewal Authority

Agenda Date: Urban Renewal Authority Meeting – April 1, 2020

Attachments:
a. Resolution 20-FURA-01
b. Exhibit A

Finance Review: _____
Finance Director

Submitted by: Rick Samson
Frederick Town Attorney

Approved for Presentation: 
Executive Director

Quasi-Judicial Legislative Administrative

Summary Statement:

This is a request to approve a resolution establishing emergency meeting procedures as a result of the State-wide health crisis.

Detail of Issue/Request:

As a result of the State of Emergency declared by Colorado Governor Polis and the corresponding state emergency declared by the Frederick Board of Trustees which amounts to a stay at home order, these emergency procedures allow the Frederick Urban Renewal Authority (FURA) to conduct necessary business with Commissioners appearing remotely.

Legal/Political Considerations:

The resolution was drafted by the Frederick Town Attorney.

Built on What Matters.

Alternatives/Options:

Without these procedures the Commission could not act.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends approval of the resolution as presented.

**FREDERICK URBAN RENEWAL AUTHORITY
RESOLUTION NO. 20-FURA-01**

**A RESOLUTION OF THE FREDERICK URBAN RENEWAL
AUTHORITY ESTABLISHING EMERGENCY MEETING
PROCEDURES**

WHEREAS, on March 10, 2020, Jared Polis, the Governor of the State of Colorado, declared a state-wide state of emergency in response to the spread of coronavirus (COVID-19) within the State of Colorado; and

WHEREAS, on March 19, 2020 the Mayor of the Town of Frederick declared a local disaster pursuant to CRS §24-33.5-701 *et seq.*; and

WHEREAS, pursuant to CRS 24-33.5-709(1) the Board of Trustees of the Town of Frederick confirmed the Mayor's declaration of a local disaster that protecting the public health of the Town of Frederick is the Board's top priority; and

WHEREAS, the Frederick Urban Renewal Authority (FURA) was established by the Frederick Board of Trustees on May 14, 2013; and

WHEREAS, the Board of Trustees is empowered by CRS § 31-15-401(1)(b), "to do all acts and make all regulations which may be necessary or expedient for the promotion of health or the suppression of disease"; and

WHEREAS, the Commissioners of the Frederick Urban Renewal Authority finds and determines that it is necessary for FURA to operate under emergency meeting procedures.

BE IT RESOLVED BY THE COMMISSIONERS OF THE FREDERICK URBAN RENEWAL AUTHORITY AS FOLLOWS:

Section 1. This resolution shall be known and may be cited as the "Frederick Urban Renewal Authority Emergency Meeting Procedures."

Section 2. The Commissioners of the Frederick Urban Renewal Authority approve the emergency meeting procedures, attached hereto as Exhibit A. Any reference to "Board of Trustees" therein shall be interpreted to also mean "Frederick Urban Renewal Authority."

Section 3. Conflict with Other Laws. If any provision of this resolution conflicts with any provision of the Frederick Municipal Code, or any provision of the Board of Trustees' Procedures and Rules of Order, this resolution shall control.

Section 4. Effective Date. This resolution shall become effective immediately upon adoption.

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

Section 6. Certification. The Authority Secretary shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND SIGNED 1ST DAY OF APRIL, 2020.

ATTEST:

**FREDERICK URBAN RENEWAL
AUTHORITY**

By _____
Executive Director/Secretary

By _____
Tony Carey, Chair

EXHIBIT A

Board of Trustees Meeting Procedures.

- a. For the duration of the public health emergency, if a member of the Board of Trustees reasonably determines that his or her personal attendance at a Board of Trustees meeting would not be prudent, such Board of Trustee member may participate by telephone, video conferencing, or other electronic means to any Board of Trustee meeting (“Electronic Participation”). Such Board of Trustee member participating via telephone or other electronic means shall be deemed present for purposes of determining a quorum. Such member of Board of Trustees may participate and vote on any matter on the agenda including quasi-judicial matters. Electronic Participation is also available to a Board of Trustees member during an executive session.
- b. The Board of Trustees may discontinue the use of Electronic Participation by one or more members during a meeting where the participation results in delays or interference in the meeting process; e.g., where the telephone connection or connection by other electronic means is repeatedly lost, the quality of the connection is unduly noisy or otherwise problematic to the conduct of the meeting, or the listening member is unable to hear speakers using a normal speaking voice amplified to a level suitable for the meeting audience in attendance.
- c. Quasi-Judicial Matters. In the event that a quasi-judicial matter is scheduled for a public hearing at a meeting during the time a local or state-wide emergency is in effect, the Town shall advise the applicant of such circumstances and present the applicant with two options for proceeding with the application. The applicant shall authorize the Town, in writing, to proceed with one of the following options.
 - 1) Conduct the public hearing under this policy with accommodations made for electronic public participation and waive any legal challenge to the hearing conducted electronically; or
 - 2) Suspend any and all review and decisions deadlines until such time that the local or state-wide emergency is lifted and the Town Board schedules a regular meeting at which a quorum will be physically present.
- d. Whenever a Board of Trustees member is allowed to participate in a Board of Trustees meeting by telephone or other electronic means pursuant to this Rule, the following additional rules shall be observed:
 - i. All members of the Board of Trustees must be able to hear one another or

otherwise communicate with one another, and be able to hear all discussion and testimony in a manner designed to provide maximum notice and participation;

- ii. Members of the public present at the meeting location must be able hear all discussion, testimony, and votes;
- iii. All votes held at the meeting shall be conducted by roll call.
- iv. To the extent possible, full and timely notice shall be given to the public, advising that one or more members of the Board of Trustees may participate in the meeting electronically.
- e. In the event it is necessary to conduct a meeting electronically, the meeting shall be conducted using a platform like Zoom or GoToMeeting which shall be made available to the general public subject to the constraints of subsection b. above. Notifications shall be posted on the Town website.
- f. Whenever the public health emergency makes it imprudent or impossible for Board of Trustees, or any Town board, commission, or committee, to meet at a previously scheduled date and time, such meeting shall be deemed to be postponed until a quorum of the Board of Trustees, commission, or committee is able to meet, not to exceed one (1) week.
- g. Any official act or meeting required to be performed at any regular location of the Board of Trustees board, commission, or committee or any Town department is valid when performed at any temporary location under this section.
- h. The provisions of this section shall apply to all executive, legislative, and judicial branches, powers and functions conferred upon the Town and its officers, employees, and authorized agents by the Colorado Constitution, Colorado Statutes, the Town Municipal Code.



TOWN OF FREDERICK Urban Renewal Authority Action Memorandum

Tony Carey, Chair

Laura Brown, Vice Chair
Rocky Figurilli, Authority Member
Salvatore "Sam" DeSantis, Authority Member
Chris Vigil, Authority Member
Dan March, Authority Member

Steve Moreno, Authority Member
Tracie Crites, Authority Member
Chico Garcia, Authority Member
Rusty O'Neal, Authority Member
Vacant, Authority Member

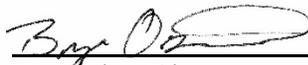
A Resolution Authorizing the Executive Director to Deliver a Combined Notice of Termination and Default to BAS Colorado LLC

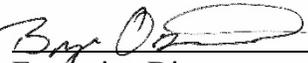
Agenda Date: Urban Renewal Authority Meeting – April 1, 2020

Attachments:

- a. Resolution 20-FURA-02
- b. Amendment No. 4 – November 8, 2018
- c. Exhibit C – Schedule of Performance

Finance Review: _____
Finance Director

Submitted by: 
Executive Director

Approved for Presentation: 
Executive Director

Quasi-Judicial Legislative Administrative

Summary Statement:

This is a request to approve a resolution to authorize the Executive Director to deliver a combined notice of termination and default to BAS Colorado LLC with respect to redevelopment of the Former Public Works Building Urban Renewal Area. This item was tabled from the December 10, 2019 Authority meeting.

Detail of Issue/Request:

The Frederick Urban Renewal Authority and BAS Colorado LLC entered into a Disposition and Development Agreement dated September 8, 2015, which was subsequently amended four times granting time extensions for BAS Colorado LLC to redevelop the property in accordance with the amended agreement and plan.

To date, BAS Colorado has not completed items 8, 10 and 14 through 18 listed in the Schedule of Performance. The deadlines for these items have passed. In addition, the Executive Director and staff have made multiple attempts to contact BAS to determine the project's status and after several unsuccessful attempts, made contact with a BAS representative. This request was originally on the Authority's December 10, 2019 meeting agenda and when reached by telephone, BAS indicated a representative would attend the meeting; however, a BAS representative did not attend the meeting and the Authority tabled the item. Since then, no further action has been taken by BAS Colorado to move the project forward.

Legal/Political Considerations:

The resolution was drafted by the URA Attorney.

Alternatives/Options:

The URA could choose to not call default or termination on the project.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends approval of the resolution as presented.

**FREDERICK URBAN RENEWAL AUTHORITY
RESOLUTION NO. 20-FURA-02**

**A RESOLUTION AUTHORIZING THE EXECUTIVE DIRECTOR TO DELIVER
A COMBINED NOTICE OF TERMINATION AND DEFAULT AS PROVIDED IN
THE AMENDED AGREEMENT WITH BAS COLORADO LLC AND TO TAKE
FURTHER ACTION AS APPROPRIATE**

WHEREAS, the Frederick Urban Renewal Authority (the “Authority”) and BAS Colorado LLC (the “Redeveloper”) entered into a Disposition and Development Agreement dated as of September 8, 2015, as amended by Amendment No. 1 dated as of February 23, 2016, Amendment No. 2 dated as of October 27, 2016, Amendment No. 3 dated as of December 13, 2017, and Amendment No. 4 dated as of November 8, 2018, (collectively, the “Amended Agreement”) with respect to redevelopment of the Former Public Works Building Urban Renewal Area; and

WHEREAS, in each of the Amendments Nos. 1 through 4 recited above, the Authority has granted extensions of time for the Redeveloper to take title to the Property described in the Amended Agreement and to redevelop the Property in accordance with Amended Agreement and the Plan; and

WHEREAS, the Redeveloper has failed to perform each of the required actions listed in Nos. 8, 10 and 14 through 18 of the attached Amendment No. 4 and other applicable provisions of the Amended Agreement and after repeated attempts by the Executive Director and staff of the Town of Frederick to obtain information as to the reason for such failures advised that the Redeveloper has failed to secure the financing necessary to perform the Amended Agreement, including construction of the improvements required by the Amended Agreement; and

WHEREAS, it is necessary and in the public interest that the Authority exercise its rights to terminate the Amended Agreement in accordance with the provisions of Sections 1 and 2 listed below and to authorize the Chair and Executive Director to take such further actions as may be required to enforce the provisions of the Amended Agreement.

BE IT RESOLVED BY THE COMMISSIONERS OF THE FREDERICK URBAN RENEWAL AUTHORITY, AS FOLLOWS:

Section 1. The Executive Director is authorized and directed to prepare and deliver to the Redeveloper a combined notice of (a) termination of the Amended Agreement under Sections 15.02 and 15.03 of the Amended Agreement and (b) default under Sections 16.01 and 16.04 of the Amended Agreement.

Section 2. Such notice shall require the Redeveloper to undertake curative action as required under applicable provisions of the Amended Agreement within thirty (30) days of receipt of such notice or the Amended Agreement shall be terminated and rendered null and void.

Section 3. The Chair, in consultation with the Executive Director and legal counsel, is authorized to review any reasonable curative action, if any, undertaken by the Redeveloper and to suspend the effect of termination of the Amended Agreement pending presentment of such curative action, including written agreements proposed or agreed to by the Redeveloper, to the Board of Commissioners for consideration and approval, but nothing herein shall require the Authority to approve any such curative action.

Section 4. This resolution shall become effective immediately upon adoption.

Section 5. The Authority Secretary shall certify to the passage of this resolution and make not less than one copy of the adopted resolution available for inspection by the public during regular business hours.

INTRODUCED, READ, PASSED, AND SIGNED THIS 1ST DAY OF APRIL, 2020.

ATTEST:

FREDERICK URBAN RENEWAL AUTHORITY

By: _____
Executive Director/Secretary

By: _____
Tony Carey, Chair

**AMENDMENT NO. 4
TO DISPOSITION AND DEVELOPMENT AGREEMENT**

1.0 **PARTIES.** The parties to this Amendment (“Amendment No. 4”) are the FREDERICK URBAN RENEWAL AUTHORITY, a body corporate of the State of Colorado (the “Authority”) and BAS COLORADO LLC, a Colorado limited liability company (the “Redeveloper”) (the Authority and the Redeveloper are referred to collectively as the “Parties” or individually as a “Party”).

2.0 **RECITAL.** The Parties entered into a Disposition and Development Agreement dated as of September 8, 2015, as amended by Amendment No. 1 dated as of February 23, 2016, Amendment No. 2 dated as of October 27, 2016, and Amendment No. 3 dated as of December 13, 2017 (collectively, as amended, the “Agreement”). The Parties have determined it is necessary to modify the Agreement in accordance with this Amendment No. 4. Capitalized terms not otherwise defined herein shall have the meaning stated in the Agreement.

3.0 **TERMS AND CONDITIONS.** In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as set forth in this Amendment No. 4.

4.0 **EXHIBIT C – SCHEDULE OF PERFORMANCE (REVISED – Fourth Amendment).** The dates for performance of all events listed in the Agreement are hereby amended and restated as set forth in Exhibit C – Schedule of Performance (Revised – Fourth Amendment) attached hereto and incorporated herein as governing the performance of the Parties.

4.0 **EFFECT.** Except as modified by this Amendment No. 4, the provisions of the Agreement shall remain unchanged and in full force and effect and fully binding on the Parties, their successors and assigns, and the Agreement and this Amendment No. 4 shall be construed together as a single integrated document. The person signing this Amendment No. 4 on behalf of the Redeveloper represents and warrants that he or she is fully authorized to execute and bind the Redeveloper to this Amendment No. 4.

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of _____, 2018.

ATTEST:

THE FREDERICK URBAN RENEWAL AUTHORITY

Chair

Secretary

BAS COLORADO LLC

By: _____
Scott A. Beard, Manager

EXHIBIT C - SCHEDULE OF PERFORMANCE

<u>Event</u>	<u>Date or Time</u>
1. Effective Date	Completed
2. Title Information Deadline	Completed
3. Title Objection Deadline	Completed
4. Survey and Testing Deadline	Completed
5. Survey and Testing Objection Deadline	Completed
6. Feasibility Analysis Objection Deadline	Completed
7. Development Plan Submission	Completed
8. Development Plan Approval	November 15, 2018
9. Design Development Documents Submission	Completed
10. Design Development Documents Approval	November 15, 2018
11. Construction Documents Submission	Completed
12. Construction Documents Approval	Completed
13. Redeveloper Financing Approval	Completed
14. Closing	On or before December 10, 2018
15. Commencement of Construction	45 days after Closing
16. Completion of Construction	May 30, 2019
17. Certificate of Occupancy	May 30, 2019
18. Certificate of Completion	May 30, 2019



TOWN OF FREDERICK Urban Renewal Authority Action Memorandum

Tony Carey, Chair

Laura Brown, Vice Chair
Rocky Figurilli, Authority Member
Salvatore "Sam" DeSantis, Authority Member
Chris Vigil, Authority Member
Dan March, Authority Member

Steve Moreno, Authority Member
Tracie Crites, Authority Member
Chico Garcia, Authority Member
Rusty O'Neal, Authority Member
Vacant, Authority Member

A Resolution Approving a Purchase and Sale Agreement with QuikTrip Corporation

Agenda Date: Urban Renewal Authority Meeting – April 1, 2020

Attachments:
a. Resolution 20-FURA-03
b. Purchase and Sale Agreement

Finance Review: _____
Finance Director

Submitted by: _____
Executive Director

Approved for Presentation: _____
Executive Director

Quasi-Judicial Legislative Administrative

Summary Statement:

This is a request to approve a resolution to enter into a Purchase and Sale Agreement between the Frederick Urban Renewal Authority (FURA) and QuikTrip Corporation.

Detail of Issue/Request:

This is the first of three agreements related to the CDOT property at the corner of I-25 and Highway 52. This is a request to approve a resolution to enter into a Purchase and Sale Agreement with QuikTrip Corporation. The agreement is provided to the FURA Board as part of this agenda item.

Legal/Political Considerations:

The resolution was drafted by the Frederick Town Attorney.

Alternatives/Options:

The URA could choose to not enter into the agreement.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends approval of the resolution as presented.

