



TOWN OF FIRESTONE

Board of Trustees Special Meeting Agenda

November 20, 2024
Immediately Following the 6:00 PM FURA Meeting
9900 Park Avenue, Firestone, CO 80504

Board of Trustees Special Meetings can be viewed live online at www.firestoneco.gov/Agendas

1. **Call to Order & Roll Call**
2. **Pledge of Allegiance**
3. **Approval of Agenda**
4. **Public Comment** *(maximum time permitted for all Public Comment is 30 minutes)
5. **Consent Agenda**
 - a. Approval of November 13, 2024, Meeting Minutes
6. **Discussion/Action**
 - a. **Resolution 24-110:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE FIRESTONE URBAN RENEWAL AUTHORITY, THE TOWN OF FIRESTONE AND TARGET CORPORATION.
7. **Public Comment** *(maximum time permitted for all Public Comment is 30 minutes)
8. **Reports**
9. **Executive Session**
 - a. An executive session pursuant to C.R.S. 24-6-402 (4)(e)(I) to determine positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators regarding a development plan for Central Park.
 - b. An executive session pursuant to C.R.S. 24-6-402 (4)(e)(I) to determine positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators regarding the purchase of real property within the Town.

* Individuals that desire to address the Board of Trustees are requested to sign up at the table at the entrance to the meeting room. Individuals are allotted 3 minutes of Public Comment during the entirety of the meeting. Maximum time permitted for all Public Comment during a meeting is 30 minutes.

If you need special assistance in order to participate in a Board of Trustees meeting, please contact the Town Clerk's Office at 303-531-6264 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

10. Adjournment

* Individuals that desire to address the Board of Trustees are requested to sign up at the table at the entrance to the meeting room. Individuals are allotted 3 minutes of Public Comment during the entirety of the meeting. Maximum time permitted for all Public Comment during a meeting is 30 minutes.

If you need special assistance in order to participate in a Board of Trustees meeting, please contact the Town Clerk's Office at 303-531-6264 in advance of the meeting to make arrangements. A forty-eight-hour notice is requested.

**AGENDA INFORMATION
MEMORANDUM**

FIRESTONE BOARD OF TRUSTEES



AIM No.: 5.a

Consent Agenda

Meeting Date: November 20, 2024

Initiated By:

Department: Town Clerk

AGENDA ITEM

Approval of November 13, 2024, Meeting Minutes

RECOMMENDATION

SUMMARY

FINANCIAL CONSIDERATIONS

HISTORY AND PREVIOUS BOARD ACTION

BOARD STRATEGIC PLAN IMPACT

- ✓ This agenda item furthers the Board of Trustees' strategic goal:
N/A

ATTACHMENTS

1. November 13, 2024 BoT Meeting Minutes DRAFT



TOWN OF FIRESTONE
Board of Trustees Regular Meeting
MINUTES
November 13, 2024

1. Call to Order & Roll Call

The Board of Trustees of the Town of Firestone met for a Regular Meeting on November 13, 2024, at the Police Department & Municipal Court building, 9900 Park Avenue, Firestone, Colorado. Mayor Conyac called the meeting to order at 06:00 PM

The following were present upon the call of the roll:

Mayor: Don Conyac, Jr.
Mayor Pro-tem: Frank A. Jimenez, **Excused**
Trustees: Linda J. Haney, **Excused**
Ray Byrd
Matt Holcomb
Lorna Morton
Sean Doherty

2. Pledge of Allegiance

Mayor Conyac led the pledge of allegiance.

3. Approval of Agenda

Motion by Trustee Byrd, **second** by Trustee Morton, for Approval of Agenda

Roll Call Vote:

Yes: Trustee Holcomb, Trustee Morton, Trustee Byrd, Trustee Doherty

No: None

Abstain: None

Motion carried

4. Public Comment *(maximum time permitted for all Public Comment is 30 minutes)

Laura Duncan, a Firestone resident, expressed her desire to amend the Municipal Code to allow for more potbelly pigs per household.

5. Consent Agenda

Motion by Trustee Doherty, **second** by Trustee Morton, to Approve Consent Agenda

Roll Call Vote:

Yes: Trustee Holcomb, Trustee Morton, Trustee Byrd, Trustee Doherty

No: None

Abstain: None

Motion carried

a. Approval of October 23, 2024, Meeting Minutes

b. **Resolution 24-109:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A GRANT AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND THE COLORADO STATEWIDE INTERNET PORTAL AUTHORITY

6. Presentation

a. Presentation of Check to Santa Cops

7. Discussion/Action

a. **PUBLIC HEARING: Ordinance 1055:** AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, REPEALING AND REENACTING AS AMENDED IN ITS ENTIRETY CHAPTER 10.04 OF THE FIRESTONE MUNICIPAL CODE REGARDING THE ADOPTION OF THE 2024 MODEL TRAFFIC CODE FOR COLORADO.

