



**Town of Frederick**  
**Board of Trustees Agenda**

Frederick Town Hall  
Board Chambers  
401 Locust Street  
Tuesday, October 17, 2023

**Special Meeting 5:30 PM**

**2024 Budget Work Session to Follow Special Meeting**

Livestreaming of the Board of Trustees regular meetings have been transitioned to the Town of Frederick website. Work Sessions are not livestreamed. The livestream for the regular meeting can be accessed at [www.frederickco.gov/civimedia](http://www.frederickco.gov/civimedia)

Public Comment will only be taken in person unless an accommodation is requested through the Town Clerk's Office. If you require an accommodation or have questions about making public comment please contact the Town Clerk's Office:

Kelly Green, Deputy Town Clerk  
[kgreen@frederickco.gov](mailto:kgreen@frederickco.gov)  
720-382-5500

Or

Emily Nitcher, Assistant Town Clerk  
[enitcher@frederickco.gov](mailto:enitcher@frederickco.gov)  
720-382-5500

**Built on What Matters.**



**Town of Frederick  
Board of Trustees Agenda**

Frederick Town Hall  
Board Chambers  
401 Locust Street  
Tuesday, October 17, 2023

**5:30 P.M.**

**Special Meeting**

**Work Session to follow Special Meeting**

**2024 Budget**

**Call to Order – Roll Call:**

**Pledge of Allegiance:**

**Approval of Agenda:**

**Special Presentations:**

**Public Comment:** This portion of the agenda is provided to allow members of the audience to provide comments to the Town Board. Please sign in and the Mayor 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.

**Staff Reports:**

**Consent Agenda:**

**Action Agenda:**

- A. Ordinance No. 1388 -Long term lease agreement and property acquisition – Jason Meyers, Town Attorney.

**Mayor and Trustee Reports:**

**Adjournment:**

**Built on What Matters.**



# TOWN OF FREDERICK

## Board of Trustees

### Action Memorandum

Tracie Crites, Mayor

Dan March, Mayor Pro Tem  
Mark Lamach, Trustee  
Adam Mahan, Trustee

Chad teVelde, Trustee  
Kevin Brown, Trustee  
Windi Padia, Trustee

### An Ordinance of the Town of Frederick approving an Agreement for an Exchange of Property between the Town of Frederick and Agilent Technologies Inc.

**Agenda Date:** Town Board Special Meeting – October 17, 2023

**Attachments:**  
a. Ordinance No. 1388  
b. Draft Agreement

**Finance Review:** \_\_\_\_\_  
Finance Director

**Submitted by:** \_\_\_\_\_  
Ryan Johnson  
Assistant Town Manager

**Approved for Presentation:** \_\_\_\_\_  
Bryan Ostler  
Town Manager

Quasi-Judicial       Legislative       Administrative

### **Strategic Plan Alignment:**



#### **Strategic, Reliable & Sustainable Infrastructure**

4.1 Complete work on a short-term and long-term Facilities Master Plan taking into account the growth needs of the Town.



#### **Community and Economic Vitality**

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

### **Summary Statement:**

# **Built on What Matters.**

This request is for consideration of Ordinance No. regarding a proposed Exchange of Property between the Town of Frederick and Agilent Technologies, Inc. in substantially the same form as attached and as finalized by the Town Attorney.

**Background:**

- 2013 – Construction began on the existing Public Works facility located at 7031 Eagle Blvd.
- 2014 – Upon project completion, Staff realized they were at maximum capacity day-one.
- 2021 – The Board of Trustees adopted a Strategic Plan and began prioritizing all Town facilities due to the age of the buildings and/or lack of capacity to accommodate existing and future level of service demands.
- 2022 – The Town partnered with the Colorado Department of Local Affairs and received a grant to complete a facilities existing conditions assessment of all Town facilities.
  - o Facility was identified as not meeting the needs of the department due the following reasons:
    - Lack of indoor and outdoor storage space for equipment.
    - Lack of adequate office space, restrooms, breakrooms, meeting rooms etc.
    - Lack of space for employee lockers changing rooms or equitable facilities for both male and female workers.
    - Lack of room to accommodate growth needs (i.e. level of service increase or staffing).
- Q1 2023 – Staff hired Stantec to complete a 50 year space needs analysis for a Public Works Facility. This work effort included the following deliverables:
  - o 50 year space needs analysis based on industry best management practice.
  - o Myriad of staff interviews to capture existing conditions and future needs.
  - o A robust site selection process to include the following:
    - Consideration of 6 sites (including the existing site)
    - 40-50 data points were included in the process
    - 7400 Eagle Blvd. was identified as the optimal site

**Detail of Issue/Request:**

Agilent Technologies owns land located at 7051 Eagle Blvd. They initially located in Frederick in 2016 with an expansion into Frederick (from their Boulder location) with a project called Project Apothecary. This project led to another phase of expansion that was known as Project Synergy which was completed on the same property. As Project Synergy was winding down in 2021, Agilent began the process of considering yet another expansion. During this time, Agilent acquired property located at 7400 Eagle Blvd. anticipated to facilitate that future expansion. Initial improvements including installation of a parking lot occurred on this property in 2022. In early 2023, Agilent broke ground on yet another expansion, dubbed Project Endeavor which is located on Agilent’s existing property on 7051 Eagle Blvd.

Agilent has approached the Town of Frederick regarding the Town’s interest in relocating its Public Works facility to 7400 Eagle Blvd. The nature of this request includes multiple facets that are listed below:

- Agilent proposes to give the Town of Frederick all of 7400 Eagle Blvd. fee simple upon transaction closing for no cost.
- The Town of Frederick would enter in to a 99 year lease for the existing property the Town owns with Agilent.
- The purpose of this is to allow sufficient time for the Town to design and construct a new Public Works facility.
- During this design and construction time, Agilent would lease back the portion of 7031 Eagle Blvd. that the Town needs for its operations.
- Similarly, the Town would lease back the western portion of 7400 Eagle Blvd. to Agilent for staging and other construction related activities associated with Project Endeavor.
- At the completion of the construction period of the new Public Works facility, both leases would terminate.
- During the course of the construction period, both the Town and Agilent would provide reciprocal monthly leases resulting in a cost neutral financial situation for the Town.
- Should the Town at some point in the future decide to dispose of surplus land that is no longer being used for a municipal purpose, Agilent would receive a purchase option prior to listing the property on the market.

This item was initially considered at the October 10, 2023 Board of Trustees meeting and direction was provided to Staff to bring back the item at a future meeting for finalization. During this initial consideration, Staff presented to the Board and the other Party was also present for comments and questions.

**Legal Comments:**

The Town Attorney’s Office has reviewed and approved both the attached agreement and Ordinance. This agreement has also been reviewed by representatives from Agilent. This has also been reviewed by legal counsel for Agilent including broker research on market rates for the proposed lease back.

**Alternatives/Options:**

The Town could choose to not approve this agreement. While this is an option the Board could choose, it should be noted that the site of our existing Public Works facility was not the optimal site to accommodate a true 50 year facility to meet the Town’s needs. Further, by partnering with Agilent, the Town has the ability to acquire suitable land without cost to the taxpayers for a new facility. The cost of design, construction and construction management are costs that would be born regardless of the location of the facility. This site is also advantageous due to the presence of existing water/sewer connections, adjacency to minor arterial streets for easier access for heavy equipment and relatively fewer site constraints resulting from less unbuildable area compared to our existing property.

The Board could also choose to direct staff to modify the terms of the agreement. Doing so would require both parties to re-enter negotiations to search for mutually agreeable terms. The document that is presented in all material forms is reflective of the previous guidance the Board has provided to Staff.

**Financial Considerations:**

Fiscal Impact – This lease is structured in a way to be cost neutral to the Town. However, the financials of the Town will need to accurately reflect the inflow and outflow of funds even though there is no impact to the bottom line.

- Expenses - \$33,416/month increasing 3.5% annually at the anniversary of the lease.
- Revenue - \$33,416/month increasing 3.5% annually at the anniversary of the lease.

**Staff Recommendation:**

Staff recommends approving this request, and attached agreement as finalized by the Town Attorney in substantially the same form as attached as reflected in the Ordinance.

**TOWN OF FREDERICK, COLORADO**  
**ORDINANCE NO. 1388**

**AN ORDINANCE OF THE TOWN OF FREDERICK, COLORADO APPROVING AN AGREEMENT FOR EXCHANGE OF PROPERTY IN SUBSTANTIALLY THE SAME FORM AS ATTACHED BETWEEN THE TOWN OF FREDERICK AND AGILENT TECHNOLOGIES, INC.**

**WHEREAS**, The TOWN OF FREDERICK (“TOWN”) has adopted a Strategic Plan since 2021; and

**WHEREAS**, the adopted 2022-2023 Strategic Plan identified completing a Facilities Master Plan as a goal; and

**WHEREAS**, the Town engaged consultants to complete due diligence on space needs for a 50-year Public Works facility; and

**WHEREAS**, that space planning included a robust site selection of several properties in the Town of Frederick; and

**WHEREAS**, the optimal site for consideration is certain real property located at 7400 Eagle Blvd., LOT 1B EAGLE BUSINESS PARK, FILING NO. 2 Town of Frederick, County of Weld, State of Colorado, which is owned by AGILENT TECHNOLOGIES, INC. (“AGILENT”); and

**WHEREAS**, The TOWN owns certain real property located at 7301 Eagle Blvd. LOT 1A EAGLE BUSINESS PARK, FILING NO.2, Town of Frederick, County of Weld, State of Colorado; and

**WHEREAS**, AGILENT approached the Town regarding a property exchange in order to facilitate the Town’s long term space needs; and

**WHEREAS**, The PARTIES have worked collaboratively to propose an agreement that mutually meets each organization’s needs; and

**WHEREAS**, The Town Attorney’s Office has reviewed and approved the Agreements in substantially the same form as attached; and

**WHEREAS**, Colorado Revised Statutes § 31-15-713 (1)(c) authorizes the long-term lease of public land and facilities by ordinance when deemed by the governing body to be in the best interest of the municipality.

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

**Section 1. Findings.** The Town Board determines this action to be in the best interest of the Town of Frederick.

**Section 2. Agreement for an Exchange of Property.**

- a. The Board of Trustees approves the Agreement for Exchange of Property, generally located within Lot 1A, Eagle Business Park, Filing No. 2, Town of

Frederick, State of Colorado and Lot 1B, Eagle Business Park, Filing No. 2,  
Town of Frederick, State of Colorado.

- b. The Board of Trustees authorizes the execution of the Exchange Agreement and associated Lease Agreements by the Mayor on behalf of the Town of Frederick upon finalization by the Town Attorney in substantially the same as reflected in the attached.

**Section 3.** Effective Date. This ordinance shall become effective thirty (30) days after publication by the Town Clerk or designee.

**Section 4.** Severance Clause. If an article, section, paragraph, sentence, clause or phrase of this Ordinance is held to be unconstitutional or invalid for any reason, such decision shall not affect the validity or constitutionality of the remaining portions of this Ordinance. The Board of Trustees of the Town of Frederick, Colorado hereby declares that it would have passed this Ordinance and each part or parts thereof, irrespective of the fact that any one part or parts may be declared invalid or unconstitutional.

**Section 5.** Repealer. All other ordinances, or parts of any ordinances or other Code provisions in conflict herewith are hereby repealed.

**Section 6.** Certification. The Town Clerk or designee shall certify to the passage of this ordinance and make not less than one copy of the adopted ordinance available for inspection by the public during regular business hours.

**INTRODUCED, READ, PASSED, AND ADOPTED THIS 17<sup>TH</sup> DAY OF OCTOBER, 2023.**

**TOWN OF FREDERICK**

By \_\_\_\_\_

Tracie Crites, Mayor

**ATTEST:**

By \_\_\_\_\_

Kelly Green, Deputy Town Clerk



## AGREEMENT FOR EXCHANGE OF PROPERTY

THIS AGREEMENT FOR EXCHANGE OF PROPERTY (this "Agreement") is dated \_\_\_\_\_, 2023 ("Effective Date"), and is made by and between Agilent Technologies, Inc., a Delaware corporation ("Agilent"), and the Town of Frederick, a Colorado statutory town ("Town").

### RECITALS

A. Agilent is the owner of certain real property located in the Town, commonly known as 7400 Eagle Boulevard, consisting of approximately 10 acres of unimproved land, as more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Agilent Property").

B. Town is the owner of certain real property located in the Town, commonly known as 7301 Eagle Boulevard, consisting of approximately 14.26 acres of partially improved land, as more particularly described on Exhibit "B" attached hereto and made a part hereof (the "Town Property").

C. Agilent and the Town have entered in to the certain Temporary Construction and Use Easement Agreement, dated as of September 12, 2023, for Agilent's construction of access roads on and use of a portion of the Town Property (the "Easement Agreement").

D. Agilent desires to exchange a fee interest in the Agilent Property for a ground leasehold interest in the Town Property, and Town desires to exchange a ground leasehold interest in the Town Property for a fee interest in the Agilent Property, in the form of a tax-deferred exchange in conformity with the provisions of Section 1031 of the United States Internal Revenue Code of 1986, as amended.

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

### TERMS AND CONDITIONS

1. Exchange of Property Interests: Agilent agrees to transfer and convey a fee interest in the Agilent Property to Town in exchange for a ground leasehold interest in the Town Property, and Town agrees to transfer and convey a ground leasehold interest in the Town Property to Agilent in exchange for a fee interest in the Agilent Property, upon the terms and conditions of this Agreement. Agilent and Town (collectively, "Owners", and sometimes referred to individually as an "Owner") agree that the fee interest in the Agilent Property and ground leasehold interest in the Town Property are of equal value.

2. Properties:

2.1 Town Property: At the Closing (defined below), Town shall convey to Agilent insurable leasehold title to the Town Property by a duly executed ground lease in the form attached hereto as Exhibit "C" and made a part hereof (the "Town Ground Lease"). Evidence of delivery of an insurable ground leasehold interest shall be the issuance by Chicago Title Company located at One Embarcadero Center Suite 250, San Francisco, CA 94111 ("Title Company"), of an ALTA extended coverage policy of leasehold title insurance (the "Agilent Title Policy"), in form and substance acceptable to Agilent and with such endorsements as Agilent may reasonably request, insuring leasehold title to the Town Property, subject only to the title

exceptions shown on that certain title commitment ("Agilent Commitment") issued by the Title Company and dated May 5, 2023, as may be amended.

2.2 Agilent Property: At the Closing, Agilent shall convey to Town insurable title to the Agilent Property by a duly executed and acknowledged special warranty deed in the form attached hereto as Exhibit "D" and made a part hereof (the "Agilent Deed"). Conclusive evidence of delivery of insurable title to the Agilent Property shall be the issuance by the Title Company of an ALTA policy of title insurance (the "Town Title Policy"), in form and substance acceptable to Town, subject only to the title exceptions shown on that certain preliminary Title Commitment issued by the Title Company and dated as of May 9, 2023, as may be amended. The Agilent Deed will contain deed restrictions for the Agilent Property to (i) restrict the use of the Agilent Property exclusively to uses permitted under the current I – Industrial District per the Town’s zoning code, but specially prohibit the use of the Agilent Property for all of the specified complimentary uses in the current I (Industrial) district, including without limitation, convenience shopping and child-care centers and (ii) expressly prohibit the use of the Agilent Property for any residential use.

2.3 Town Sublease: At the Closing, Town shall sublease the easterly portion of the Town Property from Agilent as described in, and in accordance with the provisions of, the lease form attached hereto as Exhibit "E" and made a part hereof (the "Sublease").

2.4 Agilent Lease: At the Closing, Agilent shall license the westerly portion of the Agilent Property (consisting of approximately five (5) acres) from Town as described in, and in accordance with the terms of, the license form attached hereto as Exhibit "F" and made a part hereof (the "Agilent License").

### 3. Covenants:

3.1 Prior to Closing, Agilent shall remove from the eastern five (5) acres of the Agilent Property any portion of the stockpile and clear all equipment and surplus materials located thereon (collectively, the "Stockpile Removal Work").

3.2 At the Town’s sole cost and expense, the Town shall, prior to the termination of the Sublease, to Agilent’s sole satisfaction, cause further investigation and remediation at, on, and under the Town Property, as necessary, with regard to the presence of certain per and polyfluoroalkyl substances (PFAS), including without limitation N-EtFOSAA, Nmethylperfluorooctanesulfonamidoethanol (NMeFOSE), and Nethylperfluorooctanesulfonamidoethanol (NEtFOSE) (collectively "PFAS Substances"). Such investigation shall include sampling for and identification of the source of each detected PFAS Substance, with sampling grid parameters reasonably established to identify source areas. The provisions of this Section 3.2 shall survive Closing. The Town’s obligation hereunder shall survive the expiration of this Agreement and the Closing.

### 4. Conditions to Closing:

4.1 Agilent's Conditions. The obligation of Agilent to exchange and convey fee title to the Agilent Property to the Town pursuant to this Agreement is subject to the satisfaction on or before the Closing of all of the following conditions precedent, which conditions are for the benefit of Agilent only and the satisfaction of which may be waived in writing only by Agilent:

4.1.1 Delivery and execution by Town of all monies, items and instruments required to be delivered by Town pursuant to this Agreement;

4.1.2 Town shall have performed each and every agreement to be performed prior to the Closing by Town pursuant to this Agreement;

4.1.3 As of the Closing, the Title Company shall have issued or shall have committed to issue, upon the sole condition of the payment of its regularly scheduled premium, the Agilent Title Policy;

4.1.4 The physical condition of the Town Property shall be substantially the same on the date of the Closing as on the Agreement Date, subject to investigation and remedial activities set forth in Section 3.2 above;

4.1.5 The Town shall have removed all improvements, stockpiles and other personal property located on the portion of the Town Property identified as the Remainder Parcel in the Sublease, as defined in the Sublease, except for the Building Materials, Access Roads and any personal property of Agilent located on the Town Property, pursuant to and as those terms are defined in the Easement Agreement. The Town shall cause the Mobile Fire Unit to be removed and shall have addressed the environmental condition of the Town Property to specifications acceptable to Agilent, as set forth in Section 3.2 above before the termination of the Sublease (which such obligation shall survive the termination of this Agreement and the Closing); and

4.1.6 The Town shall (i) pay to Valley Bank & Trust (“VBT”) any rent or other sums required to terminate that certain Lease Agreement by and between VBT and the Town, dated December 20, 2013 and recorded in the real property records of Weld County, Colorado (the “Records”) on December 23, 2013 at Reception No. 3985996 (the “Bank Lease”) and that certain Site Agreement by and between VBT and the Town, dated December 20, 2013 and recorded in the Records on December 23, 2013 at Reception 3985995 (the “Site Agreement”) and (ii) cause the Bank Lease and Site Agreement to be terminated of record.

4.2 Town's Conditions. The obligation of the Town to exchange and convey leasehold title to the Town Property pursuant to this Agreement is subject to the satisfaction on or before the Closing of all of the following conditions precedent which conditions are for the benefit of Town only and the satisfaction of which may be waived in writing only by Town:

4.2.1 Delivery and execution by Agilent of all monies, instruments and other items required to be delivered by Agilent pursuant to this Agreement;

4.2.2 Agilent shall have performed each and every agreement to be performed prior to the Closing by Agilent pursuant to this Agreement;

4.2.3 As of the Closing, the Title Company shall have issued or shall have committed to issue, upon the sole condition of the payment of its regularly scheduled premium, the Town Title Policy; and

4.2.4 The physical condition of the Agilent Property shall be substantially the same on the date of the Closing as on the Agreement Date.

4.3 Failure of Conditions. If any of the conditions set forth in Sections 4.1 or 4.2 are not timely satisfied or waived in writing by the applicable party for any reason other than the default of Agilent or Town under this Agreement, then this Agreement and the rights and obligations of Agilent and Town shall terminate and be of no further force or effect except as to those matters as specifically stated in this Agreement to survive termination, in which case the Title Company is hereby instructed to return promptly to the party which placed such items into Escrow (defined below) the documents that are held by the Title Company on the date of termination.