**FREDERICK URBAN RENEWAL AUTHORITY
RESOLUTION NO. 20-FURA-03**

**A RESOLUTION OF THE FREDERICK URBAN RENEWAL
AUTHORITY APPROVING A PURCHASE AND SALE AGREEMENT
WITH QUIKTRIP CORPORATION, AN OKLAHOMA CORPORATION**

WHEREAS, the Frederick Urban Renewal Authority, hereafter known as the FURA, wishes to enter into a Purchase and Sale Agreement (“AGREEMENT”) with QUIKTRIP Corporation, an Oklahoma Corporation.

BE IT RESOLVED BY THE COMMISSIONERS OF THE FREDERICK URBAN RENEWAL AUTHORITY, AS FOLLOWS:

Section 1. The Commissioners approve the AGREEMENT and authorize the Chair to execute the AGREEMENT.

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

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

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

INTRODUCED, READ, PASSED, AND SIGNED 1ST DAY OF APRIL, 2020.

ATTEST:

**FREDERICK URBAN RENEWAL
AUTHORITY**

By _____
Executive Director/Secretary

By _____
Tony Carey, Chair

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is entered into by and between the FREDERICK URBAN RENEWAL AUTHORITY, a political subdivision of the State of Colorado, organized and existing under the Urban Renewal Law, Part 1 of Article 25, Title 31, C.R.S., as amended ("**Seller**"), and QUIKTRIP CORPORATION, an Oklahoma corporation ("**Buyer**"), to be effective as of the ___ day of _____, 2020 (the "**Effective Date**").

RECITALS

A. The Colorado Department of Transportation ("**CDOT**") is the owner of approximately 7.52 acres and situated in the Town of Frederick, County of Weld, State of Colorado, as further described and depicted on *Exhibit A* attached hereto and incorporated by reference (the "**Property**").

B. Seller intends to acquire certain real property to support the construction of new CDOT facilities (the "**Relocation Parcel**"). Any agreement entered into by Seller for the acquisition of the Relocation Parcel, or other in-kind transaction in Seller's sole but reasonable determination and discretion in order to effect the relocation transactions contemplated herein and in the CDOT Relocation Agreement and PSA (defined below), shall be referred to as the "**Relocation Parcel PSA**."

C. Seller and CDOT are presently negotiating the terms and conditions of an agreement whereby CDOT shall sell to Seller and Seller shall purchase from CDOT, fee simple title to the Property and Seller shall convey the Relocation Parcel to CDOT as a replacement site for the relocation of CDOT's operations (the "**CDOT Relocation Agreement and PSA**"). The CDOT Relocation Agreement and PSA shall provide, *inter alia*, for the construction or renovation by Seller of certain improvements for the use and benefit of CDOT (the "**CDOT Improvements**") on the Relocation Parcel and for the vacation of the Property by CDOT.

D. Subject to (i) the successful closing by Seller of the acquisition of the Relocation Parcel PSA pursuant to the terms and conditions of the Relocation Parcel PSA (the "**Relocation Parcel Closing**"), (ii) consummation of the relocation transactions set forth in the CDOT Relocation Agreement and PSA, and (iii) acquisition of the Property by Seller from CDOT pursuant to the CDOT Relocation Agreement and PSA (collectively, the "**CDOT Sale Closing**"), Buyer desires to purchase the Property, exclusive of any water, mineral or geothermal rights, from Seller and Seller desires to sell the Property to Buyer (the "**QuikTrip Closing**"), subject to the terms and conditions contained herein.

E. The parties intend to effect the CDOT Sale Closing wherein Seller acquires the Property from CDOT and then conveys the Property, excluding any water, mineral or geothermal rights to Buyer, as two immediately successive transactions on the same closing date (referred to herein as the "**Cumulative Sale Date**").

COVENANTS

NOW THEREFORE, IN CONSIDERATION of the foregoing recitals which are incorporated herein by reference, of the mutual covenants and agreements contained herein, and of

other good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the parties hereto agree as follows:

ARTICLE 1. PURCHASE AND SALE

Section 1.01. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to acquire from CDOT, then sell and convey to Buyer, and Buyer agrees to purchase and pay for the Property, together with all improvements thereon and all rights and appurtenances pertaining thereto, including any right, title and interest of Seller, if any, in and to appurtenant easements and rights of way, adjacent streets, alleys or rights-of-way, and all of Seller's right, title and interest, if any, in and to all strips and gores of land, but excluding, and which shall remain reserved as the property of Seller, any a) oil, gas, and minerals of whatever type and character including (i) hydrocarbon substances in or under or that may be produced from, or are appurtenant to the Property, (ii) benefits and rights of Seller pursuant to any oil and gas lease, including any and all royalties, bonuses and payments due thereunder, (iii) other benefits and rights accruing to the owner of minerals by applicable law, and (iv) any geothermal resources of any kind in, upon, under, or that may be produced from the Property and (b) any water and water rights, ditch and ditch rights, reservoirs, water wells and well rights, whether tributary or nontributary, on, underlying, appurtenant to or used or to be used on or in conjunction with the Property, whether appropriated, conditionally appropriated or unappropriated, and whether adjudicated or unadjudicated, including any and all (i) rights of use, reuse and successive use together with all recirculated irrigation water supplies, surface runoff, irrigation return flow, and domestic municipal affluent flows and (ii) well permits, water taps, permit applications, decrees, pending water court applications, well registration statements and any well equipment, personalty, fixtures, transmission lines and related equipment used for the supply, storage, treatment and distribution of such water and water rights, underlying, or appurtenant to, the Property. Notwithstanding the foregoing, except as expressly stated otherwise in this Agreement, Buyer understands and agrees that it is purchasing the Property on an "AS IS" "WHERE IS" physical basis, "WITH ALL FAULTS," without representation or warranty, express or implied, by Seller with regard to physical condition, except as expressly provided herein or in the deed conveying the Property to Buyer.

1.1. **Purchase Price.** The purchase price ("**Purchase Price**") for the Property shall be Four Million Five Hundred Thousand U.S. Dollars (\$4,500,000.00), payable as follows:

1.1.1. **Initial Deposit.** Within three (3) days following the Effective Date, Buyer shall deposit the sum of One Hundred Thousand U.S. Dollars (\$100,000.00) in cash or by certified or wire transfer funds (the "**Initial Deposit**") with Stewart Title, Attn: Suzanne Killmer, 55 Madison Street, Suite 400, Denver, Colorado (the "**Title Company**"). The Initial Deposit, Relocation Parcel Funds (defined below), and Improvement/Relocation Funds are collectively referred to herein as the "**Deposit**." The Initial Deposit shall be refundable until the end of the Due Diligence Period. The Deposit shall be deposited with and held by the Title Company in an interest bearing account with interest accruing thereon for the benefit of the party entitled to the Deposit in accordance herewith. At the end of the Due Diligence Period as defined in Section 4.1 hereof, unless this Agreement is terminated by Buyer in accordance with said Section 4.1 below, the Deposit shall become non-refundable, except if Seller is in default under this Agreement or as specifically provided herein. The Deposit shall be credited towards the Purchase Price payable to Seller at the QuikTrip Closing, and shall be distributed by the Title Company as set forth herein.

1.1.2. Relocation Parcel Funds. Upon the expiration of the Due Diligence Period, if the Buyer has not elected to terminate this Agreement pursuant to Section 4.1 below, then Buyer shall deposit funds with the Title Company in the amount of One Million & 00/100 U.S. Dollars (\$1,000,000.00) (the “**Relocation Parcel Funds**”) which shall be nonrefundable to Buyer except as a result of: (i) an uncured event of default hereunder by Seller, or (ii) Seller has not completed the Relocation Parcel Closing on or before six (6) months after expiration of the Due Diligence Period (the “**Relocation Parcel Closing Deadline**”), provided, however, that the Relocation Parcel Funds shall remain nonrefundable to Buyer if any such delay in closing the acquisition of the Relocation Parcel is caused solely by an act or failure to act by either CDOT under the CDOT Relocation Agreement and PSA or the selling entity under the Relocation Parcel PSA, and further provided, that Buyer must not then be in default of any of its obligations under this Agreement. The Title Company shall release the Relocation Parcel Funds to Seller at the Relocation Parcel Closing, which Seller may apply towards the acquisition price for the Relocation Parcel in Seller’s sole determination, discretion, and direction and any such released amount shall be credited against the Purchase Price for the QuikTrip Closing.

1.1.3. Improvement/Relocation Funds. Seller shall determine, in Seller’s sole but good faith determination in cooperation with CDOT, the amount required to construct the CDOT Improvements on the Relocation Property all as reasonably determined by Seller (collectively, the “**Improvement/Relocation Funds**”), and which Improvement/Relocation Funds payable by Buyer shall not in any event exceed Three Million Two Hundred Thousand & 00/100 U.S. Dollars (\$3,200,000.00). Seller shall provide written notice to Buyer of the final amount of the Improvement/Relocation Funds as soon as reasonably practicable. Unless this Agreement has been earlier terminated by Buyer or Seller as expressly permitted herein, Buyer shall deposit the Improvement/Relocation Funds with the Title Company on or before the Relocation Parcel Closing (or such earlier date as mutually agreed by the parties in writing), and the Improvement/Relocation Funds shall be non-refundable to Buyer except as a result of: (i) an uncured event of default hereunder by Seller, or (ii) as of the Cumulative Sale Date, CDOT has not vacated the Property solely as a result of an uncured event of default by Seller to have fulfilled Seller’s obligations under the CDOT Relocation Agreement and PSA to construct the CDOT Improvements, but provided, however, that the Improvement/Relocation Funds shall remain non-refundable to Buyer if any such delay in completing the construction and/or renovation of the CDOT Improvements is caused solely by an act or failure to act by either CDOT under the CDOT Relocation Agreement and PSA or, the selling entity under the CDOT Relocation PSA and, further provided, that Buyer must not then be in default of any of its obligations under this Agreement. The Title Company shall release the Improvement/Relocation Funds to Seller at the Relocation Parcel Closing, or earlier, if designated in writing by Seller and Buyer, and any such released amount shall be credited against the Purchase Price for the QuikTrip Closing. Seller may apply any released Improvement/Relocation Funds in its sole discretion for the construction of the CDOT Improvements.

1.1.4. Closing Payment. The balance of the Purchase Price, after application of the Deposit, and subject to other closing adjustments and credits in accordance with this Agreement, shall be paid by Buyer at the closing of the purchase and sale of the Property from Seller to Buyer provided for in Article 5 (the “**QuikTrip Closing**”) by delivery of good funds to the Title Company.

ARTICLE 2. REQUIREMENTS FROM SELLER

2.1. Items to be Delivered to Buyer. Seller shall, at Seller's expense, deliver or cause to be delivered to Buyer, the following items relating to the Property:

2.1.1. Title Commitment. Within ten (10) business days following the Effective Date (or three (3) business days following receipt of the same by Seller from CDOT, if later, but in any event not later than thirty (30) days following the Effective Date), an owner's title insurance commitment issued by the Title Company showing the status of record title to the Property (a "**Commitment**") and committing to insure, subject to the exceptions and requirements set forth therein, title to the Property in Buyer in the amount of the Purchase Price under a 2006 ALTA standard owner's policy. Seller shall cause the Title Company to deliver to Buyer legible copies of all recorded documents referred to in the Commitment. The Commitment, together with the Schedule B-2 documents referenced therein are referred to collectively herein as "**Title Documents**."

2.1.2. Survey. Within ten (10) business days following the Effective Date (or three (3) business days following receipt of the same by Seller from CDOT, if later, but in any event not later than thirty (30) days following the Effective Date), a copy of any existing survey of the Property currently in the possession of Seller or upon Seller's receipt of the same from CDOT, if any (collectively, the "**Existing Survey**"). Buyer may, at Buyer's expense, cause the Existing Survey to be updated and/or obtain a new ALTA survey of the Property, which shall also be certified to Seller, (such updated or new survey hereinafter described as the "**Survey**") sufficient to satisfy the requirements of the Title Company for issuance of an ALTA extended owner's title insurance policy, including the deletion of the standard printed survey exceptions. In the event the QuikTrip Closing does not occur for any reason, any updates to any existing Survey, or any new Survey, shall belong to and shall be delivered to Seller, without cost to Seller.

2.1.3. Due Diligence Documents. Within ten (10) business days following the Effective Date (or three (3) business days following receipt of the same by Seller from CDOT, but in any event not later than thirty (30) days following the Effective Date), a copy of, to the extent they exist, if at all, in Seller's possession or control: (i) all soil, geological, engineering, environmental, and governmental reports and studies relating to the Property obtained by, for the benefit of or on behalf of Seller or otherwise not subject to any confidentiality or non-disclosure restriction which would restrict delivery to Buyer, (ii) any appraisals of the Property, (iii) all environmental audits and reports of the Property, and (iv) all other material information regarding the Property (collectively, the "**Due Diligence Documents**"). In the event the QuikTrip Closing does not occur for any reason, any updates to any Due Diligence Documents, or any new Due Diligence Documents, to the extent that the same do not contain any proprietary or confidential information as determined by Buyer in its sole discretion, shall belong to and shall be delivered to Seller, without cost to Seller.

2.2. CDOT Relocation Agreement and PSA. Within sixty (60) days following the Effective Date (the "**Relocation Agreements Deadline**"), Seller and CDOT shall have negotiated and entered into the CDOT Relocation Agreement and PSA. Upon entering into the CDOT Relocation Agreement and PSA, Seller shall provide written notice thereof to Buyer. At minimum, the CDOT Relocation Agreement and PSA shall provide for the sale of the Property from CDOT to Seller on or before the Cumulative Sale Date, time being of the essence, and for the vacation of the Property by CDOT on or

before the Cumulative Sale Date. In the event that Seller and CDOT shall not have entered into the CDOT Relocation Agreement and PSA on or before the Relocation Agreements Deadline for any reason despite Seller's good faith efforts to do so, Seller or Buyer may elect to terminate this Agreement by providing written notice to the other party within five (5) business days following the Relocation Agreements Deadline.

2.3. Relocation Parcel PSA. Seller shall exercise commercially reasonable efforts to negotiate and enter into the Relocation Parcel PSA on or before the Relocation Agreements Deadline. Upon entering into the Relocation Parcel PSA, Seller shall provide written notice thereof to Buyer, which notice shall also include all due diligence contingency deadlines applicable to Seller (in Seller's role as the purchaser of the Relocation Parcel) set forth in the Relocation Parcel PSA together with the date of the Relocation Parcel Closing and such other information reasonably required by Buyer in order to effect the transactions contemplated herein. In the event that Seller shall not have entered into the Relocation Parcel PSA on or before the Relocation Agreements Deadline for any reason despite Seller's good faith efforts to do so, Seller or Buyer may elect to terminate this Agreement by providing written notice to the other party within five (5) business days following the Relocation Agreements Deadline, whereupon the Deposit shall be returned to Buyer provided Buyer is not then in Default.

2.4. CDOT Improvements. Promptly following the release of Improvement/Relocation Funds to Seller pursuant to Section 1.1.3 above, Seller shall commence and thereafter diligently carry out (subject to delays caused by force majeure) the design and construction/renovation of the CDOT Improvements pursuant to the terms and conditions of the CDOT Relocation Agreement and PSA.

ARTICLE 3. REPRESENTATIONS AND WARRANTIES

3.1. Seller's Representations. Seller represents and warrants to Buyer as of the date of this Agreement and as of the Cumulative Sale Date (as defined in Section 5.1 below) as follows:

3.1.1. Status and Authority. The execution and delivery of this Agreement, and Seller's performance of its obligations under this Agreement, are within Seller's powers and have been duly authorized by all necessary action. The person executing this Agreement on behalf of each Seller has the authority so to act on behalf of Seller.

3.1.2. No Litigation. There is no litigation pending or, to the best of Seller's knowledge, threatened, which would materially affect the Property or Seller's interest therein.

3.1.3. Foreign Person. Seller is not a "foreign person" within the meaning of Sections 1445(f)(3) and 7701(a)(30) of the Internal Revenue Code of 1986 and Seller will furnish to Buyer at the QuikTrip Closing an affidavit confirming the same.

3.1.4. Condemnation. The Property has not been condemned and, to Seller's knowledge, there are no presently pending or threatened condemnation, eminent domain, or similar proceedings with respect to the Property, or any part thereof, nor has Seller received any notice of any condemnation actions being contemplated.

3.1.5. No Violation. Seller has received no written notice from any county, state or other government or quasi governmental authority of any violation of any statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, with respect to the Property, which violation has not been corrected.

3.1.6. Hazardous Substances. Seller has received no notice, that has not been delivered to Buyer, that (i) the Property is in violation of any federal, state and local laws, ordinances and regulations applicable to the Property with respect to hazardous or toxic substances or industrial hygiene (collectively, "**Environmental Laws**") or (ii) that any owner or tenant of any portion of the Property has owned, used, generated, manufactured, stored, handled, released or disposed of any hazardous or toxic substances on the Property in violation of applicable Environmental Laws.