The Mayor opened the public hearing at 6:08 PM regarding the Public Hearing for Ordinance 1055

Firestone Chief of Police David Angelo presented to the Board of Trustees.

Mayor Conyac opened public comment, but no one from the public came forward to speak.

The Board's questions regarding the proposed Ordinance were answered.

b. **Ordinance 1055:** AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE COLORADO, REPEALING AND REENACTING AS AMENDED IN ITS ENTIRETY CHAPTER 10.04 OF THE FIRESTONE MUNICIPAL CODE REGARDING ADOPTION OF THE 2024 MODEL TRAFFIC CODE FOR COLORADO

Motion by Trustee Byrd, **second** by Trustee Morton, to Approve **Ordinance 1055:** AN ORDINANCE OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE

COLORADO, REPEALING AND REENACTING AS AMENDED IN ITS ENTIRETY
CHAPTER 10.04 OF THE FIRESTONE MUNICIPAL CODE REGARDING ADOPTION
OF THE 2024 MODEL TRAFFIC CODE FOR COLORADO

Roll Call Vote:

Yes: Trustee Holcomb, Trustee Morton, Trustee Byrd, Trustee Doherty

No: None

Abstain: None

Motion carried

- c. **Resolution 24-106:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND JUB ENGINEERS, INC. FOR CONSTRUCTION ADMINISTRATION SERVICES PERTAINING TO THE WELD COUNTY ROAD 20 AND COAL RIDGE DITCH BRIDGE REPLACEMENT PROJECT

Motion by Trustee Doherty, **second** by Trustee Byrd, to Approve **Resolution 24-106:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING AN AGREEMENT BETWEEN THE TOWN OF FIRESTONE AND JUB ENGINEERS, INC. FOR CONSTRUCTION ADMINISTRATION SERVICES PERTAINING TO THE WELD COUNTY ROAD 20 AND COAL RIDGE DITCH BRIDGE REPLACEMENT PROJECT

Roll Call Vote:

Yes: Trustee Holcomb, Trustee Morton, Trustee Byrd, Trustee Doherty

No: None

Abstain: None

Motion carried

- d. **Resolution 24-105:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, PRESCRIBING THE TOWN OF FIRESTONE'S WATER RATES, FEES, TOLLS AND CHARGES AND STORAGE AND INFRASTRUCTURE INVESTMENT FEES

Motion by Trustee Morton, **second** by Trustee Byrd, to Approve **Resolution 24-105:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, PRESCRIBING THE TOWN OF FIRESTONE'S WATER RATES, FEES, TOLLS AND CHARGES AND STORAGE AND INFRASTRUCTURE INVESTMENT FEES

Roll Call Vote:

Yes: Trustee Morton, Trustee Byrd, Trustee Doherty

No: Trustee Holcomb

Abstain: None

Motion carried

- e. **PUBLIC HEARING: Resolution 24-107:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING A BUDGET FOR THE FISCAL YEAR OF 2025 AND APPROPRIATING SUMS FOR AND DEFRAYING THE EXPENSES AND LIABILITIES FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2025 AND ENDING DECEMBER 31, 2025 IN ACCORDANCE WITH THE STATUTES OF THE STATE OF COLORADO

The Mayor opened the public hearing at 6:39 PM regarding the Public Hearing for Resolution 24-107.

The Town Finance Department has previously presented the proposed Budget for the 2025 Fiscal Year but welcomed questions from the Board.

Mayor Conyac opened public comment, but no one from the public came forward to speak.

Motion by Trustee Byrd, **second** by Trustee Doherty, to Approve **PUBLIC HEARING: Resolution 24-107:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, ADOPTING A BUDGET FOR THE FISCAL YEAR OF 2025 AND APPROPRIATING SUMS FOR AND DEFRAYING THE EXPENSES AND LIABILITIES FOR THE FISCAL YEAR BEGINNING JANUARY 1, 2025 AND ENDING DECEMBER 31, 2025, IN ACCORDANCE WITH THE STATUTES OF THE STATE OF COLORADO

Roll Call Vote:

Yes: Trustee Holcomb, Trustee Morton, Trustee Byrd, Trustee Doherty

No: None

Abstain: None

Motion carried

- f. **Resolution 24-108:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES, IN THE AMOUNTS AND FOR THE PURPOSES AS SET FORTH BELOW FOR THE 2025 FISCAL YEAR.

Motion by Trustee Doherty, **second** by Trustee Byrd, to Approve **Resolution 24-108:** A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROPRIATING SUMS OF MONEY TO THE VARIOUS FUNDS AND SPENDING AGENCIES, IN THE AMOUNTS AND FOR THE PURPOSES AS SET FORTH BELOW FOR THE 2025 FISCAL YEAR.

