

## UNDERWRITER ENGAGEMENT AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and among Fremont County, Colorado (the "Issuer") and Stifel, Nicolaus & Company, Incorporated, (the "Underwriter" or "Stifel"), with reference to the following facts:

### RECITALS

WHEREAS, the Issuer plans to issue Certificates of Participation (the "COPs") to finance the refunding of the Issuer's Certificates of Participation, Series 2013 and Refunding Certificates of Participation, Series 2013, and potentially finance new money for projects within Fremont County (the "Project"); and

WHEREAS, the Issuer desires and is authorized by law to retain the services of the Underwriter in connection with the issuance of the COPs; and

WHEREAS, the Underwriter agrees to be retained by the Issuer and to provide to the Issuer the services described herein; and

WHEREAS, Stifel agrees to act as underwriter, subject to the conditions set forth herein;

NOW therefore, for and in consideration of the mutual promises, covenants, and conditions herein contained, the parties hereto agree as follows:

#### *Scope of Services*

The Issuer has engaged the Underwriter to perform various services related to the issuance of the COPs, which are to be performed within the framework of all relevant rules and regulations. All services are provided on an arm's length, commercial basis and may or may not be provided in conjunction with services provided by advisors to the Issuer, such as, but not limited to, a financial advisor or a municipal advisor.

With this understanding, the Underwriter may provide the following services and perform the following functions with respect to the COPs:

#### **A. Structuring the Financing**

1. The Underwriter will work with the Issuer, its bond counsel, financial advisor, disclosure counsel, and other members of the Issuer's financing team in evaluating specific terms and conditions affecting the COPs with the purposes of meeting the Issuer's financing objectives and assuring appropriate credit quality;
2. The Underwriter will work with the Issuer to create a feasible and efficient structure for the COPs in order to enhance the COPs' marketability; and
3. In cooperation with Issuer, the Underwriter will assist in the preparation of and/or review of all documents necessary to implement the issuance of the COPs, including, but not limited to, authorizing resolutions, certificate purchase agreement, and preliminary and final official statements distributed to potential investors, as required.

## **B. Marketing the Securities**

1. The Underwriter will provide information and material as needed to support presentations for rating agencies and/or insurance companies; if requested;
2. The Underwriter will coordinate printing and distribution of the preliminary and final official statements;
3. Together with the Issuer and other appropriate parties, the Underwriter will provide market information on the timing of the sale of the COPs in relation to the market conditions and financing needs;
4. The Underwriter will arrange for distribution of the final official statements in accordance with Section 240.15c2-12 of Title 17 of the Code of Federal Regulations; and
5. The Underwriter will serve as sole managing underwriter of the COPs, which obligation is conditioned upon the execution of a mutually satisfactory certificate purchase agreement and other customary documentation, and coordinate with all parties so as to consummate the sale and delivery of the COPs in a timely manner.

### ***Regulatory Disclosure***

The Issuer is aware of Section 975 of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the Securities and Exchange Commission's adopted rule commonly known as the "Municipal Advisor Rule" (SEC Rule 15Ba1-1 to 15Ba1-8 -"the Rule") and the underwriter exclusion from the definition of "municipal advisor" for a firm serving as an underwriter for a particular issuance of municipal securities. Some of the services that Stifel will be called upon to perform, such as providing advice with respect to the sizing, structure, timing and terms of the COP issuance, are services that are also commonly provided by financial advisory firms.

However, in providing such services for the COPs, the parties understand and agree that Stifel is serving as an underwriter for this transaction and is permitted to give advice and recommendations under the "underwriter exclusion" provision of the Rule. Issuer agrees that Stifel will not be serving as the Issuer's financial advisor or acting as an agent or fiduciary for the Issuer and that the Issuer will be consulting with its own legal, financial and other advisors. This Agreement and relationship shall be either executed, approved or acknowledged by the governing board of Issuer (the "Governing Board").

### ***Disclosures Required by MSRB Rule G-17 Concerning the Role of the Underwriter***

The Issuer confirms and acknowledges the following disclosures, as required by the Municipal Securities Rulemaking Board (MSRB) Rule G-17 as set forth in MSRB Notice 2019-20 (Nov. 8, 2019)<sup>1</sup>:

The following G-17 conflict of interest disclosures are broken down into three types, including: 1) dealer-specific conflicts of interest disclosures (if applicable); 2) transaction-specific disclosures (if applicable); and 3) standard disclosures. You may receive additional separate disclosure letters pursuant to Rule G-17 from the co-managing underwriters or other syndicate members for the COPs if they have their own dealer-specific or transaction-specific disclosures.