3.1.7. Accuracy of Statements. The documents delivered or made available to Buyer in accordance with this Agreement are materially true and complete copies of the documents as they exist in Seller's possession.

Seller covenants and agrees that each representation and warranty contained herein by or on behalf of Seller shall be deemed restated by Seller at the QuikTrip Closing and shall survive the QuikTrip Closing for a period of six (6) months. If Seller or Buyer becomes aware of any facts or circumstances prior to the QuikTrip Closing which would render any of the foregoing representations and warranties materially false or misleading, the discovering party will promptly deliver written notice to the other party with respect thereto, and Seller shall have a reasonable opportunity (not to exceed thirty (30) days) to cure any materially false or misleading representation or warranty. Should Seller fail to cure any materially untrue or misleading representation or warranty above, then Buyer may elect, in Buyer's sole determination, to terminate this Agreement and the Initial Deposit shall be returned to Buyer; and further provided, however, in the event that such failure to cure any materially untrue or misleading representation or warranty in Sections 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.1.5, or 3.1.6 is caused by the grossly negligent, fraudulent, or intentional act of Seller or failure to act where a duty existed by Seller, and such uncured representation or warranty results in the failure of Seller to deliver title to the Property to Buyer, then the Initial Deposit shall be returned to Buyer upon termination and the remainder of the Deposit shall be returned to Buyer within 365 days of termination.

3.2. Buyer's Representations. Buyer hereby represents and warrants to Seller as of the date of this Agreement and as of the Cumulative Sale Date as follows:

3.2.1. Status and Authority. Buyer is a corporation, duly organized and legally existing under the laws of the State of Oklahoma and qualified to conduct business in the State of Colorado. The execution and delivery of this Agreement, and Buyer's performance of its obligations under this Agreement, are within Buyer's powers and have been duly authorized by all necessary company action. The person executing this Agreement on behalf of Buyer has the authority so to act.

3.2.2. Valid and Enforceable. This Agreement constitutes the legal, valid and binding obligation of Buyer and is enforceable against Buyer in accordance with its terms.

3.2.3. No Consents. No consent, approval, or authorization of any third party is required in connection with the valid execution of this Agreement or to permit the consummation of the transaction contemplated hereby, and the execution, delivery and performance of this Agreement by Buyer will not result in a breach of, or constitute a default under any instrument or agreement to which Buyer is bound or otherwise prevent, restrict or

limit in any way the performance of the obligations of Buyer under any agreements to be performed by Buyer on and after the QuikTrip Closing.

Buyer covenants and agrees that each representation and warranty contained herein by or on behalf of Buyer shall be deemed restated by Buyer at the QuikTrip Closing and shall survive the QuikTrip Closing for a period of six (6) months. If either Seller or Buyer becomes aware of any facts or circumstances prior to the QuikTrip Closing which would render any of the foregoing representations and warranties materially false or misleading, discovering party will promptly deliver written notice to the other party with respect thereto, and Buyer shall have a reasonable opportunity (not to exceed thirty (30) days) to cure a materially false or misleading representation or warranty. Should Buyer fail to cure, Buyer agrees to indemnify, defend and hold Seller harmless from and against all claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and costs) incurred, suffered by or claimed against Seller by reason of Buyer's breach of the representation and warranties contained in this Section 3.2.

ARTICLE 4. DUE DILIGENCE; CONDITIONS PRECEDENT TO BUYER'S PERFORMANCE

The obligation of Buyer to purchase the Property is subject to the satisfaction of the following conditions precedent in this ARTICLE 4, and if said conditions are not so satisfied, Buyer may either waive satisfaction of said remaining conditions by means of a writing designated as a waiver or amendment to this Agreement, or Buyer may terminate this Agreement in which event Buyer shall be returned the Initial Deposit, and the parties will be released from all obligations hereunder other than those expressly contemplating survival of termination.

4.1. Due Diligence Period. Buyer shall have one hundred (100) days from the execution date of the CDOT Relocation Agreement and PSA (the "**Due Diligence Period**"), in which to inspect and evaluate the Property to determine the suitability of the Property for Buyer's intended use(s) and the likelihood of securing the necessary site plan and other entitlements to allow use of the Property for Buyer's intended use(s), which determination shall be made by Buyer in its sole discretion. During the Due Diligence Period:

4.1.1. Access; Indemnification. Subject to the CDOT Relocation Agreement and PSA, Buyer and Buyer's representatives, agents, consultants and designees shall have the right to enter upon the Property, at Buyer's sole cost and expense, for any purpose in connection with its proposed purchase, development or operation of the Property, including, without limitation, the right to make such inspections, investigations and tests (collectively, "**Tests and Studies**") as Buyer may elect to make or obtain. The Tests and Studies include without limitation, any geotechnical soil compaction studies or surveys and/or any Phase I and/or Phase II environmental site assessment. All Tests and Studies shall be certified to Seller as well as Buyer and Buyer shall deliver copies of all Tests and Studies immediately to Seller upon Buyer's receipt thereof, not to include any documents deemed proprietary by Buyer. Buyer shall promptly restore any alterations made or damage to the Property by Buyer or at Buyer's instance or request. Buyer shall pay promptly when due for all work performed on the Property by Buyer, or at Buyer's instance or request, including, without limitation, all inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Buyer relating to the inspection of the Property, all of which shall be incurred and payable at the sole cost and expense of the Buyer. Any and all liens, whether threatened or actually filed, against any portion of the Property resulting from Buyer's inspection of the Property, or for work performed or materials supplied at Buyer's instance or request, shall be promptly

removed by Buyer. Buyer shall indemnify, defend, protect and hold Seller harmless from any claims, injuries, losses, liens, judgments, liabilities, damages or expenses to the extent arising out of or incurred in connection with the Buyer, its agents, designees, or representatives, entering onto or otherwise inspecting the Property hereunder or arising from or in connection with any and all mechanic's liens and physical damage to property or persons arising out of any such entry by Buyer; provided, however, that Buyer shall not be required to indemnify Seller for and Seller shall hold Buyer harmless from any liability or damages arising from the discovery of any existing environmental matters on the Property, including any diminution in value of the Property or costs of remediation. If requested by Seller, in writing, Buyer, at Buyer's expense, shall obtain and maintain during the Due Diligence Period general liability insurance in the amount of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with Seller being shown as an additional insured on such policy. Buyer's obligations pursuant to this Section 4.1.1 shall survive the QuikTrip Closing or earlier termination of this Agreement.

4.1.2. Termination of the Agreement. On or prior to the end of the Due Diligence Period, Buyer may terminate this Agreement for any reason by delivery to Seller of a written notice of Buyer's election to terminate this Agreement. In the event of any breach of the representations and warranties of Seller that are uncured by Seller prior to the Cumulative Sale Date, Buyer may terminate this Agreement for reason of such breach at any time up to the Cumulative Sale Date by delivery to Seller of written notice of Buyer's election to terminate this Agreement. If this Agreement is terminated during the Due Diligence Period, then the Initial Deposit shall be returned to Buyer and the parties shall be released of all further obligations under this Agreement, except for those obligations which expressly survive termination hereof.

4.2. Title Documents. During the Due Diligence Period, Buyer shall have the right to review the Title Documents and Survey and determine the acceptability of the same in Buyer's sole discretion. In the event that Buyer objects to any exceptions to title contained in the Title Documents or to any matters shown on the Survey, Buyer shall provide written notice of said objection to Seller and the Title Company on or before the forty-fifth (45th) day following the Effective Date of this Agreement (the "**Title Review Period**"). Seller shall have a period of thirty (30) days after receipt of said notice in which to determine whether Seller will cure, or cause to be cured or endorsed over, the matters to which Buyer objects. Seller's failure to respond within said thirty (30) day period shall be deemed Seller's election not to cure or cause to be cured or endorsed over any of the matters to which Buyer objects. If Seller elects (or is deemed to have elected) not to cure, or cause to be cured or endorsed over, any such objection, Buyer's sole remedy shall be either to (i) waive its objection to such uncured exceptions, with said exceptions thereafter considered to be Permitted Exceptions (as defined below), or (ii) to terminate this Agreement in accordance with the procedure established in Section 4.1.2 above. In all events and notwithstanding the foregoing, Seller shall be obligated to remove or cause Escrow Agent to insure over mechanic's, materialmen's and similar liens attributable to work performed on or about the Property other than those caused by or on behalf of Buyer and Seller shall be obligated to remove mortgages, deeds of trusts and similar consensual liens against the Property (collectively, the "**Lien Defects**"). If Buyer does not elect to terminate in accordance with the provisions of this Section 4.2, then Buyer shall be deemed to have accepted all exceptions to title (other than Seller's obligation to effect the CDOT Sale Closing set forth in Section 5.1 below and the Lien Defects) and all other matters shown by the Title Documents and the Survey, excepting such matters as to which Seller has committed in writing to cure. All accepted exceptions shall be deemed "**Permitted Exceptions.**" If Seller elects to cure any such objected matter, Seller shall cause such cure to be effected prior to the

end of the Due Diligence Period unless such longer period of cure is necessary, in which case the cure period shall be extended to provide Seller with a reasonable opportunity to cure (not to exceed thirty (30) days); provided, however, the Due Diligence Period shall be extended for an equal period of time. In no event shall such cure period be extended past the Cumulative Sale Date unless mutually agreed to in writing by the parties hereto.

4.3. Relocation Parcel Closing. Seller shall have effected the Relocation Parcel Closing on or before the Relocation Parcel Closing Deadline. In the event that Seller has not effected the Relocation Parcel Closing as of the Relocation Parcel Closing Deadline and Buyer is not in default hereunder, Buyer may elect to terminate this Agreement using the procedures set forth in Section 4.1.2 and Buyer shall be entitled to a return of the Deposit within thirty (30) days following Seller's receipt of Buyer's termination election.

4.4. Demolition of Improvements. Seller shall not be responsible for any Demolition Work on the Property.

4.5. CDOT Sale Closing. Buyer's obligations to complete the QuikTrip Closing are expressly contingent upon Seller having closed the CDOT Sale Closing. Subject to events of force majeure, and provided there is no uncured event of default hereunder by Buyer, in the event that the CDOT Sale Closing has not closed by the Cumulative Sale Date (defined below), Buyer may terminate this Agreement by delivering written notice of its election to terminate this Agreement to Seller and the Title Company, whereupon Seller must return the Deposit to Buyer within thirty (30) days following Buyer's termination notice and the parties shall be released of all further obligations under this Agreement thereafter.

ARTICLE 5. CLOSINGS.

5.1. Closings. The CDOT Sale Closing and QuikTrip Closing shall take place at the offices of the Title Company on the date that is twenty-four (24) months following the Effective Date or such earlier date or time or other place as the parties may agree in writing (the "**Cumulative Sale Date**"). On the Cumulative Sale Date, immediately following the closing of the CDOT Sale Closing, the parties shall effect the QuikTrip Closing, whereby Seller shall deliver exclusive possession of the Property to Buyer.

5.2. Obligations of Seller at QuikTrip Closing. Seller shall do or take the following actions at the QuikTrip Closing at Seller's expense, unless otherwise provided herein:

5.2.1. Deed. Execute, have acknowledged and deliver to Buyer a special warranty deed conveying title to Buyer to the Property subject only to the Permitted Exceptions.

5.2.2. Policy. Cause the Title Company to deliver to Buyer either (i) a current ALTA standard owner's policy of title insurance on the Property to be issued pursuant to the standard Commitment subject to the Permitted Exceptions, including any use restrictions and limitations contemplated in this Agreement, (ii) if requested by Buyer, an ALTA extended owner's policy of title insurance on the Property to be issued pursuant to the extended Commitment subject to the Permitted Exceptions, including any use restrictions and limitations contemplated in this Agreement (the additional premium for which Buyer is obligated to pay) or (iii) an unqualified written commitment from the Title Company to deliver the policy selected by Buyer.

5.2.3. Affidavit. Deliver to Buyer an affidavit setting forth Seller's federal tax identification number and certification that it is not a "foreign person" within the meaning of the Internal Revenue Code of 1986.

5.2.4. Miscellaneous. Such other actions as shall be reasonably necessary of Seller to close the transaction contemplated herein in accordance with the customary practice in the Denver, Colorado metropolitan area.

5.2.5. Annexation and Zoning. Annex the Property into the Town and zone the Property to permit development of a hotel, fueling station, convenience store and a commercial drive-thru facility.

5.3. Obligations of Buyer at the QuikTrip Closing. Buyer shall do or take the following actions at the QuikTrip Closing:

5.3.1. Payment. Once all conditions precedent to Buyer's performance set forth in ARTICLE 4 have been met other than the CDOT Sale Closing, Buyer shall instruct the Title Company to release the remaining balance of the Purchase Price for the benefit of Seller, subject to a credit for application of the Deposits and other credits provided for in this Agreement, by wire transfer of federal funds. Seller shall direct such released funds to be applied in satisfaction of the purchase price to close the CDOT Sale Closing, and the funds shall be credited to Buyer's obligation to pay the Purchase Price under this Agreement.

5.3.2. Miscellaneous. Such other actions as shall be reasonably necessary of Buyer to close the transaction contemplated herein.

5.4. Closing Costs. Closing costs and adjustments shall be allocated as follows:

5.4.1. Seller Costs. Seller will pay the cost of the standard owner's policy of title insurance to be provided pursuant to the terms of this Agreement, one-half of any escrow or other Title Company closing fees, and the fees of Seller's counsel.

5.4.2. Buyer Costs. Buyer shall pay the cost of any additional premium for the extended owner's policy of title insurance together with any endorsements requested by Buyer, if elected by Buyer; recording the special warranty deed and any other conveyance documents; all documentary fees and taxes; all roll-back taxes, if any; one-half of the escrow fees or other Title Company closing fees; and the fees of Buyer's counsel.

5.4.3. Prorations. All real property taxes levied against the Property and other regular expenses, if any, affecting the Property shall be paid or shall be prorated as of 11:59 p.m. on the day preceding the Cumulative Sale Date based upon the most recent assessments and mill levy and shall be final. Except as expressly provided herein, all proration adjustments shall be final as of the Cumulative Sale Date. Any apportionments which are not expressly provided for herein shall be made in accordance with customary practice in Denver, Colorado.

ARTICLE 6. DEFAULT AND TERMINATION

6.1. Time of Essence. Time is of the essence of the obligations of the parties.

6.2. Buyer Default. If all conditions of Buyer's obligations to close are satisfied and Buyer fails to close under this Agreement, and Buyer fails to cure the same within a reasonable period of time after written notice from Seller (not to exceed thirty (30) days), Seller shall be entitled to terminate this Agreement and have the Deposit paid to Seller as liquidated damages as Seller's sole and exclusive remedy. Seller shall have no right to an action for specific performance or for money damages except the payment of such liquidated damage amount. The parties acknowledge that Seller's damages because of Buyer's default hereunder are difficult to ascertain and agree that the amount of the Deposit represents a reasonable estimate of said damages.

6.3. Seller Default. If Seller shall fail to consummate this Agreement for any reason other than Buyer's default hereunder or termination of this Agreement by Buyer or Seller pursuant to a right to do so under the provisions hereof, and Seller fails to cure the same within a reasonable period of time after written notice from Buyer (not to exceed thirty (30) days), Buyer shall have the right to either: (i) elect to terminate this Agreement, and have the Deposit returned to Buyer; or (ii) elect to seek specific performance of this Agreement from Seller because of such default. Buyer agrees that the remedy selected by Buyer (either (i) or (ii) above) shall be its sole and exclusive remedy for default by Seller.

ARTICLE 7. CONDEMNATION AND CASUALTY

7.1. Condemnation. Promptly upon learning of the institution, prior to the QuikTrip Closing, of any proceedings for the condemnation of any part of the Property, the party learning of the same shall promptly notify the other of the pendency of such proceedings. In the event of the condemnation of any portion of the Property, this Agreement shall remain in full force and effect and Seller shall assign to Buyer any and all claims for the proceeds of such condemnation, and Buyer shall take title to the remainder of the Property with the assignment of such proceeds and subject to such condemnation and without reduction in the Purchase Price; provided, however, that if after such condemnation the remainder of the Property would no longer be reasonably suitable for Buyer's intended purposes as determined by Buyer in its sole discretion, then Buyer may terminate this Agreement by notice in writing to Seller within thirty (30) days following notice in writing by Seller of such condemnation of the Property, in which event the parties shall have no further rights or obligations hereunder and the Initial Deposit shall be returned to Buyer. If Buyer does not elect to terminate within said thirty (30) day period following such notice by Seller, Buyer shall be deemed to waive all rights to terminate pursuant to this provision and this Agreement shall remain in full force and effect.