4.4 Satisfaction of Conditions. The occurrence of the Closing shall constitute satisfaction of conditions set forth in Sections 4.1 and 4.2 not otherwise specifically satisfied or waived by Agilent or Town, provided that Agilent's agreement to proceed with Closing in accordance with Section 4.1.6 notwithstanding that the Town's obligations set forth in Section 3.2 have not been completed shall not alleviate or otherwise limit, reduce, or affect those obligations set forth in Section 3.2, nor shall it constitute a waiver by Agilent of the Town's obligations set forth in Section 3.2.

5. Escrow:

5.1 Opening of Escrow: Agilent shall deliver a fully executed copy of this Agreement into escrow ("Escrow") to be established at the Title Company in care of Jennifer Lewis on or before three (3) business days after the date by which a fully executed copy of this Agreement has been received by Agilent. Agilent and Town shall each be entitled to submit escrow instructions to the Title Company in connection with the Closing. Agilent and Town shall, in addition, execute such further escrow instructions as the Title Company may reasonably require in connection with the Closing so long as such instructions are consistent with the provisions of this Agreement and the escrow instructions of Agilent and Town. In the event of any conflict between the terms and conditions of this Agreement and the provisions of any escrow instructions prepared by Agilent, Town or the Title Company, the terms and conditions of this Agreement shall control.

5.2 Closing: The execution and exchange of the documents required under this Section 5 (the "Closing") shall occur at the offices of the Title Company, and be completed by 5:00 p.m. on November 30, 2023, or such earlier date approved by both Agilent and the Town; provided, however, so long as executed documents and any funds required to close the transaction contemplated hereby are timely delivered to the Title Company, neither party need attend the Closing in person.

5.3 Delivery by Town: At or before the Closing, the Town shall deliver into Escrow the following:

5.3.1 The Town Ground Lease, duly executed by the Town;

5.3.2 The Memorandum of Lease in the form attached hereto as Exhibit "G" and made a part hereof ("Lease Memorandum") duly executed and acknowledged by Town;

5.3.3 The Sublease, duly executed by the Town;

5.3.4 The Agilent License, duly executed by the Town;

5.3.5 A termination of the Easement Agreement, duly executed and acknowledged by the Town; and

5.3.6 Affidavits and similar instruments as are reasonably required by the Title Company (i) to close the transaction and to issue the Agilent Title Policy, and (ii) for the satisfaction of any Internal Revenue Service and any other required governmental disclosure and reporting requirements.

5.4 Delivery by Agilent: At or before the Closing, Agilent shall deliver into Escrow the following:

5.4.1 The Agilent Deed duly executed and acknowledged by Agilent;

5.4.2 The Town Ground Lease, duly executed by Agilent;

5.4.3 The Lease Memorandum duly executed and acknowledged by Agilent;

5.4.4 The Sublease duly executed by Agilent;

5.4.5 The Agilent License duly executed by the Agilent.

5.4.6 A termination of the Easement Agreement, duly executed and acknowledged by Agilent; and

5.4.7 Affidavits and similar instruments as are reasonably required by the Title Company (i) to close the transaction and to issue the Town Title Policy, and (ii) for the satisfaction of any Internal Revenue Service and any other required governmental disclosure and reporting requirements.

5.5 Further Assurances: The Town and Agilent shall each deposit such other instruments as are reasonably required by the Title Company or otherwise required to consummate the exchange of the Agilent Property for the Town Ground Lease in accordance with the terms hereof.

5.6 Prorations; Closing Costs: The following are to be apportioned as of the Closing, as follows:

5.6.1 Apportionments/Costs: Real property taxes and installments of assessments for the Agilent Property shall be apportioned as of the Closing. Agilent shall pay for the cost of the Agilent Title Policy and the Town shall pay the cost of the Town Title Policy. Agilent and the Town shall each pay fifty percent (50%) of the Title Company's escrow fee. Any documentary transfer taxes or filing fees related to the Agilent Deed shall be paid by Town. Any documentary transfer taxes or fees related to the Town Ground Lease and Lease Memorandum shall be paid Agilent. The Town and Agilent shall each pay their own legal and professional fees incurred in connection with this Agreement.

5.6.2 Survival: The provisions of this Section 5.6 shall survive the Closing.

6. Brokers and Finders: Neither party hereto has had any contact or dealings regarding the Agilent Property or the Town Property, or any communication in connection with the subject matter of this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee in connection with the sale contemplated herein. Each of Agilent and Town agree to be solely responsible for, protect, and save and hold harmless the other party and to reimburse the other party for any and all commissions claimed by any broker or third party under such party. The obligations of Agilent and Town as contained in this Section 6 shall survive the Closing or the earlier expiration or termination of this Agreement.

7. Release: (i) Agilent and Town are aware (or have voluntarily chosen not to be aware) of all zoning regulations, other governmental requirements, site and physical conditions, and other matters affecting the use and condition of the Agilent Property and Town Property, as applicable; and (ii) the Parties shall accept the Properties, in its "AS IS" condition WITH ALL FAULTS as of the date of the Closing, and Parties waive and release any and all claims, demands, causes of action, losses, costs, damages, penalties, fines, taxes, remedial actions, removal and disposal costs, investigation and remedial costs and expenses (including, without limitation, attorneys', expert and consultant fees), whether direct or indirect ("Liabilities"), known or unknown, the Parties may have against each other as a result of the condition or status of the Properties. Notwithstanding any other provision or term of this Agreement, and without limitation, Agilent does not release the Town with regard to any Liabilities associated with or arising from any environmental contamination or the

presence of any hazardous substances, pollutants, or hazardous materials, at, on, or under the Town Property existing as of the Closing Date. The provisions of this Section 7 shall survive the Closing.

8. Remedies: If Agilent shall fail to convey the Agilent Property to Town in accordance with the provisions of this Agreement, and such failure constitutes a default by Agilent, the Town's sole and exclusive remedies shall be either to (i) sue for specific performance, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of either party hereunder, or (ii) terminate this Agreement, which termination shall release defaulting party from any and all liability hereunder. Cumulative with the remedies in the foregoing (i) and (ii), in the event of a breach of this Agreement by Agilent, Agilent shall reimburse to the Town all actual, out-of-pocket expenses incurred by the Town in negotiating this Agreement and in inspecting or analyzing the Agilent Property, or otherwise performing its rights and obligations pursuant to this Agreement, not to exceed \$100,000.

If the Town shall fail to convey the Town Property to Agilent in accordance with the provisions of this Agreement, and such failure constitutes a default by the Town, Agilent's remedies shall be to (y) sue for specific performance, it being understood and agreed that the remedy of specific performance shall not be available to enforce any other obligation of either party hereunder, or (z) terminate this Agreement, which termination shall release the defaulting party from any and all liability hereunder. Cumulative with the remedies in the foregoing (y) and (z), in the event of a breach of this Agreement by the Town, the Town shall reimburse to Agilent all actual, out-of-pocket expenses incurred by Agilent in negotiating this Agreement and in inspecting or analyzing the Town Property, or otherwise performing its rights and obligations pursuant to this Agreement, not to exceed \$100,000.

The non-defaulting party shall be deemed to have elected to terminate this Agreement if it fails to file suit for specific performance against defaulting party in a court having jurisdiction in the county and state in which the property is located, on or before thirty (30) days following the date upon which the Closing was to have occurred.

9. Attorneys' Fees: Should any action or proceeding be commenced between the parties hereto concerning either the Town Ground Lease or the Agilent Property, this Agreement or the rights and duties of either Agilent or Town in relation thereto, the prevailing party in such action or proceeding shall be entitled, in addition to all other relief as may be granted by the court, to reasonable sums as and for attorneys' fees in the discretion of the court.

10. Notices: Any notice or report required or desired to be given regarding this Agreement shall be in writing and may be given by personal delivery or by courier service. Any notice or report addressed to Agilent or Town at their respective addresses set forth below, as appropriate, shall be deemed to have been given (i) when personally delivered or (ii) if properly addressed and deposited with a reputable overnight carrier, on the date the notice or report is delivered (or delivery is refused) as evidenced by the overnight carrier's delivery records. For this purpose, a "business day" shall be a day on which such reputable overnight carrier has regularly scheduled delivery (excluding Saturdays).

Each notice to Town shall be delivered to:

Town of Frederick  
Town Manager  
401 Locust Street  
Frederick, CO 80530

with copies to:

Town of Frederick  
Town Attorney  
401 Locust Street  
Frederick, CO 80530

Each notice to Agilent shall be delivered to:

Agilent Technologies, Inc.  
7051 Eagle Blvd.  
Frederick, CO 80504  
Attn: Avelino Reyes  
Email: [avelino.reyes@agilent.com](mailto:avelino.reyes@agilent.com)

with copies to:

GCA Law Partners LLP  
2570 W. El Camino Real, Suite 400  
Mountain View, California 94040  
Attn: Peter Schwab  
Email: [pschwab@gcalaw.com](mailto:pschwab@gcalaw.com)

and:

Davis Graham & Stubbs LLP  
1550 17th Street  
Suite 500  
Denver, CO 80202  
Attn: David Kuosman  
Email: [david.kuosman@dgsllaw.com](mailto:david.kuosman@dgsllaw.com)

11. Assignment: Neither party hereto may assign any of its right, title and interest in and to this Agreement to any other party without the express written approval of the other party and any attempt by either party to do so without such approval shall be deemed void and of no force or effect.

12. Like Kind Exchange: The Owners acknowledge that the exchange of the Properties pursuant to this Agreement will be treated for tax purposes as an exchange of like kind properties by Agilent pursuant to Section 1031 of the Internal Revenue Code of 1986, as amended. The Owners agree to report the transaction consistently with such treatment.

13. Miscellaneous: This Agreement shall not be modified by either party by any oral representation made before or after the execution of this Agreement, and all modifications must be in writing signed by Agilent and Town. Both Agilent and Town acknowledge that time is of the essence for the performance of each and every covenant and for the satisfaction of each and every condition contained in this Agreement. In the event that any provision or provisions of this Agreement is or are hereinafter adjudged to be, for any reason, unenforceable or invalid, it is the specific intent of the parties that the remainder hereof shall not be affected by such unenforceability or invalidity but shall remain in full force and effect. The headings contained in this Agreement are for reference purposes only and shall not limit or define the meaning of the text of this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of

Colorado. The language in all parts of this Agreement shall in all cases be construed as a whole according to its reasonable meaning, and any ambiguities in this Agreement shall not be construed strictly for or against either Agilent or Town. This Agreement may be executed in counterparts by the parties hereto, and shall become binding when all parties have each executed a counterpart hereof, and together such executed counterparts shall constitute this Agreement. Each party hereto (i) has agreed to permit the use from time to time, where appropriate, of emailed pdf or other form of electronic signatures in order to expedite the transaction contemplated by this Agreement, (ii) intends to be bound by its respective emailed pdf or electronic signature, (iii) is aware that the other will rely on the emailed pdf or electronic signature, and (iv) acknowledges such reliance and waives any defenses to the enforcement of this Agreement and the documents affecting the transaction contemplated by this Agreement based on the fact that a signature was sent by emailed electronically or by pdf only. Each party hereto shall execute, acknowledge and deliver or to cause to have executed, acknowledged and delivered, such other and further instruments and documents as may reasonably be requested by the other to carry out this Agreement. Agilent and Town each represent and warrant with respect to each person executing this Agreement on their behalf, respectively, that such person is duly and validly authorized to do so on behalf of the entity it purports to so bind, and that such entity or individual has full right and authority to enter into this Agreement and perform all of its obligations hereunder. This Agreement together with any exhibits attached hereto and (incorporated herein by this reference) shall constitute the entire agreement between the parties with regard to the subject matter of this Agreement, and shall supersede all other agreements respecting the subject matter of this Agreement.

[Signature page follows]



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the respective dates set forth below.

AGILENT:  
AGILENT TECHNOLOGIES, INC., a  
Delaware corporation

TOWN:  
TOWN OF FREDERICK, a Colorado  
statutory town

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

DRAFT

EXHIBIT A

Agilent Property

Lot 1B, Eagle Business Park, Filing No. 3, County of Weld, State of Colorado.

For Informational Purposes:

Tax ID No.: R6787694

DRAFT

EXHIBIT B

Town Property

Lot 1A, Eagle Business Park, Filing No. 2, Town of Frederick, County of Weld, State of Colorado.

For Informational Purposes:

Tax ID No.: R6784796

DRAFT

EXHIBIT C

Town Ground Lease

**7301 EAGLE BLVD.**

**99 – YEAR GROUND LEASE**

**BETWEEN**

**TOWN OF FREDERICK, COLORADO**

**AS LANDLORD**

**AND**

**AGILENT TECHNOLOGIES, INC.**

**AS TENANT**

DRAFT

## GROUND LEASE

(7301 Eagle Blvd. – Agilent and Town of Frederick)

THIS GROUND LEASE (the “**Lease**”) is made as of the \_\_\_ day of \_\_\_\_\_, 2023 (“**Effective Date**”), by and between The **TOWN OF FREDERICK, COLORADO**, a Colorado statutory town (hereinafter referred to as “**Landlord**”), and **AGILENT TECHNOLOGIES, INC.**, a Delaware corporation or its assigns (hereinafter referred to as “**Tenant**”, and with Landlord, each a “**Party**”, and together the “**Parties**”).

### 1. Premises.

Landlord hereby leases, rents, lets and demises to Tenant, and Tenant does hereby lease, rent, let and demise from Landlord, upon and subject to the terms, conditions, covenants and provisions hereof, all that certain parcel of land containing approximately 14.26 acres located at 7301 Eagle Boulevard in the Town of Frederick (“**Town**”), County of Weld, State of Colorado, more particularly described on “**Exhibit A**” attached hereto and made a part hereof, together with any and all buildings and other improvements located thereon, appurtenances, rights, privileges and easements now or hereafter benefiting, belonging or pertaining thereto (all the foregoing hereinafter referred to as the “**Premises**” or the “**Property**”).

### 2. Term.

The term of this Lease shall commence on the Effective Date (the “**Commencement Date**”) and shall continue until 5:00 pm local time on ninety ninth (99<sup>th</sup>) anniversary of the Commencement Date, said term being hereinafter referred to as the “**Term**.”

### 3. Rent.

3.1 Fixed Ground Rent; True Net Lease. On the Commencement Date, Tenant shall pay Landlord a one-time payment of One Hundred and No/100 Dollars (\$100.00) as fixed ground rent for the entire Term of this Lease (“**Fixed Ground Rent**”). Landlord and Tenant agree that this Lease is intended as an absolute net lease, and Landlord shall not pay any costs or expenses arising out of or in any way connected with the Premises during the Term, except as expressly set forth in this Lease. Additionally, other than the Fixed Ground Rent payment to Landlord made on the Commencement Date, Tenant shall not have any other payment obligations to Landlord under this Lease (except for damages resulting from an Event of Default by Tenant under this Lease).

### 4. Construction of Improvements, Pre-Construction Activities and Easements.

4.1 New Improvements. Landlord and Tenant acknowledge that Tenant intends and shall have the unilateral right to develop and redevelop the Premises, from time-to-time, with to-be determined buildings, improvements, and uses and as authorized under laws, rules, regulations, and private restrictions applicable to the Premises (the “**Project**”). Tenant intends to seek (on terms and conditions and costs satisfactory to Tenant) all permits, approvals, and entitlements from all applicable governmental and quasi-governmental authorities required for the development and/or redevelopment of the Project, including (to the extent applicable), without limitation, rezoning, platting, curb cut, signage, wetlands, utilities, impact fees, demolition certificate, concept design, site plan development, zone lot amendment, subdivision plat, foundation permit, building

permit, sewer use and drainage, and transportation engineering plans (the “**Regulatory Approvals**”). Tenant acknowledges that Landlord has made no representations regarding the likelihood that Tenant will be able to obtain any of the necessary Regulatory Approvals, but Landlord will cause its staff to reasonably support Tenant’s efforts to process and obtain the Regulatory Approvals, including without limitation executing such applications and other documents reasonably necessary or appropriate for Tenant to apply for, process and obtain the Regulatory Approvals. Notwithstanding anything herein to the contrary, from and after the Commencement Date, Landlord shall cause its staff to reasonably support Tenant’s efforts to cause the Premises to be rezoned from BLI – Business Light Industrial to I – Industrial District (the “**Rezoning**”), at Tenant’s request, including without limitation executing such applications and other documents as fee title owner of the Property reasonably necessary or appropriate for Tenant to apply for, process and obtain the Rezoning.

4.2 Construction. Any improvements presently existing as of the Effective Date, or thereafter contemplated to be constructed by the Tenant as part of the Project shall be herein referred to as the “**Improvements.**” Tenant has no obligation to construct any new or additional Improvements upon the Premises at any time during the Term of this Lease. Any Improvements shall be built in accordance with the Regulatory Approvals in a good and workmanlike manner and in accordance with all requirements of local ordinances, rules and regulations, and requirements of all governmental authorities having jurisdiction thereof.

4.3 Design of and Title to Improvements. In connection with any Improvements constructed during the Term, Tenant shall determine the availability of and shall cause to be installed in, on and about the Premises all facilities necessary to supply all water, sewer, gas, electric, telephone, cable television, and other like utility services required therewith. Tenant may enter into any contract or agreement, and Landlord shall reasonably cooperate and execute necessary documents as fee owner if and as required by any city, county, or any governmental agency or body or public utility with reference to any required utility or sewer lines or connections, street improvements, including, but not limited to, curbs, gutters, parkways and street lighting or utility lines and connections such as drainage, gas, water, telephone, power, cable television or easements. Title to all buildings and improvements constructed by Tenant or its subtenants that are now or from time to time may be located on, and all fixtures, equipment and machinery installed by Tenant that may from time to time be used or are intended to be used in connection with the Premises shall be and remain in Tenant until the expiration or termination of this Lease, and Tenant or its subtenants, but not Landlord, shall be entitled to deduct all depreciation and investment tax credits on Tenant’s income tax returns for any such buildings, equipment, Improvements or additions. Upon the expiration or prior termination of this Lease, title to all buildings and improvements, as well as all fixtures, equipment and machinery, apparatus and appliances incorporated into such buildings and improvements then owned by Tenant and located on the Premises, shall pass to and vest in Landlord without cost or charge to it, and upon request of Landlord, Tenant will execute a bargain and sale deed, and quit claim bill of sale memorializing such transfer; provided, however, that at its election, Tenant may remove and retain title to any or all of its trade fixtures, machinery and equipment.

4.4 Cooperation with Permitting; Dedications. Landlord shall cause its staff to reasonable assist Tenant in its efforts to obtain any necessary governmental permits needed or required by Tenant in the demolition of existing structures, construction, reconstruction,

remodeling, repair, and/or replacement of Improvements on the Premises to build and develop the Project (the “**Development Permits**”). Landlord shall further cause its staff to reasonable assist Tenant in its efforts to obtain any dedications of portions of the Premises for public streets, alleys, and rights-of-way, including public utility rights-of-way, such as sewer, water, storm drain, electricity, gas, telephone, and cable television necessary to build and develop the Project in accordance with the rules and regulations, building restrictions and ordinances of the Town and any other governmental agency.

## **5. Use and Acceptance of Premises.**

The Premises may be used for any purpose authorized under applicable law and subject to private restrictions applicable to the Premises. Landlord represents and warrants to Tenant that as of the Commencement Date, the Premises is in compliance with all Applicable Requirements (as defined below).