Roll Call Vote:

Yes: Trustee Holcomb, Trustee Morton, Trustee Byrd, Trustee Doherty

No: None

Abstain: None
Motion carried

8. Public Comment *(maximum time permitted for all Public Comment is 30 minutes)

No members of the public came forward for comment.

9. Reports

- a. Staff
- b. Mayor
- c. Trustees

10. Executive Session

- a. An executive session pursuant to C.R.S. 24-6-402(4)(f)(I) for a personnel matter regarding the Town Manager's annual evaluation.

11. Adjournment

Introduced and Approved the _____ of _____, 2024.

TOWN OF FIRESTONE, COLORADO

ATTEST

Don Conyac, Jr., Mayor

Missy Carranco,
Deputy Town Clerk

AGENDA INFORMATION MEMORANDUM

FIRESTONE BOARD OF TRUSTEES



AIM No.: 6.a

Discussion/Action

Meeting Date: November 20, 2024

Initiated By:

Department: Administration

AGENDA ITEM

Resolution 24-110: A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE FIRESTONE URBAN RENEWAL AUTHORITY, THE TOWN OF FIRESTONE AND TARGET CORPORATION.

RECOMMENDATION

Approval of Resolution 24-110

SUMMARY

Approval of this Resolution will authorize the execution of a Development Agreement between the Town of Firestone, Firestone Urban Renewal Authority, and Target Corporation for the development of property and the construction of a Target store. The Development Agreement outlines the terms and conditions under which the development would occur.

FINANCIAL CONSIDERATIONS

HISTORY AND PREVIOUS BOARD ACTION

BOARD STRATEGIC PLAN IMPACT

- ✓ This agenda item furthers the Board of Trustees' strategic goal:
 - Design and Promote Livable Neighborhoods & Homes

ATTACHMENTS

1. Reso 24-110 Target development Agreement
2. FURA - Firestone - Target - Development Agreement - Final

RESOLUTION NO. 24-110

A RESOLUTION OF THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO, APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE FIRESTONE URBAN RENEWAL AUTHORITY, THE TOWN OF FIRESTONE AND TARGET CORPORATION

WHEREAS, the Firestone Urban Renewal Authority (“FURA”) is a public body corporate and politic organized as of July 24, 2009, and authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S. (the “Act”); and

WHEREAS, more specifically, FURA has undertaken to eliminate and prevent blight and to prevent injury to the public health, safety, morals, and welfare of the residents of the Town of Firestone, Colorado (the “Town”); and

WHEREAS, the Town Board of Trustees adopted Resolution 15-62 on December 16, 2015, approving the Central Firestone Urban Renewal Plan (as may be amended from time to time, the “Plan”), which guides the elimination and prevention of conditions of blight in the area described in the Plan (the “Plan Area”); and

WHEREAS, FURA is authorized under the Plan and the Act to utilize incentives and financial assistance in order to provide for the redevelopment of the Plan Area and promote improvements of properties in the Plan Area; and

WHEREAS, Target Corporation, a Minnesota corporation (“Target”) is the contract purchaser of certain real property located within the Plan Area (the “Property”); and

WHEREAS, in furtherance of the Plan, Target intends to redevelop the Property for commercial uses, including but not limited to a Target store; and

WHEREAS, the Town is a statutory town of the State of Colorado authorized to exercise its powers under and pursuant to the Colorado Constitution and state law; and

WHEREAS, the Town owns certain water rights, the use of which it has offered to Target in the form of water credits to assist Target in achieving its water dedication requirements pursuant to the Firestone Municipal Code; and

WHEREAS, pursuant to C.R.S. §§31-15-707, 31-15-708, 31-35-402, and 31-15-903, the Town has authority to offer water rights in the Town’s water portfolio (i.e., assign as a credit) and to use economic incentives as tools to assist applicants in satisfying their water dedication requirements as a condition of obtaining development application approvals and for the purposes of creating new commercial growth and increasing revenues to fund town services; and

WHEREAS, FURA and the Town, finding development of the Property within the Plan Area to be within the best interest of FURA and the health, safety, and welfare of the citizens of the Town, intends to provide certain incentives and financial assistance to Target in accordance with the Plan, the Act, and Colorado law in order to facilitate the redevelopment of the Property with the expectation that both FURA’s and the Town’s involvement will encourage and accelerate the timing of

development, thus providing substantial direct and indirect benefits to the Town, its citizens, and the surrounding area in numerous ways, and furthering the elimination and prevention of conditions of blight; and

WHEREAS, in order to further the purposes of the Act and the Plan, the best interest of the Town, and to promote the public health, safety and welfare, FURA, Target, and the Town desire to enter into the Development Agreement attached hereto and made a part hereof as Exhibit A, which outlines various forms of incentives and financial assistance in accordance with the Plan and the Act.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF TRUSTEES OF THE TOWN OF FIRESTONE, COLORADO:

Section 1. That the above-stated recitals are incorporated herein as findings of the Town Board of Trustees.

