



A COMMUNITY OF CHOICE

## Planning and Development Department

2101 O'Neil Avenue, Suite 202, Cheyenne WY 82001  
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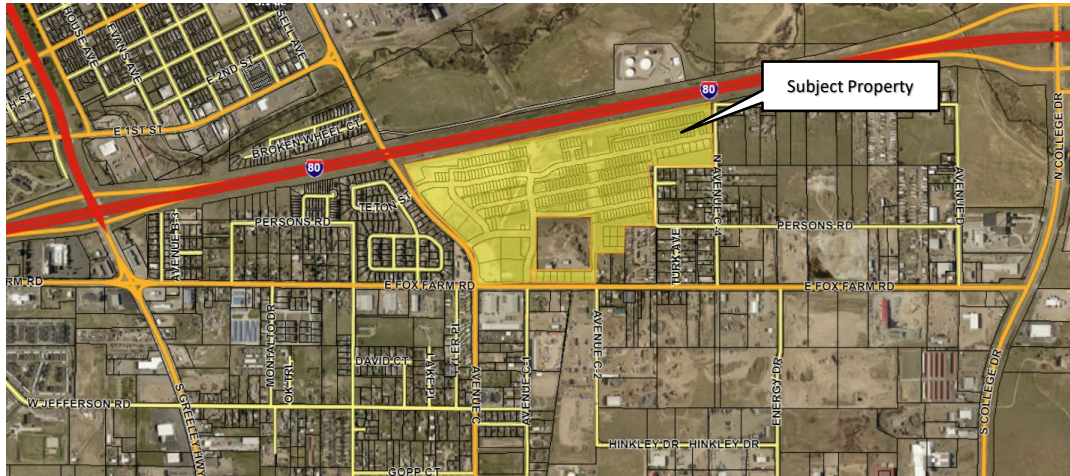
### MEMO

To: Honorable Mayor Patrick Collins and Members of the City Council

From: Charles Bloom, AICP, Planning and Development Director

Subject: A Memorandum of Understanding (MOU) between the City of Cheyenne and Cal Kunkel of Cheyenne Fox Farm, LLC to authorize filing of platting application(s) for City-owned lands for the purposes of vacating and replatting Waterford Square Second Filing.

Date: August 2, 2022



#### Background:

The item for consideration is a memorandum of understanding between the City and Cal Kunkel of Cheyenne Fox Farm, LLC to allow for the replatting of the Waterford Square Second Filing plat (Waterford Square development). The previous plat was approved in 2015 and infrastructure has not been developed. Lot 1, Block 11, Waterford Square Second Filing, the City's ownership, was transferred to the City for the purpose of open space and a trail corridor in conjunction with the Waterford Square development. Ownership has changed and the present owners seek an alternative design necessitating replatting.

Pursuant to chapter 2.1 of the Unified Development Code, applications for plats may only be initiated by a landowner or authorized agent. Also, state statute requires consent of all property owners adjacent to a street right-of-way proposed for vacation. Since the City is the owner of Lot 1, Block 11, Waterford Square Second Filing, City authorization and signature on the plat is required.

This MOU will authorize the replatting of Lot 1, Block 11, Waterford Square Second Filing. The replat will not change the boundaries of the lot or encumber the land in any additional ways. Access and utility easements to the City lot will be required to be provided as an alternative to the platted right-of-way.

This agreement authorizes application submittal and review. The agreement shall not be considered as the City granting approval of the development application(s) that would be authorized. City involvement will be at no cost to the City.