## **6. Taxes and Utility Expenses.**

6.1 Commencing as of the Effective Date and continuing during the Term, Tenant shall pay and discharge, or cause to be paid and discharged, before delinquency: (A) all real property taxes, special and general assessments, business improvement, metropolitan and special district fees, charges and assessments (hereinafter referred to as “**Taxes**”), which during the Term of this Lease are imposed and become due and payable with respect to the Premises (and the Improvements), and (B) all consumption or utility charges of any kind or nature (including but not limited to water, steam, heat, gas, hot water, electricity, light and power, cable and/or digital communications and entertainment services, and other utility service or services), furnished to the Premises or the occupants thereof during the Term of this Lease (hereinafter referred to as “**Utility Expenses**”).

6.2 To the extent that the same may be permitted by law, Tenant or its designees shall have the right to apply for: (a) exemption from any Taxes and Utility Expenses; and (b) the conversion of any assessment for local improvements assessed during the Term of this Lease in order to cause the same to be payable in annual or semi-annual installments. Upon any conversion, Tenant shall pay and discharge punctually said installments as they shall become due and payable during the Term. Landlord agrees to permit the application for the foregoing exemption or conversion to be filed by Tenant in Landlord’s name as the fee title owner of the Property, if necessary, and shall execute any and all documents requested by Tenant to accomplish the foregoing result.

6.3 All such Taxes, including assessments which have been converted into installments as set forth in the preceding Section 6.2, which shall become payable for the fiscal year during which the Term of this Lease commences or terminates, shall be apportioned pro rata between Landlord and Tenant in proportion with the respective portions of such year during which such Term shall be in effect.

6.4 Tenant shall have the right to contest or review all such Taxes by legal proceedings, or in such other manner as it may deem suitable, and Landlord agrees, at the reasonable request of Tenant, to take such ministerial actions as the fee title owner of the Property which are necessary

to facilitate such contest or review. Notwithstanding the foregoing, Tenant shall promptly pay all such Taxes before delinquency, subject to the right to contest such Taxes in good faith.

6.5 The legal proceedings referred to in the preceding Section 6.4 shall include, at Tenant's option, appropriate certiorari proceedings and appeals from orders therein and appeals from any judgment, decrees, or orders. Tenant shall pay the amount finally levied or assessed against the Premises or adjudicated to be due and payable on any such contested Taxes.

6.6 Any refunds or rebates on account of Taxes paid by Tenant under the provisions of this Lease shall belong to Tenant. Any refunds received by Landlord shall be deemed trust funds and as such are to be received by Landlord in trust and paid to Tenant forthwith. Landlord, upon the request of Tenant, will sign any receipts which may be necessary to secure the payment of any such refund or rebate, and will pay over to Tenant such refund or rebate as received by Landlord. Landlord further covenants and agrees upon request of Tenant at any time, and from time to time, to make application individually (if legally required) for separate tax assessments for such portions of the Premises as Tenant at any time, and from time to time, shall designate. Landlord hereby agrees upon request of Tenant to execute such instruments and to give Tenant such assistance in connection with such applications as shall be required by Tenant.

6.7 Upon receipt of any tax bills or reassessment notices or other communications from the assessing or tax collecting agencies, Landlord shall provide a copy to Tenant as soon as possible. Promptly upon receipt of a written request from Landlord, Tenant shall provide Landlord with a copy of each tax bill payment.

## **7. Repairs, Additions, Replacements.**

7.1 During the Term, Tenant shall keep and maintain or cause to be kept and maintained in repair and good condition (ordinary wear and tear excepted) all buildings and improvements at any time located on the Property, and shall use all reasonable precaution to prevent waste, damage, or injury. Except in its role as the municipality providing services to the Property, Landlord shall not be required (as an independent covenant under this Lease) to furnish any services or facilities or to make any improvements, maintenance, repairs, replacements, or alterations in or to the Premises (or any buildings or improvements located thereon) during the Term.

7.2 With respect to any Improvements existing as of the Effective Date, and after completion of construction of any new Improvements, Tenant, at any time and from time to time, may make such alterations, changes, additions, replacements and improvements to the Improvements thereon, as it may deem desirable, including the demolition of any building(s) and improvement(s) and/or structure(s) that may be situated or erected on the Premises and the right at any time to construct new buildings, structures and improvements. In this connection, Tenant shall have the right to seek new entitlements for the redevelopment of the Premises and all of the other rights and obligations as set forth in Section 4 of this Lease to permit such redevelopment, and Landlord shall reasonably cooperate in any application for such redevelopment.

7.3 Upon the expiration or prior termination of this Lease, title to all buildings and improvements located on the Premises, shall pass to and vest in Landlord without cost or charge



to it, and upon request of Landlord, Tenant will execute a bargain and sale deed, and quit claim bill of sale memorializing such transfer.

## **8. Requirements of Public Authority.**

8.1 During the Term of this Lease, Tenant, at its own cost and expense, shall promptly observe and comply in all material respects with all present and future laws, ordinances, rules and regulations of the federal, state, county, town and city governments and of all other governmental or quasi-governmental authorities affecting the Premises or appurtenances thereto. For the avoidance of doubt, this Section 8.1 shall not require Tenant to repair, alter, or renovate the Premises to comply with any building code enacted or amended after the Effective Date (a “**New Building Code Requirement**”) to the extent that such New Building Code Requirement (or any applicable law related thereto) contains a grandfathering provision that makes the Premises not in violation of such New Building Code Requirement.

8.2 Tenant shall have the right to contest by appropriate legal proceedings diligently conducted in good faith, in the name of Tenant, the validity or application of any law, ordinance, rule, regulation or requirement of the nature referred to in Section 8.1 and, if by the terms of any such law, ordinance, order, title, regulation or requirement, compliance therewith may legally be delayed pending the prosecution of any such proceeding, Tenant may delay such compliance therewith until the final determination of such proceeding.

## **9. Covenant Against Liens.**

If any mechanic’s lien or other lien, charge or order for the payment of money shall be filed against the Premises, or any portion thereof (except to the extent directly caused by the acts or omissions of Landlord which acts or omissions are not the responsibility of Tenant under this Lease) then Tenant, at its own cost and expense, shall cause the same to be discharged of record or Tenant shall provide adequate security therefor within one hundred eighty (180) days after notice to Tenant of the filing thereof, and Tenant shall be solely responsible and save Landlord harmless from and against all costs, liabilities, suits, penalties, claims and demands, including reasonable counsel fees, resulting therefrom.

## **10. Access to Property.**

Landlord has no ongoing maintenance or repair obligations under this Lease, and correspondingly no need or right to access the Property except upon prior written notice and approval from Tenant; provided Landlord shall be permitted to affix a “To Let” or “For Sale” sign on the Property during the last twelve (12) months of the Term.

## **11. Transfers, Assignment and Subletting.**

11.1 Transfer by Landlord. Subject to Sections 37 and 38, Landlord shall have the right to engage in any sale, assignment, encumbrance, pledge, deed of trust or other transfer or hypothecation of its interest in or rights with respect to the Premises, including, without limitation, this Lease (“a “**Transfer**”) without the prior written consent of Tenant. Prior to the effectiveness of any Transfer by Landlord, Landlord shall deliver to Tenant a fully executed copy of the assignment instrument, pursuant to which the proposed transferee shall unconditionally (i) assume

and agree to perform and observe all covenants and conditions to be performed and observed by Landlord under this Lease arising on and after the date of such Transfer, and (ii) make the representations and warranties and covenants set forth in Section 39. Any Transfer or attempted Transfer that fails to comply with this Section 11.1 shall be void and, at the option of Tenant, shall constitute an incurable event of default by Landlord under this Lease (notwithstanding anything to the contrary contained in this Lease).

11.2 Transfer by Tenant. Except for a Permitted Transfer (defined below), Tenant shall not directly or indirectly, in whole or in part, voluntarily or by operation of law, engage in any Transfer without the prior written consent of Landlord, which consent shall not be unreasonably withheld or delayed. Landlord's approval may not be conditioned on the payment of money. For purposes of this Section 11.2, a "**Permitted Transfer**" means (x) any Transfer to any Affiliate of Tenant or any successor by merger or successor by ownership interest or asset combination or transaction, (y) any Transfer otherwise permitted under Section 17, and (z) any Transfer by a Leasehold Mortgagee to a third-party purchaser. A Permitted Transfer does not require the consent of Landlord but does require written notice to Landlord along with reasonable supporting documentation or certifications verifying the Permitted Transfer. As part of any Transfer, Tenant shall deliver to Landlord a fully executed copy of the assignment instrument, pursuant to which the proposed transferee shall unconditionally (i) assume and agree to perform and observe all covenants and conditions to be performed and observed by Tenant under this Lease arising on and after the date of such Transfer, and (ii) make the representations and warranties and covenants set forth in Section 39. The consent by Landlord to any Transfer shall not relieve Tenant from the obligation to obtain Landlord's express consent to any other Transfer requiring Landlord's consent. "**Affiliate**" means, with respect to a party, any party that directly or indirectly through one or more intermediary's controls, is controlled by, or is under Common Control with such party. "**Control**" means, with respect to a party, the power to direct the management and governance of such party, directly or indirectly, whether through ownership of voting securities or other beneficial interest, by contract or otherwise, and terms "**Controlling**" or "**Controlled**" have the meanings correlative to the foregoing.

## 12. Risk Allocation.

12.1 Tenant and its successors and assigns shall be solely responsible, protect, and save and hold harmless Landlord and its members, manager(s), lender(s), directors, officers, employees, representatives and agents (the "**Landlord Parties**") from and against, and shall reimburse Landlord and the Landlord Parties for, any and all claims, demands, losses, damages, costs, liabilities, penalties, causes of action and expenses, including, without limitation, reasonable attorneys' fees and expenses (collectively, "**Claims**"), arising from or in any way connected with the Premises and the Improvements during the Term not specifically caused by: (a) the breach of this Lease by Landlord; or (b) the negligence or willful misconduct of Landlord or Landlord's employees or agents (collectively, "**Landlord's Agents**"). The foregoing allocation of risk and responsibility shall expressly include those matters where Landlord is determined to have liability solely because of its status as the fee owner of the Premises.

12.2 To the extent allowed by Colorado law, Landlord and its successors and assigns shall be solely responsible, protect, and save and hold harmless Tenant and its directors, officers, employees, representatives and agents (the "**Tenant Parties**") from and against, and shall

reimburse Tenant and the Tenant Parties for, any and all Claims incurred in any way in connection with or arising from, in whole or in part, the negligence or willful misconduct of Landlord or any of Landlord's Agents in connection with Landlord's exercise of its rights and duties under this Lease. The foregoing allocation of risk and responsibility shall not apply to the extent of Tenant's breach of its obligations under this Lease, or the negligence or willful misconduct of Tenant or Tenant's Agents.

### **13. Insurance**

13.1 Tenant shall, at its expense, maintain a policy or policies of commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death, and damage to property occurring in, or resulting from an occurrence in, the Premises, with combined single limit coverage of not less than Five Million Dollars (\$5,000,000). Tenant agrees to not permit its insurance to lapse such that the Premises are not insured as required herein and agrees to deliver certificates of such insurance to Landlord promptly upon Tenant's receipt of a written request from Landlord.

13.2 Tenant's insurance required under this Lease shall: (i) be issued by insurance companies authorized to do business in the state in which the Premises is located; and (ii) contain an endorsement requiring thirty (30) days' written notice from the insurance company before cancellation of any such policy. Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Premises and other locations of Tenant, provided that Landlord Parties shall be named as an additional insured as its interests may appear, and the coverage afforded to the Landlord shall not be reduced or diminished by reason of the use of such blanket policy of insurance (subject to aggregate limits of coverage contained therein, which shall be allocated in accordance with the insurance limits provided herein).

13.3 Landlord and Tenant hereby waive all rights of recovery against the other for any loss and/or damage covered by any casualty and property insurance required to be maintained by such party under this Lease for which such party recovers the proceeds of insurance from such policy(s).

**14. Damage or Destruction.** No loss or damage by fire or other cause resulting in either partial or total destruction of the Premises, the Improvements or any other property on the Premises shall operate to terminate this Lease. The following terms and conditions shall apply in the event of damage to or destruction of the Premises and these obligations shall expressly survive the expiration of the Term or early termination of this Lease.

14.1 No such loss or damage shall relieve or discharge Tenant from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed; provided Tenant shall have no obligation for any repair, reconstruction, or replacement of the Improvements (except to the extent required under Applicable Requirements), or as required under any applicable Leasehold Mortgage. As between Landlord and Tenant, all insurance proceeds resulting from such casualty event shall belong to and be paid to Tenant (or its Leasehold Mortgagee if and as required under any applicable Leasehold Mortgage).

14.2 If a casualty occurs and there is a substantial possibility that immediate emergency repairs will be required to eliminate defective or dangerous conditions as required under Applicable Requirements then Tenant shall promptly undertake such emergency repair work as necessary or appropriate under the circumstances to eliminate defective or dangerous conditions and to comply with Applicable Requirements and any proceeds of insurance shall first be applied to reimburse Tenant for the cost of such emergency repair work.

**15. Condemnation and Eminent Domain.** If all or any part of the Premises shall be taken or condemned by any governmental or other public or private entity with condemnation powers (the “**Condemnor**”) during the Term of this Lease, or if the Condemnor shall take title to or possession of the Premises in lieu of condemnation (the “**Condemnation Effective Date**”), this Lease shall terminate as to the part so taken. For the purposes hereof, “**Condemnation**” shall mean any taking by exercise of right of condemnation (direct or inverse) or eminent domain or requisitioning by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance or sale under threat of condemnation (“**Condemned**” means having been subject to such taking and “**Condemning**” means exercising such taking authority). Landlord shall not take any action supporting any Condemnation without the express prior consent of Tenant. The following terms and conditions shall apply in the event of a Condemnation.

15.1 No Condemnation shall, except as otherwise provided herein, operate to terminate this Lease. Unless this Lease is terminated pursuant to and in accordance with this Section 15, no such Condemnation shall relieve or discharge Tenant from the performance and observance of any of the agreements, covenants and conditions herein contained on the part of Tenant to be performed and observed.

15.2 If during the Term: (i) the entire Premises shall be Condemned; or (ii) greater than 35% of the square footage of the Improvements shall be Condemned and Tenant thereafter reasonably determines that the balance of the Improvements at the Premises need to be demolished, removed or materially altered such that the Condemnation makes the continued operation of the remaining portion of the Premises not capable of being restored to an economically viable whole for the Project permitted hereunder, then, in either of such cases, Tenant shall have the option, in its sole discretion, to terminate this Lease. Tenant may exercise its option to terminate this Lease pursuant to this Section 15 by giving written notice to Landlord within ninety (90) days after the Condemnation Effective Date. If Tenant elects to terminate this Lease pursuant to this Section 15, Tenant shall deliver the Premises to Landlord on such termination date in its AS-IS condition.

15.3 If less than the entire Premises is subject to a Condemnation then Landlord shall have no right to terminate this Lease, and no right to share in any portion of the Award. If less than the entire Premises is Subject to a Condemnation, and this Lease is not terminated by Tenant pursuant to and in accordance with this Section 15, this Lease shall be deemed terminated as to the part so Condemned as of the Condemnation Effective Date and shall be deemed amended, effective as of Condemnation Effective Date, such that the definition of the “Premises” shall include only that portion of the Premises that is not subject to such Condemnation; provided Tenant shall have no obligation for any repair, reconstruction, or replacement of the Improvements (except to the extent required under Applicable Requirements), or as required under any applicable Leasehold Mortgage.

15.4 Any amount paid by the Condemning authority as a result of the applicable Condemnation is herein referred to as the “**Award**”. All Awards received by or payable to any party with respect to a Condemnation following a partial Condemnation where this Lease is not terminated by Tenant pursuant to and in accordance with this Section 15, shall be paid entirely to Tenant (or its Leasehold Mortgagee if and as required under any applicable Leasehold Mortgage).

15.5 If the whole or any part of the Premises or of Tenant’s interest in this Lease shall be taken in a Condemnation only for a temporary use or occupancy, the Term shall not be reduced or affected in any way, nor will Tenant receive a rebate of previously paid Fixed Ground Rent. Except only to the extent that Tenant is prevented from so doing pursuant to the terms of the order of the condemning authority, Tenant shall continue to perform and observe all of covenants, agreements, terms, and provisions of this Lease as though such Condemnation had not occurred. Tenant shall be entitled to receive the entire amount of any Award. If the period of any such temporary use or occupancy will extend beyond the expiration date of the Term, the portion of any Award payable with respect to the temporary loss of use or occupancy shall be apportioned by Landlord and Tenant as of such date of expiration in the same ratio that the part of the entire period for such compensation is made falling before the date of expiration and that part falling after, the date of expiration, bear to the entire period.

**16. [Intentionally Omitted]**

**17. Leasehold Mortgages.**

17.1 Leasehold Mortgage.

(a) Notwithstanding the provisions of Section 11 regarding Transfers of this Lease, but subject to the provisions of this Section 17, Tenant shall have the right to encumber its leasehold estate created by this Lease and Tenant’s interest in the Improvements by a mortgage, deed of trust or other security instrument (any such mortgage, deed of trust, or other security instrument that satisfies the requirements of this Section 17 being herein referred to as a “**Leasehold Mortgage**”) to secure repayment of a loan (and associated obligations) made to Tenant by an Institutional Lender for the financing of any such Improvements, provided that the loan secured by a Leasehold Mortgage shall be payable over not more than the remaining portion of the Term. A Leasehold Mortgage shall also include a security instrument or instruments by which all or substantially all of the equity interests in Tenant are assigned or pledged to secure a debt or other obligation to an Institutional Lender, including mezzanine debt, and for the avoidance of ambiguity, any lender for any such security interest or instruments shall have the same rights, remedies and privileges as any lender to Tenant whose security interest is in the leasehold estate created by this Lease.

(b) In no event shall all or any portion of Landlord’s fee interest in the Premises, be subject or subordinate to any lien or encumbrance of any mortgage, deed of trust or other security instrument.

(c) For purposes of this Section 17, “**Institutional Lender**” shall mean a state or federally chartered savings bank, savings and loan association, credit union, commercial bank or trust company or a foreign banking institution (in each case whether acting individually or in a

fiduciary or representative (such as an agency) capacity); college, university, state or local governmental authority, pension fund, an insurance company organized and existing under the laws of the United States or any state thereof or a foreign insurance company (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); a publicly held real estate investment trust, an entity that qualifies as a “REMIC” under the Internal Revenue Code, a private equity fund or other investment fund, limited liability company, limited partnership or other public or private investment entity (in each case whether acting as principal or agent) which at the date hereof or in the future is involved in the business of investing in real estate assets; a brokerage or investment banking organization (in each case whether acting individually or in a fiduciary or representative (such as an agency) capacity); an employees’ welfare, benefit, pension or retirement fund; an institutional leasing company; any governmental agency or entity insured by a governmental agency, or any combination of institutional investors. An Institutional Lender may also be any partnership, corporation, trust, or other legally recognized entity formed for the purpose of issuing debt, securities of other obligations, the proceeds of the sale of which shall be used to make a loan to be secured by, inter alia, a Leasehold Mortgage, and shall include, by way of example only, a trustee or agent for a CMBS or similar pool of mortgages, loans, and other interests in real estate. In all instances, an “Institutional Lender” shall include any Affiliate of any of the foregoing listed in this Section 17.1(c).