7.2. Casualty. Prior to the QuikTrip Closing and notwithstanding the pendency of this Agreement, the entire risk of loss or damage to the Property by earthquake, hurricane, tornado, flood, landslide, fire, sinkhole, or other casualty shall be borne and assumed by Seller (subject at all times to the terms and conditions of the CDOT Relocation Agreement and PSA). If, prior to the QuikTrip Closing, all or any material portion of the Property is damaged as a result of any earthquake, hurricane, tornado, flood, sinkhole, landslide, fire, or other casualty, Seller shall promptly notify Buyer upon Seller learning of such fact. In such event, Buyer shall have the option to terminate this Agreement at Buyer's election in its sole discretion, upon written notice to Seller given within thirty (30) days after receipt of any such notice from Seller, in which event the Initial Deposit shall be returned to Buyer. Prior to any termination of this Agreement, Buyer shall have the right to participate in any adjustment of the insurance claim. If Buyer waives the right to terminate this Agreement and elects to proceed with the Closing, then: (a) Seller, at, and as a condition precedent to Buyer's obligation to proceed with, the Closing, must either: (i) pay to Buyer (or direct Escrow Agent to credit Buyer against the Purchase Price for) the amount of any insurance proceeds actually received by Seller plus the amount of any deductible under Seller's (or CDOT's, as applicable) insurance; or (ii) if no insurance proceeds

have been received by Seller, assign to Buyer by written instrument reasonably satisfactory to Buyer all rights or claims to the insurance proceeds; and (b) the parties shall proceed to the Closing pursuant to the terms hereof without further modification of the terms of this Agreement.

ARTICLE 8. SURVIVAL OF REPRESENTATIONS AND WARRANTIES

No representations or warranties whatever are made by any party to this Agreement except as specifically set forth in this Agreement. The representations, warranties and indemnities made by the parties to this Agreement and the covenants and agreements to be performed or complied with by the respective parties under this Agreement prior to or on the Cumulative Sale Date shall be deemed to be continuing and shall survive the QuikTrip Closing for a period of six (6) months, subject to the requirements set forth herein.

ARTICLE 9. MISCELLANEOUS

9.1. Effect of Headings. The subject headings of Articles, Sections and subsections of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

9.2. Entire Agreement/Survival of Agreement. This Agreement constitutes the entire agreement between the parties hereto and supersedes all prior and contemporaneous agreements, representations and understandings of the parties regarding the subject matter of this Agreement. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by the parties hereto.

9.3. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and emailed signatures and delivery of this Agreement shall be deemed effective and binding for all purposes and may be relied upon by all parties hereto.

9.4. Assignment. This Agreement may be assigned by Buyer or Seller without the consent of the other party, provided, however, that no such assignment shall relieve the assignment party of any of its obligations hereunder. This Agreement shall be binding on and shall inure to the benefit of the parties hereto and their respective successors and assigns.

9.5. Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of service, if served personally on the party to whom notice is given; (ii) on the date of delivery or attempted delivery as shown by the return receipt, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid; (iii) date of delivery or attempted delivery by a reputable national courier service for overnight delivery, as shown by delivery service records; or (iv) on the date of transmission by email as shown by the system time for the transmitting party, provided that read receipt is requested. Notices shall be properly addressed as follows:

To Seller at:

Frederick Urban Renewal Authority

Attention: _____
Email: _____

with a copy to:

Fairfield and Woods, P.C.
Attention: Rita M. Connerly, Esq. and Nicholas N. Dyer, Esq.
1801 California Street, Suite 2600
Denver, Colorado 80202
Email: rconnerly@fwlaw.com; ndyer@fwlaw.com

To Buyer at:

QuikTrip Corporation
1499 West 120th Ave., Suite 110
Westminster, CO 80234
Attn: Troy DeVos, Director of Real Estate
E-Mail: tdevos@quiktrip.com

With a copy to:

QuikTrip Corporation
1499 West 120th Ave., Suite 110
Westminster, CO 80234
Attn: Craig Romrell, Real Estate Manager
E-Mail: cromrell@quiktrip.com

With a copy to:

QuikTrip Corporation
P.O. Box 3475, Tulsa, Oklahoma 74101
or, 4705 S. 129th E. Ave., Tulsa, Oklahoma 74134-7008
Attn: General Counsel
E-Mail: legalnotice@quiktrip.com

To Title Company at:

Attention: _____
Email: _____

9.6. Governing Law. This Agreement shall be construed in accordance with the laws of the State of Colorado.

9.7. Time Calculations. Unless otherwise indicated, all periods of time referred to in this Agreement shall refer to calendar days and shall include all Saturdays, Sundays and state or national holidays; provided that if the date to perform any act or give any notice with respect to this Agreement shall fall on a Saturday, Sunday, or state or national holiday in Frederick, Colorado, such act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday in Frederick, Colorado. Each day shall be deemed to expire at 5:00 p.m. Mountain Time.

9.8. Broker's Fees; Disclosure. Except as set forth below, each party warrants and represents to the other that no broker, finder or other intermediary hired or employed by it is entitled to a commission, finder's fee or other compensation based upon the transaction contemplated hereby and each party shall indemnify and hold harmless the other party from and against any and all liens, demands, liabilities, causes of action, judgments, costs, claims, damages, suits, losses and expenses, or any combination thereof, including reasonable attorneys' fees, of any nature, kind or description, caused by or arising out of the claim of any broker, finder or other intermediary alleging to have been employed or hired by the indemnifying party, to a commission, finder's fee or other compensation based upon the transactions contemplated hereby.

9.8.1. The parties acknowledge that Buyer has engaged Newmark Knight Frank ("Buyer's Broker") to represent Buyer as the Buyer's broker in connection with the transactions contemplated herein. Buyer is solely responsible for any compensation payable to Buyer's Broker, all pursuant to a separate agreement between Buyer's Broker and Buyer.

9.8.2. The parties acknowledge that Seller has engaged Summit Strategies, Inc. ("Seller's Consultant") as a consultant in connection with the transactions contemplated herein. Seller's Consultant, in assembling the opportunities for increased economic development, has earned a fee equal to three percent (3%) of the Purchase Price. Such vested commission shall be paid to Seller's Consultant from the proceeds of the QuikTrip Closing.

9.8.3. The compensation, sources and amounts of payments to Buyer's Broker and Seller's Consultant shall be set forth on the final closing settlement statement and will be paid at the QuikTrip Closing.

9.9. Recovery of Litigation Costs. If any legal action or any arbitration or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

9.10. Partial Invalidity. In the event that any condition or covenant herein contained is held to be invalid or void by a court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

9.11. Special Taxing Districts. Buyer acknowledges that the Property may be subject to certain general obligation indebtedness of special districts encompassing the Property, and that Buyer shall be solely responsible for determining the scope and extent of the same during the Due Diligence Period. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION

INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. BUYER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICTS SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

9.12. Condition to QuikTrip Closing. Notwithstanding any provision of this Agreement to the contrary, Seller's obligation to close on the sale of the Property to Buyer is expressly conditioned upon Seller closing on its purchase of the Property and the Relocation Parcel; provided, however, Seller shall use good faith efforts to satisfy all obligations under its purchase agreement to allow such sale to close.

9.13. 1031. The parties agree that a party may elect to complete an Internal Revenue Code 1031 tax-deferred exchange that will not affect the terms and conditions of this Agreement; *provided, however*, that (a) the non-requesting party will cooperate with the requesting party to complete such exchange in a timely manner on the conditions that the non-requesting party shall not be obligated to pay, suffer or incur any additional expenses or liabilities as a result of cooperating in the requesting party's exchange and the non-requesting party shall not be obligated to acquire any other real property in connection with such exchange; (b) the non-requesting party shall not have any liability to the requesting party for failure of the exchange to qualify under the Internal Revenue Code and Treasury Regulations; (c) any assignment(s) made by the requesting party in connection with such exchange shall not relieve the requesting party of its obligations under this Agreement; (d) the requesting party shall cause all documentation necessary or appropriate in connection with such exchange to be prepared and available for execution no later than the Cumulative Sale Date; and (e) the completion of one or more tax-deferred exchanges is not a condition to the performance by the requesting party of its obligations set forth in this Agreement.

9.14. Force Majeure. "**Force Majeure**" (whether or not capitalized) shall mean delays caused by occurrences beyond the reasonable control and without the fault, negligence or financial inability of a party hereto or its contractors or subcontractors, including, without limitation, strikes, labor disputes, increases in the costs of labor, supply or other costs of over 25% from their prices as of the Effective Date, utilities shortages, moratoria (other than moratoria entered into by Seller), fire, earthquake, floods and other out of the ordinary actions of the elements, pandemics or epidemics, enemy invasion, wars, terrorism, insurrection, sabotage, laws, orders or actions of governmental, civil or military authorities, governmental restrictions, riot, civil commotion, terrorist activities, judicial or administrative proceedings commenced by persons not a party to this Agreement and unavoidable casualty. If the performance of an obligation hereunder or under any other agreement or declaration, other than the payment of money, is expressly subject to the effect of a force majeure delay, then, unless otherwise provided herein or in such other agreement or declaration to the contrary, the effect of a force majeure delay shall be to extend the time for

performance of such obligation for the reasonable period of such force majeure delay, but in no event greater than the period of the force majeure delay.

9.15. Confidentiality. To the extent permissible by law, neither party will make any announcement nor will either party discuss the proposed transaction with a third party, other than CDOT or with such party's attorneys or other advisors, without the prior consent of the other party prior to the execution of a mutually binding Purchase Agreement. Buyer and Seller will maintain in confidence, and cause their respective agents, representatives, accountants, counsel and other advisors to maintain in strict confidence, any written, oral or other information obtained from any other party or parties in connection with the transaction contemplated by this letter, unless (i) such information is already known to such party or to others not bound by a duty of confidentiality or such information is or becomes publicly available through no fault of such party, (ii) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the transactions contemplated by this letter, or (iii) the furnishing or use of such information is required by or necessary or appropriate in connection with a legal proceeding. Notwithstanding anything to the contrary in this Section 9.15, Buyer expressly acknowledges that Seller is a "political subdivision" as defined in the Colorado Open Records Act, C.R.S. §24-72-200, *et seq.* ("CORA"), and, accordingly, Seller's compliance with its obligations under this Section 9.15 are, and shall remain in the future, subject to all of Seller's obligations under CORA and any other applicable law, regulation, ordinance or statute, all of which shall control in the event that any of the foregoing conflict with the terms and conditions set forth in this Section 9.15. This Section 9.15 shall survive termination of this Agreement for any reason.

9.16. No Waiver of Immunity. Nothing in this Agreement shall be deemed or construed as a waiver of any of the protections to which Seller may be entitled under the Constitution of the State of Colorado or pursuant to the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, *et seq.*, as amended, or any other applicable law.

9.17. Exclusivity. Seller covenants and agrees to refrain during the term of this Agreement from making, accepting, or soliciting or otherwise pursuing any other offer or proposal or agreement regarding the sale or lease of the Property or any portion thereof or any interest therein (excepting the Relocation Parcel PSA and CDOT Relocation Agreement and PSA), and will deal exclusively with Buyer in good faith toward the completion of the transactions contemplated herein unless the Agreement is terminated as provided herein.

9.18. Mineral Rights. Seller reserves all oil, gas and other minerals not previously reserved, but expressly waives and gives up any right to enter or allow entry upon the Property for the purpose of drilling or mining for same. Additionally, the only manner in which oil, gas, or other minerals in, on or under the Property may be mined, drilled, operated, explored, developed, removed, stored, treated, transported, tested, processed, handled or otherwise dealt with is from the surface location on other lands which are not within the boundaries of the Property; provided, however, that any horizontal drilling or similar exploration of the oil, gas or other minerals in, on or under the Property which are owned by Seller shall not be permitted from the surface of any other premises unless they are at a depth of one thousand feet (1,000') beneath the surface of the Property. The provisions of this paragraph shall survive the QuikTrip Closing, run with the land and be incorporated into the deed.

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, this Purchase and Sale Agreement is entered into effective as of the Effective Date.

SELLER:

FREDERICK URBAN RENEWAL AUTHORITY

By: _____
Name: _____
Its: _____
Date: _____

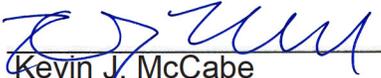
BUYER:

QUIKTRIP CORPORATION,
an Oklahoma corporation

By: 
Name: TRAVIS L. DEVIS
Its: DIRECTOR OF REAL ESTATE
Date: MARCH 23, 2020

Acknowledged and agreed
this 24th day of March, 2020,
as Buyer's Broker:

ROSS REAL ESTATE, LTD., dba
NEWMARK KNIGHT FRANK

By: 
Name: Kevin J. McCabe
Its: Executive Vice President/Regional Managing Director
Date: 03/24/2020

Acknowledged and agreed this
23rd day of March, 2020,
as Seller's Consultant:

SUMMIT STRATEGIES, INC.

By: 
Name: Matthew Hopper
Its: President
Date: March 23, 2020

Exhibit A

Legal Description

[To be attached]



TOWN OF FREDERICK Urban Renewal Authority Action Memorandum

Tony Carey, Chair

Laura Brown, Vice Chair
Rocky Figurilli, Authority Member
Salvatore "Sam" DeSantis, Authority Member
Chris Vigil, Authority Member
Dan March, Authority Member

Steve Moreno, Authority Member
Tracie Crites, Authority Member
Chico Garcia, Authority Member
Rusty O'Neal, Authority Member
Vacant, Authority Member

A Resolution Approving a Purchase and Sale Agreement with 3258 State Highway 52, LLC

Agenda Date: Urban Renewal Authority Meeting – April 1, 2020

Attachments:
a. Resolution 20-FURA-04
b. Purchase and Sale Agreement

Finance Review: _____
Finance Director

Submitted by: 
Executive Director

Approved for Presentation: 
Executive Director

Quasi-Judicial Legislative Administrative

Summary Statement:

This is a request to approve a resolution to enter into a Purchase and Sale Agreement between the Frederick Urban Renewal Authority (FURA) and 3258 State Highway 52, LLC.

Detail of Issue/Request:

This is the second of three agreements related to the CDOT property at the corner of I-25 and Highway 52. This is a request to approve a resolution to enter into a Purchase and Sale Agreement with 3258 State Highway 52, LLC. The agreement is provided to the FURA Board as part of this agenda item.

Legal/Political Considerations:

The resolution was drafted by the Frederick Town Attorney.

Alternatives/Options:

The URA could choose to not enter into the agreement.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends approval of the resolution as presented.

**FREDERICK URBAN RENEWAL AUTHORITY
RESOLUTION NO. 20-FURA-04**

**A RESOLUTION OF THE FREDERICK URBAN RENEWAL
AUTHORITY APPROVING A PURCHASE AND SALE AGREEMENT
WITH 3258 STATE HIGHWAY 52, LLC**

WHEREAS, the Frederick Urban Renewal Authority, hereafter known as the FURA, wishes to enter into a Purchase and Sale Agreement (“AGREEMENT”) with 3258 State Highway 52, LLC.

BE IT RESOLVED BY THE COMMISSIONERS OF THE FREDERICK URBAN RENEWAL AUTHORITY, AS FOLLOWS:

Section 1. The Commissioners approve the AGREEMENT and authorize the Chair to execute the AGREEMENT.

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

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

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

INTRODUCED, READ, PASSED, AND SIGNED 1ST DAY OF APRIL, 2020.

ATTEST:

**FREDERICK URBAN RENEWAL
AUTHORITY**

By _____
Executive Director/Secretary

By _____
Tony Carey, Chair

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made and entered into by and between 3258 State Highway 52, LLC, a Colorado limited liability company ("**Seller**"), and the FREDERICK URBAN RENEWAL AUTHORITY, a political subdivision of the State of Colorado, organized and existing under the Urban Renewal Law, Part 1 of Article 25, Title 31, C.R.S., as amended ("**Buyer**"), and is effective as of the 23rd day of March, 2020 (the "**Effective Date**").

RECITALS

A. Seller is the owner of approximately ten (10) acres of real property ("**Seller's Property**") located at 3258 State Highway 52, in the Town of Frederick ("**Town**"), County of Weld ("**County**") Colorado, being more particularly described on Exhibit A attached hereto and incorporated herein and generally depicted on Exhibit A-1 attached hereto and incorporated herein.

B. Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, a six (6) acre parcel of land within the northern portion of Seller's Property, in the area generally depicted on Exhibit A-2 ("**Land**"), attached hereto and incorporated herein, on the terms and conditions hereinafter set forth.

C. Assuming the Property is deemed suitable by Purchaser, it is Purchaser's intent to acquire the Property as soon after expiration of the Inspection Period as it receives necessary commitments from third parties on other related transactions.