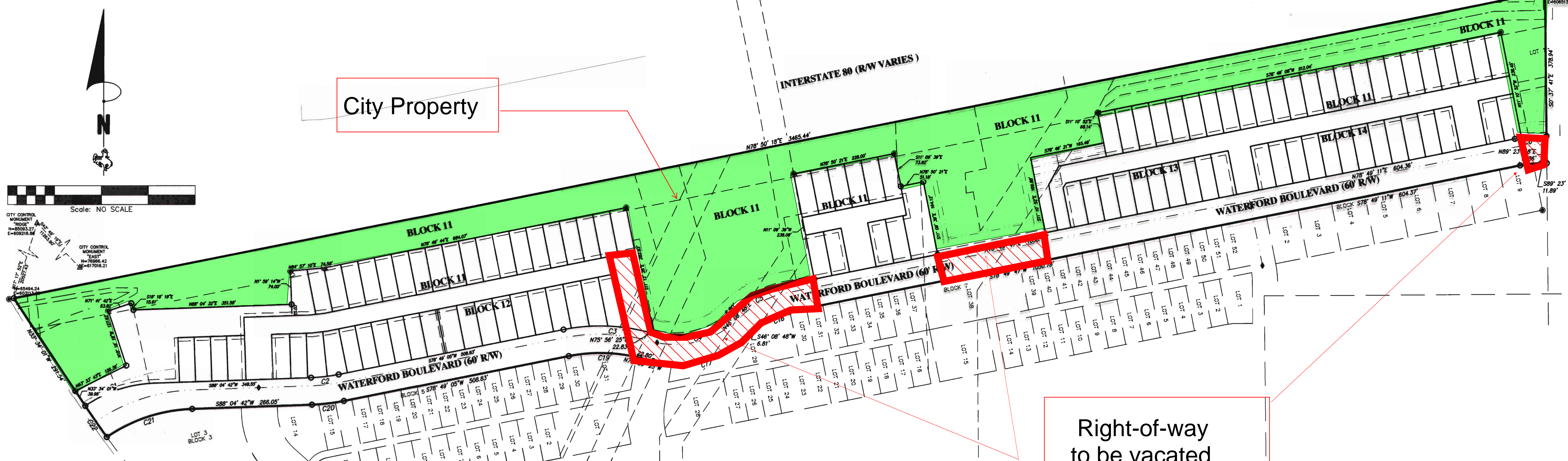
The proposed Governing Body review schedule is as follows:

- Introduction at Public Services Committee: August 2, 2022
- Final consideration: August 8, 2028

**Attachments:**

1. Memorandum of Understanding
2. Map showing City land and of rights of way proposed for vacation





### LAND DESCRIPTION

A REPLAT OF ALL OF BLOCK 6 AND ADJACENT WATERFORD BOULEVARD RIGHT-OF-WAY, WATERFORD SQUARE, CITY OF CHEYENNE, LARAMIE COUNTY, WYOMING.

### GENERAL NOTES

- 1) BASIS OF BEARINGS - CITY OF CHEYENNE DATUM REFERENCED FROM CITY CONTROL MONUMENTS "EAST" & "RIDGE".
- 2) NO PORTION OF THE SUBJECT PROPERTY FALLS WITHIN A F.E.M.A. SPECIAL 100-YEAR FLOOD HAZARD AREA AS SHOWN ON F.I.R.M. PANEL No. 56021C1356F DATED JANUARY 17, 2007.
- 3) ALL LOT CORNERS, ANGLE POINTS, AND POINTS OF CURVATURE TO BE MONUMENTED WITH 1 1/2" ALUMINUM CAP STAMPED "SSS P.L.S. 5910" ON 3/4"x24" REBAR.
- 4) "DRAINAGE EASEMENT(S)" GRANTED TO THE CITY OF CHEYENNE SOLELY FOR THE PURPOSE OF STORMWATER DRAINAGE AND/OR DETENTION.
- 5) THIS WATER AND SEWER UTILITY EASEMENT (HEREINAFTER REFERRED TO AS THE "BOPU UTILITY EASEMENT"), AS SHOWN AND DESCRIBED HEREON, IS GRANTED TO THE BOARD OF PUBLIC UTILITIES OF THE CITY OF CHEYENNE ("BOPU"). NO OTHER UTILITIES MAY INSTALL FACILITIES ON OR WITHIN THE BOPU UTILITY EASEMENT, EXCEPT AS FOLLOWS: OTHER UTILITIES MAY CROSS THE BOPU UTILITY EASEMENT, IF AND ONLY IF: (i) A UTILITY'S FACILITIES CROSS THE BOPU FACILITIES AT NO LESS THAN A 60 DEGREE ANGLE; (ii) A MINIMUM OF 24 INCHES OF VERTICAL CLEARANCE IS PROVIDED BETWEEN THE BOPU FACILITIES AND THE CROSSING FACILITIES, UNLESS OTHERWISE APPROVED BY THE BOPU; AND (iii) A COPY OF ANY UTILITY EASEMENT AUTHORIZING THE CROSSING OF THE BOPU UTILITY EASEMENT IS PROVIDED TO THE BOPU PRIOR TO ANY CONSTRUCTION WITHIN THE BOPU UTILITY EASEMENT.

