

**AGREEMENT
FOR
DEFERMENT OF PLANT INVESTMENT FEES**

THIS AGREEMENT FOR CERTAIN ECONOMIC INDUCEMENTS AND INCENTIVES ("Agreement") is executed effective as of January 1st, 2024 ("Effective Date"), by and between the TOWN OF FRASER, COLORADO, a Colorado municipal corporation ("Town"), and 406 ZEREX, LLC, a Colorado limited liability company (hereinafter referred to as "Owner", whether one or more).

RECITALS:

1. The Town has adopted Fraser Municipal Code Section 2-2-10(d) to encourage, in part, the establishment and expansion of new retail sales tax generating businesses within the Town of Fraser and to further other public purposes.
2. Owner is the owner of the following described property located at 406 Zerex Street and 315 Fraser Ave., Fraser, Colorado ("Property"):

FINAL PLAT KOSELIG ON MAIN,
406 Zerex St. & 315 Fraser Ave.,
Replat of Lots 24 through 29, Block 7 & 30-33, Block 7 Lying North of U.S. Route 40,
1st Addition to the Town of Eastom (aka Fraser), Grand County, Colorado,
Part of Sec. 19, Township 1 South, Range 75 West of the 6th PM, according to the plat
recorded October 26, 2023 at Reception No. 2023007368.

3. Owner intends to undertake new commercial real estate and business development on said Property, generally described as follows (the "Proposed Development"):

Mixed use commercial and residential development on the Property.
4. In order to facilitate such Proposed Development, Owner desires to obtain the benefits of certain incentives pursuant to Fraser Municipal Code Section 2-2-10(d) as set forth below.
5. The Town is willing to offer such incentives, which will facilitate the Proposed Development by deferring plant investment fees on that portion of the Property known as 406 Zerex Street, but not on that portion of the Property known as 315 Fraser Avenue. Such incentives will generate additional sales tax revenues and otherwise serve the public interest.
6. It is an appropriate and lawful function of Colorado municipalities to encourage economic vitality through economic inducements and incentives.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and Owner agree as follows:

The foregoing Recitals are fully incorporated herein by this reference with the same force and effect as though restated below.

1. **Determination of Public Benefit, Reliance of the Town.**

- a. The Town maintains certain guidelines for evaluating the public benefit of commercial development within its corporate limits, and the value of providing economic inducements and incentives to encourage and sustain such development. In reliance upon certain data and information provided to the Town by Owner, the Town has determined that construction of the Proposed Development satisfies such guidelines and will be of substantial economic benefit to the Town.
- b. Owner has provided the Town with certain information and representations upon which the Town has relied in determining future tax revenue generation from commercial activity presently taking place and anticipated to take place in the foreseeable future within the Property. By entering into this Agreement, the Town is relying on Owner's representations in good faith.

2. **Agreed Incentives and Inducements.**

In light of the foregoing, the Town agrees to the following incentives and inducements upon the terms and conditions set forth below. These incentives shall only apply to the building and improvements included as part of the Proposed Development and known as 406 Zerex Street (the incentives granted herein shall not apply to the building and improvements known as 315 Fraser Avenue), construction of which is commenced and completed within the time lines specified in Subsection 4.a. below, together with the subdivided lot or parcel on which such building and improvements are located.

- a. **Deferral of Plant Investment Fees.** The Town agrees to allow the deferred payment of water and wastewater plant investment fees associated with 406 Zerex Street, which are normally payable at the time of issuance of certificate of occupancy. Owner will be allowed to pay such plant investment fees in eight (8) equal quarterly installments, without interest, with the first installment payable within fifteen (15) business days of January 1st, 2024, and with subsequent quarterly installments payable within fifteen (15) business days of each quarter

thereafter (April 1st, July 1st, and October 1st).