AGREEMENT

In consideration of the mutual promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Purchase and Sale.** Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell, assign, and convey to Buyer, and Buyer agrees to purchase from Seller, the Land, as more specifically described in Exhibit A-3, together with all right, title, and interest of Seller in and to appurtenant easements, and rights-of-way, rights of ingress and egress, development rights, water supply, water taps, sewer rights, and sewer taps, including all subsurface rights, including, but not limited to, any water and water rights, ditch and ditch rights, reservoirs, water wells and well rights, whether tributary or nontributary, on, underlying, appurtenant to or used or to be used on or in conjunction with the Land, whether appropriated, conditionally appropriated or unappropriated, and whether adjudicated or unadjudicated, including any and all (i) rights of use, reuse and successive use together with all recirculated irrigation water supplies, surface runoff, irrigation return flow, and domestic municipal affluent flows and (ii) well permits, permit applications, decrees, pending water court applications, well registration statements and any well equipment, personalty, fixtures, transmission lines and related equipment used for the supply,

storage, treatment and distribution of such water and water rights, underlying, or appurtenant to, the Land and other estates, rights, interests, privileges, and appurtenances now owned or hereafter acquired by Seller (collectively "**Property**"). Any and all mineral rights relating to the Land are not being conveyed by Seller to Buyer.

2. **Purchase Price.** The Purchase Price (herein so called) for the Property to be paid by Buyer to Seller shall be the sum of One Million One Hundred Thousand and No/100ths Dollars (\$1,100,000.00). The Purchase Price shall be payable as follows:

2.1 **Deposit.** Within ten (10) business days after the Effective Date of this Agreement, Buyer shall deliver to First American Title Insurance Company, 1125 17th Street, Suite 500, Denver, Colorado 80202 ("**Title Company**") an earnest money cash deposit of One Hundred Thousand and No/100th Dollars (\$100,000.00) (the "**Deposit**"). If Buyer fails to deliver its Notice of Suitability to Seller pursuant to Section 3.2.1 hereof, or if Buyer fails to deliver its Notice of Feasibility to Seller pursuant to Section 3.2.2 hereof, the Deposit shall be refundable to Buyer. The Deposit shall be held by the Title Company in an interest-bearing account, subject to disbursement in accordance with the provisions of this Agreement. In the event of a Closing, all interest earned on the Deposit shall be credited against the Purchase Price at Closing. In the event this Agreement is terminated prior to Closing, interest on the Deposit shall be credited and paid to whichever party shall receive the Deposit pursuant to this Agreement.

2.2 **Cash at Closing.** At the consummation of the transaction contemplated by this Agreement ("**Closing**"), the Purchase Price, less a credit for the Deposit and subject to the adjustments and prorations provided for herein, will be paid by Buyer to Seller in immediately available funds.

3. **Buyer's Investigations.**

3.1 **Seller's Initial Deliveries.** Seller will deliver or cause to be delivered to Buyer the following:

3.1.1 **Title Insurance Commitment; Survey.** Within five (5) days after the Effective Date of this Agreement, Seller will (i) cause the Title Company to deliver to Buyer a commitment to insure, subject to the exceptions and requirements stated therein, title to the Property in Buyer in the amount of the Purchase Price under an ALTA owner's policy with owner's extended coverage (the "**Commitment**") and (ii) any existing surveys of the Property in Seller's possession or control (the "**Survey**"). Buyer may, in its sole and absolute discretion and at its sole cost and expense, order an update to the Survey (or shall order a new Survey if no existing Survey is in Seller's possession). Buyer shall have the right to object to: (i) any matters set forth in the Commitment deemed unacceptable to Buyer in Buyer's sole discretion ("**Title Objections**"), and (ii) any matters disclosed by the Survey that are unacceptable to Buyer in Buyer's sole discretion ("**Survey Objections**"), provided that Buyer delivers written notice of any Title Objections or Survey Objections on or before the date of the expiration of the Inspection Period (as defined below); otherwise any such objections shall be deemed to be waived. If Buyer delivers in a timely manner written notice of any Title Objections and/or Survey Objections (collectively, "**Objections**"), then

Seller shall within five (5) business days following receipt of any Objections from Buyer notify Buyer in writing ("**Seller's Response**") whether Seller elects, to: (i) cure any such Objections on or prior to the Closing Date, or (ii) not to cure any such Objections. In the event Seller fails to deliver Seller's Response to Buyer within such five (5) business-day period, Seller shall be deemed to have elected not to cure Buyer's Objections. If Seller's Response states that Seller elects not to cure any of Buyer's Objections on or prior to Closing, or Seller is deemed to have elected not to cure, then within five (5) business days following Buyer's receipt of Seller's Response, Buyer shall elect to either: (x) terminate this Agreement, whereupon Title Company shall promptly deliver the Deposit to Buyer and the parties shall have no further obligations under this Agreement, except for those obligations specifically stated in this Agreement to survive Closing, or (y) waive the Objections and proceed to purchase the Property with such condition of title as Seller is able to convey and/or subject to the Objections, without a reduction of the Purchase Price, in which event the items objected to which were not cured shall be deemed to be "**Permitted Exceptions**". Seller and Buyer will each provide such further affidavits to Title Company as may be necessary, together with the Survey, to delete the standard printed exceptions. The "**Permitted Exceptions**" shall not include (i) any delinquent taxes or assessments, (ii) any monetary liens or encumbrances not caused by Buyer, or (iii) any standard printed exceptions concerning parties in possession, unrecorded easements, encroachments, or other matters of survey, mechanics' liens or claims therefore (except to the extent caused by Buyer, its agents or contractors), and matters first appearing in the public records during the so-called "gap" period which occurs after the effective date of the last version of the Commitment issued prior to the Closing, but before the recordation of the Deed (as defined below).

3.1.2 **Copies**. Within five (5) days after the Effective Date, Seller will deliver to Buyer copies of the following documents to the extent the same are within Seller's possession or reasonable control (collectively, the "**Due Diligence Documents**"): (i) copies of any existing environmental reports pertaining to the Property; (ii) copies of any existing subdivision reports, Planned Unit Development maps, or any other document pertaining to zoning or permitted uses on the Property; (iii) copies of any existing, unrecorded covenants, conditions, and restrictions affecting the Property; (iv) copies of any existing soils, water, and engineering reports; (v) copies of all existing agreements, studies, reports, correspondence, and other documents relating to the presence or absence of any endangered species or environmentally sensitive areas on the Property, if any; (vi) copies of the service plan, organizational documents, financial projections, and bond documents as to any special or metropolitan district affecting the Property; and (vii) copies of all other contracts, documents, agreements, records, and information pertaining to or affecting the Property in Seller's possession or under Seller's control. Except as otherwise provided herein, Seller makes no representations or warranties as to the completeness or accuracy of such Due Diligence Documents, other than representations that (a) Seller has delivered to Buyer all of the Due Diligence Documents in its possession concerning the Property which are required in accordance with this Section 3.1.2, and (b) Seller has no actual knowledge that any of said Due Diligence Documents are false or misleading in any material respect. Seller agrees to furnish immediately to Buyer any Due Diligence Documents described above and coming into Seller's possession or completed by Seller after the initial production date specified above, and to continue to provide the same during the pendency of this Agreement.

3.2 Inspection and Contingency Periods.

3.2.1 Inspection Period. Buyer, at its expense, may review the Commitment, the Survey, the Due Diligence Documents, conduct a feasibility study of the Property to determine whether or not the Property is suitable to Buyer, and cause such other tests, studies, and investigations to be made as Buyer, in its sole discretion, determines are reasonable or necessary in order to evaluate the suitability of the Property for Buyer's use. Buyer shall have a period commencing on the Effective Date this Agreement and expiring as of 5:00 p.m. (Mountain Time) on the one hundred and ten (110) days after the Effective Date of this Agreement, (the "**Inspection Period**"), in which to review the Commitment, the Survey, and the Due Diligence Documents, and to conduct such inspections and tests of the Property as Buyer deems prudent or necessary. In the event the Phase I on the parcel Buyer is trying to sell in order to have the proceeds to purchase this Property recommends or requires further environmental site assessments, including any Phase II environmental site assessment or additional investigation (collectively, a "**Phase II**"), the Inspection Period shall automatically be extended for a period of two hundred ten (210) days from the Effective Date in order to complete the Phase II. In the event such tests, reports, studies, or investigations confirm, in Buyer's sole judgment and discretion, that the Property is not suitable to Buyer, Buyer shall send written notice (the "**Notice of Unsuitability**") to Seller on or before the expiration of the Inspection Period. If Buyer fails to send Seller the Notice of Unsuitability on or before expiration of the Inspection Period, then Buyer shall be deemed to have accepted the status of title to, and the physical conditions of, the Property as set forth in the Commitment, Survey and Due Diligence Documents, and as established by such other tests, studies or inspections as Buyer may have elected to conduct or obtain, and this Agreement will remain in full force and effect in accordance with its terms and the Deposit, upon expiration of the Contingency Period, will become non-refundable to Buyer for any reason other than as expressly provided herein. If Buyer delivers its Notice of Unsuitability prior to the expiration of the Inspection Period, then the Title Company will return the Deposit to Buyer and both parties will be relieved of any further obligations hereunder except those obligations which expressly service any termination.

3.2.2 Contingency Period. Buyer shall have a period commencing on the last day of the Inspection Period (the "**Contingency Period Commencement Date**"), and expiring at 5:00 p.m. Mountain Time on the date that is one hundred eighty (180) days from the Contingency Period Commencement Date (such period, the "**Contingency Period**"), in which to review the feasibility of Buyer's intended use and development of the Property. In the event such investigations confirm, in Buyer's sole judgment and discretion, that the Property is not feasible for Buyer's intended use and development thereof, Buyer shall send a written notice (the "**Notice of Non-Feasibility**") to Seller on or before the expiration of the Contingency Period, as may be extended. If Buyer fails to send Seller a Notice of Non-Feasibility on or before the expiration of the Contingency Period, as may be extended, then Buyer shall be deemed to have accepted the feasibility (or lack of feasibility) of the Property for Buyer's intended use and development thereof, and this Agreement will remain in full force and effect in accordance with its terms and the Deposit will become non-refundable to Buyer for any reason other than as a result of a default by Seller or as expressly provided herein. If Buyer delivers its Notice of Non-Feasibility prior to the expiration of the Contingency Period, then the Title Company will return the Deposit to Buyer and both parties will be

relieved of any further obligations hereunder except those obligations which expressly service any termination.

3.3 Buyer's Right of Entry. Buyer's right of investigation shall include, without limitation, the right for Buyer, its agents, employees, and any other persons under Buyer's right hereunder, to enter the Property during normal business hours (subject to the rights of tenants in possession) for any purpose and the right to have made, at Buyer's expense, any and all studies or inspections of the Property as Buyer may deem necessary or appropriate; provided, however, that in no event shall such inspections or studies materially disrupt or disturb the on-going operation of the Property. Seller hereby agrees, subject to the requirements of this Section 3.3, to allow Buyer reasonable access and license to enter onto the Property; however, Buyer shall not perform any invasive testing without the prior written consent of Seller, which shall not be unreasonably withheld, conditioned, or delayed and provided further that in no event shall such inspections or tests materially disrupt or disturb the on-going operation of the Property. After making such tests and inspections, Buyer agrees to promptly restore the Property to substantially its condition prior to such tests and inspections (which obligation shall survive the Closing or any termination of this Agreement). Seller agrees to cooperate with any such investigations, inspections, or studies made by or at Buyer's, so long as such cooperation is at no expense to Seller. Buyer agrees to keep the Property free from all liens. The obligation of Buyer to restore the damage to the Property resulting from inspections and to keep the Property free of mechanic's or materialmen's liens shall survive termination of this Agreement for two (2) years.

4. **Title.**

4.1 Issuance of Title Policy. At Closing, Title Company will issue, or unconditionally commit to issue, to Buyer its ALTA owner's policy of title insurance insuring in the amount of the Purchase Price that title to the Property is vested in Buyer, subject only to the Permitted Exceptions (the "**Title Policy**").

4.2 Subsequent Title Defects. If, subsequent to the expiration of the Inspection Period and prior to Closing, Buyer notifies Seller of the existence of any encumbrance, encroachment, defect in or other matter materially and adversely affecting title, other than the Permitted Exceptions (a "**Subsequent Defect**"), Seller will use such efforts and will expend such amount as it may, in its sole judgment, deem appropriate to remove or cure such Subsequent Defect of title prior to Closing. Seller will have no obligation, however, to cure any Subsequent Defect. If Seller does not or is unable to so remove or cure all Subsequent Defects prior to Closing, Buyer may (i) waive all such uncured Subsequent Defects and accept such title as Seller is able to convey as of Closing without an abatement of the Purchase Price; or (ii) terminate this Agreement, whereupon Title Company will return the Deposit to Buyer and all parties will be relieved of any further obligations hereunder, except for those obligations which expressly survive any termination hereof. Notwithstanding the foregoing, if any Subsequent Defect (a) was caused by Seller, (b) is a monetary lien or encumbrance required to be removed by Seller pursuant to Section 3.1.1, (c) is required to be cured or satisfied by Seller pursuant to any other provision of this Agreement, or (d) concerns solely

the legal status of Seller or its authority to convey its interest in the Property, then Seller will be obligated to cure or satisfy the same prior to Closing.

5. **Conditions Precedent.** Buyer shall not be obligated to close this transaction until all the requirements and conditions for the Closing have been performed including, but not limited to, the following:

5.1 Bankruptcy. No action or proceeding shall have been commenced by, or against, Seller under the federal bankruptcy code or any state law for the relief of debtors or for the enforcement of the rights of creditors, and no attachment, execution, lien, or levy shall have attached to or been issued with respect to the interest of Seller in the Property, or any portion thereof.

5.2 Injunctions; Litigation. As of the Closing Date, (a) the transactions contemplated under this Agreement to be effected on the Closing Date will not have been restrained or prohibited by any decree, injunction, or judgment rendered by any court or other governmental agency of competent jurisdiction and (b) there shall be no litigation pending or threatened relating to, or affecting, the performance of this Agreement or that would have a material adverse effect on the Entitlements or the Property.

5.3 Moratorium. There shall be no moratorium, prohibition, or any other measure, rule, regulation or restriction imposed by the Town or a utility provider that would (a) have a material adverse effect on the Property, the development and use of the Property, or the availability or cost of gas, sanitary sewer, water, electricity, telephone or cable television to the Property, or (b) preclude or restrict any inspections, or the issuance of any building, grading or other permits, or certificates of occupancy, or the effect of which would be to preclude the construction, use and occupancy of the Property for its desired purposes.

5.4 Title Policies. Satisfaction of the requirements set forth in the Title Commitment to be satisfied by Buyer, payment by Buyer of any closing costs set forth in Section 11.2, and the Title Company's irrevocable commitment to issue the Title Policy.

5.5 Final Plat and Entitlements. Any documents required by the Town as a condition to conveyance of the Property and the use and development of the Property for its intended purpose ("**Entitlements**") shall have been fully executed, delivered, and recorded at or before recording the special warranty deed. Buyer, at its sole cost and expense, and with the cooperation of Seller, shall complete the Entitlements, such as zoning, platting and obtaining final site plan approval, from the Town and all other applicable governmental agencies or authorities having jurisdiction over the Property. The Property shall have direct and legal access to Highway 52. Should Buyer obtain approval of any Entitlements which require the dedication of acreage to a governmental or quasi-governmental agency, Seller agrees to complete such land dedications. Seller or a designated representative shall also appear at public hearings, Town staff meeting, or other meetings related to the approval of Buyer's application(s), as may be reasonably requested by Buyer. Failure of Seller to fully execute and deliver the Entitlements shall constitute a Seller default and Buyer may pursue its rights and remedies as set forth in Section 14.1 below.

Seller hereby consents to Buyer's pursuit of Entitlements, and the applications, in furtherance thereof, including but not limited to: the subdivision of Seller's Property into two (2) legal parcels to create a six (6) acre parcel on the north side of Seller's Property; and, the creation of a tract, the dedication of land, or other application that allows for the development of a paved road, compliant with Town standards, from the Land to Highway 52 ("**Access Tract**"). Applications in furtherance of the Entitlements do not require Seller's prior approval and Seller agrees not to frustrate the purpose of these objectives. However, Buyer agrees to submit the application for Entitlements to the Seller for review prior to formal submittal to the Town or other applicable governmental agencies or authorities and, if Seller delivers a written notice of objection to Buyer with respect to the Entitlements within three (3) business days of Buyer's delivery of such submittal to Seller, then Buyer and Seller and Buyer shall use commercially reasonable efforts to resolve such objections. If Buyer and Seller are unable to resolve Buyer's objections within ten (10) business days, Seller may still proceed with the Entitlement applications and Buyer remains obligated to support Buyer's applications for Entitlement. To the extent the Seller's objections relate solely to that portion of Seller's Property which is not part of the Land or the Access Tract ("**Seller's Remaining Parcel**"), then Buyer shall amend or withdraw such application if Buyer and Seller are unable to resolve Buyer's objections.