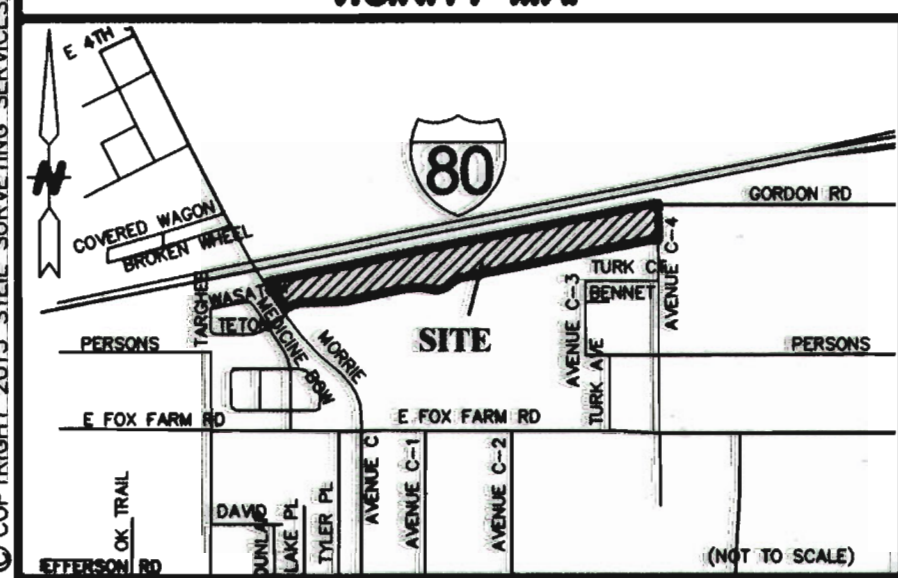
### LEGEND

- SET 3/4" X 24" LONG REBAR WITH 1 1/2" ALUMINUM CAP STAMPED "SSS P.L.S. 5910"
- FOUND 1 1/2" ALUMINUM CAP STAMPED "SSS P.L.S. 2500"
- FOUND 1 1/2" ALUMINUM CAP STAMPED "P.E.L.S. 9283"
- ◆ FOUND NAIL SET BY P.E.L.S. 9283

### VACATION STATEMENT

IT IS THE INTENT OF THIS PLAT TO VACATE ALL OF BLOCK 6, WATERFORD SQUARE AND ADJOINING WATERFORD BOULEVARD, CITY OF CHEYENNE, LARAMIE COUNTY, WYOMING; INCLUDING ALL INTERVENING EASEMENTS, LOT LINES AND RIGHTS-OF-WAY CONTAINED WITHIN THE PLAT BOUNDARY, EXCEPTING PRE-EXISTING EASEMENTS AS SHOWN ON THE PLAT OF WATERFORD SQUARE.