#### 17.2 Notice to Landlord.

(a) Each time Tenant shall mortgage Tenant’s leasehold estate to an Institutional Lender, Tenant shall require the holder of such Leasehold Mortgage to provide Landlord with notice of such Leasehold Mortgage, together with a true copy of such Leasehold Mortgage and the name and address of the holder of the Leasehold Mortgage (the “**Leasehold Mortgage**”). Tenant will provide the name and address of the Leasehold Mortgagee and a copy of the Leasehold Mortgage to Landlord pursuant to the notice provisions of this Lease. In the event of any assignment of a Leasehold Mortgage (other than an assignment to an Affiliate thereof provided that the address of such Leasehold Mortgagee does not change, in which event no notice shall be required) or in the event of a change of address of a Leasehold Mortgagee or of an assignee of such Leasehold Mortgagee, notice of the new name and address shall be provided to Landlord, provided that failure to deliver any such notice shall not result in a Leasehold Mortgagee no longer having the rights, remedies and privileges of a Leasehold Mortgagee under this Lease. Landlord shall, without the necessity of execution by Landlord of any further instruments or affirmative recognition of any of the notices referred to herein, recognize the rights of any Leasehold Mortgagee as provided in this Section 17. Any holder of any mortgage, deed of trust or other security instrument encumbering the fee simple estate of the Premises (“**Fee Mortgage**”) and its successors and assigns, by accepting such Fee Mortgage shall (i) without executing any further document or instrument, be deemed to recognize the rights of any Leasehold Mortgagee as provided in this Section 17, and (ii) be subject and subordinate to this Lease and any renewals and replacements hereof, and the term, rights and leasehold estate of Tenant hereunder and thereunder, without the need for execution of any further document or instrument.

(b) If requested by the terms of such notice, Landlord shall promptly upon receipt of a communication purporting to constitute the notice provided for by Section 17.2(a) acknowledge in writing receipt of such communication as constituting the notice provided for by this Section 17.

17.3 Protection of Leasehold Mortgages. If Tenant shall mortgage Tenant's interest under this Lease in compliance with the provisions of this Section 17, then so long as any such Leasehold Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) No cancellation, termination, surrender, amendment or modification of this Lease shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee. Without limiting the generality of the foregoing, no rejection of this Lease by Tenant or by a trustee in bankruptcy for Tenant shall be effective as to any Leasehold Mortgagee unless consented to in writing by such Leasehold Mortgagee or otherwise approved by the court having jurisdiction over such bankruptcy.

(b) Landlord, upon providing Tenant any notice of (i) any default under this Lease, or (ii) a matter on which Landlord may predicate or claim a default, shall at the same time provide a copy of such notice to each Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 17.2. Landlord shall have no liability for the failure to give any such notice, except that no such notice by Landlord to Tenant shall be deemed to have been duly given unless and until a copy thereof has been so provided to each Leasehold Mortgagee of which Landlord has been provided notice in accordance with Section 17.2. From and after such notice has been given to a Leasehold Mortgagee, such Leasehold Mortgagee shall have the same period, after the giving of such notice upon it, for remedying any default or acts or omissions which are the subject matter of such notice, or causing the same to be remedied, as is given Tenant after the giving of such notice to Tenant, plus in each instance, an additional period of time not to exceed 180 days to remedy, commence remedying or cause to be remedied, the defaults or acts or omissions which are specified in such notice. Each Leasehold Mortgagee shall have the right, but not the obligation, to perform any covenant or agreement under this Lease to be performed by Tenant, and Landlord shall accept such performance by or at the instigation of such Leasehold Mortgagee as if the same had been done by Tenant. Tenant authorizes each Leasehold Mortgagee to take any such action at such Leasehold Mortgagee's option and does hereby authorize entry upon the Premises by the Leasehold Mortgagee for such purpose. Notwithstanding the foregoing, each Leasehold Mortgagee may, in good faith, contest through appropriate proceedings whether an alleged default in fact occurred or constitutes a default under this Lease, and the cure period available under the terms hereof to Leasehold Mortgagee shall be extended so long as Leasehold Mortgagee shall be diligently pursuing such contest, provided that: (x) Leasehold Mortgagee shall have commenced such contest prior to the expiration of the applicable notice and cure period herein for such alleged default; and (y) Tenant shall not be separately contesting, or shall not have, separately contested such alleged default.

17.4 Certain Defaults. Nothing herein contained shall require any Leasehold Mortgagee or its designee as a condition to its exercise of rights hereunder to cure any Event of Default which by its terms is not reasonably susceptible of being cured by such Leasehold Mortgagee or such designee in order to comply with the provisions of Sections 17.3 or 17.4. The financial condition of any Leasehold Mortgagee or successor to Tenant's interest under this Lease shall not be a consideration in the determination of the reasonable susceptibility of cure of such Event of Default. No Event of Default, the cure of which, and no obligation of Tenant, the performance of which, requires possession of the Premises shall be deemed reasonably susceptible of cure or performance by any Leasehold Mortgagee or successor to Tenant's interest under this Lease not in possession of the Premises, provided such holder is complying with the requirements described in Section

17.4(a)(ii) hereof and, upon obtaining possession, promptly proceeds to cure any such Event of Default then reasonably susceptible of cure by such Leasehold Mortgagee or successor. No Leasehold Mortgagee shall be required to cure the bankruptcy, insolvency or any related or similar condition of Tenant.

17.5 Eminent Domain. Tenant's share, as provided in Section 15, of any Award shall, subject to the provisions of Section 15, be disposed of as provided for by the Leasehold Mortgage.

17.6 Insurance. A standard mortgagee clause naming each Leasehold Mortgagee may be added to any and all insurance policies required to be carried by Tenant hereunder. To the extent required by the Leasehold Mortgage, all insurance proceeds payable to Tenant with respect to any casualty shall be held in trust by Tenant and deposited in a segregated account at a depository institution acceptable to Leasehold Mortgagee to hold, apply and make available to Tenant in the manner as is set forth in this Lease.

17.7 Legal Proceedings. Landlord shall give each Leasehold Mortgagee of which Landlord has notice prompt notice of any dispute resolution or legal proceedings between Landlord and Tenant involving obligations under this Lease. Each such Leasehold Mortgagee shall have the right to intervene in any such proceedings and be made a party to such proceedings, and the parties hereto do hereby consent to such intervention. Any intervening Leasehold Mortgagee shall be bound by the outcome of such proceedings.

17.8 No Merger. So long as any Leasehold Mortgage is in existence, unless all Leasehold Mortgagees shall otherwise expressly consent in writing, the fee title to the Premises and the leasehold estate of Tenant therein created by this Lease shall not merge but shall remain separate and distinct, notwithstanding the acquisition of said fee title and said leasehold estate by Landlord or by Tenant or by a third party, by purchase or otherwise.

17.9 Notices. Notices from Landlord to the Leasehold Mortgagee shall be mailed to the address furnished Landlord pursuant to Section 17.2 and those from the Leasehold Mortgagee to Landlord shall be mailed to the address designated pursuant to the provisions of Section 23, as the same may be amended from time to time. All notices from the Leasehold Mortgagee or Landlord shall be given in the manner described in Section 23 and shall in all respects be governed by the provisions of that section.

17.10 Bankruptcy. In the event of any proceeding by either Landlord or Tenant under the United States Bankruptcy Code (Title 11 U.S.C.) as now or hereafter in effect:

(a) If this Lease is rejected in connection with a bankruptcy proceeding by Tenant or a trustee in bankruptcy for Tenant, such rejection shall be deemed an assignment by Tenant to the Leasehold Mortgagee (or if there is more than one Leasehold Mortgagee, to the one highest in priority) of the leasehold estate and all of Tenant's interest under this Lease, in the nature of an assignment in lieu of foreclosure, and this Lease shall not terminate, unless such Leasehold Mortgagee shall reject such deemed assignment by notice in writing to Landlord within thirty (30) days following the later of (i) rejection of the Lease by Tenant or Tenant's trustee in bankruptcy or (ii) approval of such rejection by the bankruptcy court.



(b) If this Lease is rejected or otherwise terminated in connection with a bankruptcy proceeding by Landlord or by Landlord's trustee in bankruptcy:

(i) Tenant shall not have the right to treat this Lease as terminated except with the prior written consent of all Leasehold Mortgagees and the right to treat this Lease as terminated in such event shall be deemed assigned to each and every Leasehold Mortgagee, whether or not specifically set forth in any such Leasehold Mortgage, so that the concurrence in writing of Tenant and each Leasehold Mortgagee shall be required as a condition to treating this Lease as terminated in connection with such proceeding.

(ii) Unless this Lease is treated as terminated in accordance with Section 17.10(a), this Lease shall continue in effect upon all the terms and conditions set forth herein, but excluding requirements that are not then applicable or pertinent to the remainder of the Term. The lien of any Leasehold Mortgage then in effect shall extend to the continuing possessory rights of Tenant following such rejection or other termination with the same priority as it would have enjoyed had such rejection or other termination not taken place.

(c) If, in any bankruptcy or similar proceeding in which Landlord is the debtor, the Premises are sold or proposed to be sold free and clear of the interests of Tenant under this Lease, each Tenant and any Leasehold Mortgagee shall be entitled to: (i) receive prior written notice of such proposed sale not less than ten (10) Business Days prior to the earliest date such sale or proposed sale is to or could occur; (ii) contest such sale or proposed sale; and (iii) petition for and receive adequate protection of their respective interests under this Lease, it being acknowledged and agreed that monetary damages are not, and will not be, adequate protection thereof.

17.11 Rights Against Tenant. The right of a Leasehold Mortgagee hereunder shall not diminish any right or claim of Landlord against Tenant for damages or other monetary relief under this Lease.

17.12 Lease Amendments Requested by Leasehold Mortgagee. In the event Tenant seeks to obtain or modify a Leasehold Mortgage, and the Leasehold Mortgagee desires amendments to this Section 17, then Landlord agrees to negotiate in good faith any commercially reasonable amendment; provided that the form and content of such amendment is not unreasonable and that such proposed amendment does not otherwise materially adversely affect the rights of Landlord hereunder or its interest in the Premises, as determined by Landlord in its reasonable discretion.

## **18. Attorney Fees.**

In the event of any claim, dispute or controversy arising out of or relating to this Lease, including an action for declaratory relief, the prevailing party in such action or proceeding shall be entitled to recover its court costs and reasonable out-of-pocket expenses actually incurred, including but not limited to phone calls, photocopies, expert witnesses, travel, etc., and reasonable attorney fees to be fixed by the court. Such recovery shall include court costs, out-of-pocket expenses and attorney fees actually incurred on appeal, if any. The court shall determine who is the "**Prevailing Party**," if the dispute or controversy proceeds to final judgment. If either party is reasonably required to incur such out-of-pocket expenses and attorney fees as a result of any claim

arising out of or concerning this Lease or any right or obligation derived hereunder, then the Prevailing Party shall be entitled to recover such reasonable out-of-pocket expenses and attorney fees only if an action is filed.

## **19. Quiet Enjoyment.**

Tenant and its subtenants shall quietly have and enjoy the Premises during the Term of this Lease, and any extensions thereof, without hindrance or molestation by anyone claiming through or under Landlord.

## **20. Default.**

20.1 Because Tenant has prepaid the entire Fixed Ground Rent in advance, it is expressly agreed that only in the event that Tenant defaults in the performance of any covenant or agreement on the part of Tenant to be performed hereunder and if such default continues for a period of one hundred eighty (180) days after Tenant receives written notice of such default from Landlord (or if the same cannot reasonably be cured within such 180-day period, then such 180-day period shall be extended for such longer period of time as is reasonably necessary to cure such default, so long as Tenant continuously prosecutes the same with diligence to completion), then only in such instance will the occurrence be considered an “**Event of Default**” on the part of Tenant hereunder.

20.2 Upon the occurrence and during the continuance of any Event of Default by Tenant, Landlord may exercise, as its sole and exclusive remedy hereunder, one the following remedies: (a) enforce specific performance by Tenant, if such remedy is available; or (b) recover all actual damages incurred by Landlord in connection with the Event of Default. Landlord hereby knowingly, intentionally, and presently waives the right to terminate this Lease for any Event of Default and waives the right to any incidental or consequential damages. In addition to any recovery obtained by Landlord in connection therewith, Tenant will be liable to reimburse Landlord for all attorneys’ fees and costs incurred by Landlord in pursuing damages and/or specific performance from Tenant following an Event of Default.

20.3 Upon the occurrence and during the continuance of any default by Landlord, and after notice of such default and Landlord’s failure to timely cure such default within a reasonable time period thereafter, Tenant may exercise, as its sole and exclusive remedy hereunder, one the following remedies: (a) enforce specific performance by Landlord, if such remedy is available; or (b) recover all actual damages incurred by Tenant in connection with such default. Tenant hereby knowingly, intentionally, and presently waives the right to seek any incidental or consequential damages. In addition to any recovery obtained by Tenant in connection therewith, Landlord will be liable to reimburse Tenant for all attorneys’ fees and costs incurred by Landlord in pursuing damages and/or specific performance from Landlord following a default.

## **21. Waivers.**

Failure of Landlord or Tenant to complain of any act or omission on the part of the other party, no matter how long the same may continue, shall not be deemed to be a waiver by said party of any of its rights hereunder. No waiver by Landlord or Tenant at any time, express or implied, of any breach of any provision of this Lease shall be deemed a waiver of a breach of any other provision of this Lease or a consent to any subsequent breach of the same or any other provision.

No acceptance by Landlord of any partial payment shall constitute an accord or satisfaction but shall only be deemed a part payment on account, unless otherwise specifically agreed to in writing.

## **22. Force Majeure.**

In the event that Landlord or Tenant shall be delayed, hindered in, or prevented from the performance of any act, other than the payment of Rent, required hereunder by reason of labor troubles, inability to procure materials, insurrection, the default of the other party, acts of God, or other reason beyond their control (all of which, together with the additional acts, incidents, or situations described below, are herein referred to as “**Force Majeure Events**”) (provided that financial inability to perform a covenant shall not excuse such performance), then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. Force Majeure Events shall include delay that is caused by strikes or other labor or industrial disturbances or disputes, shortage of or inability to obtain labor or materials, restrictions imposed or mandated by governmental or quasi-governmental entities in issuing requisite approvals or consents, orders of any kind of the government of the United States, the State of Colorado, or any other civil or military authority, restraint of government and people, acts of terrorism, enemy action, civil commotion, insurrections, riots, explosions, epidemics, fire, flood, earthquake landslides, lightning, hurricanes, storms, washouts, other natural disasters, pandemics and governmental restrictions regarding pandemics (including, without limitation COVID-19), or any other event beyond the reasonable control of the Person claiming the benefit of the Force Majeure Event. Actions, omissions or inactions of any local, state or other governmental authorities are not reasonably within the control of Tenant provided that Tenant in good faith promptly files and diligently pursues all necessary governmental approvals, licenses, permits and licenses in compliance with all applicable laws.

## **23. Notices and Consents.**

23.1 Every notice, approval, consent or other communication authorized or required by this Lease shall not be effective unless the same shall be in writing and be given by personal delivery or by courier service. Any notice or report addressed to Tenant or Landlord at their respective addresses set forth below, as appropriate, shall be deemed to have been given (i) when personally delivered, or (ii) if properly addressed and deposited with a reputable overnight carrier, on the date the notice or report is delivered (or delivery is refused) as evidenced by the overnight courier’s delivery records. All notices shall be sent postage prepaid by United States registered or certified mail, return receipt requested, or by personal delivery, directed as follows or as otherwise designated by the parties in writing:

To Landlord:

TOWN OF FREDERICK, COLORADO  
Town Manager  
401 Locust Street  
Frederick, CO 80530

With copy to:

TOWN OF FREDERICK, COLORADO  
Town Attorney  
401 Locust Street  
Frederick, CO 80530

To Tenant:

Agilent Technologies, Inc.  
7051 Eagle Blvd.  
Frederick, CO 80504  
Attn: Avelino Reyes  
Email: [avelino.reyes@agilent.com](mailto:avelino.reyes@agilent.com)

23.2 Wherever any consent is required under this Lease, the same shall not be unreasonably withheld unless specifically stated otherwise.

#### **24. Certificates.**

Either Party shall, without charge, at any time and from time to time thereafter, within ten (10) business days after written request of the other, certify by written instrument duly executed and acknowledged to any lender (including any Leasehold Mortgagee of Tenant) or purchaser, or proposed lender (including any Leasehold Mortgagee of Tenant) or proposed purchaser, or any other person, firm or corporation specified in such request: (a) as to whether this Lease has been supplemented or amended, and if so, the substance and manner of such supplement or amendment; (b) as to the validity and force and effect of this Lease in accordance with its tenor as then constituted; (c) as to the existence of any default thereunder without any duty to investigate; (d) as to the existence of any offsets, counterclaims or defenses thereto on the part of such other party without any duty to investigate; and (e) as to the commencement and expiration dates of the Term of this Lease without any duty to investigate. Any such certificate may be relied upon by the party requesting it and for whose benefit the certificate is given, and the contents of such certificate shall be binding on the party executing same.

#### **25. Governing Law.**

This Lease and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of Colorado. Any judicial proceeding brought by either of the Parties against the other Party shall be brought exclusively in the District Court of the State of Colorado, or in the United States District Court for the District of Colorado. In that regard, each party hereby waives any defense of inconvenient forum and any bond or other security that might otherwise be required of the other party with respect to such choice of judicial forum.

#### **26. Partial Invalidity.**

If any term, covenant, condition or provision of this Lease or the application thereof to any person or circumstance shall, including, without limitation, the Purchase Option, as defined in Section 38, below, at any time or to any extent, be invalid or unenforceable, the remainder of this Lease, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term, covenant,

condition and provision of the Lease shall be valid and be enforced to the fullest extent permitted by law.

**27. Recordable Documents.**

27.1 The parties, at the same time this Lease is executed, shall execute duplicate originals of an instrument, in recordable form as attached hereto as “**Exhibit B**” which will constitute a Memorandum of Lease. Said Memorandum shall be recorded upon the Effective Date. All costs of recording shall be paid by Landlord and Tenant equally, except documentary transfer taxes shall be paid by Landlord.

27.2 Tenant may request in writing for approval from Landlord, which such approval shall not be unreasonably withheld, conditioned or delayed, to record easements, subleases or any other documents or agreements with respect to the Premises, provided the foregoing, in Tenant's discretion, are reasonably required or desirable in furtherance of the development or redevelopment of the Project.

**28. Interpretation.**

Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The Section headings used herein are for reference and convenience only and shall not enter into the interpretation hereof. The terms “**Landlord**” and “**Tenant**” whenever used herein shall mean only the Landlord at the time of Landlord’s or Tenant’s interest herein, and upon any sale, transfer, or assignment of the interest of either Landlord or Tenant herein, their respective successors in interest and/or assigns, during the term of their ownership of their respective estates herein, shall be deemed to be Landlord or Tenant, as the case may be.

**29. Entire Agreement.**

This Agreement contains the entire agreement between the parties, and any prior agreement, written or oral, is hereby superseded. This Agreement shall not be modified or canceled except by writing subscribed to by all parties.

**30. Successors.**

Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Lease shall bind, and inure to the benefit of Landlord and Tenant and their respective heirs, successors, administrators, and assigns.

**31. Real Estate Brokers’ Commissions**

The parties hereby agree that neither has dealt with any real estate brokers in regard to this Lease. Landlord and Tenant each agree to hold the other free and harmless of and from any brokerage claims with respect to this transaction arising through the acts or omissions of the party breaching the warranty contained in this Section 31.

**32. [Intentionally Omitted]**

**33. Index and Captions.**

The captions of this Lease are for convenience and reference only and in no way define, limit or describe the scope or intent of this Lease nor in any way affect this Lease.

**34. No Merger.**

There shall be no merger of this Lease, nor of the leasehold estate created hereby, with the fee estate in the Premises by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly this Lease or the leasehold estate created by this Lease or any interest herein and the fee estate in the Premises or any interest in such fee estate unless Landlord, Tenant and any Leasehold Mortgagee(s) shall join in a written instrument affecting such merger and duly record the same.