Section 2. The Board of Trustees hereby approves the Redevelopment Agreement in substantially the same form as the copy attached hereto, with such modifications as may be necessary for the Town's protection or to the effectuate the purposes of this Resolution, and with the approval of the Town Attorney's Office. The Mayor is authorized to execute the Redevelopment Agreement on behalf of the Town.

Section 2. The Town Manager is authorized to approve, sign, execute and deliver any and all any related documents or certificates necessary in connection with the transactions contemplated by the Development Agreement.

PASSED AND ADOPTED this ____ day of _____, 2024.

Don Conyac Jr., Mayor

ATTEST:

Miriam Luna Gonzalez, Town Clerk

APPROVED AS TO FORM:

William P. Hayashi, Town Attorney

DEVELOPMENT AGREEMENT

This DEVELOPMENT AGREEMENT (this “**Agreement**”) dated as of _____, 2024 (the “**Effective Date**”), is made by and among the FIRESTONE URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (the “**Authority**”), the TOWN OF FIRESTONE, a statutory town of the State of Colorado (the “**Town**”), and TARGET CORPORATION, a Minnesota corporation (“**Target**”). The Authority, the Town, and Target are sometimes collectively called the “**Parties**,” and individually, a “**Party**”.

RECITALS

All capitalized terms used, but not defined, in these Recitals, have the meanings set forth above or in Section 2 of this Agreement.

A. The Town is a statutory town of the State of Colorado authorized to exercise its powers under and pursuant to the Colorado Constitution and state law;

B. FURA is a public body corporate and politic organized as of July 24, 2009 and authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, Part 1 of Article 25 of Title 31, C.R.S.;

C. Target is under contract to purchase and plans to develop certain real property as more particularly described in Exhibit A-1 and depicted in Exhibit A-2 (the “**Property**”);

D. Target proposes to redevelop the Property for commercial uses including but not limited to a Target store (the “**Project**”);

E. The Property is located within the area described in the Central Firestone Urban Renewal Plan adopted by the Town Board of Trustees by Resolution 15-62 on December 16, 2015 (as may be amended from time to time, the “**Plan**”).

F. Due to the significant investment required for infrastructure and the up-front nature of the required investment, the acquisition of the Property by Target and the Project would not be financially feasible through traditional private investment and financing mechanisms alone;

G. The acquisition of the Property by Target and the Project will create significant economic benefits for the Town, will significantly increase sales, use, and property taxes and other revenues to the Town, will increase employment, will provide needed and desired goods and services to the community, and will enhance the value of the area surrounding the Property, including the areas included in the Plan, and therefore will benefit the public health, safety and welfare;

H. Pursuant to the Code, a landowner seeking to develop property for commercial, industrial or other non-residential uses must dedicate “water rights” at or prior to the Town’s approval of a final development plan;

I. The Town owns certain water rights, the use of which it has offered to Target in the form of Water Credits to assist Target in achieving its water dedication requirements pursuant to the Code;

J. Target desires to utilize the Water Credits from the Town as set forth in this Agreement; and

K. The Authority, the Town, and Target have agreed upon additional mechanisms to make the Project financially feasible by reimbursing Target for a portion of the costs involved in the acquisition of the Property, as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises of the Parties contained in this Agreement, and other valuable consideration, the receipt and adequacy of which are acknowledged, the Parties agree to the terms and conditions in this Agreement.

AGREEMENT

1. **Recitals.** The Recitals set forth above are hereby incorporated by this reference.
2. **Definitions and Qualifications.** In this Agreement, unless a different meaning clearly appears from the context, capitalized terms mean:

“**Acquisition Cost Reimbursement Amount**” means the amount of \$2,500,000.00.

“**Agreement**” means this Development Agreement, as it may be amended or supplemented by written agreement of the Parties in writing, from time to time. References to sections or Exhibits are to this Agreement unless otherwise qualified. All Exhibits are incorporated into this Agreement.

“**Authority**” means the Party stated in the Preamble to this Agreement.

“**Code**” means the Firestone Municipal Code, as the same may be amended or supplemented.

“**Commencement of Construction**” means the visible commencement by Target of actual physical construction and operations on the Property for the development of the Project, including, without limitation, obtaining permits and licenses for and installation of a permanent required construction element, such as any site utilities, an access drive, any detention facilities, a caisson, a footing, a foundation or a wall.

“**Completion of Construction**” means construction acceptance of the Project in accordance with the Town Requirements, applicable laws, ordinances, and regulations of the Town and any other governmental entity or public utility with jurisdiction, subject to punch list items and any applicable conditions of maintenance and warranty, including, without limitation, the issuance of a temporary certificate of occupancy by the Town.