### VICINITY MAP



### FILING RECORD

RECP #: 696582  
RECORDED 11/21/2016 AT 12:24 PM BK# 10 PG# 188  
Debra K. Lee, CLERK OF LARAMIE COUNTY, WY PAGE 1 OF 2

CURVE TABLE					
CURVE #	DELTA	RADIUS	CHORD BEARING	CHORD LENGTH	ARC LENGTH
C1	32° 27' 03"	288.30'	N71° 51' 11"E	161.11'	163.28'
C2	9° 15' 45"	382.00'	N83° 26' 54"E	61.69'	61.76'
C3	25° 14' 52"	418.00'	S88° 33' 40"E	182.71'	184.19'
C4	57° 54' 47"	182.00'	N75° 06' 11"E	176.23'	183.96'
C5	32° 40' 52"	218.00'	N62° 29' 17"E	122.67'	124.35'
C6	10° 34' 37"	318.00'	N84° 06' 29"E	58.62'	58.70'
C7	5° 25' 34"	382.00'	S85° 22' 00"W	36.16'	36.18'
C8	3° 50' 11"	382.00'	S80° 44' 07"W	25.57'	25.58'
C9	2° 25' 40"	418.00'	N80° 01' 45"E	17.71'	17.71'
C10	5° 31' 26"	418.00'	N84° 00' 18"E	40.28'	40.30'
C11	5° 35' 58"	418.00'	N89° 34' 00"E	40.84'	40.85'
C12	5° 52' 21"	418.00'	S84° 41' 50"E	42.82'	42.84'
C13	5° 49' 26"	418.00'	S78° 50' 57"E	42.47'	42.49'
C14	2° 41' 23"	318.00'	N80° 09' 53"E	14.93'	14.93'
C15	10° 34' 37"	258.00'	S84° 06' 29"W	47.56'	47.63'
C16	32° 40' 52"	158.00'	S62° 29' 18"W	88.90'	90.12'
C17	55° 44' 40"	241.99'	S74° 01' 12"W	226.26'	235.44'
C18	2° 10' 36"	241.99'	N77° 01' 42"W	9.19'	9.19'
C19	25° 14' 52"	358.01'	N88° 33' 41"W	156.48'	157.76'
C20	9° 15' 45"	441.99'	S83° 26' 54"W	71.38'	71.45'
C21	32° 28' 47"	358.00'	S71° 50' 33"W	200.24'	202.94'
C22	2° 26' 23"	1869.80'	N34° 47' 18"W	79.61'	79.62'

### NOTE TO ASSESSOR

LOT 1, BLOCK 11 TO BE OWNED BY THE CITY OF CHEYENNE. ALL OTHER LOTS TO BE OWNED BY HEARTLAND HOMES LLC.

### DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS THAT: Heartland Homes LLC., a Wyoming Corporation, owner in fee simple of the following described lands: Lots 2 thru 57, Block 6, Waterford Square, City of Cheyenne, Laramie County, Wyoming.

Has caused the same to be surveyed, vacated, and re-platted to be known as WATERFORD SQUARE, 2ND FILING, and does hereby declare the subdivision of said land as it appears on this plat, to be their free act and deed and in accordance with their desires and do hereby grant the easements and public rights-of-way for the purposes indicated hereon.

by: James O. Woods III, Owner of Heartland Homes LLC.

### ACKNOWLEDGEMENT

STATE OF WYOMING )  
COUNTY OF LARAMIE ) SS

The foregoing instrument was acknowledged before me this 15th day of November, 2016, by James O. Woods III, Owner of Heartland Homes LLC.

Notary Public, Laramie County, Wyoming  
My Commission Expires: 03/27/2018

### DEDICATION

KNOW ALL PERSONS BY THESE PRESENTS THAT: The City of Cheyenne, a Wyoming Municipal Corporation, owner in fee simple of the following described lands:

All of Lot 1, Block 6, Waterford Square and Waterford Boulevard, Waterford Square, City of Cheyenne, Laramie County, Wyoming.

Has caused the same to be surveyed, vacated, and re-platted to be known as WATERFORD SQUARE, 2ND FILING, and does hereby declare the subdivision of said land as it appears on this plat, to be their free act and deed and in accordance with their desires and do hereby grant the easements and public rights-of-way for the purposes indicated hereon.

City of Cheyenne, a Wyoming Municipal Corporation

Notary Public, Laramie County, Wyoming  
My Commission Expires: 03/27/2018

### ACKNOWLEDGEMENT

STATE OF WYOMING )  
COUNTY OF LARAMIE ) SS

The foregoing instrument was acknowledged before me this 15th day of November, 2016, by Mayor Richard L. Kaysen for the City of Cheyenne.

Notary Public, Laramie County, Wyoming  
My Commission Expires: 03/27/2018

### CITY APPROVALS

Approved by the City of Cheyenne Planning Commission this 5TH day of SEPTEMBER, 2016.

Development Director, City of Cheyenne, Wyoming

Approved by the Council of the City of Cheyenne, Wyoming this 14TH day of NOVEMBER, 2016.

Mayor  
ATTEST: City Clerk

### CERTIFICATE OF SURVEYOR

I, Jeffrey B. Jones, Licensed Professional Land Surveyor in the State of Wyoming, for and on behalf of Steel Surveying Services, LLC, hereby state, to the best of my knowledge, information and belief, that this map was prepared from field notes taken during an actual survey made by me or under my direct supervision; and that this map correctly shows the results of said survey and that the monuments found or set are as shown.