**35. [Intentionally Omitted]**

**36. Hazardous Substances.**

36.1 Defined. The term “**Hazardous Substance**” as used in this Lease shall mean any product, substance, chemical, material or waste whose presence, nature, quantity and/or intensity of existence, use, manufacture, disposal, transportation, spill, release or effect, is either: (i) regulated or monitored by any governmental authority; or (ii) a basis for liability of Landlord to any governmental agency or third party under any applicable statute or common law theory. Hazardous Substance shall include but not be limited to asbestos-containing materials, hydrocarbons, petroleum, gasoline, crude oil or any products or by-products thereof, polychlorinated biphenyls, per- and polyfluoroalkyl substances, lead or lead-containing materials, and urea formaldehyde foam insulation. “**Applicable Requirements,**” (when used in this Lease) shall mean all laws, rules, regulations, ordinances, directives, covenants, governmental orders, easements and restrictions of record, permits applicable to the Premises (including but not limited to matters pertaining to (i) industrial hygiene, (ii) environmental conditions on, in, under or about the Premises, including ambient air, soil and groundwater conditions, and (iii) the use, generation, manufacture, production, installation, maintenance, removal, transportation, treatment, storage, discharge, spill, disposal, remediation, or release, of any Hazardous Substance in violation of Applicable Requirements. The term Applicable Requirements shall include but is not limited to the following (including their implementing regulations and any state and local analogs and their implementing regulations): the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. §§ 9601 et seq.; the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended by the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. §§ 6901 et seq.; the Federal Water Pollution Control Act of 1972, as amended by the Clean Water Act of 1977, 33 U.S.C. §§ 1251 et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., the Toxic Substances Control Act of 1976, as amended, 15 U.S.C. §§ 2601 et seq.; the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11001 et seq.; the Clean Air Act of 1966, as amended by the Clean Air Act Amendments of 1990, 42 U.S.C. §§ 7401 et seq.; and the Occupational Safety and Health Act of 1970, as amended, 29 U.S.C. §§ 651 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§

136 et seq., the Hazardous Materials Transportation Act, 49 U.S.C. §§ 5101 et seq., the Oil Pollution Act, 33 U.S.C. §§ 2701 et seq.

36.2 Tenant's Requirements. Tenant may use any materials (including Hazardous Materials) which are ordinarily or customarily used, or reasonably required to be used by Tenant in the development of the Project (and the Improvements contemplated as a part thereof) and in the course of the Permitted Use; provided in all instances such use is in compliance with all Applicable Requirements. If Tenant has actual knowledge that a Hazardous Substance in violation of Applicable Requirements has come to be located in, on, under or about the Premises or the Improvements during the Term, then Tenant shall promptly give Landlord written notice thereof, together with a copy of any additional materials received from, any governmental authority or private party concerning such Hazardous Substance. Tenant shall not cause any Hazardous Substance to be spilled or released in violation of Applicable Requirements in, on, under or about the Premises (including, without limitation, through the plumbing or sanitary sewer system).

36.3 Risk and Responsibility Allocation.

(a) Tenant shall be solely responsible, protect, defend and hold harmless the Landlord Parties from and against any and all Claims arising out of or involving: (i) any Hazardous Substance placed by Tenant on, in, under, or about, or directly caused by Tenant to be emanating from, the Premises during the Term of this Lease in violation of Applicable Requirements to the extent not caused, directly or indirectly, by Landlord or any of the Landlord Parties; (ii) the violation of this Lease or of Applicable Requirements by Tenant. The provisions of this Section shall survive the expiration or earlier termination of this Lease.\

(b) Landlord represents and warrants to Tenant that as of the Commencement Date the Premises is in compliance with all Applicable Requirements (including laws relating to Hazardous Substances), subject to investigation and remediation of the presence of certain per and polyfluoroalkyl substances (PFAS), including without limitation N-EtFOSAA, Nmethylperfluorooctanesulfonamidoethanol (NMeFOSE), and Nethylperfluorooctanesulfonamidoethanol(NEtFOSE) (collectively "PFAS Substances") on, at, under, or emanating from the Premises. To the extent allowed by Colorado law, Landlord shall be solely responsible, and will protect, indemnify, defend and hold harmless Tenant its employees, officers and directors from and against any and all Claims incurred by Tenant (including first party claims arising from Tenant's actions to comply with Applicable Requirements) and arising from or in connection with (1) any Hazardous Substances at, on, under, migrating from, or migrating to, the Premises prior to or after the Term of this Lease; (2) any Hazardous Substances placed on, in or about the Premises at any time by any party (to the extent not specifically caused by Tenant during the Term), and (3) Landlord's breach of its representation and warranty above. Nothing herein is intended to be a waiver of Landlord's governmental immunity pursuant to the Colorado Governmental Immunity Act. The provisions of this Section shall survive the expiration or earlier termination of this Lease.

**37. Right of First Offer**

If Landlord elects to offer its fee interest for sale to a third-party, then Tenant shall have the right of first offer ("ROFO") to purchase the fee interest in the Property on the following terms.

Landlord shall deliver to Tenant a notice setting forth the proposed purchase price and all other material terms and conditions upon which Landlord is prepared to offer its fee interest for sale and offering to enter into a sale transaction with Tenant on the same terms and conditions (except that if the terms and conditions include financing, Tenant shall have the option to acquire Landlord's fee interest for all cash). Thereafter, Tenant and Landlord shall have a period of ninety (90) days to negotiate in good faith a definitive purchase and sale agreement for the sale of the Property (the "Negotiation Period"). If Landlord and Tenant are not able to reach an agreement during the Negotiation Period on the terms of a purchase and sale agreement, then Landlord shall be free to market the Property for sale to the general public; provided that if Landlord intends to enter into a contract with any third party at a price less than 95% or with less favorable material terms than those offered to Tenant, including pricing, closing and financing terms (with materiality not including any due diligence, representations and warranty or default provisions) of that offered in writing by Landlord during the Negotiation Period (the "Favored Terms"), then Landlord must deliver another notice to Tenant, which will set forth the more favorable price and terms. Tenant shall have thirty (30) days to elect to proceed with a purchase on the Favored Terms. Tenant's Right of First Offer shall be ongoing and applicable to all subsequent offers made by Landlord or any successor to Tenant's interest in the Property.

### **38. Tenant's Right to Purchase the Property.**

Tenant shall have the option to purchase the Property (the "Purchase Option"), subject to compliance with any Colorado law requiring a ballot measure or the Premises being deemed "excess property". Tenant shall exercise its option by delivering written notice to Landlord (the "Exercise Notice") at any time after expiry of the fifth Lease Year, but otherwise prior to expiration of the Term. After delivery of the Exercise Notice, the parties shall proceed to closing within a commercially reasonable timeframe, subject to all legal requirements for Landlord's sale of the Premises. At closing, Tenant will pay Landlord the sum of One Hundred Dollars (\$100) as the purchase price; Landlord will deliver a special warranty deed to Tenant conveying to Tenant title to the Premises free of all liens and encumbrances except Colorado statutory exceptions, and a bill of sale conveying all fixtures and personal property owned by Landlord at the Premises to Tenant; and all prorations, closing costs and closing deliveries shall be delivered at closing and the cost and responsibility for such items shall be allocated according to local custom where the Premises is located. Closing of the conveyance will be subject to completion by Tenant of all customary due diligence for the purchase of real estate. Until closing under the Purchase Option, Tenant shall continue to pay the Rent and each party shall continue to discharge its respective obligations under this Lease according to the terms hereof.

### **39. Anti-Corruption and Anti-Money Laundering.** In the performance of this Lease:

39.1 Each Party, and, to each Party's knowledge, after due inquiry, each Party's Affiliates, subsidiaries, officers, directors, employees, agents and representatives, has conducted their business in compliance with applicable Anti-Corruption Laws and Anti-Money Laundering Laws, and has instituted and will maintain policies, procedures, and internal controls that are reasonably designed to ensure compliance with such laws.

39.2 Each Party represents that neither it nor, to its knowledge, after due inquiry, any of its officers, directors, employees, subsidiaries, Affiliates, agents or representatives has offered,



promised or given, or will offer, promise or give, to any person, directly or through a third party, anything of value, for the person himself or herself or another person or entity, in order to improperly influence official actions, obtain or retain business, or otherwise secure an improper business advantage.

39.3 Neither Party shall be obligated to take any action or omit to take any action that it believes, in good faith, would cause it to be in violation of any applicable Anti-Corruption Laws and/or Anti-Money Laundering Laws.

39.4 For the purposes hereof, (a) “**Anti-Corruption Laws**” means any laws, rules or regulations of any applicable jurisdiction concerning or relating to bribery or corruption, including the U.S. Foreign Corrupt Practices Act, and (b) “**Anti-Money Laundering Laws**” means any laws, rules or regulations, state and federal, criminal and civil, that: (i) limit the use of and/or seek the forfeiture of proceeds from illegal transactions; or (ii) are designed to disrupt the flow of funds to terrorist organizations (such laws, regulations and sanctions shall be deemed to include the Bank Secrecy Act, as amended by the USA PATRIOT Act of 2001, Pub. L. No. 107-56, and the Money Laundering Control Act of 1986, including the laws relating to prevention and detection of money laundering under 18 U.S.C. §§ 1956-1957).

#### **40. Waiver of Jury Trial.**

Landlord and Tenant hereby waive trial by jury in any action or proceeding brought by either of the parties hereto against the other or on any counterclaim in respect thereof on any matters whatsoever arising out of, or in any way connected with this Lease.

#### **41. Relationship of the Parties.**

The relationship between the parties hereunder shall be that of tenant and landlord. The parties do not intend to create, and this Lease shall not be construed as creating, a partnership or joint venture between the parties. Neither of the parties hereto shall have any authority to act for or assume any obligation or responsibility on behalf of the other party. Nothing in this Lease shall be construed to mean that Landlord shall participate in or be liable for any losses sustained by or any claims made against Tenant in connection with the acquisition, development, construction of improvements or the sale of the Project.

[signatures on following page]

IN WITNESS WHEREOF, the parties hereto have hereunder set their hands and seals effective as of the Effective Date as defined above, even though such party may have executed such document prior to or after such date.

“LANDLORD”

**TOWN OF FREDERICK, COLORADO,**  
a Colorado statutory town

By: \_\_\_\_\_  
Name:  
Title:

“TENANT”

**AGILENT TECHNOLOGIES, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**

**TO GROUND LEASE**

**LEGAL DESCRIPTION**

Lot 1A, Eagle Business Park, Filing No. 2, Town of Frederick, County of Weld, State of Colorado.

For Informational Purposes:

Tax ID No.: R6784796

DRAFT

**EXHIBIT “B”**

**MEMORANDUM TO GROUND LEASE**

THIS AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, (“**Effective Date**”) by and between **TOWN OF FREDERICK**, a Colorado statutory town (hereinafter referred to as “**Landlord**”), and **AGILENT TECHNOLOGIES, INC.**, a Delaware corporation (hereinafter referred to as “**Tenant**”).

1. Pursuant to that certain Ground Lease executed concurrently herewith, Landlord has leased to Tenant that certain real property in the County of Denver, State of Colorado, more particularly described in “**Exhibit A**” attached hereto and incorporated herewith (the “**Property**”), with easements as therein specified, for a term extending from the date hereof to \_\_\_\_\_, 2\_\_\_\_, unless terminated earlier according to the terms and conditions of said Ground Lease.

2. Pursuant to the Ground Lease, during the term Tenant has an ongoing right of first offer to purchase the Property and, subject to compliance with any Colorado law requiring a ballot measure or the Property being deemed “excess property”, an option to purchase the Property from and after the fifth (5<sup>th</sup>) anniversary of the date of the Ground Lease.

3. This Memorandum of Ground Lease is and shall be subject to all the conditions, covenants, restrictions, terms and provisions set forth in said Ground Lease.

4. The covenants contained herein and in said Ground Lease shall run with the land and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Ground Lease on the day and year first above written.

“LANDLORD”

**TOWN OF FREDERICK, COLORADO,**  
a Colorado Statutory Municipality

By: \_\_\_\_\_

Name:

Title:

“TENANT”

**AGILENT TECHNOLOGIES, INC.,**  
a Delaware corporation

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT "A"**

**TO MEMORANDUM OF LEASE**

**LEGAL DESCRIPTION**

Lot 1A, Eagle Business Park, Filing No. 2, Town of Frederick, County of Weld, State of Colorado.

For Informational Purposes:  
Tax ID No.: R6784796

EXHIBIT D

Agilent Deed

**After Recording Return to:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

**SPECIAL WARRANTY DEED**

THIS DEED, made this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, between AGILENT TECHNOLOGIES, INC., a Delaware corporation (“Grantor”), and TOWN OF FREDERICK, a Colorado statutory town, whose legal address is \_\_\_\_\_ (“Grantee”);

WITNESSETH, That Grantor, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold, and conveyed and by these presents does grant, bargain, sell, and convey to Grantee, all of that certain tract or parcel of land lying and being in Weld County, Colorado, as more particularly described as follows:

SEE **EXHIBIT A** attached hereto (the “Property”);

also known by street and number as: 7400 Eagle Boulevard, Frederick, CO 80542;

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereof, to the same belonging or in any way appertaining, to the only proper use and benefit of Grantee in fee simple.

THIS DEED is made expressly subject to the title exceptions set forth on **Exhibit B**, attached hereto and incorporated herein by reference.

SUBJECT TO the title matters set forth herein, Grantor will warrant and forever defend the right and title to the tract or parcel of land described above to the Grantee against the claims of all persons claiming by, through or under Grantor, and not otherwise.

Additionally, the conveyance of the Property hereby is on and subject to the following use restrictions: the Property shall be used only for such uses as permitted by right for the I – Industrial District, as provided in Town of Frederick, Colorado Land Use Code effective as of the date hereof (the “Code”), and not for any use which is not permitted, is a Permitted Conditional Use or is a Special Use for the I – Industrial District, as provided in the Code (the “Use Restrictions”). The Use Restrictions shall, without limiting the foregoing, expressly prohibit the use of the Property (or any portion thereof) for any residential use and any use identified in the Code as a complimentary use in the I – Industrial District, including, without limitation, convenience shopping and child care centers.

The Use Restrictions shall be deemed a covenant running with the Property enforceable against the fee title owner of the Property and inuring to the benefit of and enforceable by any or all of the following: (i) the Grantor, its successors, and assigns; and (ii) any then-current owner of Lot 1, Eagle Business Park, Town of Frederick, County of Weld, State of Colorado (the “Restriction Beneficiaries”).

In the event that Grantee violates the Use Restriction, any of the Restriction Beneficiaries shall have the right to specifically enforce the Use Restriction or to seek any other available remedy whether through any proceeding at law or in equity.

*{Signature Page Follows}*





**Exhibit A**

Legal Description of the Property

Lot 1B,  
Eagle Business Park, Filing No. 3,  
County of Weld, State of Colorado.

For Informational Purposes:  
Tax ID No.: R6787694

Exhibit B

Title Exceptions

[To be determined]

EXHIBIT E

Town Lease

**LEASE AGREEMENT\***  
**(Sublease of Ground Lease Property and Improvements)**

between

**AGILENT TECHNOLOGIES, INC.**  
**AS “LANDLORD”**

and

**TOWN OF FREDERICK, COLORADO**  
**as “Tenant”**

**7301 EAGLE BLVD.**  
**Frederick, Colorado**

\*Although titled as a Lease Agreement (for convenience purposes), the parties acknowledge that this “Lease Agreement” and the naming of the Parties hereto as “Landlord” and “Tenant” is more properly characterized as a “sublease” agreement as Agilent (as the Landlord hereunder) presently holds rights in the Premises as a tenant under the terms of a 99 year Ground Lease, and is granting the rights of use and occupancy to The Town of Frederick, Colorado as a subtenant on the terms and conditions set forth in this Lease Agreement. It is understood, and the intent of the parties, that nothing in this Lease Agreement affects or limits the Town of Frederick’s obligations with regard to Hazardous Materials as set for in that certain 99-year Ground Lease.

BASIC LEASE INFORMATION

Lease Date: For identification purposes only, the date of this Lease is \_\_\_\_\_, 2023

Landlord: **AGILENT TECHNOLOGIES, INC.**, a Delaware corporation or its assigns

Tenant: The **TOWN OF FREDERICK, COLORADO**, a Colorado statutory town

Premises: The portion of the Project (as defined below) which specifically includes the office building consisting of approximately 18,651 square feet (the "Building") located at 7301 Eagle Blvd., Town of Frederick, CO, and the associated driveways and parking areas within the Project serving the Building, as more particularly described on **Exhibit A**.

Project: That certain parcel of land containing approximately 14.26 acres located at 7301 Eagle Boulevard in the Town of Frederick on which the Building and other appurtenant improvements are located, as more particularly described on **Exhibit B**.

Term: Commencing on the Lease Date and ending on the earlier of (i) ten (10) years after the Lease Date and (ii) one (1) year after expiration or earlier termination of the License Agreement, unless this Lease is sooner terminated or extended pursuant to its terms.

Commencement Date: Upon mutual execution of this Lease.

Expiration Date: The date that is on (1) year after expiration or earlier termination of the License, unless this Lease is sooner terminated or extended pursuant to its terms.

License Agreement: That certain Laydown Area License by and between Landlord and Tenant with respect to the construction staging and laydown area located on the approximately 5-acre west half of the property owned by Tenant located at 7400 Eagle Blvd., Town of Frederick, CO dated as of \_\_\_\_\_, 202\_\_.

Base Rent: \$33,416.00 per month\*, which shall increase by three and one half percent (3.5%) on each anniversary of the first calendar day of the month following the Lease Date during the Term.

\*(any partial remainder of the month in which the Commencement Date occurs shall be prorated as set forth in Section 3.1 of this Lease)

Landlord's Address for  
Notices:

Town of Frederick, Colorado  
401 Locust Street  
Frederick, CO 80504  
Attn: Town Manager

with a copy to

Town of Frederick, Colorado  
401 Locust Street  
Frederick, CO 80504  
Attn: Town Attorney

Tenant's Address for Notices:

Agilent Technologies, Inc.  
7501 Eagle Blvd.  
Frederick, CO 80504  
Attn: Avelino Reyes  
Email: [avelino.reyes@agilent.com](mailto:avelino.reyes@agilent.com)

with copies to:

GCA Law Partners LLP  
2570 W. El Camino Real, Suite 400  
Mountain View, California 94040  
Attn: Peter Schwab  
Email: [pschwab@gcalaw.com](mailto:pschwab@gcalaw.com)

and:

Davis Graham & Stubbs LLP  
1550 17th Street  
Suite 500  
Denver, CO 80202  
Attn: David Kuosman  
Email: [david.kuosman@dgsllaw.com](mailto:david.kuosman@dgsllaw.com)

or such other addresses as may be designated in writing by  
Tenant

The Basic Lease Information set forth above is part of the Lease and capitalized terms shall be defined terms in the Lease. In the event of any conflict between any Basic Lease Information and the Lease, the Lease shall control.

## TABLE OF CONTENTS

ARTICLE NUMBER & TITLE	NUMBER	PAGE
1. DEFINITIONS		5
2. DEMISE, TERM AND OPTION TO EXTEND		6
3. RENT		7
4. USE OF PREMISES		7
5. LEASEHOLD IMPROVEMENTS AND TRADE FIXTURES		8
6. CONDITION OF PREMISES; MAINTENANCE; REMEDIATION		9
7. UTILITIES AND SERVICES		10
8. TAXES		10
9. INSURANCE		10
10. INDEMNITY AND EXCULPATION		11
11. DAMAGE AND DESTRUCTION		12
12. CONDEMNATION		12
13. ASSIGNMENT AND SUBLETTING		12
14. DEFAULT		13
15. SIGNS		14
16. SUBORDINATION		14
17. HOLDOVER		14
18. GENERAL PROVISIONS		15
EXHIBITS		
Exhibit A	Premises	
Exhibit B	Project	
Exhibit C	Remainder Parcel	

**LEASE AGREEMENT**  
**(Sublease of Ground Lease Property and Improvements)**

THIS LEASE AGREEMENT, dated \_\_\_\_\_, 2023, for reference purposes only, is made by and between **AGILENT TECHNOLOGIES, INC.**, a Delaware corporation (“Landlord”), and **TOWN OF FREDERICK, COLORADO**, a Colorado statutory town (“Tenant”).