5.6 **Waiver**. If any of the conditions precedent set forth above in this Section 5 are not satisfied on or before the Closing Date, Buyer shall have the right to terminate this Agreement and receive a return of the Deposit. The foregoing right of Buyer shall not relieve Seller of its obligations under this Agreement in connection with the satisfaction of one or more of such conditions precedent.

6. **Seller's Representations and Warranties.**

6.1 **Representations and Warranties**. Seller represents and warrants to Buyer as follows:

6.1.1 **Authority**. Seller is a Colorado limited liability company, duly organized and existing and in good standing under the laws of Colorado. Seller has full right and authority to enter into this Agreement and consummate the transaction contemplated hereby. All requisite action has been taken by Seller in connection with the entering into of this Agreement and the instruments referenced herein and the consummation of the transaction contemplated hereby. Each of the persons signing this Agreement on behalf of Seller is authorized to do so.

6.1.2 **Binding Obligations**. This Agreement and all documents required hereby to be executed by Seller are and will be valid, legally binding obligations of and enforceable against Seller in accordance with their terms, except to the extent such enforcement may be limited by applicable bankruptcy, insolvency, moratorium, and other principles relating to or limiting the right of contracting parties generally and does not and will not violate any provision of any agreement or law to which Seller is a party or to which it is subject.

6.1.3 Pending Actions. To Seller's actual knowledge, there are no pending or threatened legal proceedings or administrative actions of any kind or character adversely affecting the Property or Seller's interest therein, including, without limitation, any condemnation proceedings.

6.1.4 Notice of Violation. Seller has received no written notice from any city, county, state, federal, or other government authority or source, or from any private person or entity, and Seller has no actual knowledge, of any material violation of any law, statute, ordinance, regulation, or administrative or judicial order or holding, whether or not appearing in public records, or of any private covenant, condition, or restriction, with respect to the Property, which violation has not been corrected.

6.1.5 Environmental Laws. Seller has received no written notice, and Seller has no actual knowledge, that the Property is in violation of any federal, state, and local laws, ordinances, and regulations applicable to the Property with respect to hazardous or toxic substances or industrial hygiene (collectively, "Environmental Laws"). To Seller's actual knowledge, no prior owners of all or any portion of the Property have owned, used, generated, manufactured, stored, handled, released, or disposed of any hazardous or toxic substances on the Property in violation of applicable Environmental Laws.

6.1.6 Special Districts. Seller makes no representation or warranty with respect to special taxing districts. SPECIAL TAXING DISTRICTS MAY BE SUBJECT TO GENERAL OBLIGATION INDEBTEDNESS THAT IS PAID BY REVENUES PRODUCED FROM ANNUAL TAX LEVIES ON THE TAXABLE PROPERTY WITHIN SUCH DISTRICTS. PROPERTY OWNERS IN SUCH DISTRICTS MAY BE PLACED AT RISK FOR INCREASED MILL LEVIES AND EXCESSIVE TAX BURDENS TO SUPPORT THE SERVICING OF SUCH DEBT WHERE CIRCUMSTANCES ARISE RESULTING IN THE INABILITY OF SUCH A DISTRICT TO DISCHARGE SUCH INDEBTEDNESS WITHOUT SUCH AN INCREASE IN MILL LEVIES. PURCHASER SHOULD INVESTIGATE THE DEBT FINANCING REQUIREMENTS OF THE AUTHORIZED GENERAL OBLIGATION INDEBTEDNESS OF SUCH DISTRICTS, EXISTING MILL LEVIES OF SUCH DISTRICT SERVICING SUCH INDEBTEDNESS, AND THE POTENTIAL FOR AN INCREASE IN SUCH MILL LEVIES.

6.1.7 Copies. To Seller's actual knowledge, copies of any documents furnished to Buyer pursuant to this Agreement are true and complete copies of the documents they purport to be and, to Seller's knowledge do not include any false or misleading information.

6.1.8 Notice to Buyer. Seller agrees to give Buyer notice of any taking (or written threat thereof), material damage, or destruction of the Property promptly after Seller obtains actual knowledge thereof.

6.2 Effective Date; Merger. All of the foregoing representations and warranties made by Seller are made as of the Effective Date of this Agreement and deemed restated at Closing.

7. **Buyer's Representations and Warranties.**

7.1 Representations and Warranties. As of the Effective Date, Buyer represents and warrants to Seller as follows:

7.1.1 Organization and Authority. Buyer is a political subdivision of the State of Colorado, organized and existing under the Urban Renewal Law, 31-25-101 *et seq*, C.R.S., as amended, and has the power and authority to enter into this Agreement and consummate the transaction contemplated hereby.

7.1.2 Economic Benefit. Buyer reasonably believes that the consummation of the transaction contemplated hereby will serve a public purpose and contribute to the elimination of blight within the Urban Renewal Area by stimulating economic development within the Urban Renewal Area.

7.2 Effective Date and Certificate. The foregoing representations and warranties of Buyer are made as of the Effective Date of this Agreement and deemed restated at Closing.

8. **Covenants.**

8.1 Seller's Covenants. Seller hereby covenants with Buyer as follows:

8.1.1 No Further Encumbrances. From and after the date of this Agreement, Seller shall not grant, convey, transfer, or hypothecate any interest in the Property to any party, including, but not limited to, any agreement, encumbrance, lien, right-of-way, restriction, covenant, mortgage, deed of trust, easement, ground lease, license, permit, bill of sale, or form UCC-1 or convey or transfer any other legal or beneficial interest in or to the Property or do anything else with respect to the Property which would in any way impair the marketability of the title of Seller to the Property, without the prior written consent of Buyer, unless and except such action is approved by Buyer in writing and required by the Entitlements. Commencing on the Effective Date and continuing until the Closing, or earlier termination of this Agreement, Seller shall not market the Property for sale or lease to third parties.

8.1.2 Compliance with Laws. Seller shall not violate any covenant, restriction, law, ordinance, resolution, code, rule, regulation, lease, or license affecting the Property including, but not limited to, the Environmental Laws as defined above (collectively, "**Laws**"). Seller shall deliver to Buyer promptly after Seller's receipt any notices of alleged defaults under a lease or other agreement or alleged violations of Laws or agreements with governmental agencies.

8.1.3 Preservation of Property. Seller shall do or cause to be done all things reasonably within its control to preserve intact and unimpaired any and all rights-of-way, access, easements, grants, appurtenances, rights, privileges, leases, contracts, agreements, and licenses in favor of, relating to, or benefiting all or any portion of the Property.

9. **Representations and Warranties** In addition to any other express conditions set forth in this Agreement, unless waived in writing, or as otherwise provided in this Agreement, including by passage of deadlines, by the party entitled to the benefit thereof, the obligations of either

party to close under this Agreement are subject to satisfaction of the conditions that all representations and warranties of the other party contained in this Agreement are true and correct in all material respects as of Closing and that the other party has performed all material covenants, agreements and obligations required to be performed by it under this Agreement.

10. **Closing.** Buyer and Seller agree that the purchase of the Property will be consummated as follows:

10.1 Closing Date. Subject to events of Force Majeure, the satisfaction of Seller's obligations and all other conditions to Closing, Closing will occur on a date mutually agreed upon by the parties (the "Closing Date") within ten (10) days from expiration of the Contingency Period or such earlier date as Buyer desires.

10.2 Closing Documents. Seller and Buyer will deliver or cause to be delivered to each other at Closing, as appropriate, the following items (all documents will be duly executed and acknowledged where required):

10.2.1 Special Warranty Deed. A special warranty deed (the "**Deed**"), executed and acknowledged by Seller, conveying to Buyer good and marketable fee title to the Property, subject only to the Permitted Exceptions, substantially in the form attached hereby as Exhibit B.

10.2.2 Assignment of Permits and Utility Rights. Such assignments and other documents and certificates as Buyer may reasonably require in order to fully and completely assign to Buyer all of Seller's right, title, and interest, if any, in and to any Entitlements, water and sewer taps, permits, drainage agreements, utility agreements, and similar rights applicable to the Property, and all documents and contracts related thereto, and all rights under utility agreements with governmental entities and similar rights ("**Assignment**").

10.2.3 Title Policy. The Title Policy or an unconditional commitment by Title Company to issue the Title Policy promptly after Closing.

10.2.4 Non-foreign Affidavit. An affidavit of Seller that evidences that it is exempt from the withholding requirements of Section 1445 of the Internal Revenue Code.

10.2.5 Conveyance Information. A Colorado Form DR-1083, in form required by law and signed by Seller, concerning information with respect to a conveyance of a Colorado real property interest.

10.2.6 Transfer Declaration. A real property transfer declaration, in form required by law and signed by Buyer, concerning the transaction contemplated by this Agreement.

10.2.7 Settlement Sheets and Funds. Settlement statements reflecting the Purchase Price and all adjustments and prorations to be made thereto pursuant to this Agreement

including, without limitation, Article 11 below, together with any amounts, in immediately available funds, required to be paid by either party thereunder.

10.3 Further Documents. Seller and Buyer will execute and deliver such other documents and will take such other action at Closing as may be necessary or appropriate to carry out their respective obligations under this Agreement, without further representations or warranties other than those contained herein.

11. **Adjustments and Prorations**. The following adjustments and prorations will be made at Closing and reflected, where appropriate, on the settlement sheets described in Section 10.2.7 above:

11.1 Ad Valorem Taxes. Buyer is a tax-exempt entity. Seller will pay all assessments and taxes attributable to the Property prior to the Closing Date. In the event that on the Closing Date the actual tax bills for the year or years in question are not available and the amount of taxes or assessments cannot be ascertained, or the Property on the Closing Date is not being, or has not been, taxed as a separate tax parcel, the Escrow Holder shall retain Two Thousand Dollars of the Purchase Price in an interest bearing account (\$2,000.00) until a final adjustment can be made. Seller shall be responsible to pay any and all taxes and assessments, as computed, assessed or levied against the Property as and when such actual tax amounts become known.

11.2 Closing Costs. Buyer will pay (i) one-half of Title Company's closing fee; (ii) the costs of any endorsements to the Title Policy, except for any owners extended coverage endorsements and any endorsements, if any, that Seller agrees to obtain pursuant to Section 4.2; (iii) the cost of recording Seller's Deed to Buyer (including the state documentary fees); (iv) all costs incurred by Buyer in connection with Buyer's investigations of the Property; (v) if Buyer elects to update the Survey pursuant to Section 3.1.1 above, all costs incurred by Buyer to obtain the update of the Survey; and, (vi) Buyer's attorneys' fees. Seller will pay (i) one-half of Title Company's closing fee; (ii) Title Company's premium for the Title Policy, excluding the costs of any endorsements thereof (except for any owners extended coverage endorsements and any endorsements, if any, that Seller agrees to obtain pursuant to Section 4.2); and (iii) Seller's attorneys' fees.

11.3 Survival. The parties' obligations under this Article 11, to the extent not fully discharged by or through Closing, will survive Closing and remain fully enforceable thereafter for a period of two (2) years after the Closing Date.

12. **Condemnation and Casualty**.

12.1 Condemnation. In the event of any threatened, contemplated, commenced, or consummated proceedings in eminent domain prior to Closing (notice of which shall be given to Buyer by Seller immediately) respecting the Property, Buyer may, at its option, by notice to Seller given within fifteen (15) days after Buyer is notified of such actual or possible proceedings (but before the Closing): (i) unilaterally terminate this Agreement and the Deposit shall be immediately returned to Buyer; or (ii) proceed under this Agreement, in which event Seller shall, at the Closing, assign to Buyer its entire right, title, and interest in

and to any condemnation award, and Buyer shall have the right during the pendency of this Agreement to assist in the negotiations and otherwise deal with the condemning authority in respect of such matter.

12.2 Casualty. Prior to Closing and notwithstanding the pendency of this Agreement, the entire risk of loss or damage by earthquake, hurricane, tornado, flood, landslide, fire, sinkhole, or other casualty shall be borne and assumed by Seller. If, prior to Closing, the Property is damaged as a result of any earthquake, hurricane, tornado, flood, sinkhole, landslide, fire, or other casualty, Seller, upon becoming aware of such fact, shall immediately notify Buyer of such fact. In such event, Buyer shall have the option to terminate this Agreement upon written notice to Seller given within fifteen (15) days after receipt of any such notice from Seller, in which event the Deposit shall be returned to Buyer. If Buyer waives the right to terminate this Agreement and elects to proceed with Closing, Buyer shall have the right to participate in any adjustment of the insurance claim. If Buyer waives the right to terminate this Agreement and elects to proceed with the Closing, then (a) Seller, at, and as a condition precedent to Buyer's obligation to proceed with the Closing, must either: (i) pay to Buyer (or direct Title Company to credit Buyer against the Purchase Price for) the amount of any insurance proceeds actually received by Seller; or (ii) if no insurance proceeds have been received by Seller, assign to Buyer by written instrument reasonably satisfactory to Buyer all rights or claims to the insurance proceeds; and (b) the parties shall proceed to the Closing pursuant to the terms hereof without further modification of the terms of this Agreement.

13. **Escrow; Commissions.**

13.1 Instructions. Within five (5) days after the Effective Date of this Agreement, Buyer and Seller each shall deposit two (2) copies of this Agreement executed by such party (or either of them shall deposit a copy executed by both Buyer and Seller) with Title Company. This Agreement, together with such further instructions, if any, as the parties shall provide to Title Company by written agreement, shall constitute the escrow instructions. If any requirements relating to the duties or obligations of Title Company hereunder are not acceptable to Title Company, or if Title Company requires additional instructions, the parties hereto agree to make such deletions, substitutions, and additions hereto as counsel for Buyer and Seller shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly agreed to by Seller and Buyer.

13.2 Escrow. By its execution of this Agreement, Title Company agrees to receive, invest, and apply the Deposit in accordance with the terms and provisions hereof. In the event of any dispute between Buyer and Seller as to the proper application of the Deposit, Title Company may commence an action in Weld County District Court, pay the Deposit to such Court, and interplead Buyer and Seller to such action, whereupon Title Company will be dismissed from such action and relieved of any further obligations with respect to the Deposit. Buyer and Seller hereby agree to submit to the jurisdiction of such court for the purpose of any such action.

13.3 Close of Escrow. Provided that Title Company shall not have received written notice in a timely manner from Buyer or Seller of the failure of any condition to the Closing or of the termination of the escrow, and if and when Buyer and Seller have deposited into escrow the items required by this Agreement and Title Company unequivocally agrees in writing that Title Company can and will issue the Title Policy, Title Company shall:

(a) Record the original Deed in the real property records of Weld County, State of Colorado.

(b) Deliver to Seller: (i) the Purchase Price, after satisfying the Closing costs, prorations, and adjustments to be paid by Seller; and (ii) a copy of the recorded Deed together with copies of all other documents or assignments as may be recorded or delivered as a part of the Close of Escrow.

(c) Deliver to Buyer: the Certificate of Non-Foreign Status; the original recorded Deed; the original Assignment; copies of such other documents or assignments recorded or delivered as a part of the Close of Escrow; any funds deposited by Buyer, and any interest earned thereon, in excess of the Purchase Price and other Closing Costs required to be paid by Buyer; and the Title Policy issued by Title Company.

13.4 Sales Commissions. Seller and Buyer represent and warrant, one to the other, that neither has dealt with any real estate broker, sales person, or finder in connection with this transaction. Each party agrees to defend and hold the other harmless from and against any loss, cost, liability, or expense suffered or incurred by the other party as a result of a claim or claims for brokerage commissions, finder's fees or other similar fees from any party or firm that is based on the act or omission of the party in breach of the above warranty.

13.5 Survival. The parties' obligations under this Article 13 will survive Closing or any termination of this Agreement and remain fully enforceable thereafter.

14. Remedies.

14.1 Breach by Seller. In the event Seller defaults in its material obligations under this Agreement and such default, other than Seller's obligation to close on the Closing Date, is not cured within fifteen (15) days after written notice from Buyer, Buyer's remedies shall be either (a) to terminate this Agreement and have the Deposit returned to it or (b) specific enforcement of this Agreement, including, without limitation, Seller's obligation to convey the Property; provided, however, that in the event Seller's default is a result of a representation made by Seller pursuant to Article 6 which was false in any material respect at the time made, then Seller shall additionally reimburse Buyer for all bona fide out-of-pocket costs and expenses to third parties actually incurred by Buyer in connection with the transaction contemplated by this Agreement, including, but not limited to, Buyer's reasonable attorneys' fees (the "**Buyer's Third-Party Costs**"). In the event Buyer elects to pursue the remedy of specific performance and such remedy is not obtainable (according to a court of competent jurisdiction) due to an act or inaction which was within the reasonable control of Seller, Buyer may elect to terminate this Agreement and have the Deposit returned to it and Seller

shall be subject to the payment of damages (plus any interest provided by law). In the event Seller defaults on its obligation to close on the Closing Date, Buyer shall also have the right to pursue any and all remedies available to it at law or in equity.