## WATERFORD SQUARE 2ND FILING

A REPLAT OF ALL OF  
BLOCK 6 AND  
ADJACENT WATERFORD BOULEVARD RIGHT-OF-WAY.  
WATERFORD SQUARE,  
CITY OF CHEYENNE,  
LARAMIE COUNTY, WYOMING.

SHEET 1 OF 2 PREPARED OCTOBER, 2016



**STEEL SURVEYING SERVICES, LLC**  
PROFESSIONAL LAND SURVEYORS  
1102 W. 19th ST. CHEYENNE, WY. 82001 (307)634-7273  
756 GILCHRIST ST. WHEATLAND, WY. 82201 (307)322-9789



## **MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is by and between the City of Cheyenne, a municipal corporation existing under the laws of the State of Wyoming (City), located at 2101 O'Neil Avenue, Cheyenne, Wyoming 82001, and Cal Kunkel of Cheyenne Fox Farm, LLC, a Montana limited liability corporation, of 2729 Aspen Way, Billings, Montana 59106 (Applicant). The City and Applicant are collectively referred to as "Party" or "Parties." This MOU shall become effective upon the date of the last signature affixed hereto.

WHEREAS, the Applicant intends to replat Waterford Square Second Filing; and

WHEREAS, the City is owner of Lot 1, Block 11, Waterford Square Second Filing; and

WHEREAS, Lot 1, Block 11, Waterford Square Second Filing is adjacent to rights-of-way platted with Waterford Square Second Filing and has an interest in said rights-of-way; and

WHEREAS, the intention of City involvement is to authorize the vacation of platted yet unbuilt rights-of-way and convey the rights-of-way to the Developer; and

WHEREAS, Lot 1, Block 6, Waterford Square (subsequently replatted as Lot 1, Block 11, Waterford Square Second Filing) was deeded to the City for the purpose of open space and a trail corridor in conjunction with the Waterford Square development; and

WHEREAS, pursuant to chapter 2.1 of the Unified Development Code, applications for a division of land may be initiated by the property owner(s) of all property subject to the application, or the property owner(s)'s authorized agent; and

WHEREAS, pursuant to Wyo Stat. § 34-12-106, in cases where any lots within a plat have been sold said plat may be vacated provided all owners of lots in such plat execute a written instrument declaring the same to be vacated; and

WHEREAS, City authorization to allow replatting of City-owned land is required

pursuant to chapter 2.1 of the Unified Development Code; and

WHEREAS, City authorization allows the Applicant to plat City-owned lands for the purpose of access and future development; and

WHEREAS, this agreement shall not be construed as the City granting approval of the development application(s) authorized herein.

NOW, THEREFORE, the Parties agree as follows:

1. Recitals Incorporated. The foregoing recitals are incorporated herein by reference into this Agreement.

2. Purpose. The purpose of this MOU is to allow replatting of Lot 1, Block 11, Waterford Square Second Filing and adjacent rights-of-way.

3. Term. This MOU shall commence on the last date executed by the duly authorized representatives of the Parties to this MOU and shall remain in full force and effect until November 8, 2023, for a period of two (2) years.

4. Payments. Neither Party shall have any obligation to make any payment of any kind to the other Party under this MOU.

5. Responsibilities of Applicant. Applicant shall:

a. File necessary division of land applications and pay required fees in accordance with City standards.

b. May vacate rights-of-way adjacent to Lot 1, Block 11, Waterford Square Second Filing and establish access and utility easements within the previously platted rights-of-way as necessary. Access and utility easements shall provide the same level of access as previously platted Waterford Boulevard.

c. Be responsible for all public improvements and surveying related to division of land applications.

6. Responsibilities of the City. The City shall:

a. Have the Mayor shall sign necessary authorizations for the Applicant to proceed with platting applications related to the lands mentioned herein without delay.

b. Assist the Applicant with provision of necessary information regarding the platting of City-owned land.

c. Allow the Applicant and his/her agents access to City owned lands for carrying out necessary actions relating to applications authorized per this agreement.