1. DEFINITIONS: Any term that is given a special meaning by this Section 1 or by any other provision of this Lease (including any exhibits attached hereto) shall have such meaning when used in this Lease or any addendum or amendment hereto.

- 1.1 Agreed Interest Rate: “Agreed Interest Rate” is defined in Section 14.2.1.
- 1.2 Agreement: “Agreement” is defined in Section 2.1.
- 1.3 Base Rent: “Base Rent” is defined in Section 3.1.
- 1.4 Building: “Building” is defined in the Basic Lease Information.
- 1.5 Building Systems: “Building Systems” is defined in Section 6.2.
- 1.6 Casualty: “Casualty” is defined in Section 11.1.
- 1.7 Commencement Date: “Commencement Date” is defined in the Basic Lease Information.
- 1.8 Default: “Default” is defined in Section 14.1.
- 1.9 Executive Order: “Executive Order” is defined in Section 18.10.
- 1.10 Expiration Date: “Expiration Date” is defined in the Basic Lease Information.
- 1.11 Ground Lease: “Ground Lease” means that certain 7301 Eagle Blvd. 99-Year Ground Lease Between Town of Frederick, Colorado as Landlord and Agilent Technologies, Inc. as Tenant.
- 1.12 Hazardous Material: “Hazardous Material” is defined in Section 4.4.
- 1.13 Landlord Parties: “Landlord Parties” means Landlord’s officers, directors, shareholders, partners, members, managers, employees, contractors, property managers, agents and mortgagees.
- 1.14 Laws: “Laws” is defined in Section 4.2.
- 1.15 Lease: “Lease” means this printed lease and all of the exhibits attached hereto and made a part hereof, as the same may be amended in accordance with this Lease from time to time.
- 1.16 Leasehold Improvements: “Leasehold Improvements” is defined in Section 5.1.
- 1.17 Lender: “Lender” is defined in Section 16.2.
- 1.18 Master Lease: “Master Lease” shall mean that specific 99-Year Ground Lease covering that certain parcel of land containing approximately 14.26 acres located at 7301 Eagle Boulevard in the Town of Frederick from The Town of Frederick, Colorado (as the landlord thereunder) in favor of Agilent Technologies, Inc., or its assigns (as the tenant thereunder).



- 1.19 Money Laundering Act: “Money Laundering Act” is defined in Section 18.10.
- 1.20 OFAC: “OFAC” is defined in Section 18.10.
- 1.21 Permitted Transferee: “Permitted Transferee” and “Permitted Transferees” are defined in Section 13.
- 1.22 Permitted Uses: “Permitted Uses” is defined in Section 4.1.
- 1.23 Prime Rate: “Prime Rate” means the annual interest rate as published, from time to time, in The Wall Street Journal as the “Prime Rate” in its column entitled “Money Rate”. The Prime Rate may not be the lowest rate of interest charged by any “large U.S. money center commercial banks” and Landlord makes no representations or warranties to that effect. In the event The Wall Street Journal ceases publication or ceases to publish the “Prime Rate” as described above, the Prime Rate shall be the average per annum discount rate (the “Discount Rate”) on ninety-one (91) day bills (“Treasury Bills”) issued from time to time by the United States Treasury at its most recent auction, plus three hundred (300) basis points. If no such 91-day Treasury Bills are then being issued, the Discount Rate shall be the discount rate on Treasury Bills then being issued for the period of time closest to ninety-one (91) days.
- 1.24 Private Restrictions: “Private Restrictions” is defined in Section 4.2.
- 1.25 Project: “Project” is defined in the Basic Lease Information.
- 1.26 Real Property Taxes: “Real Property Taxes” is defined in Section 8.1.
- 1.27 Remainder Parcel – “Remainder Parcel” shall mean the portion of the Project adjacent to the Premises, as identified on **Exhibit C**. Prior to the Commencement Date, Tenant has allowed firefighter training activities to occur, which has resulted in soil contamination.
- 1.28 Rent: “Rent” is defined in Section 3.4.
- 1.29 Tenant’s Property: “Tenant’s Property” is defined in Section 6.4.
- 1.30 Term: “Term” is defined in Section 2.2.
- 1.31 Trade Fixtures: “Trade Fixtures” is defined in Section 5.2.
2. DEMISE, TERM AND OPTION TO EXTEND:
- 2.1 Demise of Premises: Landlord leases to Tenant, and Tenant leases from Landlord, for the Term upon the terms and subject to the conditions of this Lease, the Premises identified and defined in the Basic Lease Information, including, without limitation, Building.
- 2.2 Term: The term of this Lease (the “Term”) shall commence on the Commencement Date as set forth in the Basic Lease Information. The Term shall expire on the Expiration Date specified in the Basic Lease Information, unless the Term is extended or sooner terminated as provided herein.
- 2.3 Master Lease: This Lease is made expressly subject to the terms and conditions of the Master Lease, and Tenant hereby expressly covenants and agrees to pay and perform all obligations of the Tenant under the Master Lease as they become due thereunder.

3. RENT:

3.1 Base Rent: Tenant agrees to pay to Landlord the Base Rent (“Base Rent”) set forth in the Basic Lease Information, without prior notice or demand, on the first day of each and every calendar month (the “Base Rent Payment Date”). Base Rent for any period during the Term that is for less than one month shall be prorated based upon the actual number of days of the calendar month involved. Each such payment of Rent shall be made via ACH transfer for value in Federal Funds on each Base Rent Payment Date to Landlord or to such other party, pursuant to instructions delivered to Tenant from time to time at such address as Landlord may direct by fifteen (15) days' prior written notice to Tenant.

3.2 Late Charge: In addition to the Base Rent, after the date all or any portion of any installment of Base Rent is due and not paid by the applicable Base Rent Payment Date, Tenant shall pay to Landlord an amount (the “Late Charge”) equal to five percent (5%) of the amount of such unpaid installment or portion thereof to reimburse Landlord for its cost and inconvenience incurred as a result of Tenant’s delinquency; provided, however, that with respect to the first late payment of all or any portion of any installment of Base Rent in any consecutive twelve (12) month period, no Late Charge or interest under Section 3.3 below shall be due and payable unless the Base Rent has not been paid within five (5) days following notice from Landlord. Tenant acknowledges that the damages to and costs incurred by Landlord resulting from Tenant’s late payment of Base Rent would be difficult, if not impossible, to ascertain with any accuracy, and that the five percent (5%) charge represents Landlord and Tenant’s efforts to approximate such potential damages and costs.

3.3 Rent Payments: All amounts payable or reimbursable by Tenant under this Lease, including but not limited to Base Rent, Real Property Taxes, Late Charges, insurance and any and all other sums payable by Tenant under this Lease, shall collectively constitute “Rent” and shall be payable in the manner provided in this Lease. All Rent shall be paid in lawful money of the United States of America to Landlord’s Address for Payment of Rent as set forth in the Basic Lease Information, or to such other person or at such other place as Landlord may from time to time designate to Tenant in writing. Tenant shall pay to Landlord interest at the rate (the “Default Rate”) of three percent (3%) over the Prime Rate per annum on the following sums until paid in full: (A) all overdue installments of Base Rent from the respective due dates thereof, and (B) all other overdue amounts of Rent other than Base Rent, from the date when any such amount becomes overdue.

3.4 Net Lease. Except as otherwise specifically provided herein, all Rent shall be net to Landlord so that this Lease shall yield net to Landlord the Rent to be paid each month during the Term of this Lease. Accordingly, and except as otherwise specifically provided in this Lease, all costs, expenses and obligations relating to the operation of the Premises that may arise or become due during the Term of this Lease, including maintenance, repairs, insurance and taxes, shall be paid by Tenant. Nothing herein contained shall be deemed to require Tenant to pay or discharge any liens or mortgages of any character whatsoever which may exist or hereafter be placed upon the Premises or Property by an affirmative act or omission of Landlord.

4. USE OF PREMISES:

4.1 Tenant’s Use of the Premises: Tenant may use the Premises for operation of Tenant’s public works and parks departments, and all other legally permitted uses approved by Landlord, which approval shall not be unreasonably withheld, conditioned, or delayed (collectively, “Permitted Uses”). Tenant shall not commit any waste, or allow any nuisance, on the Premises. Tenant must use the Premises in compliance with the Master Lease and all applicable Laws.

4.2 Compliance with Laws and Private Restrictions: Tenant shall observe and comply with all (i) judicial decisions, statutes, constitutions, ordinances, resolutions, orders, or other requirements of any municipal, county, state, federal, or other government agency or authority having jurisdiction over the parties to this Lease, the Premises, or both, in effect either at the Commencement Date of this Lease or any time during the Term (collectively, "Laws"), and (ii) recorded covenants, conditions and restrictions, private agreements, and any other recorded instruments affecting the use of the Building and Common Area, as they may exist from time to time (collectively, "Private Restrictions"), applicable to the Project. Landlord shall not enter into any Private Restrictions during the Term of this Lease without Tenant's prior written consent.

4.3 Parking and Reservation of Rights: During the Term, Tenant and its employees and invitees shall be entitled to the use of the exterior parking areas serving the Premises, at no additional cost to Tenant. Tenant shall use the parking area at its own risk, and Landlord shall have no liability to Tenant or Tenant's employees or invitees for any damage to vehicles, theft or personal injury occurring in or about the parking area of the Premises, except to the extent caused by the gross negligence or willful misconduct of Landlord, its agents, employees or contractors.

4.4 Hazardous Materials: Tenant, at its sole cost, shall comply with all Laws relating to the storage, use, disposal, emission, or release of any Hazardous Materials. If Hazardous Materials are stored, used, released, emitted, disposed of or discovered on, at or under the Project which require remediation by Landlord or Tenant under applicable Law, then Tenant shall promptly take any and all action necessary to clean up and remove such Hazardous Materials contamination as required by applicable Law. At any time prior to the expiration of the Term, Tenant shall have the right, but not the obligation, to conduct appropriate tests of water and soil and deliver to Landlord the results of such tests to demonstrate that no Hazardous Materials contamination has occurred or exists at the Project which requires remediation by Landlord or Tenant under applicable Law. Tenant shall be solely responsible for, and shall defend, indemnify and hold harmless Landlord and the Landlord Parties from and against, all losses, claims, costs, damages and liabilities, including reasonable attorneys' fees and costs, to the extent arising out of the existence, storage, use, disposal, emission or release of Hazardous Materials on, at or under the Project which require remediation by Landlord or Tenant under applicable Law. Notwithstanding anything to the contrary in this Section 4.4, Tenant shall not be responsible for, and shall have no obligation to investigate or remediate, any Hazardous Materials on the Project to the extent such Hazardous Materials were released or deposited at the Project by Landlord or its officers, employees, agents, contractors, or property manager. As used herein and elsewhere in this Lease, the term "Hazardous Materials" means any material or substance that is now or hereafter prohibited or regulated by any Law or that is now or hereafter designated by any governmental authority to be radioactive, toxic, hazardous or otherwise a danger to health, reproduction or the environment, including, without limitation, asbestos and petroleum products. Nothing in this Lease Agreement shall limit or otherwise affect in any matter Tenant's obligations with regard to Hazardous Materials as set forth in the Ground Lease.

## 5. LEASEHOLD IMPROVEMENTS AND TRADE FIXTURES:

5.1 Leasehold Improvements: Tenant may, without Landlord's approval, construct any leasehold improvement which does not affect the structural parts or exterior of the Premises, is not visible from the exterior of the Premises and does not cost more than One Hundred Thousand Dollars (\$100,000.00) in any one instance (each, a "Leasehold Improvement", and collectively, the "Leasehold Improvements"). Any other Leasehold Improvements may be made only after obtaining Landlord's consent, which consent shall not be unreasonably withheld or delayed. Landlord shall notify Tenant in writing of its approval or disapproval of the Leasehold Improvement within fifteen (15) days after Tenant's written request for Landlord's consent to the Leasehold Improvement. If Landlord fails to respond within such fifteen (15) day period, then Tenant may deliver a second notice which shall state in

14 (or larger) point, all CAPS type on the first page of such notice that “THIS NOTICE CONSTITUTES A SECOND REQUEST FOR DELIVERY OF RESPONSE TO TENANT’S REQUEST FOR CONSENT TO CERTAIN LEASEHOLD IMPROVEMENTS AND FAILURE TO DELIVER THE SAME TO THE UNDERSIGNED WITHIN FIVE (5) BUSINESS DAYS AFTER RECEIPT OF THIS NOTICE SHALL CONSTITUTE A DEEMED CONSENT.” Failure to respond to any such second request within such five (5) business day period shall result in Landlord’s deemed consent to such Leasehold Improvement. All Leasehold Improvements constructed at Tenant’s cost shall remain the property of Tenant during the Term and on the Expiration Date, title to and ownership of the Leasehold Improvements shall automatically vest in Landlord without the execution of any further instrument and without any payment therefor by Landlord. Landlord shall have no lien or other interest whatsoever in any Leasehold Improvement, and, within ten (10) days following Tenant’s request, Landlord shall execute documents in reasonable form to evidence Landlord’s waiver of any right, title, lien, or interest in Tenant’s Leasehold Improvements located in the Premises. Tenant shall restore all damage to the Premises caused by any removal of the Leasehold Improvements.

5.2 Trade Fixtures: Tenant may install in the Premises such Trade Fixtures as it considers advisable for the conduct of its business. All Trade Fixtures installed by and/or at the expense of Tenant shall remain the property of Tenant. Upon the Lease Termination, Tenant shall remove its Trade Fixtures and shall repair any damage to the Premises caused by such removal. As used herein and elsewhere in this Lease, the term “Trade Fixtures” means anything affixed to the Building by Tenant at its expense for purposes of trade, manufacture, ornament, or domestic use (except replacement of similar work or material owned and installed by Landlord) which can be removed without material structural injury to the Building and are not reasonably required for the operation of the Building.

5.3 Liens: Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by Tenant, its agents, employees or contractors relating to the Premises. If any claim of lien is recorded against the Premises, Tenant shall, at its election, make a cash deposit or bond against such lien pursuant to a procedure that effectively prevents any foreclosure of such lien, or discharge the same within twenty (20) days after Tenant’s receipt of written notice that the same has been recorded.

## 6. CONDITION OF PREMISES; MAINTENANCE; REMEDIATION:

6.1 Condition of Premises: Landlord is leasing the Premises to Tenant “as is”, including without limitation as to the presence of any Hazardous Materials at, on, under, or emanating to or from, the Premises, without any obligation to alter, remodel, improve, repair, remediate, or decorate any part of the Premises, except as expressly set forth in this Lease. Landlord expressly disclaims any warranty or representation, express or implied, with respect to the Premises or any portion thereof, including, without limitation, any warranty or representation as to fitness, condition (including as to the presence of Hazardous Materials), the existence of any defect, patent or latent, merchantability, quality or durability, or suitability for any particular use, except as expressly set forth in this Lease.

6.2 Maintenance by Tenant: Throughout the Term, Tenant shall maintain the entire Building and Premises in good order, repair and condition including without limitation (i) the structural parts of the Building, including without limitation the foundations, columns, footings, load-bearing and exterior walls, sub-flooring, roof and roofing, and all pipes and conduit (including, without limitation, the fire protection loop) serving the Building, and (ii) the electrical, lighting, plumbing sewage, heating, ventilating air conditions, conveyance, emergency, fire protection, life safety and support systems serving the Building (collectively, the “Building Systems”), the interior of the Building and the landscaping, parking and other exterior areas of the Premises.

6.3 Surrender: Not later than the Expiration Date, as such date may be extended, or upon termination of Tenant's right to possession, Tenant shall deliver the Premises to Landlord with all improvements located on the Premises removed, except for the Building and its appurtenances, which shall be delivered in its condition as of the Commencement Date, ordinary wear and tear excepted. Tenant shall have the right to remove from the Premises its Trade Fixtures pursuant to Paragraph 5.2, furniture, moveable equipment and other personal property ("Tenant's Property"). If Tenant does not timely remove Tenant's Property, then Tenant shall be conclusively presumed to have, at Landlord's election, after five (5) days' written notice to Tenant (i) conveyed Tenant's Property to Landlord without compensation, or (ii) abandoned Tenant's Property, and Landlord may dispose of or store any part thereof in any manner at Tenant's sole cost. If Landlord elects to deem Tenant's Property abandoned by Tenant, Tenant shall pay to Landlord, within thirty (30) days after receipt of demand, any expenses incurred for disposition.

6.4 Remediation: On or before the expiration or earlier termination of the Lease (the "Remediation Date"), Tenant shall cause the Remainder Parcel to be remediated and cleaned up, in compliance with all applicable laws, and to such specifications as Landlord shall determine are necessary for its use of the Project, in Landlord's sole discretion. In the event that Tenant has failed to cause the Remainder Parcel to be so remediated or cleaned up by the Remediation Date and such failure continues for more than thirty (30) days after notice thereof is delivered to Tenant, Landlord shall have the right to enter on to the Remainder Parcel (and such other portions of the Premises are necessary for Landlord's exercise of its rights hereunder) and remediate and clean up the Remainder Parcel, in which case Tenant shall reimburse to Landlord all costs for the same within thirty (30) days after written demand therefor is made. The provisions of this Section 6.4 shall survive the expiration or earlier termination of this Lease.

7. UTILITIES AND SERVICES: All HVAC, electricity, water, janitorial and other utilities and services supplied to Tenant in the Premises shall be supplied by Tenant and kept in Tenant's name until the expiration or earlier termination of the Term. Tenant shall be responsible, at Tenant's sole cost and expense, for performing all janitorial, pest control, snow removal, trash removal and other cleaning services for the Premises and outside areas of the Premises, as appropriate to maintain the Premises in good operating condition.

8. TAXES:

8.1 Real Property Taxes Defined: The term "Real Property Taxes" as used herein shall mean all real property taxes, assessments and other charges imposed by any governmental or quasi-governmental authority, which are due and payable by reason of the ownership or use of the Premises or any portion thereof, including, without limitation, any supplemental Real Property Taxes allocable to the Term that are subsequently assessed against the Premises as a result of Landlord's acquisition of the leasehold interest to the Project pursuant to the Ground Lease. Landlord and Tenant agree that Landlord will pay all Real Property Taxes for the Project for which it is responsible before delinquency. In making this determination, the Landlord and Tenant will reference 39-3-129 CRS, 39-1-103(17) CRS, and 39-3-124(b) CRS. All Real Property Taxes that can be paid by Landlord in installments shall be paid by Landlord in the maximum number of installments permitted by Law, and shall only be included as Real Property Taxes in the year in which the installment is actually paid.

9. INSURANCE:

9.1 Tenant's Insurance: Tenant shall, at its cost, maintain a policy or policies of commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, death, and property damage liability with coverage limit of not less than One Million Dollars

(\$1,000,000). Tenant shall maintain excess liability limits in the amount of Three Million Dollars (\$3,000,000.00). Tenant shall also maintain any insurance required under the Master Lease.

9.2 Landlord's Insurance: Landlord has no obligation to maintain any insurance on the Building or Premises, and the proceeds of any insurance actually maintained by Landlord shall belong solely to Landlord.

9.3 Release and Waiver of Subrogation: Notwithstanding anything to the contrary in this Lease, Tenant releases Landlord, and its respective agents, employees and subtenants from any liability for damage to property that arises out of or incident to any peril which is required to be insured against under this Lease, without regard to the negligence or willful misconduct of the Landlord. Tenant shall cause its property insurance policy to provide that the insurer thereunder waives all right of recovery by way of subrogation as required herein in connection with any injury or damage covered by the policy.