“Default” or **“Event of Default”** means any of the events described in Section 8 hereof; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of enforced delay provided for in this Agreement.

“Effective Date” means the date stated in the Preamble to this Agreement.

“Exhibits” The following Exhibits are a part of this Agreement:

Exhibit A-1: Legal Description of the Property

Exhibit A-2: Depiction of the Property

“First Installment” has the meaning set forth in Section 3 of this Agreement.

“Force Majeure” means any one or more of the following events or circumstances, whether alone or in combination: fire, earthquake, storm or other casualty or significant weather event; strikes, lockouts, or other labor interruptions; pandemics, including COVID-19; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God or of any government; disruption to local, national or international transport services; shortages of materials; epidemics; utility delays; and any other events or circumstances, whether similar or dissimilar, that are beyond the respective Party’s reasonable control and have not been caused by the actions or inactions of the respective Party.

“Opening Condition” has the meaning set forth in Section 3 of this Agreement.

“Party” or **“Parties”** has the meaning set forth in the Preamble to this Agreement.

“Permit Fees” means any Town fee applicable to the Project, including any fee imposed as a condition to the issuance of a Town permit for improvements, but excluding any tax and the water-related fees and costs described in Section 5 hereof.

“Plan” has the meaning set forth in the Recitals to this Agreement.

“Project” has the meaning set forth in the Recitals to this Agreement.

“Property” has the meaning set forth in the Recitals to this Agreement.

“Reimbursing Parties” shall mean, collectively, the Authority and the Town.

“Second Installment” has the meaning set forth in Section 3 of this Agreement.

“Target” means, collectively, the Party stated in the Preamble to this Agreement, and any successors and assigns approved in accordance with this Agreement.

“Term” has the meaning set forth in Section 6 of this Agreement.

“Town” means the Party stated in the Preamble to this Agreement.

“**Town Requirements**” means, collectively, (a) the Code, (b) the Firestone Development Code, (c) the Town building codes and design criteria, and (d) Town regulations.

“**Water Credit**” or “**Water Credits**” means one or more credits derived from certain water or water rights which are currently owned by the Town, each of which is equivalent to one acre-foot of water per year, for purposes of meeting the dedication requirements of the Code.

3. **Reimbursement of Acquisition Costs.** Subject to the terms of this Agreement, the Reimbursing Parties shall pay to Target the Acquisition Cost Reimbursement Amount as follows: (a) upon issuance of a certificate of occupancy for the Target store by the Town, the Reimbursing Parties shall pay to Target the amount of \$1,250,000.00 within thirty (30) days after issuance of the certificate of occupancy (the “**First Installment**”), and (b) within thirty (30) days after Target has, in accordance with Target’s customary business practices and subject to Force Majeure, continuously operated the Property as a Target store, fixtured, stocked and staffed, and open for business to the public for a total of six months (the “**Opening Condition**”), the Reimbursing Parties shall pay to Target the remaining amount of \$1,250,000.00 (the “**Second Installment**”). The Town and the Authority shall be jointly and severally liable for the obligations of Reimbursing Parties in this Section 3; provided, however, the Town’s obligations under this Section 3 are subject to annual appropriation by the Town Board of Trustees for the Town.

4. **Construction, Completion and Operation.** Notwithstanding anything in this Agreement to the contrary, Target shall have no obligation to (i) commence or complete construction of the Project, or (ii) to open or to remain open for business; however, the Authority shall have no obligation to pay to Target the First Installment of the Acquisition Cost Reimbursement Amount until Completion of Construction has occurred, and the Authority shall have no obligation to pay to Target the Second Installment of the Acquisition Cost Reimbursement Amount until the Opening Condition has been fulfilled. To the extent that Target elects to commence or complete construction of the Project, Target shall (a) create and process the development applications as reasonably necessary for the development of the Project per the Town Requirements, including but not limited to the final development plan, subdivision plat, and building permits with the Town, (b) design and construct or cause the design and construction of the Project in compliance with all applicable codes and regulations of entities having jurisdiction, including the Town Requirements and requirements of the water, wastewater and fire protection providers serving the Property, except as otherwise approved by the Town, and (c) pay or cause to be paid all typical and customary required fees and costs, including Permit Fees, in connection with the design, construction, applicable warranty requirements, and use of the Project. Nothing in this Agreement should be construed as a waiver, limitation, precedent, or supersession by the Town of any such Town Requirements, or a waiver, limitation, precedent, or supersession by Target of any rights to contest or appeal any Town Requirements.