14.2 Breach by Buyer. **IF BUYER FAILS TO CLOSE THE PURCHASE OF THE PROPERTY FOR ANY REASON OTHER THAN SELLER'S DEFAULT OR FAILURE OF A PURCHASER'S CONDITION PRECEDENT, SELLER'S SOLE REMEDY (OTHER THAN AS SPECIFICALLY EXCEPTED IN THIS SECTION 14.2) SHALL BE TO TERMINATE THIS AGREEMENT, AND THE DEPOSIT SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES HERETO EXPRESSLY AGREE AND ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY PURCHASER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO ASCERTAIN AND THAT THE AMOUNT OF THE DEPOSIT REPRESENTS THE PARTIES' REASONABLE ESTIMATE OF SUCH DAMAGES.**

15. **General Provisions.** The parties further agree as follows:

15.1 Time and Dates. Time is of the essence of this Agreement and Seller's and Buyer's obligations hereunder. If any date set forth in this Agreement for the delivery of any document or the happening of any event (such as, for example, the expiration of the Inspection Period, the expiration of the Contingency Period, or the Closing Date) should, under the terms hereof, fall on a weekend or holiday, then such date will be automatically extended to the next succeeding weekday that is not a holiday.

15.2 Attorneys' Fees. In the event it becomes necessary for Buyer or Seller to file a suit to enforce this Agreement or any provisions contained herein, the prevailing party in such suit will be awarded, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred in such suit.

15.3 Entire Agreement. No change or modification of this Agreement will be valid unless the same is in writing and signed by the parties hereto. This Agreement contains the entire agreement between the parties relating to the purchase and sale of the Property. All prior negotiations between the parties are merged in this Agreement and there are no promises, agreements, conditions, undertakings, warranties, or representations, oral or written, express or implied, between the parties other than as set forth herein.

15.4 Governing Law. This Agreement will be construed and enforced in accordance with the laws of the State of Colorado. Venue for any matter arising out of this Agreement shall be the County of Weld, Colorado.

15.5 Notices. All notices, demands or other communications required or permitted to be given hereunder will be in writing and any and all such items will be deemed to have been duly delivered upon personal delivery; electronic mail; or, as of the third business day after mailing by United States mail, certified, return receipt requested, postage prepaid, addressed as follows; or, as of

12:00 Noon on the immediately following business day after deposit with Federal Express or a similar overnight courier service that provides evidence of receipt, addressed as follows:

If to Seller, to: _____

Email: _____

with a copy to: _____

Email: _____

If to Buyer, to: Frederick Urban Renewal Authority
Attn: _____

Email: _____

with a copy to:

or to such other address of which, or such other person of whom, any party notifies the other for such purpose in accordance with this Section 15.5.

15.6 Headings. The headings which appear in the Articles and Sections of this Agreement are for purposes of convenience and reference and are not in any sense to be construed as modifying the Sections in which they appear.

15.7 Counterparts. This Agreement may be executed in counterparts and may be executed or delivered electronically, each of which (or any combination of which) when signed by all of the parties will be deemed an original, but all of which when taken together will constitute one agreement.

15.8 Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors, and assigns. Buyer may assign this Agreement to a third party in its sole determination and election, and shall promptly notify Seller in writing of such assignment thereafter.

15.9 Interpretation. Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Buyer with respect to the Property to be conveyed.

15.10 Recordation Prohibited. This Agreement shall not be recorded by either party in the Weld County Clerk and Recorder's Office or in any other office or place of public record.

15.11 Waiver of Jury Trial. IN ANY PROCEEDING TO ENFORCE THE TERMS OF THIS AGREEMENT OR OBTAIN ANY REMEDY PROVIDED FOR IN THIS AGREEMENT OR OTHERWISE PERMITTED BY LAW IN CONNECTION WITH THE SUBJECT MATTER HEREOF, WHETHER BEFORE OR AFTER CLOSING, SELLER AND PURCHASER WAIVE TRIAL BY JURY TO THE FULLEST EXTENT PERMITTED BY LAW.

15.12 Cancellation Fees. Buyer and Seller agree to share equally any title or escrow cancellation fees charged by the Title Company.

15.13 No Waiver of Immunity. Nothing in this Agreement shall be deemed or construed as a waiver of any of the protections to which Seller may be entitled under the Constitution of the State of Colorado, the Colorado Governmental Immunity Act, C.R.S. §§24-10-101, et seq., as amended, or any other applicable law.

15.14 Force Majeure. “**Force Majeure**” (whether or not capitalized) shall mean delays caused by occurrences beyond the reasonable control and without the fault, negligence or financial inability of a party hereto or its contractors or subcontractors, including, without limitation, strikes, labor disputes, increases in the costs of labor, supply or other costs of over 25% from their prices as of the Effective Date, utilities shortages, moratoria (other than moratoria entered into by Seller), fire, earthquake, floods and other out of the ordinary actions of the elements, pandemics or epidemics, enemy invasion, wars, terrorism, insurrection, sabotage, laws, orders or actions of governmental, civil or military authorities, governmental restrictions, riot, civil commotion, terrorist activities, judicial or administrative proceedings commenced by persons not a party to this Agreement and unavoidable casualty. If the performance of an obligation hereunder or under any other agreement or declaration is expressly subject to the effect of a force majeure delay, then, unless otherwise provided herein or in such other agreement or declaration to the contrary, the effect of a force majeure delay shall be to extend the time for performance of such obligation for the reasonable period of such force majeure delay, but in no event greater than the period of the force majeure delay.

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IN WITNESS WHEREOF, the parties have executed this Purchase and Sale Agreement effective as of the Effective Date.

SELLER:

3258 State Highway 52, LLC,
a Colorado limited liability company

DocuSigned by:
Aaron Grant
By: _____
Name: Aaron Grant
Title: Owner

BUYER:

FREDERICK URBAN RENEWAL AUTHORITY
a political subdivision of the State of Colorado,
organized and existing under the Urban Renewal Law

By: _____
Name: _____
Title: _____
Date: _____

TITLE COMPANY:

The undersigned Title Company hereby accepts the foregoing Purchase and Sale Agreement and joint escrow instructions, agrees to act as Title Company under this Agreement in strict accordance with its terms.

By: _____
Name: _____
Title: _____
Date: _____

EXHIBIT A

DESCRIPTION OF SELLER'S PROPERTY

3258 Highway 52, Frederick, CO, Section 03, Township 01, Range 68; a/k/a Parcel No.
146703000005

Approximately 10.29 acres

EXHIBIT B

**SPECIAL
WARRANTY DEED**

[SEE ATTACHED]

After Recording Return To:

SPECIAL WARRANTY DEED

This Special Warranty deed (this "**Deed**") is dated this ____ day of _____, 201__ between _____, a _____ ("**Grantor**"), whose address is _____, and [_____] ("**Grantee**"), whose address is _____.

WITNESSETH, that Grantor, for and in consideration of other valuable consideration and the sum of [_____ Dollars (\$_____)], (the "**Purchase Price**") to Grantor in hand paid by Grantee, the receipt whereof is hereby confessed and acknowledged, has granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, convey, and confirm, unto Grantee, its successors and assigns forever, all of that certain real property situate, lying, and being in the _____, County of _____, State of Colorado, more particularly described on Exhibit A attached to this Deed (the "**Property**").

TOGETHER WITH all and singular the hereditaments and appurtenances thereunto belonging, or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof; and all the estate, right, title, interest, claim, and demand whatsoever of Grantor, either in law or equity, of, in, and to the Property, together with all improvements and fixtures thereon, easements, rights and other privileges appurtenant thereto or associated therewith, including, without limitation, all of Grantor's interest in any and all water and water rights (both tributary and non-tributary), ditches or ditch rights, laterals and lateral rights, wells and well rights, lakes, reservoirs and reservoir rights and storage rights, belonging, used or in any way pertaining or appertaining to the Property, development rights, rights of ingress and egress, sewer rights, including all subsurface rights, including, but not limited to, mineral rights, oil rights, gas rights, water rights and geothermal rights relating to the real property and other estates, rights, interests, privileges, and appurtenances now owned or hereafter acquired by Seller;

Grantor, for itself and for the Grantor's successors and assigns, does hereby covenant and agree that neither the Grantor, nor any of its successors or assigns, shall have any rights to enter upon or use the surface of the Property, for any purpose whatsoever, including, without limitation, for purposes of drilling, removal, extraction, or production of Minerals, or setting of any equipment, and that the Grantor, for the Grantor and the Grantor's successors and assigns, does hereby forever relinquish the same and so long as these operations in no manner interfere with the surface or subsurface support of any improvements constructed or to be constructed on the Property.

SUBJECT ONLY TO the "**Permitted Exceptions**" set forth on Exhibit B attached hereto and incorporated herein by reference;

TO HAVE AND TO HOLD the Property with the appurtenances, unto Grantee, its successors and assigns forever;

AND Grantor, for itself, its successors, and assigns, covenants and agrees to and with Grantee, its successors and assigns, to warrant and defend the quiet and peaceable possession of the Property by Grantee, its successors and assigns, against every person who claims the Property or any part thereof by, through, or under Grantor, subject to the Permitted Exceptions and the covenants, conditions, reservations and restrictions herein contained.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, Grantor and Grantee have executed this Special Warranty Deed as of the day and year first above written.

GRANTOR:

By: _____

Name: _____

Title: _____

STATE OF COLORADO)

) ss.

COUNTY OF DENVER)

This instrument was acknowledged before me this ____ day of _____, 202__, by _____, as _____ of _____.

Witness my hand and official seal.

My commission expires: _____

Notary Public

(SEAL)

EXHIBIT A
TO
SPECIAL WARRANTY DEED

Legal Description

[TO BE INSERTED FROM FINAL TITLE COMMITMENT]

EXHIBIT B
TO
SPECIAL WARRANTY DEED

List of Permitted Exceptions

[TO BE INSERTED FROM FINAL TITLE COMMITMENT]



TOWN OF FREDERICK Urban Renewal Authority Action Memorandum

Tony Carey, Chair

Laura Brown, Vice Chair
Rocky Figurilli, Authority Member
Salvatore "Sam" DeSantis, Authority Member
Chris Vigil, Authority Member
Dan March, Authority Member

Steve Moreno, Authority Member
Tracie Crites, Authority Member
Chico Garcia, Authority Member
Rusty O'Neal, Authority Member
Vacant, Authority Member

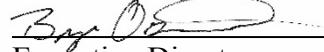
A Resolution to Enter into an Agreement with the Colorado Department of Transportation

Agenda Date: Urban Renewal Authority Meeting – April 1, 2020

Attachments:
a. Resolution 20-FURA-05
b. Agreement

Finance Review: _____
Finance Director

Submitted by: 
Executive Director

Approved for Presentation: 
Executive Director

Quasi-Judicial Legislative Administrative

Summary Statement:

This is a request to approve a resolution to enter into an Agreement between the Frederick Urban Renewal Authority (FURA) and the Colorado Department of Transportation (CDOT).

Detail of Issue/Request:

This is the third of three agreements related to the CDOT property at the corner of I-25 and Highway 52. This is a request to approve a resolution to enter into an Agreement with CDOT. The Agreement is provided to the FURA Board as part of this agenda item.

Legal/Political Considerations:

The resolution was drafted by the Frederick Town Attorney.

Alternatives/Options:

The URA could choose to not enter into the agreement.

Financial Considerations:

Not applicable.

Staff Recommendation:

Staff recommends approval of the resolution as presented.

**FREDERICK URBAN RENEWAL AUTHORITY
RESOLUTION NO. 20-FURA-05**

**A RESOLUTION OF THE FREDERICK URBAN RENEWAL
AUTHORITY APPROVING AN AGREEMENT WITH THE COLORADO
DEPARTMENT OF TRANSPORTATION**

WHEREAS, the Frederick Urban Renewal Authority, hereafter known as the FURA, wishes to enter into an Agreement (“AGREEMENT”) with the Colorado Department of Transportation.

BE IT RESOLVED BY THE COMMISSIONERS OF THE FREDERICK URBAN RENEWAL AUTHORITY, AS FOLLOWS:

Section 1. The Commissioners approve the AGREEMENT and authorize the Chair to execute the AGREEMENT.

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

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

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

INTRODUCED, READ, PASSED, AND SIGNED 1ST DAY OF APRIL, 2020.

ATTEST:

**FREDERICK URBAN RENEWAL
AUTHORITY**

By _____
Executive Director/Secretary

By _____
Tony Carey, Chair

AGREEMENT

THIS AGREEMENT made and entered into this _____ day of _____, 2020 by and between the **STATE OF COLORADO** for the use and benefit of the **COLORADO DEPARTMENT OF TRANSPORTATION** hereinafter referred to as “CDOT”, and the **FREDERICK URBAN RENEWAL AUTHORITY**, a political subdivision of the State of Colorado, organized and existing under the Urban Renewal Law, Part 1 of Article 25, Title 31, C.R.S., as amended, “The Authority”, CDOT and The Authority are collectively referred to hereinafter as the “Parties.”

RECITALS:

- A.** WHEREAS, CDOT is the owner and in possession of approximately 7.52 acres located in the County of Weld, State of Colorado, known as Parcels 216B RevEX and 216C RevEX described in Exhibit “A”, which real property was acquired by CDOT and used by CDOT as the site for a park and ride, maintenance building, sand storage, and material storage for state highway purposes, and is hereinafter referred to as the “Dacono Site”; and
- B.** WHEREAS, The Authority, prior to Closing, will be the owner and in possession of certain real property in The Town of Frederick (“Town”), State of Colorado, County of Weld, more particularly described in Exhibit “B”, hereinafter referred to as the “Frederick Site”.
- C.** WHEREAS, subject to certain conditions The Authority desires to acquire the Dacono Site. The conditions include, The Authority’s inspection of the Dacono Site (“Investigation Period”) as outlined in paragraph I.B.; and
- D.** WHEREAS, CDOT desires to relocate the CDOT Maintenance Operations to the Frederick Site in new improvements when The Authority first complies with the terms and conditions, as contained within this agreement; and
- E.** WHEREAS, at its meetings on January 16 and April 16, 2020, the State Transportation Commission of Colorado adopted resolution Numbers _____ (“the Resolution”) attached as Exhibit “C”, approving exchange of the Dacono Site for the Frederick Site and construction of new improvements at the Frederick Site subject to certain conditions. These conditions include, but are not limited to, that The Authority make specific improvements to the Frederick Site before the exchange in order to make the new facility at the Frederick Site suitable for CDOT maintenance operations; and
- F.** WHEREAS, CDOT’s Chief Engineer has determined that if The Authority makes those improvements required by this Agreement and makes the new improvements at the Frederick Site available to CDOT, the Frederick Site will be suitable for highway maintenance operations for future CDOT needs and the Dacono Site will no longer be needed by CDOT for transportation purposes; and
- G.** WHEREAS, the purpose of this Agreement is to define the rights and remedies of the Parties for the above described property transaction. CDOT enters into this Agreement pursuant to Sections 43-1-105, 43-1-106, and 43-1-210, C.R.S., as amended.

NOW, THEREFORE, in consideration of the premises, the mutual agreements herein contained, and subject to the terms and conditions hereinafter stated, it is hereby understood and agreed by the Parties hereto as follows:

I. PROPERTY EXCHANGE PROVISIONS:

- A.** The Authority shall have a period of 120 days from the Effective Date for The Authority’s Investigation Period. The Authority reserves the right to terminate this Agreement by providing written notice of such election to CDOT within the Investigation Period if The Authority determines in its reasonable discretion that the results of The Authority’s investigation are unsatisfactory. In the event the Phase I recommends or requires further environmental site assessments, including any Phase II environmental site assessment or additional investigation, the Investigation Period shall be extended for an additional 120 days.
- B.** On or before the expiration of the Investigation Period, The Authority shall, in writing, provide CDOT with notice of acceptance of the condition (“Notice of Acceptance”) of the Dacono Site. The Authority, its designees, consultants and agents, shall have the right, upon reasonable notice to and approval from CDOT, to enter upon the Dacono Site, during the Investigation Period to perform inspections and investigations.
- C.** Within 240 days of Notice of Acceptance, The Authority shall complete appraisals for both the Frederick Site (inclusive of the value of the improvements related to the non-exclusive license for ninety-four (94) Park and Ride spaces on land, within one-half mile of the Dacono Site, mutually agreeable to the Parties (the “Park and Ride Licensed Spaces”)) and the Dacono Site. The Authority shall contract with an appraiser from CDOT’s “Approved Appraiser List” attached hereto as Exhibit D. The appraisal shall name CDOT and its assigns as the intended user of the report. Both appraisal reports shall follow the CDOT Excess Parcel Appraisal Format (attached hereto as Exhibit E). The CDOT Excess Appraisal format requires the selected appraiser to develop a range of values for each property. Both appraisal reports shall be reviewed by a CDOT staff appraiser. The CDOT staff appraiser shall complete Appraisal Review Report for both property appraisals. The CDOT staff appraiser shall use the CDOT Appraisal Review Report Format (attached hereto as Exhibit F) for the review. The CDOT staff appraiser shall issue a Fair Market Value (FMV) report using the CDOT FMV Form #930 (attached hereto as Exhibit G). CDOT and The Authority agree to use the FMV’s recommended by the CDOT staff appraiser for the value of the property exchange.
- D.** Within the 240 days of Notice of Acceptance, the Parties will agree on the location of the Park and Ride Licensed Spaces. The Authority agrees to grant, or cause to have granted, to CDOT a non-exclusive license for use of the Parking Spaces at closing.
- E.** The Authority shall contract with a General Contractor to construct the improvements described in Section II below (“GC Contract”). The Authority shall provide a copy of the fully executed contract to CDOT.
- F.** Within 30 days of receipt of the executed GC Contract, CDOT shall issue a license to allow The Authority or its designee to begin construction on Parcel 216B RevEX. The license agreement shall be drafted and agreed to by both Parties prior to the execution of the GC Contract.