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<sup>1</sup> Revised Interpretive Notice Concerning the Application of MSRB Rule G-17 to Underwriters of Municipal Securities (effective Mar. 31, 2021).

### 1. Dealer-Specific Conflicts of Interest Disclosures

Stifel has not identified any actual or potential<sup>2</sup> material conflicts of interest.

### 2. Transaction-Specific Disclosures: Disclosures Concerning Complex Municipal Securities Financing

Since we have not recommended a “complex municipal securities financing” to the Issuer or Obligor, additional disclosures regarding the financing structure for the COPs are not required under MSRB Rule G-17.

### 3. Standard Disclosures

- Disclosures Concerning the Underwriters’ Role:
  - MSRB Rule G-17 requires an underwriter to deal fairly at all times with both issuers and investors.
  - The underwriters’ primary role is to purchase the securities with a view to distribution in an arm’s-length commercial transaction with the Issuer. The underwriters have financial and other interests that differ from those of the Issuer.
  - Unlike a municipal advisor, an underwriter does not have a fiduciary duty to the Issuer under the federal securities laws and is, therefore, not required by federal law to act in the best interests of the Issuer without regard to its own financial or other interests.
  - The Issuer may choose to engage the services of a municipal advisor with a fiduciary obligation to represent the Issuer’s interest in this transaction.
  - The underwriters have a duty to purchase the securities from the Issuer at a fair and reasonable price, but must balance that duty with their duty to sell the securities to investors at prices that are fair and reasonable.
  - The underwriters will review the official statement for the securities, if any, in accordance with, and a part of, their respective responsibilities to investors under the federal securities laws, as applied to the facts and circumstances of this transaction.<sup>3</sup>
- Disclosures Concerning the Underwriters’ Compensation:
  - The underwriters will be compensated by a fee and/or an underwriting discount that will be set forth in the certificate purchase agreement to be negotiated and entered into in connection with the issuance of the COPs. Payment or receipt of the underwriting fee or discount will be contingent on the closing of the transaction and the amount of the fee or discount may be based, in whole or in part, on a percentage of the principal amount of the COPs. While this form of compensation is customary in the municipal securities market, it presents a conflict of interest since the underwriters may have an incentive to

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<sup>2</sup> When we refer to *potential* material conflicts throughout this letter, we refer to ones that are reasonably likely to mature into *actual* material conflicts during the course of the transaction, which is the standard required by MSRB Rule G-17.

<sup>3</sup> Under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. The review of the official statement by the underwriters is solely for purposes of satisfying the underwriters’ obligations under the federal securities laws and such review should not be construed by an issuer as a guarantee of the accuracy or completeness of the information in the official statement.

recommend to the Issuer a transaction that is unnecessary or to recommend that the size of the transaction be larger than is necessary.

### ***Limitation of Duties***

The Issuer acknowledges and agrees that Stifel is not making a commitment to extend credit, make a loan or otherwise fund the Project beyond the obligations contained in a mutually satisfactory certificate purchase agreement. The Issuer acknowledges that the services provided under this Agreement involve professional judgment by Stifel and that the results cannot be, and are not, guaranteed.

As addressed above, among the services that Stifel will perform under this Agreement is assistance in preparation of, and/or review of the preliminary and final official statements for the COPs. We note, however, that under federal securities law, an issuer of securities has the primary responsibility for disclosure to investors. Our assistance with respect to, and/or review of the official statement will be solely for purposes of satisfying our obligations as underwriter under the federal securities laws and such assistance and/or review should not be construed by the Issuer as a guarantee of the accuracy or completeness of the information in the official statement.

### ***Expenses***

The Issuer, from the COP proceeds, will pay the Underwriter's costs incurred in the performance of this Agreement, including costs of its legal counsel, if any, communication, preparation of the official statements, and overhead expenses.