5. **Water Credits.**

5.1 **Availability of Water Credits.** The Town shall reserve up to forty Water Credits as necessary to fully develop the Property for the Project. The Water Credits shall be used solely for the Project and for related landscape irrigation on the Property. Unless and until Target redeems a Water Credit, the Water Credit is personal to Target and only constitutes an offer by the Town to meet the Project’s water dedication requirement. The pool of

Water Credits shall expire at the date that is the earlier of the following: (a) six months after issuance a final development plan for the Property and (b) December 31, 2025.

5.2 Redemption of Water Credits and Water Delivery. The pool of Water Credits shall be available to Target at no cost to Target to meet the Town's water dedication requirements for purposes of approval of a final development plan for the Project, provided that Target has satisfied all obligations under and is in compliance with this Agreement at the time that it redeems one or more Water Credits. Target shall identify in writing the amount of Water Credits from the pool that it desires to redeem hereunder and any additional water or water rights, as necessary, sufficient to satisfy the Town's then applicable water dedication requirement at or before approval of a final development plan, and no final development plan shall be issued by the Town until Target has complied with such requirement. The final development plan shall include a water dedication statement: (a) indicating the amount of water required to be dedicated for the Project under the Firestone Municipal Code; (b) referring to this Agreement and, more specifically, to Target's right to redeem Water Credits from the pool pursuant to this Section 5; and (c) affirming the number of Water Credits from the pool that Target intends to redeem and Target's exercise of such right to redeem to meet the Project's water dedication requirement.

5.3 Allocation of Redeemed Water Credits. Upon the Town's approval of a final development plan for the Project, Applicant shall be deemed to have redeemed the number of Water Credits from the pool of available Water Credits as noted in the water dedication statement contained on the approved final development plan. Target's redemption shall fully satisfy the water dedication requirement for the Project under Firestone Municipal Code Section 13.08.010(B). Once the Water Credits are redeemed, they are considered allocated to the Project and shall no longer be deemed credits or available for allocation from the pool. The pool of available Water Credits shall then be reduced by the number of redeemed Water Credits. Any unredeemed, unexpired Water Credits remaining in the pool shall be considered personal to Target.

- a. If, at any time after approval of the final development plan, Target determines not to undertake the development of the Project on the Property due to economic infeasibility, casualty or condemnation, changes in law that affect the financing or development of the Project, or any other reason that makes Target's ability to complete its anticipated Project practically impossible or unduly burdensome, then Target shall be entitled to transfer only the redeemed Water Credits to a permitted assignee or transferee in accordance with Section 13. In the alternative, if Target determines not to undertake the development of the Project after approval of the final development plan, it shall have the option to reimburse the Town for the redeemed Water Credits at a price of \$70,000 per Water Credit and any redeemed Water Credits shall apply and be appurtenant to the Property.
- b. If, at any time after Commencement of Construction, Target determines not to complete the Project on the Property due to economic infeasibility, casualty or condemnation, changes in law that affect the financing or development of the Project, or any other reason that makes Target's ability to complete its Project

practically impossible or unduly burdensome, then any redeemed Water Credits shall apply and be appurtenant to the Property, except as limited by Section 5.6.

5.4 Fees. Notwithstanding the provisions of Sections 5.1 and 5.2, Target shall pay all costs associated with installation of water taps as required by the Firestone Municipal Code, including, without limitation, any standard and customary plant investment fee, tap fee, installation fees, and meter fees in effect at the time of the Effective Date of this Agreement. All such costs, fees and charges remitted to the Town by Target in connection with water service to the Property are non-refundable.

5.5 Water Tap Installation. Target shall install lines for treated water service to the Property. Target shall provide development plans for the Property to the Town for its review and approval before installation of any new water taps, to ensure compliance with the applicable standards set forth in the Town Requirements.

5.6 No Vested Interest. The Town grants no ownership in its water, water rights or treated water system to Target by this Agreement, and Target acknowledges that no such ownership interest shall vest, in law or equity, as a result of this Agreement.

6. Term. The term of this Agreement (“**Term**”) is the period commencing on the Effective Date and terminating on the date of payment in full of the Acquisition Cost Reimbursement Amount, unless earlier terminated in accordance with this Agreement. If Commencement of Construction has not occurred by December 31, 2027, this Agreement shall automatically terminate unless extended by written agreement of the Parties.

7. Notices. Any notice required or permitted by this Agreement will be in writing and will be deemed to have been sufficiently given for all purposes if delivered in person, by prepaid overnight express mail or overnight courier service, or by certified mail or registered mail, postage prepaid return receipt requested, addressed to the Party to whom such notice is to be given at the address set forth on the signature pages below or at such other or additional addresses as may be furnished in writing to the other Parties in accordance with the notice requirements of this Section 7. Additionally, the Parties agree to provide concurrent notice via electronic mail.