- G.** If the value of the Frederick Site, as improved, and the value of the Park and Ride Licensed Spaces is greater than the value of the Dacono Site, no monetary consideration will be required by either Party as part of this exchange.
- H.** If the value of the Frederick Site, as improved, and the value of the Park and Ride Licensed Spaces is less than the value of the Dacono Site, The Authority shall be required to make a cash payment to CDOT equal to the amount of the Dacono property less the value of the Frederick Site, as improved.
- I.** The Authority shall be required to keep an accounting of all design, permitting, grading, architectural, engineering, testing, management, plan review, and other construction related fees and costs (including contract work and change orders) for the improvements.
- J.** The construction and performance by The Authority on the Frederick Site shall be subject to inspection and written approval by CDOT prior to Closing (“Final Acceptance”). Final Acceptance shall not be unreasonably withheld, conditioned nor delayed by CDOT. It is considered reasonable to be within CDOT’s discretion to require that all Improvements be completed in a good and workmanlike manner and substantially in accordance with the plans and specifications set forth in Exhibit “H”.
- K.** If CDOT approves The Authority’s performance in accordance with the Provisions, in Section III below, and all monetary payments required by Paragraph G of this section have been made or deposited into Escrow with the Title Company, the Parties shall exchange the Dacono Site and the property and new facilities at the Frederick Site as described in paragraph following.
- L.** A closing for the entire transaction described herein will occur within fifteen (15) days of the date of the last of the approvals, as described in the above Property Exchange Provisions, at a time and place agreed to by the Parties (“Closing”) and the Title Company shall be Stewart Title, Attn: Suzanne Killmer, 55 Madison Street, Suite 400, Denver, Colorado.
1. At the Closing, The Authority shall deliver to CDOT a fully executed copy of the Special Warranty Deed for the Frederick Site.
 2. At the Closing The Authority shall provide CDOT with a lease agreement for the Dacono Site. The Lease agreement shall be for the term of 60 days to allow CDOT time to move from the site. CDOT shall not pay any rent for the 60 day lease term. The form of the lease shall be developed and agreed to by both Parties prior to the Closing.
 3. At the Closing, CDOT shall deliver to The Authority a fully executed copy of the conveyance deed, without warranties, for the Dacono Site.
 4. At the Closing The Authority shall provide CDOT with a non-exclusive license for the Park and Ride Licensed Spaces.
 5. The Authority will record and pay recording fees for the original conveyance deed from CDOT and The Authority.
 - i. Recordation must occur within 72 hours of exchange of the deeds.
 - ii. After recordation, original documents shall be delivered to the Parties in accordance with the joint closing instruction letter to the Title Company and recorded copies of all

instruments will be provided to all of the Parties.

II. PLANS AND SPECIFICATIONS PROVISIONS

- A.** The Authority shall contract with one of CDOT Property Management's contracted Multiple Project Architect and Engineering firms ("A/E Consultants") to develop construction documents ("CDs") and construction Specifications for all structures, appurtenances and improvements to the Frederick Site based on CDOT's Prototype Drawings and Specifications for the Vehicle Storage Facility, Sand Shed and Secondary Containment structure (collectively, "Improvements"), attached hereto as Exhibit "H", such Improvements being of a size equivalent to those existing on the Dacono Site:
1. Ten (10) Bay Vehicle Storage Facility, plus office space, equivalent to the current facility at the Dacono Site, based on current Prototype, using one of the 6 CDOT pre-approved Pre-Engineered Metal Building Manufacturers listed on the Prototype Drawings and Specifications. CDOT agrees it is responsible to pay The Authority for design and construction of two (2) of the ten (10) bays defined herein, based on an apportionment of the total costs of the Vehicle Storage Facility within three (3) business days of receipt of an invoice from The Authority.
 2. One Sand Shed based on the current prototype.
 3. One eight tank Secondary Containment Unit based on the current prototype.
 4. Paved road providing direct access to Highway 52.
 5. Site utilities, including, but not limited to water, sewer, electricity, telephone, data and natural gas, of a size or phase equivalent to those currently serving the facilities at the Dacono Site.
- B.** The Authority shall use CDOT's approved A/E Consultants for the following design services, at their expense for:
1. All surveying, civil, structural, mechanical, plumbing, and electrical design services needed to develop the CDs and Specifications.
 2. CDOT will provide The Authority a list of CDOT Property Management A/E Consultants.
- C.** The Authority shall contract with a Geotechnical Engineer ("Geotech") to produce a Geotechnical Engineering Study that will be incorporated into the CDs and Specifications for all Improvements to the Frederick Site.
1. CDOT will provide The Authority a list of CDOT Property Management contracted Geotechnical Engineers at The Authority's request.
- D.** During development of CDs and Specification for all Improvements, the Authority shall require the A/E Consultant to comply with the Town's "Development Review Process" and all Building Codes as required by the Town's "Buildings Permit/Inspection Department".
- E.** The Authority is solely responsible for all applicable Permitting Review Fees or applicable fees. The Authority shall determine which permits apply to the work. The Authority shall obtain and pay for all permits, applications and fees.
- F.** CDOT's Architect will approve the site layout for all Improvements at the Frederick Site prior to

development of CDs and Specifications.

- G.** CDOT's Architect will review all plans and specifications, developed by the A/E Consultant at both the completion of the Design Development ("DD") phase and at the 99% CD phase, prior to code review submission.
- H.** The Authority shall incorporate all edits and modifications to DDs and CDs required by CDOT's Architect.
- I.** Prior to the start of construction at the Frederick Site, The Authority will provide to CDOT documentation that CDs are code compliant.
- J.** The Authority shall not construct the work on the Frederick Site absent CDOT's prior approval of all CDs and Specifications. Upon approval of CD's and Specifications, construction shall not be unreasonably withheld, conditioned or delayed.
- K.** The Authority shall cause the construction of Park and Ride Licensed Spaces pursuant to Section I.C to be completed within 365 calendar days from the Effective Date of this Agreement.

III. CONSTRUCTION PROVISIONS FOR THE FREDERICK SITE:

- A.** The Authority shall use the A/E Consultant for the following construction administrative services, at The Authority's expense for:
 - 1. Limited construction observations, and
 - 2. Review of metal building, structural, civil, and mechanical, electrical and plumbing ("MEP") related submittals.
- B.** The Authority shall construct all Improvements (identified in Section II.A above) at its sole expense, other than two (2) bays of the Ten Bay Vehicle Storage Facility, in a good and workmanlike manner and in accordance with the terms of this Agreement.
- C.** The Authority is responsible for obtaining and documenting all inspections as required by the Town's "Buildings Permit/Inspection Department" during construction of all Improvements.
- D.** The Authority shall be solely responsible for the overall construction management. CDOT shall not be responsible for directing the means and methods of construction.
- E.** CDOT's representative, including Property Management Staff and the Region 4 Maintenance Superintendent and his/her assigns, shall be allowed access to the Frederick Site at all times following the date of execution of this Agreement for the purpose of inspection of work and materials.
- F.** The Authority shall require its general contractor and any subcontractor who works on The Frederick Site to furnish The Authority with certificates of insurance. Such insurance coverage shall be for:
 - 1. Workers Compensation Insurance as required by Colorado state statutes, and Employer's Liability Insurance covering all of the contractor's employees acting within the course and scope of their employment.
 - 2. Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with

minimum limits as follows:

- i. \$1,000,000 each occurrence;
 - ii. \$2,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate;
 - iv. \$50,000 any one fire.
3. Automotive Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit as follows: \$1,000,000 each accident combined single limit.
 4. If any operations are anticipated that might in any way result in the creation of a pollution exposure, GC shall also provide Pollution Legal Liability Insurance with minimum limits of liability of \$1,000,000 Each Claim and \$1,000,000 Annual Aggregate. CDOT shall be named as Additional Insured to the Pollution Legal Liability policy. The Policy shall be written on Claims Made form, with an extended reporting period of at least two years following finalization of construction of the New Building.
 5. CDOT shall be named as additional insured on the Commercial General Liability and Automobile Liability insurance policies and the Completed Operations Endorsement CG 2010 11/85, CG 2037, or equivalent.
- G.** The Authority is solely responsible for all permits required for the performance of the work. The Authority shall determine which permits apply to the work. The Authority shall obtain and pay for all permits, applications and fees.
- H.** The Authority shall be solely responsible for all applications and all costs of procuring and connecting all public utilities (of a size or phase currently serving the Dacono Site) to the Improvements. The Authority shall connect all such utilities prior to the exchange of the properties. Any costs associated with increasing the size or phase of any of the Improvements are the responsibility of CDOT.

IV. TIME OF COMPLETION PROVISIONS:

- A.** The Authority shall have 365 calendar days from the Effective Date of this Agreement to complete the Plans and Specifications and to begin construction for all Improvements for the Frederick site.
- B.** The Authority agrees to Substantially Complete all Improvements at the Frederick Site within 365 calendar days from the date the Plans and Specifications are accepted by CDOT. Additionally, The Authority agrees to finally complete the Project from Substantial Completion to Final Acceptance within 14 calendar days for a total time of completion of the entire Project of 365 calendar days. The Authority shall perform the Work with due diligence to completion.
- C.** The Authority will provide timely notice to CDOT's Architect to schedule a pre-substantial completion walk through ten days prior to the Substantial completion date. CDOT's Architect will compile a list of outstanding items to be completed, repaired or reconstructed and provide to The Authority prior to Final Acceptance.

V. WARRANTY PROVISIONS:

- A.** The Authority shall warrant the Improvements made to the Frederick Site against defects in materials and/or workmanship for a period of one (1) year from the transfer date to CDOT.
- B.** Upon timely notice from CDOT, The Authority and CDOT will conduct an 11-month walk-through at the site prior to the expiration of the one-year warranty period. The Authority will complete any remaining necessary reconstruction or repairs prior to the expiration of such one-year period, provided that such repairs are actually a warranty issue and are not as a result of ordinary wear and tear or CDOT's negligence or misuse of the Improvements.
- C.** If reconstruction or repair cannot be completed within such period, The Authority will provide CDOT with written notice of completion date. If The Authority does not complete the reconstruction or repair by the extended completion date, the procedure set forth in the following sentence shall apply. If for any reason, The Authority does not complete necessary reconstruction or repair under this warranty within a reasonable time period after being notified by CDOT (one (1) business day for an emergency or thirty (30) business days for a non-emergency), CDOT will have the right to contract directly for the necessary reconstruction or repair, and forward the invoice to The Authority for payment.
- D.** CDOT shall not incur any costs as a result of this Agreement. If any costs are incurred by CDOT, CDOT shall submit bills to The Authority for such costs and The Authority shall pay such invoices in full within thirty-five (35) calendar days of their receipt.

VI. GENERAL PROVISIONS:

- A.** CDOT has the right to terminate this Agreement, upon thirty (30) days written notice, without any obligation or liability, if The Authority does not commence construction of the Frederick site improvements upon the Frederick Site as soon as practicable, but not later than 365 calendar days after the Effective Date of this Agreement, unless delayed by CDOT or unless delayed as a result of weather, acts of God, pandemic, epidemic, unavailability of labor or materials or any other reason outside of the control of The Authority. The "Effective Date" shall be the date the Agreement was executed as reflected on the first page of this document.
- B.** This Agreement is limited to the terms and conditions expressly contained herein. The exchange of properties that this Agreement contemplates is subject to the satisfactory completion by The Authority of all terms and conditions of this Agreement prior to such exchange. Should The Authority fail to satisfactorily complete the work or to comply with all terms and conditions of this Agreement, as determined by CDOT, then CDOT shall have the right to exercise any remedy available by law or in equity.
- C.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written Agreement executed

and approved pursuant to CDOT Fiscal Rules.

- D.** This Agreement contains all understandings between the Parties with respect to the costs that relate to the exchange of the Dacono Site and acquisition of the property and construction of the new facility at the Frederick Site.
- E.** The term of this Agreement shall be through the satisfactory completion of the work at the Frederick Site by The Authority no later than twenty four (24) months after the Effective Date of this Agreement, except to the extent the terms of this Agreement expressly provide that certain obligations of The Authority or CDOT continue thereafter, and except to the extent of delays caused by CDOT or delays due to weather, acts of God, unavailability of labor or materials, pandemic, epidemic, or any other reason outside of the control of The Authority.
- F.** All communications relating to the day-to-day activities under this Agreement shall be exchanged between CDOT's Representative and The Authority's Representative, as identified below. All other notices and communications in writing required or permitted hereunder shall be deemed to have been given when delivered personally to the respective representatives of State and Authority, set forth below, three (3) business days after such notice of communication has been deposited in the United States Mail, properly addressed and with first-class postage fully prepaid. Until changed by notice in writing, all such notices and communications shall be addressed as follows:

- G.** If to State: If to Authority Representative:

Marcella Broussard
Property Management Program Manager
Colorado Department of Transportation
2829 West Howard Place, Denver CO
Denver, CO 80204

The Parties may allow notice to a designated representative, as provided hereinabove.

- H.** The Authority shall comply with all applicable Federal, State, Town, and local requirements in the performance of the work.
- I.** The Authority, by its board, shall take formal action by resolution to approve the terms and conditions of this Agreement and to authorize the signatory to execute this Agreement on The Authority's behalf. Such resolution shall be attached hereto as Exhibit "I".
- J.** This Agreement shall extend to and be binding upon the Parties hereto, and their respective successors and assigns. The Authority shall have the right to assign its rights, duties and obligations hereunder to FDC or its affiliates.
- K.** The Authority, or its assigns, shall perform its duties hereunder as an independent contractor. Neither The Authority nor any agent or employee of The Authority shall be or shall be deemed to be an agent or employee of CDOT. The Authority shall pay when due all required employment taxes and income tax withholding, shall provide and keep in force worker's compensation (and show proof of such insurance) and unemployment compensation insurance in the amount required by law, and shall be solely responsible

for the acts of the contractor, its employees and agents.

- L.** Amendments to this Agreement shall be in writing and signed by the Parties hereto.
- M.** Should any conflicts occur between this Agreement and the attachments or exhibits hereto, then the terms of this Agreement document shall prevail. Notwithstanding the foregoing, to the extent there are any conflicts between this Agreement and the Addendum, then the terms of the Addendum shall control.
- N.** The Authority represents and warrants that it has taken all actions that are necessary or that are required by its procedures, bylaws, or applicable law, to legally authorize the undersigned signatory to execute this Agreement on behalf of The Authority and to bind The Authority to its terms.

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

ATTEST:

STATE OF COLORADO
_____, GOVERNOR

Chief Clerk

By: _____
Executive Director
Department of Transportation

ATTEST:

FREDERICK URBAN RENEWAL AUTHORITY

Secretary

By: _____
Its: _____

EXHIBIT A:

Real property in the County of Weld, State of Colorado, "The Dacono Site";

EXHIBIT B:

Real property in The Town of Frederick, State of Colorado, County of Weld “The Dacono Site”;

EXHIBIT C:

State Transportation Commission of Colorado Resolution Number (“the Resolution”);

EXHIBIT D:
CDOT Approved Appraiser List

EXHIBIT E:
CDOT Excess Land Appraisal Report Format

EXHIBIT F:
CDOT Review Appraisal Report Format

EXHIBIT G:
CDOT FMV Form #930 Template

EXHIBIT H:

CDOT's Prototype Drawings and Specifications for the Vehicle Storage Facility, Sand Shed and Secondary Containment structure;

EXHIBIT I:

The Authority's Board Resolution Number _____;