3. **Conditions; Enforcement.**

- a. **Commencement and Completion of Improvements.** This Agreement is entered into upon the conditions that Owner shall complete the commercial improvements included in the Proposed Development prior to the Effective Date.
- b. **Lien.** In the event that Owner fails to pay any deferred fees within the time provided for herein, the Town shall serve the Owner with a written notice of non-payment. If the Owner does not pay the deferred fees within five (5) business days of the written notice of non-payment, the Town shall have and may enforce a lien upon the Property, for payment of all such sums owed, together with all costs of collection, including reasonable attorney fees. Such lien shall have priority over other liens or claims of whatever kind or nature, except any liens for the nonpayment of property taxes and State sales and use taxes, and may be foreclosed in the same manner as a mechanics lien under the laws of the State of Colorado. In addition to said lien, the Town shall have all other rights and remedies granted to it by state and local law for the collection of unpaid taxes and fees.

4. **Miscellaneous.**

- a. **TABOR.** Nothing herein shall be deemed a multiple-fiscal year obligation in violation of the limitations set forth in Article X, Section 20 of the Colorado Constitution.
- b. **Compliance With Title 31, Article 15, Part 9, C.R.S.** In connection with providing these incentives, the Town agrees to comply with any obligations imposed pursuant to Section 31-15-903, including the notification requirements of sub-section (4) thereof.
- c. **Assignment.** Owner shall not assign or subcontract with respect to any of its rights, benefits, obligations, or duties under this Agreement, except upon prior written consent and approval of the Town. In the event of a sale of the Property, the Town will approve an assignment to the new owner, provided the Owner is not then in default hereunder and the new owner expressly assumes the Owner's obligations hereunder in writing.
- d. **Entire Agreement.** This writing constitutes the entire agreement between

the parties with respect to its subject matter, and supersedes any prior written or oral communication, negotiations, agreements, representations and understandings between them with respect to its subject matter.

- e. **Modification.** This Agreement may not be modified, enlarged or altered, except in writing, signed by both parties.
 - f. **No Third-Party Beneficiaries.** No person not a signatory hereto shall have any right to seek enforcement or declaration of status under this Agreement. No third-party beneficiaries are intended.
 - g. **Attorney fees, costs of litigation.** In the event of litigation between the parties arising out of this Agreement, and in which the Town shall prevail, in addition to any judgment for damages or declaratory relief, Owner shall pay all costs incurred by the Town, including attorney fees, expert witness fees and other costs of suit.
 - h. **Venue.** This Agreement shall be governed by and construed in accordance with the law of the State of Colorado. Venue for all purposes shall be deemed proper in the District Court of Grand County, Colorado.
 - J. **No Waiver.** A waiver by either party of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.
 - k. **Severability.** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term of provision, and the rights of the parties shall be construed as if the part, term or provision in question was never part of this Agreement.
5. **Covenant Running with the Land.** This Agreement shall be deemed to run with the Property and, upon its execution by the parties, shall be recorded by the Town with the Grand County Clerk and Recorder. Upon execution by the parties, this Agreement shall be binding upon the parties, their respective successors and permitted assigns.

[SIGNATURES ON FOLLOWING PAGES]

In witness whereof, the parties have executed this Agreement as of the Effective Date.

TOWN:

The Town of Fraser, Colorado,
a Colorado municipal corporation

BY:

Philip Vandernail, Mayor

ATTEST:

Antoinette McVeigh, Town Clerk

STATE OF COLORADO)
) ss.
COUNTY OF GRAND)

The foregoing instrument was acknowledged before me on the ____ day of January, 2024, by Philip Vandernail, as Mayor, and Antoinette McVeigh, as Town Clerk, of **The Town of Fraser, Colorado**, a Colorado municipal corporation.

Witness my hand and official seal.
My Commission expires:

Notary Public

(SEAL)

OWNER:

406 Zerex, LLC

a Colorado Limited Liability Company

By: _____
[insert authorized signatory's name and office]

STATE OF COLORADO)
) ss.
COUNTY OF GRAND)

The foregoing instrument was acknowledged before me this _____ day of January, 2024, by [insert authorized signatory], as [insert office] of **406 Zerex, LLC**, a Colorado Limited Liability Corporation.

Witness my hand and official seal.

(Notary Seal)

Notary Public

My Commission expires: _____