8. Events of Default. The following event shall constitute an Event of Default under this Agreement: any Party fails in the performance of any covenant in this Agreement, and such failure continues for thirty (30) days after written notice specifying such Default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party. If such Default is not of a type which can be cured within such thirty (30) day period and the defaulting Party gives written notice to the non-defaulting Party or Parties within such thirty (30) day period that it is actively and diligently pursuing such cure, the defaulting Party shall have a reasonable period of time given the nature of the Default following the end of such thirty (30) day period to cure such Default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith. As of the Effective Date, no Party has actual knowledge of an Event of Default under this Agreement.

9. Remedies. Upon the occurrence and continuation of an Event of Default, any non-defaulting Party’s remedies will be limited to the right to enforce the defaulting Party’s obligations

by an action for injunction, specific performance, or other appropriate equitable remedy or for mandamus, or by an action to collect and enforce payment of sums owing hereunder, and no other remedy (unless otherwise expressly authorized by this Agreement), and no Party will be entitled to or claim damages for an Event of Default by the defaulting Party, including, without limitation, lost profits, economic damages, or actual, direct, incidental, consequential, punitive or exemplary damages. In the event of any litigation or other proceeding to enforce any of the terms, covenants or conditions of this Agreement, the prevailing party in such litigation or other proceeding will receive, as part of its judgment or award, its reasonable attorneys' fees and costs.

10. **Nonliability of Officials, Agents, Members, and Employees.** Except for willful or wanton actions, no trustee, board member, commissioner, official, employee, consultant, manager, member, shareholder, attorney or agent of any Party, nor any lender to any Party or to the Project, will be personally liable under this Agreement or in the event of any Default or for any amount that may become due to any Party.

11. **Cooperation Regarding Defense.** In the event of any litigation or other legal challenge involving this Agreement, or any material part or provision of this Agreement or the ability of any Party to enter into this Agreement, the Parties will cooperate and jointly defend (if all Parties are named as defendants) against such action or challenge, to the extent permitted by law.

12. **Section Captions.** The captions of the sections are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.

13. **Assignment.** This Agreement may not be assigned in whole or in part by any Party without the prior written consent of the other Parties; provided, however, the following assignments and transfers will not require any such consent: (a) subject to written notice to the other Parties from Target containing the name and address of the lender or other party, Target may pledge, collaterally assign or otherwise encumber all or any part of its rights under this Agreement, including its right to receive any payment or reimbursement, to any lender or other party that provides acquisition, construction, working capital, tenant improvement or other financing to Target in connection with acquisition of the Property or development of the Project, (b) the Town and Authority recognize that Target may form, together with its investors, separate, special purpose entities to develop, own and/or operate all or a portion of the Property or of the Project to be developed thereon and that one or more assignments of all or any part of its rights under this Agreement may be required in connection with such activities and such transfers will not require any consent by the other Parties, as long as written notice of such transfers is provided to the other Parties containing the name and address of the successor/assignee, or (c) any assignment by Target to any party by operation of law, by merger, or in connection with the sale of any line of business. Nor shall any transfer of any or all of the real property constituting the Property (including any redeemed Water Credits per Section 5.3(b)) require the consent of the Town or Authority. The Water Credits may not otherwise be assigned prior to Commencement of Construction without the prior written approval of the Town unless Target reimburses the Town for the Water Credits pursuant to Section 5.3(a) which case no approval from the Town is required for assignment.. After Commencement of Construction, any unredeemed, unexpired Water Credits remaining in the pool shall automatically expire upon the sale, conveyance or transfer of the Property by Target, including through

foreclosure, for which Target did not obtain written approval by the Town for an associated assignment of such Water Credits.

14. **Additional Documents or Action.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders, that is necessary to carry out this Agreement or is reasonably requested by any Party to confirm or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. If all or any portion of this Agreement, or other agreements approved in connection with this Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially receives the benefits that it would have received under this Agreement.

15. **Amendment.** This Agreement may be amended or supplemented only by an instrument in writing signed by the Parties.

16. **Waiver of Breach.** A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement must be in writing and will not operate or be construed as a waiver of any subsequent breach by any Party.

17. **Governing Law; Venue.** The laws of the State of Colorado govern this Agreement. The District Court of Weld County will be the exclusive venue for any litigation.

18. **Binding Effect, Entire Agreement.** This Agreement will inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph permits the assignment of this Agreement except as set forth in Section 13. This Agreement represents the entire Agreement among the Parties regarding the subject of this Agreement, and supersedes, with respect to the subject matter of this Agreement, any prior written or oral agreements or understandings with regard to the Project not specifically set forth in this Agreement.

19. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which will be deemed an original and all of which will constitute but one and the same instrument.