The Issuer, from the COP proceeds or other lawfully available funds, will pay for legal fees, including disclosure counsel; rating agency and credit enhancement fees including all related travel (if any); the cost of appraisal, fiscal consultant, statistical, computer, and graphics services (if any), cost of printing and distribution of the official statements and expense of publication, advertising, and informational meetings; and the costs of fiscal agent or trustee and registrar.

### ***Compensation***

The Underwriter agrees to prepare and coordinate all aspects of the sale of the COPs. Stifel will be paid only when the COPs are sold. The fee for Stifel's preparation and coordination of the sale of the COPs shall be \$7.50 per \$1,000.00 of COPs sold. The underwriting fee is contingent on a successful sale of the COPs and is payable from the proceeds of the COPs.

### ***Term of Agreement***

This Agreement is to continue until the Project is financed or until the Governing Board formally abandons the Project, unless previously terminated by mutual written consent of the parties hereto.

This Agreement may be terminated at any time by the Issuer, upon five business days' prior notice to such effect to the Underwriter, or by the Underwriter upon five business days' prior notice to such effect to the Issuer. Any such termination, however, shall not affect the obligations of the Issuer under the Expenses section hereof.

### ***Severability of Provisions***

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected thereby if such remainder would then continue to conform to the terms and requirements of applicable law.

### ***Governing Law***

This Agreement, and the rights and obligations of the parties hereto, shall be construed, interpreted and enforced pursuant to the laws of the Colorado, and exclusive venue in any and all actions existing under this Agreement shall be laid in the action or proceeding which Issuer or Underwriter may be required to prosecute to enforce its respective rights within this Agreement. The unsuccessful party therein agrees to pay all costs incurred by the prevailing party therein, including reasonable interest and attorney's fees, to be fixed by court, and said costs, interest, and attorneys' fees shall be made a part of the judgment in said action. Prior to the commencement of any litigation concerning this Agreement, the Issuer and the Underwriter agree to first submit any disagreements to mediation. This mediation requirement is intended to reduce the costs of dispute resolution for both parties.

### ***Subcontractors***

The Underwriter shall, with the prior written approval of the Issuer, use such subcontractors as are necessary in the fulfillment of this Agreement.

### ***Miscellaneous***

Nothing contained herein shall preclude the Underwriter from carrying on its customary and usual business activities. The Underwriter specifically reserves the right, but is not obligated, to bid for and maintain secondary markets on any Issuer outstanding bonds/certificates subject to appropriate information barriers. Services provided by the Underwriter in connection with this Agreement shall not limit the Underwriter from providing services for the Issuer in conjunction with other services requested by the Issuer except as limited by rule of law or regulation.

Stifel certifies that it and its parent company, wholly or majority-owned subsidiaries, and other affiliates, are not currently engaged in, or for the duration of this Agreement will not engage in, a boycott of goods or services from the State of Israel; companies doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel; or persons or entities doing business in the State of Israel. Stifel understands that "boycott" includes, but is not limited to, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations, but does not include an action made for ordinary business purposes.

In connection with services agreed to herein, it is understood that the Underwriter will render professional services as an independent contractor. Neither the Underwriter nor any of its agents or employees shall be deemed an employee of the Issuer for any purpose.

The Underwriter shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of the Issuer.

The Issuer acknowledges and recognizes Stifel as Underwriter with respect to the municipal securities referenced for purposes of MSRB Rule G-23 and Securities and Exchange Commission Rule 17 CFR (Registration of Municipal Advisors) and acknowledges receipt of the G-17 disclosures included herein. It is our understanding that you have the authority to bind the Issuer by contract with us, and that you are not a party to any conflict of interest relating to the subject transaction. If our understanding is incorrect, please notify the undersigned immediately.

This Agreement constitutes the entire agreement between the parties relating to the subject matter thereof and supersedes any prior understandings or representations. The Agreement may be amended or modified only by a writing signed by both parties. It is solely for the benefit of the Issuer and Stifel, and no other person.

This Agreement is submitted in duplicate originals. The acceptance of this Agreement by the Issuer will occur upon the return of one original executed by an authorized Issuer representative, and the Issuer hereby represents that the signatory below is so authorized.

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

Stifel, Nicolaus & Company, Incorporated

By Alan Matlosz

Name: Alan Matlosz

Title: Managing Director

Date: April 14, 2021

**ACCEPTANCE**

**Fremont County**

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_