7. General Provisions.

a. Amendments. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by the Parties to this MOU shall be incorporated by written instrument, executed and signed by all Parties to this MOU.

b. Assignment. No Party may assign or transfer the responsibilities or agreements made herein without the prior written consent of the non-assigning Party, which approval shall not be unreasonably withheld.

c. Applicable Law. The construction, interpretation, and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over this MOU and the Parties, and the venue shall be in the First Judicial District, Laramie County, Wyoming.

d. Compliance with Laws. The Parties shall keep informed of and comply with all applicable federal, state, and local laws and regulations in the performance of this

MOU.

e. Indemnification. Applicant agrees to indemnify, hold harmless, and defend the City from and against any and all liabilities, claims, penalties, forfeitures, and suits, and the cost and expenses incident thereto, including reasonable attorney's fees, which may hereafter arise as a result the performance of the Licensee's duties, including death or bodily injury to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations, or orders to the extent caused by (1) Applicant's breach of any term or provision of this Agreement; or (2) any negligent or wrongful act, error, or omission by Applicant, or its employees, in the performance of this Agreement. Applicant acknowledges that it may incur a financial obligation to the City pursuant to the terms of this paragraph.

f. Nondiscrimination. The Parties shall comply with the Civil Rights Act of 1964, the Wyoming Fair Employment Practices Act, Wyo. Stat. § 27-9-105, *et seq.*, the Americans With Disabilities Act (ADA), as amended, 42 U.S.C. § 12101, *et seq.*, and the Age Discrimination Act of 1975 and any properly promulgated rules and regulations thereto, and shall not discriminate against any individual on the grounds of age, sex, creed, color, race, religion, national origin, ancestry, pregnancy, or qualifying disability in connection with the performance under this MOU.

g. Governmental Immunity. The City does not waive governmental immunity by entering into this MOU and specifically retains all immunities and defenses available to it as a governmental entity pursuant to Wyo. Stat. § 1-39-101, *et seq.*, and all

other applicable laws. Designation of venue, choice of law, enforcement actions, and similar provisions should not be construed as a waiver of governmental immunity.

h. Third-Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity, the status of third-party beneficiary and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the Parties to this MOU and shall inure solely to the benefit of the Parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The Parties to this MOU intend and expressly agree that only parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

i. Force Majeure. The performance of this MOU by the Parties shall be subject to force majeure including, but not limited to, acts of God, fire, flood, natural disaster, war or threat of war, acts or threats of terrorism, civil disorder, unauthorized strikes, governmental regulation or advisory, recognized health threats as determined by the World Health Organization, the Centers for Disease Control, or local government authority or health agencies (including, but not limited to, the health threats of COVID-19, H1N1, or similar infectious diseases), curtailment of transportation facilities, or other similar occurrence beyond the control of the Parties, where any of those factors, circumstances, situations, or conditions or similar ones prevent, dissuade, or unreasonably delay the performance required by this MOU. This MOU may be cancelled



by any Party, without liability, damages, fees, or penalty, and any unused deposits or amounts paid shall be refunded, for any one or more of the above reasons, by written notice to the other Party.

j. Severability. If any provision of this MOU is found to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this MOU is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

k. Notice. All notices arising out of or from the provisions of this MOU shall be in writing and given to the Party either by regular mail or delivery in person.

l. Termination. Any Party may terminate its participation in this MOU, with or without cause, by providing thirty (30) days written notice to the other Party.

m. Prior Approval. This MOU shall not be binding upon the Parties, no services shall be performed under the terms of this MOU, and no payments shall be made until this MOU has been reduced to writing and approved by all necessary authorities.

n. Entirety of Contract. This MOU represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations, and agreements, whether written or oral.

8. Signatures. In witness whereof, the Parties to this MOU, through their duly authorized representatives, have executed this MOU on the days and dates set out below and certify that they have read, understood, and knowingly and voluntarily agreed to the terms and conditions of this MOU.

City of Cheyenne

\_\_\_\_\_  
Date  
(SEAL)  
Attest:

By:

\_\_\_\_\_  
Patrick Collins, Mayor

\_\_\_\_\_  
Kristina F. Jones, City Clerk

Applicant

\_\_\_\_\_  
Date

By:

\_\_\_\_\_  
Cal Kunkel of Cheyenne Fox Farm, LLC