## 10. INDEMNITY AND EXCULPATION:

10.1 Indemnity: To the extent permitted by Colorado law, Tenant hereby assumes all risk of damage to property or injury to persons in, upon or about the Premises from any cause whatsoever and agrees that the Landlord Parties shall not be liable for, and are hereby released from any responsibility for, any damage either to person or property or resulting from the loss of use thereof, which damage is sustained by Tenant or by other persons claiming through Tenant, or with respect to the presence of any Hazardous Materials at, on, under, or emanating to or from, the Premises, except to the extent such injury or damage is caused by the active negligence or willful misconduct of Landlord or any of the Landlord Parties, subject to and without limiting Section 9.3 concerning waiver of subrogation rights. Tenant shall hold harmless, indemnify and defend Landlord and the Landlord Parties, with competent counsel reasonably satisfactory to Landlord, from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any death, bodily injury, personal injury or property damage to the extent resulting from (i) the negligent act or omission of Tenant, its agents, contractors, or employees, (ii) a breach by Tenant of this Lease, or (iii) a violation by Tenant of any Law or Private Restriction, in each case during the Term of this Lease only. Landlord shall hold harmless, indemnify and defend Tenant and its employees, affiliates, and agents, with competent counsel reasonably satisfactory to Tenant, from all liability, penalties, losses, damages, costs, expenses, causes of action, claims and/or judgments arising by reason of any death, bodily injury, personal injury or property damage to the extent such matter both (i) results from the negligence (and not covered by the insurance Tenant actually carries or is required to carry under this Lease), gross negligence, or willful misconduct of Landlord, or its agents, contractors, or employees, and (ii) arises in connection with Landlord's or its agents, contractors, or employees' physical entry onto the Premises or fulfilling its obligations under the Lease. Nothing herein is intended to be a waiver of Tenant's rights under the Colorado Governmental Immunity Act.

10.2 Landlord Exculpation: The liability of Landlord or the Landlord Parties for any default by Landlord under this Lease or arising in connection herewith or with Landlord's operation, management, leasing, repair, renovation, alteration or any other matter relating to the Premises shall be limited solely and exclusively to an amount which is equal to the lesser of (a) the interest of Landlord in the Premises or (b) the equity or leasehold interest Landlord would have in the Premises if the Premises were encumbered by third-party debt in an amount equal to eighty percent (80%) of the value of the Premises (as such value is reasonably determined by Landlord), provided that in no event shall such liability extend to any sales or insurance proceeds received by Landlord or the Landlord Parties in connection with the Premises, Building or Premises. Neither Landlord, nor any of the Landlord Parties shall have any personal liability therefor, and Tenant hereby expressly waives and releases such personal liability on behalf of itself and all persons claiming by, through or under Tenant. The limitations of

liability contained in this Section 10.2 shall inure to the benefit of Landlord's and the Landlord Parties' present and future partners, beneficiaries, officers, directors, trustees, shareholders, agents and employees, and their respective partners, heirs, successors and assigns. Notwithstanding any contrary provision herein, neither Landlord nor the Landlord Parties shall be liable under any circumstances for any indirect or consequential damages or any injury or damage to, or interference with, Tenant's business, including but not limited to, loss of profits, loss of rents or other revenues, loss of business opportunity, loss of goodwill or loss of use, in each case, however occurring.

11. DAMAGE AND DESTRUCTION:

11.1 Landlord's Duty to Restore: If the Building or Premises is damaged in whole or in material part by fire, the elements, or any other cause whatsoever (collectively, "Casualty"), then Landlord shall have no obligation to repair or restore the same, but (subject to Section 11.2 below) Tenant shall have the right to repair and restore the Premises (and any improvements located thereon) at Tenant's sole cost and expense.

11.2 Tenant's Right to Abatement and Termination: If all or any portion of the Premises becomes unsuitable for Tenant's use as a consequence of a Casualty, then Tenant shall be entitled to an equitable abatement of all Rent payable hereunder to the extent of the interference with Tenant's use of the Premises occasioned thereby. Further, if for any reason any material portion of the Premises cannot be restored (or Tenant chooses not to restore the Premises), then Tenant may terminate this Lease by written notice to Landlord given within thirty (30) days after the date of the Casualty, in which event the termination shall be deemed effective as of the date of the Casualty. Additionally, if a material portion of the Premises is damaged by a Casualty and the restoration is not completed by Tenant within twelve (12) months after the date of the Casualty, then this Lease shall be deemed terminated if Tenant fails to substantially complete such restoration within thirty (30) days following Tenant's receipt of a written request from Landlord, which termination shall be deemed effective on thirtieth (30<sup>th</sup>) day following Tenant's receipt of Landlord's completion request.

12. CONDEMNATION: If any material part of the Building, the Common Area, or the Premises is taken by the exercise of the power of eminent domain (or conveyed by Landlord in lieu of that exercise), and the remaining portion cannot be made suitable for the continued use and operation of the Premises by Tenant for substantially the same purposes (and in materially the same scope and capacity taken as a whole) as immediately prior to such taking, then Tenant may terminate this Lease upon thirty (30) days prior written notice. Any Lease termination pursuant to this Article 12 shall be without prejudice to the rights of either Landlord or Tenant to recover any compensation and damage caused by such condemnation to which they are entitled from the condemning authority. All consideration, compensation, damages, income, rent, awards, and interest that may be paid or made in connection with any taking will be payable to Landlord; provided, however, that Tenant shall have the right to seek a separate award from the condemning authority (and Landlord shall have no right or interest in or to any such award) for Tenant's personal property and trade fixtures, relocation and moving costs, and loss to Tenant's goodwill. If this Lease is not terminated by Tenant in accordance with this Article 12, the Rent shall be abated in the proportion that the Rentable Square Feet of the Premises taken bears to the Rentable Square Feet of the Premises immediately before the taking.

13. ASSIGNMENT AND SUBLETTING: Tenant shall not assign this Lease or any of Tenant's rights hereunder or sublet all or any part of the Premises without the prior written consent of Landlord, which consent may be withheld, or conditioned in Landlord's sole discretion, and in no event will Tenant be released from any obligation or liability under this Lease following any such assignment or sublease. Notwithstanding the foregoing to the contrary, Tenant shall have the right to allow other governmental

entities to use the Premises pursuant to the terms of any intergovernmental agreements existing as of the Commencement Date.

14. DEFAULT:

14.1 Tenant's Default-Definition: Tenant shall be in "Default" under this Lease if Tenant: (i) fails to pay any Rent when due, if the failure continues for ten (10) days after written notice thereof is given by Landlord to Tenant; (ii) fails to perform any other provision of this Lease, if the failure is not cured within thirty (30) days after written notice thereof is given by Landlord to Tenant; if the failure cannot reasonably be cured within thirty (30) days, Tenant shall not be in Default if Tenant commences to cure the failure within the thirty (30) day period and diligently continues to cure the Default; (iii) files a petition in bankruptcy or insolvency or for reorganization or arrangement under the bankruptcy laws of the United States or under any insolvency act of any state, or is dissolved, or makes an assignment for the benefit of creditors; or (iv) involuntary proceedings under any bankruptcy laws or insolvency act or for the dissolution of Tenant are instituted against Tenant, or a receiver or trustee is appointed for all or substantially all of Tenant's property, and the proceeding is not dismissed or the receivership or trusteeship is not vacated within sixty (60) days after the institution or appointment.

14.2 Tenant's Default-Remedies: Upon the occurrence of any Default by Tenant, Landlord shall have the right, at Landlord's election, to terminate this Lease by giving Tenant written notice of such termination and be entitled to the remedies described in Section 14.2.1 and/or to pursue any and all other remedies available at law or in equity.

14.2.1 Upon termination of this Lease by Landlord in accordance with the provisions of Section 14.2, Landlord shall be entitled to recover from Tenant the (i) the worth, at the time of the payment or award, of the unpaid Rent that had come due through termination of this Lease; and (ii) the worth, at the time of payment or award, of the amount by which the unpaid Rent for the balance of the Term after the time of the payment or award exceeds the amount of loss of Rent that Tenant proves could have been reasonably avoided. The worth, at the time of award, as used in the foregoing clauses (i) and (ii) shall be computed by allowing interest at a rate of either six percent (6%) per annum or the maximum applicable rate permitted by Law, whichever is less ("Agreed Interest Rate"), from the date the same became due and owing. The worth, at the time of award, as referred to in the foregoing sentence shall be computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of payment or award plus one percent (1%).

14.2.2 Landlord's rights shall also include the right to possess the Premises by any lawful means with or without terminating this Lease, in which event Tenant will immediately surrender possession of the Premises to Landlord. Unless Landlord specifically states that it is terminating this Lease, Landlord's termination of Tenant's right to possess the Premises is not to be construed as an election by Landlord to terminate this Lease or Tenant's obligations and liabilities under this Lease. In such event, this Lease continues in full force and effect (except for Tenant's right to possess the Premises) and Tenant continues to be obligated for and must pay all Rent as and when due under this Lease. If Landlord terminates Tenant's right to possess the Premises, Landlord is not obligated to but may re-enter the Premises and remove all persons and property from the Premises. Landlord may store any property Landlord removes from the Premises in a public warehouse or elsewhere at the cost and for the account of Tenant. Upon such re-entry, Landlord must use good faith efforts to, and may, relet all or any part of the Premises to a third party or parties for Tenant's account.

14.2.3 Landlord's rights shall also include the right to perform any act Tenant is obligated to perform under the terms of this Lease (and enter upon the Premises in connection therewith if necessary) in Tenant's name and on Tenant's behalf, without being liable for any claim for damages



therefor, and Tenant shall reimburse Landlord on demand for any expenses which Landlord may incur in thus effecting compliance with Tenant's obligations under this Lease (including collection costs and legal expenses), plus interest thereon at the Default Rate.

14.3 Mitigation of Damages: Landlord shall use commercially reasonable efforts to mitigate its damages from any breach or Default by Tenant under this Lease. For the purposes of this Section 14.3, "commercially reasonable efforts" shall be satisfied by Landlord hiring a reputable real estate broker with experience in leasing comparable properties to market the Premises on reasonable terms and prevailing market conditions, conducting commercially reasonable negotiations with prospective tenants of the Premises in an effort to consummate a lease of the Premises as soon as reasonably practicable, and using reasonable efforts to avoid the commission of waste on the Premises.

14.4 Waiver of Landlord's Lien: Landlord waives any right by statute, common law, contract or otherwise for distraint, landlord's lien, or any other similar right or remedy with respect to the personal property of Tenant. Within ten (10) days after Tenant's request, Landlord shall execute documents in a form reasonably satisfactory to Tenant and Landlord to evidence Landlord's waiver of any right, title, lien or interest in Tenant's personal property.

14.5 Landlord's Default and Tenant's Remedies: Landlord shall not be deemed to be in default of its obligations unless Landlord fails to perform any covenant, condition, or agreement contained in this Lease and fails to cure the nonperformance within a reasonable time, but not later than thirty (30) days after receiving written notice of the failure, provided, however, that if the nature of Landlord's failure to perform reasonably requires more than thirty (30) days to cure, then Landlord shall not be deemed in default if Landlord commences to cure such failure within said thirty (30) day period and thereafter diligently and in good faith prosecutes such cure to completion.

15. SIGNS: Tenant may use all of its existing signage located in and on the Premises.

16. SUBORDINATION:

16.1 First Mortgage: Landlord represents and warrants that there are no mortgages, ground leases, deeds of trust or other hypothecation or security devices encumbering the Premises as of the date of this Lease.

16.2 Priority of Lease: This Lease shall be prior to any encumbrance recorded after the date of this Lease affecting the Premises. If, however, a Lender requires that this Lease be subordinate to any such encumbrance, this Lease shall be subordinate only if Landlord first obtains from the Lender a written agreement that provides substantially the following, (and is otherwise reasonably acceptable to Tenant): "As long as Tenant is not in Default of its obligations beyond any applicable notice and cure periods under this Lease, no foreclosure of, deed given in lieu of foreclosure of, sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease, and Tenant shall not be joined in any such foreclosure action unless such joinder is required by applicable Law to complete the foreclosure." As used herein and elsewhere in this Lease, the term "Lender" means (i) any beneficiary, mortgagee, secured party, or other holder of any deed of trust, mortgage or other written security device or agreement affecting the Building, and the note or other obligations secured by such deed of trust, mortgage, or other written security device or agreement, and (ii) the landlord under any underlying ground lease under which Landlord holds an interest in the Building.

17. HOLDOVER: If Tenant retains possession of any part of the Premises after the Term, as it may be extended, Tenant shall become a month-to-month tenant for the entire Premises upon all of the terms of this Lease as might be applicable to such month-to-month tenancy, except that Tenant shall pay Base

Rent at 125% of the Base Rent in effect immediately prior to such holdover, computed on a monthly basis for each full or partial month Tenant remains in possession. No acceptance of Rental or other payments by Landlord under these holdover provisions shall operate as a waiver of Landlord's right to regain possession or any other of Landlord's remedies. Notwithstanding the foregoing, if Tenant gives Landlord written notice at least ninety (90) days before the expiration of the Term, Tenant may hold over in the Premises for a period not to exceed thirty (30) days, on the same terms and conditions as applicable during the last month of the Term.

18. GENERAL PROVISIONS:

18.1 Miscellaneous: Should any provision of this Lease prove to be invalid or illegal, such invalidity or illegality shall in no way affect, impair or invalidate any other provision hereof, and such remaining provisions shall remain in full force and effect. This Lease shall be governed by the Laws where the Premises is located. IN ANY ACTION OR PROCEEDING ARISING UNDER THIS LEASE, LANDLORD AND TENANT HEREBY CONSENT TO (I) THE JURISDICTION OF ANY COMPETENT COURT WITHIN THE STATE OF COLORADO, (II) SERVICE OF PROCESS BY ANY MEANS AUTHORIZED BY COLORADO LAW, AND (III) IN THE INTEREST OF SAVING TIME AND EXPENSE, TRIAL WITHOUT A JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER OR THEIR SUCCESSORS IN RESPECT OF ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS LEASE, THE RELATIONSHIP OF LANDLORD AND TENANT, TENANT'S USE OR OCCUPANCY OF THE PREMISES, AND/OR ANY CLAIM FOR INJURY OR DAMAGE, OR ANY EMERGENCY OR STATUTORY REMEDY. Time is of the essence with respect to the performance of every provision of this Lease in which time of performance is a factor. This Lease shall, subject to the provisions regarding assignment, apply to and bind the respective heirs, successors, executors, administrators and assigns of Landlord and Tenant. The language in all parts of this Lease shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against either Landlord or Tenant. The captions used in this Lease are for convenience only and shall not be considered in the construction or interpretation of any provision hereof. When a party is required to do something by this Lease, it shall do so at its sole cost and expense without right of reimbursement from the other party unless specific provision is made therefor. Landlord shall not become or be deemed a partner or a joint venturer of Tenant by reason of this Lease. This Lease may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one Lease. This Lease and the documents referred to herein constitute the entire agreement between the parties, and there are no binding agreements or representations between the parties except as expressed herein. Neither this Lease, nor any memorandum, affidavit or other writing with respect thereto, shall be recorded by Tenant or by anyone acting through, under or on behalf of Tenant. No subsequent change or addition to this Lease shall be binding unless in writing and signed by the parties hereto. All exhibits to this Lease shall be deemed incorporated herein by the individual reference to each such exhibit, and shall be deemed a part of this Lease as though set forth in full in the body of the Lease. The parties may execute this Lease in multiple counterparts, each of which constitutes an original, and all of which, collectively, constitute only one Lease. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or in PDF copy is as effective as executing and delivering this Lease in the presence of the other parties to this Lease. This Lease is effective upon delivery of one executed counterpart from each party to the other parties. In proving this Lease, a party must produce or account only for the executed counterpart of the party to be charged.

18.2 Waiver: One party's consent to or approval of any act by the other party requiring the first party's consent or approval shall not be deemed to waive or render unnecessary the first party's consent to or approval of any subsequent similar act by the other party. No delay or omission in the exercise of any right or remedy accruing to either party upon any breach by the other party under this

Lease shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by either party of any breach of any provision of this Lease shall not be deemed to be a waiver of any subsequent breach of the same or any other provisions herein contained.

18.3 Estoppel Certificates: Each party agrees, following any request by the other, to execute and deliver within ten (10) days of such request an estoppel certificate upon which the requesting party and any others it designates may rely (i) certifying that this Lease is unmodified and in full force and effect, or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (ii) stating the date to which the rent is paid in advance, if any; (iii) acknowledging that there are not, to the certifying party's knowledge, any uncured defaults on the part of the other party hereunder, or if there are stating their nature; and (iv) certifying such other information about the Lease as may be reasonably required by the requesting party.

18.4 Reimbursable Expenditures: Any expenditure by a party permitted or required under this Lease, for which such party is entitled to demand and does demand reimbursement from the other party, shall be limited to the actual cost to the demanding party of the goods and/or services giving rise to such expenditure, which cost (i) shall not exceed the fair market value of such goods and/or services, (ii) shall be reasonably incurred, and (iii) shall be substantiated by documentary evidence available for inspection and review by the other party or its representative during normal business hours.

18.5 Notices: Any notice required or desired to be given regarding this Lease shall be in writing and may be given by personal delivery or by courier service. Any notice or report addressed to Landlord or Tenant at their respective addresses set forth in the Basic Lease Information, as appropriate, shall be deemed to have been given (i) when personally delivered, or (ii) if properly addressed and deposited with a reputable overnight carrier, on the date the notice or report is delivered (or delivery is refused) as evidenced by the overnight courier's delivery records. Either party may change its address by giving notice of same in accordance with this Section. If any notice or other act that is permitted or required under this Lease shall come due on a Saturday, Sunday or legal holiday, it shall be deemed to be due on the next business day.

18.6 Authority: Each individual executing this Lease on behalf of a corporation, limited liability company or partnership represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of said corporation, limited liability company or partnership and that this Lease is binding upon said corporation, limited liability company or partnership in accordance with its terms.

18.7 Brokerage Commissions: Each party represents that it has not had any dealings with any real estate broker, finder, or other person with respect to this Lease. Each party shall hold harmless the other from all damages or claims that may be asserted by any broker, finder, or other person with whom the indemnifying party has purportedly dealt.

18.8 Force Majeure: Whenever Landlord or Tenant is delayed or prevented from performing any obligation under this Lease (other than the payment of money) for reasons of Force Majeure, such party shall not be liable or responsible for such obligation (other than the payment of money) for the duration of the Force Majeure event. "Force Majeure" shall mean any delays due to strikes, riots, acts of God, pandemics (including without limitation the current "Covid 19" pandemic), shortages of labor or materials, war, governmental laws, regulations or restrictions. Notwithstanding the foregoing, Force Majeure shall not be deemed to extend the time at which Tenant is entitled to an abatement of Rent or to terminate this Lease pursuant to any express provision of this Lease. For purposes of this Lease, a Force Majeure event shall be deemed to exist only if Landlord or Tenant (as the case may be) promptly notifies the other party in writing of such delay and, after such initial notification promptly after request of the

other party, Landlord or Tenant (as the case may be) notifies the other party of the status of such delay. Each party shall use all commercially reasonable efforts to mitigate the delay caused by any Force Majeure event to the extent reasonably commercially practicable.

18.9 Landlord's Right of Entry: Landlord, its agents, employees, and contractors shall have the right (a) to enter the Premises at any reasonable time upon written notice to Tenant and with prior consent of Tenant (which consent shall not be unreasonably withheld); provided, however, that Landlord shall comply with all reasonable security measures of Tenant and shall not materially interfere with the conduct of Tenant's business or Tenant's access to or parking rights on the Premises; (b) to cure any uncured Default of Tenant hereunder that Landlord elects to cure or is required to cure; (c) to conduct inspections; (d) to show the Building and Premises to any current or prospective lenders or investors; and (e) to carry out any other applicable provision of this Lease. However, in the event of an emergency, Landlord may enter the Premises at any time without notice to abate and cure the emergency. Landlord may show the Premises to prospective purchasers, tenants (during the last 180 days of the Term only if Tenant has not exercised an extension option), investors and lenders, during normal business hours upon at least one (1) business day's notice to Tenant, and providing Landlord does not interrupt Tenant's normal operations and adheres to Tenant's reasonable policies regarding security of the Premises and Tenant's proprietary business information.