20. **Limited Third-Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities only as to the Parties to this Agreement. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party to this Agreement. Notwithstanding anything in this Agreement to the contrary, in the event that there are found to be any third party beneficiaries, (a) no third party beneficiary's consent or approval shall be required for any amendment, modification or termination of this Agreement entered into by the Parties or for any waivers or consents granted hereunder by any Party, and (b) the rights of said third party beneficiaries may be amended, modified or terminated by the mutual agreement of the Parties, and waivers and consents granted, without the consent or approval of said third party beneficiaries.

21. **No Presumption.** The Parties and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement will be construed without regard to any presumption or other rule of construction against the Party causing this Agreement to be drafted.
22. **Severability.** If any provision of this Agreement as applied to any Party or to any circumstance is adjudged by a court to be void or unenforceable, the same will in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of this Agreement as a whole.
23. **Days.** If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to Section 24-11-101(1), C.R.S., such day will be extended until the next day on which such banks and state offices are open for the transaction of business.
24. **Good Faith of Parties.** In the performance of this Agreement, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
25. **Parties not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties will not be deemed to be partners or joint venturers, and no Party is responsible for any debt or liability of any other Party.
26. **No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by the Town or the Authority under applicable state law.
27. **Delay; Force Majeure.** Time is of the essence, provided that in the event any delays in performance by any Party of its obligations under this Agreement is caused by Force Majeure, the time for performance shall be extended for a period of time equal to the length of the Force Majeure delay. The provisions of this Section will not operate to excuse any party from the prompt payment of any monies required by this Agreement.
28. **Authority; Approval by Town Board of Trustees.** The signatures of the undersigned representatives of the Parties indicate that each Party has the full right and lawful authority to enter into this Agreement. Prior to execution by the Town, the Town Board of Trustees shall approve this Agreement.

(Signature pages to follow)

WHEREFORE, the Parties have executed this Agreement on the day and year first above written.

TOWN OF FIRESTONE, a political subdivision of
the State of Colorado

By: _____
Title: _____

ATTEST:

By: _____

Notice Address:

Town of Firestone
Attn: AJ Krieger, Town Manager
9950 Park Avenue
Firestone, CO 80520
AKrieger@firestoneco.gov

With a copy to:

Wes Knoll
Lawrence Custer Grasmick Jones & Donovan, LLP
5245 Ronald Reagan Blvd., Suite 1
Johnstown, CO 80534
Phone: (970) 622-8181
wes@lcwaterlaw.com

TOWN SIGNATURE PAGE TO PUBLIC FINANCE AGREEMENT

FIRESTONE URBAN RENEWAL AUTHORITY,
a body corporate and politic of the State of
Colorado

By: _____
Title: _____

ATTEST:

By: _____

Notice Address:

Town of Firestone
Attn: AJ Krieger, Town Manager
9950 Park Avenue
Firestone, CO 80520
AKrieger@firestoneco.gov

With a copy to:

Brownstein Hyatt Farber Schreck
Attn: Carolynne White and Angela Hygh
675 15th Street, Suite 2900
Denver, CO 80202
cwhite@bhfs.com; ahygh@bhfs.com

AUTHORITY SIGNATURE PAGE TO PUBLIC FINANCE AGREEMENT

TARGET CORPORATION,
a Minnesota corporation

By: _____

Name: _____

Its: _____

Notice Address:

With a copy to:

EXHIBIT A-1

Legal Description of the Property

[To be added]

EXHIBIT A-2

Depiction of the Property

**AGENDA INFORMATION
MEMORANDUM**

FIRESTONE BOARD OF TRUSTEES



AIM No.: 9.a

Executive Session

Meeting Date: November 20, 2024

Initiated By:

Department: Town Clerk

AGENDA ITEM

An executive session pursuant to C.R.S. 24-6-402 (4)(e)(I) to determine positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators regarding a development plan for Central Park.

RECOMMENDATION

SUMMARY

FINANCIAL CONSIDERATIONS

HISTORY AND PREVIOUS BOARD ACTION

BOARD STRATEGIC PLAN IMPACT

- ✓ This agenda item furthers the Board of Trustees' strategic goal:
N/A

ATTACHMENTS

None

**AGENDA INFORMATION
MEMORANDUM**

FIRESTONE BOARD OF TRUSTEES



AIM No.: 9.b

Executive Session

Meeting Date: November 20, 2024

Initiated By:

Department: Administration

AGENDA ITEM

An executive session pursuant to C.R.S. 24-6-402 (4)(e)(I) to determine positions relative to matters that may be subject to negotiations; developing strategy for negotiations; and instructing negotiators regarding the purchase of real property within the Town.

RECOMMENDATION

SUMMARY

FINANCIAL CONSIDERATIONS

HISTORY AND PREVIOUS BOARD ACTION

BOARD STRATEGIC PLAN IMPACT

✓ This agenda item furthers the Board of Trustees' strategic goal:

ATTACHMENTS

None