18.10 Patriot Act. Tenant and Landlord each represents to the other party that to its knowledge, (i) neither it nor any person or entity (specifically excluding the shareholders of any publicly held company directly or indirectly owning Tenant and/or Landlord) that directly owns a 10% or greater equity interest in it nor any of its officers, directors or managing members is a person or entity (each, a "Prohibited Person") with whom U.S. persons or entities are restricted from doing business under regulations of the Office of Foreign Asset Control ("OFAC") of the Department of the Treasury (including those named on OFAC's Specially Designated and Blocked Persons List) or under Executive Order 13224 (the "Executive Order") signed on September 24, 2001, and entitled "Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism", or other governmental action, (ii) its activities do not violate the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001 or the regulations or orders promulgated thereunder (as amended from time to time, the "Money Laundering Act") and (iii) throughout the term of this Lease, it shall comply with the Executive Order and with the Money Laundering Act.

18.11 Attorneys' Fees. In the event that either Landlord or Tenant should bring any action or legal proceeding for an alleged breach of any provision of this Lease, to recover any sum due under this Lease, for possession of the Premises, to terminate this Lease or otherwise to enforce, protect or establish any term or covenant of this Lease, the prevailing party shall be entitled to recover as a part of such action or proceeding, or in a separate action brought for that purpose, all costs and expenses incurred by such prevailing party, including, without limitation, reasonable attorneys' fees, court costs, and experts' fees as may be fixed by the court.

18.12 Exhibits. Each of the following Exhibits, and the terms thereof, are hereby incorporated into this Lease:

Exhibit A	Premises
Exhibit B	Project
Exhibit C	Remainder Parcel

[Signature page follows.]

IN WITNESS WHEREOF, Landlord and Tenant have executed this Lease with the intent to be legally bound thereby, to be effective as of the day and year first set forth above.

“TENANT”

TOWN OF FREDERICK, COLORADO,  
a Colorado statutory town

By: \_\_\_\_\_

Name:

Title:

“LANDLORD”

AGILENT TECHNOLOGIES, INC.,  
a Delaware corporation

By: \_\_\_\_\_

Name:

Title:

EXHIBIT A

Premises

EXHIBIT B

Project

Lot 1A, Eagle Business Park, Filing No. 2, Town of Frederick, County of Weld, State of Colorado.

For Informational Purposes:

Tax ID No.: R6784796

EXHIBIT C

Remainder Parcel



EXHIBIT F

Agilent License

**LAYDOWN AREA LICENSE**

THIS LAYDOWN AREA LICENSE (this “License”) is made and entered into as of \_\_\_\_\_, 2023 (the “Effective Date”), by and among AGILENT TECHNOLOGIES, INC., a Delaware corporation (“Licensee”), and TOWN OF FREDERICK, a Colorado statutory town (“Licensor”).

RECITALS

A. Licensor is the owner of that certain parcel of real property located in the Town of Frederick, Colorado, commonly known as 7400 Eagle Boulevard, consisting of approximately ten (10) acres of undeveloped land (the “7400 Parcel”).

B. Licensee is the owner of that certain parcel of real property in the vicinity of the 7400 Parcel, legally described as Lot 1, Eagle Business Park, Filing No. 3, Town of Frederick, County of Weld, State of Colorado, which Licensee is developing as “Project Endeavor” (the “Project Endeavor Site”).

C. Licensee desires a license to the approximately 5-acre westerly portion of the 7400 Parcel more particularly described on **Exhibit A** attached hereto and made a part hereof by this reference (the “Licensed Area”) for (i) a construction staging, storage, and laydown area for the receipt, storage and partial assembly (including, without limitation, welding and fabrication activities) of project equipment and materials, (ii) location of temporary construction trailers for office and employee workspace, (iii) employee and contractor parking related to Licensee’s development of the Project Endeavor Site, and (iv) all other related lawful purposes (collectively, the “License Purpose”).

D. Licensor is willing to grant a license to Licensee on the Licensed Area for the aforesaid License Purpose, subject to the terms and provisions hereof.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Incorporation of Recitals.** The above Recitals are incorporated herein as if fully set forth herein.
2. **Grant of Laydown Area License.** Licensor hereby grants and conveys to Licensee and Licensee’s agents, employees, affiliates, contractors, and subcontractors working on Project Endeavor (collectively, the “Licensee Parties”), an exclusive license in, on, over, under and across the Licensed Area for the License Purpose.

3. Term; Fee. This License shall commence on the Effective Date and terminate on the date that is ten (10) years after the Effective Date or as earlier terminated on the provisions hereof (the "Term"). Upon the expiration or earlier termination of this License, Licensee shall quit and surrender possession of the Licensed Area in the condition required by this License. During the Term, Licensee shall pay to Licensor a license fee in the amount of \$33,416.00 (the "License Fee") on the first day of each calendar month at the address set forth in Section 17(d) below, or at such other address as Licensor may advise Licensee in writing from time to time. The License Fee shall increase by three and one half percent (3.5%) on each anniversary of the first day of the calendar month following the Effective Date during the Term. The License Fee shall be prorated for any partial month of the Term. Notwithstanding anything herein to the contrary, Licensee shall have the right to terminate this License upon completion of Project Endeavor and written notice to Licensor (the "Termination Right"); provided, however, in the event that Licensee exercises its Termination Right as provided herein, and despite the fact that the License has been terminated thereby, Licensee shall, as a termination fee, continue to pay the License Fee to Licensor as provided herein for each subsequent month until the earlier of (i) the last month of the original ten (10) year Term and (ii) twelve (12) months after delivery of the Termination Notice.
4. Access and Use. Licensee and the Licensee Parties shall have access to the Licensed Area twenty-four (24) hours a day, seven (7) days a week. Licensee shall have the right to fence off the Licensed Area and maintain such locked, gated access areas onto public rights of way as Licensee may reasonably require, subject to all applicable laws. Licensor shall not access the Licensed Area to inspect the same for compliance with this License or for any other purpose except (i) on no less than forty-eight (48) hours' prior written notice to Licensee, (ii) during normal business hours and (iii) in a manner reasonably calculated to minimize any disruption to Licensee's use thereof. Licensee shall have the right to have a representative accompany Licensor during any access to the Licensed Area.
5. Damage and Compliance with Laws. The parties hereto acknowledge and agree that during the Term of this License, Licensor intends to develop the remaining portion of the 7400 Parcel located outside of the Licensed Area (the "Remainder Parcel") and Licensor will have agents, employees, contractors, and subcontractors (the "Licensor Parties") performing work on the Remainder Parcel. The Licensor Parties and the Licensee Parties are collectively referred to herein as the "Related Parties." Licensor shall have no right to use or occupy or disturb Licensee's use or occupancy of the Licensed Area, and Licensor shall not use the Remainder Parcel in any manner which would unreasonably interfere with Licensee's rights hereunder and shall limit all testing, inspection, construction and related activities to the portion of the Remainder Parcel. Each of Licensee, Licensor and their respective Related Parties shall conduct their operations within their respective portions of the 7400 Parcel: (a) in compliance with all laws, rules, regulations, permits, and requirements applicable to the 7400

Parcel; and (b) in such manner as not to interfere unreasonably in any way with the other party's (or its Related Parties') operations at the 7400 Parcel or to damage or alter in any way any of the other parties' work at the 7400 Parcel. Each party hereby covenants and agrees to repair any of the work or improvements of the other party or its Related Parties to the extent said repair or restoration is caused by the acts or omissions of such party or its respective Related Parties (the "Damaging Party"). Any damage to the work or improvements of a party or its respective Related Parties caused by any act or omission of a Damaging Party shall be repaired at the Damaging Party's expense within forty-eight (48) hours following the delivery of written notice from the other party stating the extent of the damage and the actions required of the other party to repair same. If the Damaging Party fails to make such repairs within forty-eight (48) hours following written notice from the other party, the other party shall have the right to make such repairs and charge the Damaging Party the actual and reasonable cost of the same. If the Damaging Party does not reimburse the other party for said costs within thirty (30) days following receipt of an invoice therefor which shall include all necessary back-up documentation, such sum shall bear interest thereon at the rate of prime (as established in the Wall Street Journal) plus eight percent (8%) until paid and the other party shall be entitled to all remedies available to it at law or in equity to collect such sums.

6. Restoration. At the end of the Term, Licensee, or its contractors or assigns, shall restore any part of the surface of the Licensed Area that is damaged or disturbed as a result of Licensee's exercise of its rights hereunder to substantially the same condition existing at the commencement of the Term, reasonable wear and tear, excepted. If Licensee fails to restore the surface of the Licensed Area within thirty (30) days after notice thereof from Licensor, Licensor may do so at Licensee's expense as provided in Section 5 above.
7. Mechanics' Liens. Licensee expressly acknowledges and agrees that: (a) nothing in this License shall authorize Licensee, any Licensee Party, or any person dealing with, through or under Licensee to subject any portion of the Licensed Area to mechanic's, materialman's or other liens on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with the entry or work upon or in relation to the Licensed Area (collectively "Liens"); and (b) Licensee shall not permit or suffer any Liens to be asserted or attached with respect to the Licensed Area in connection with any act or omission by, through, or under Licensee in connection with this License; and (c) to the extent any Lien is asserted or attaches to the Licensed Area as prohibited under subsection b above, then Licensee hereby covenants and agrees to cause such Lien to be removed and released within thirty (30) days after receipt of notice that such Lien was recorded; provided, however, Licensee shall not be in breach hereof if Licensee commences an action to defend or prosecute such Lien and posts an adequate bond therefor. The provisions of this Section 7 shall expressly survive and be enforceable by the parties after expiration or termination of this License.

8. Utilities; Taxes. During the Term, Licensee shall be responsible for and shall pay all utility charges and costs for utilities used by Licensee at the Licensed Area, including, without limitation, water, electricity and gas. Licensee shall cause all such utilities used solely by Licensee to be billed directly to Licensee. In the event that any utilities serve the entirety of the 7400 Parcel and the charges and costs attributable to Licensee's sole use thereof cannot be directly billed to Licensee, Licensor shall pay such charges and costs as and when due and Licensee shall reimburse to Licensor the amount of such charges and costs reasonably attributable to Licensee's use of such utilities within thirty (30) days after its receipt of an invoice therefor. Further, during the Term, the parties agree that Licensee will pay all property taxes for the License Area for which it is responsible. In making this determination, the Parties will reference 39-3-129 CRS, 39-1-103(17) CRS, and 39-3-124(b) CRS.
  
9. Insurance. Licensee shall, procure and maintain policies of (a) commercial general liability ("CGL") insurance in an amount of coverage of not less than Two Million Dollars (\$2,000,000) in the aggregate and Two Million Dollars (\$2,000,000) per occurrence per occurrence covering its activities and the activities of its contractors on the Property, and (b) automobile liability insurance all owned and non-owned vehicles ("Auto") (if any) in an amount of coverage of not less than One Million Dollars (\$1,000,000) in the aggregate and per occurrence, and shall list Licensor as an Additional Insured under such policy or policies. Licensee shall also cause each of its third-party contractors and consultants entering the Licensed Area to procure and maintain (i) a CGL policy in an amount of coverage of not less than One Million Dollars (\$1,000,000) in the aggregate and One Million Dollars (\$1,000,000) per occurrence covering its activities on the Licensed Area, and (ii) an Auto policy in an amount of coverage of not less than One Million Dollars (\$1,000,000) in the aggregate and per occurrence, and shall cause each such party to list Licensor as an Additional Insured under such policies.
  
10. Risk Allocation. To the extent permitted by law, and as between Licensor and Licensee, Licensee shall be solely responsible, and agrees to defend and hold Licensor harmless against and from any and all claims to the extent arising from: (a) any willful misconduct or negligence on the part of Licensee or its agents, contractors, employees or licensees (including the general public as authorized under the permitted use); (b) any accident, injury or damage to person or property in, on, or about the Licensed Area during the Term; and (c) any breach of this License by Licensee. As between Licensor and Licensee, Licensor shall have no liability in any instance where Licensor is determined under applicable law to have strict liability given its legal status as the fee title owner of the Licensed Area but was not otherwise affirmatively negligent. The foregoing risk allocation shall not apply to the extent of any negligence or willful misconduct by Licensor or its agents, contractors, or employees occurring during the Term on or about the Licensed Area. In case any action or proceeding be brought against Licensor by reason of any such claim, Licensee, upon notice from Licensor, covenants to defend such action or proceeding by counsel reasonably satisfactory to

Licensor. Subject to the foregoing, and as between Licensor and Licensee, Licensor shall be solely responsible, and agrees to defend and hold Licensee harmless against and from any and all claims to the extent arising from: (a) any breach of this License by Licensor; and (b) any willful misconduct or negligence on the part of Licensor or its agents, contractors, or employees. The foregoing risk allocation shall not apply to the extent such claim is caused by Licensee or its agents, contractors, employees, or licensees (including members of the general public as authorized under the permitted use) occurring during the Term on or about the Licensed Area. In case any action or proceeding be brought against Licensee by reason of any such claim, Licensor, upon notice from Licensee, covenants to defend such action or proceeding by counsel reasonably satisfactory to Licensee. The obligations of Licensee and Licensor under this Section 10 shall survive the expiration or termination of this License.

11. No Indemnity. Licensor and Licensee do not intend the foregoing Section 10 to be an indemnity. In the event court reads Section 10 as an indemnity the parties intend that the allocation of risk between them should be allocated between them as provided in Section 10 and Licensor and Licensee expect that the court will give full effect to the language as written. Licensee understands and acknowledges that it has been advised that Colorado law does not currently enforce indemnity clauses entered into by Colorado local governments in contracts. Licensor is a Colorado local government and is not providing any assurance or warranty that the indemnification provided herein would be enforced in any Colorado court or in any proceeding under Colorado Law.
12. Governmental Immunity. Nothing in this License shall be construed to waive, limit or otherwise modify, in whole or in part, any governmental immunity that may be available by law to the Licensor, its respective officials, directors, officers, employees, contractors, or agents, or any other person acting on behalf of the Licensor and, in particular, governmental immunity afforded or available to the Licensee pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes, as amended from time to time.
13. Termination. Licensee shall have the right to terminate this License upon not less than sixty (60) days' prior written notice to the Licensor.
14. Governing Law; Venue. This License and all claims or controversies arising out of or relating to this License shall be governed and construed in accordance with the laws of the State of Colorado, without regard to conflict of law principles that would result in the application of any law other than the law of the State of Colorado. Venue for all actions arising from this License shall be in the District Court in and for Weld County. The Parties expressly and irrevocably waive any objections or rights which may affect venue of any such action, including, but not limited to, forum non-conveniens or otherwise.

15. Assignment. Licensee shall have the right to assign this License to any affiliate or contractor actively involved in the development of Project Endeavor. Provided that Licensee delivers written notice of such assignment to Licensor, and such assignment is pursuant to a written agreement whereby the assignee assumes all of Licensee's obligations under this License, Licensee shall be released from any obligation or liability accruing on or after the date of such assignment.
16. Binding Effect. This License shall extend to and be binding upon the heirs, personal representatives, successors and assigns of the respective parties.
17. Miscellaneous:

(a) If any terms, provisions, or covenant contained in this License shall to any extent, be invalid or unenforceable, the remainder of this License shall not be affected thereby, and each term, provision and condition hereof shall be valid and enforceable to the fullest extent permitted by law.

(b) The captions of the paragraphs hereof are for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction.

(c) This License may be executed in one or more counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument. Executed copies hereof may be delivered by email of a PDF document, and, upon receipt, shall be deemed originals and binding upon the parties hereto.

(d) All notices or other communications required or permitted hereunder shall be in writing, and shall be delivered to the receiving party at the address below by: (i) personal delivery (including by means of professional messenger service); (ii) nationally recognized overnight courier; or (iii) electronic mail, or electronic transmission of a PDF document, provided it is followed by delivery of a hard copy through one of the methods outlined in (i)-(iii) above, and shall be deemed received upon the date of receipt (or refusal to accept delivery) thereof. Notice of change of address shall be given by written notice in the manner detailed in this Section.

To Licensor:                      Town of Frederick, Colorado  
    401 Locust Street  
    Frederick, CO 80504  
    Attn: Town Manager

with a copy to

Town of Frederick, Colorado  
401 Locust Street  
Frederick, CO 80504  
Attn: Town Attorney

To Licensee: Agilent Technologies, Inc.  
7051 Eagle Blvd.  
Frederick, CO 80504  
Attn: Avelino Reyes  
Email: [avelino.reyes@agilent.com](mailto:avelino.reyes@agilent.com)

with copies to:

GCA Law Partners LLP  
2570 W. El Camino Real, Suite 400  
Mountain View, California 94040  
Attn: Peter Schwab  
Email: [pschwab@gcalaw.com](mailto:pschwab@gcalaw.com)

and:

Davis Graham & Stubbs LLP  
1550 17th Street  
Suite 500  
Denver, CO 80202  
Attn: David Kuosman  
Email: [david.kuosman@dgsllaw.com](mailto:david.kuosman@dgsllaw.com)

(e) In the event of any litigation or arbitration to enforce any provision of this License or any right of either party hereto, the unsuccessful party to such litigation or arbitration shall pay to the successful party all costs and expenses at the trial and appellate levels, including reasonable attorneys' fees, incurred therein.

(f) The parties enter into this License for the sole benefit of the parties, to the exclusion of any third-party, and no third-party beneficiary is intended or created by the execution of this License.

(g) This License shall only be effective upon the full execution and delivery by both signatories hereto.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this License as of the date first above written.

LICENSOR:

TOWN OF FREDERICK,  
a Colorado statutory town

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

LICENSEE:

AGILENT TECHNOLOGIES, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**EXHIBIT A**  
**(Depiction of Licensed Area)**

EXHIBIT G

Lease Memorandum  
**MEMORANDUM TO GROUND LEASE**

THIS AGREEMENT is made as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, (“**Effective Date**”) by and between **TOWN OF FREDERICK**, a Colorado statutory town (hereinafter referred to as “**Landlord**”), and **AGILENT TECHNOLOGIES, INC.**, a Delaware corporation (hereinafter referred to as “**Tenant**”).

1. Pursuant to that certain Ground Lease executed concurrently herewith, Landlord has leased to Tenant that certain real property in the County of Denver, State of Colorado, more particularly described in “**Exhibit A**” attached hereto and incorporated herewith (the “**Property**”), with easements as therein specified, for a term extending from the date hereof to \_\_\_\_\_, 2\_\_\_\_, unless terminated earlier according to the terms and conditions of said Ground Lease.

2. Pursuant to the Ground Lease, during the term Tenant has an ongoing right of first offer to purchase the Property and, subject to compliance with any Colorado law requiring a ballot measure or the Property being deemed “excess property”, an option to purchase the Property from and after the fifth (5<sup>th</sup>) anniversary of the date of the Ground Lease.

3. This Memorandum of Ground Lease is and shall be subject to all the conditions, covenants, restrictions, terms and provisions set forth in said Ground Lease.

4. The covenants contained herein and in said Ground Lease shall run with the land and shall bind and inure to the benefit of the parties hereto and their respective heirs, successors, and assigns.

[signatures on following page]

IN WITNESS WHEREOF, the parties have executed this Memorandum of Ground Lease on the day and year first above written.

“LANDLORD”

**TOWN OF FREDERICK, COLORADO,**  
a statutory town

By: \_\_\_\_\_  
Name:  
Title:

“TENANT”

**AGILENT TECHNOLOGIES, INC.,**  
a Delaware corporation

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT "A"**

**TO MEMORANDUM OF LEASE**

**LEGAL DESCRIPTION**

Lot 1A, Eagle Business Park, Filing No. 2, Town of Frederick, County of Weld, State of Colorado.

For Informational Purposes:  
Tax ID No.: R6784796