

AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY  
[City Sale of 906 East Stuart Street, Fort Collins, CO 80525]

**THIS AGREEMENT** is made and entered into this [ ] day of [ ], 2019 (the “Effective Date”), by and between [ ] (“Purchaser”), and **THE CITY OF FORT COLLINS, COLORADO, a municipal corporation**, (“Seller”).

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser agree to be legally bound whereby Seller agrees to convey to Purchaser, and Purchaser agrees to acquire from Seller, the Property as defined below on the terms and conditions set forth in this Agreement.

1. Description of Property. The real property which is the subject matter of this Agreement is that certain parcel of real property located in Larimer County, Colorado, which is legally described on **Exhibit A**, consisting of [ ] pages, attached hereto and incorporated herein by reference (the “Property”). Unless reserved by the Seller as described below, the Property includes all improvements located thereon and all of Seller’s rights, title and interest in and to all appurtenances thereto, including but not limited to the following:

- A. Appurtenances Generally. The Property shall include all improvements now located thereon, including any fences, buildings, landscaping, and other improvements, and all fixtures of a permanent nature. In addition, the Property shall include all of the Seller’s right, title and interest in and to easements, future interests and rights to the same belonging and inuring to the benefit of the Property, and in and to all strips and gores of land lying between the Property and adjoining property or streets, roads or highways, open or proposed.
- B. Water Rights. All water, water rights, corporate stock relating to the use of water, springs, spring rights, wells, well rights, ditches, ditch rights, reservoir rights, tributary, non-tributary, and not non-tributary water, appurtenant to, customarily used with or upon, or relating to the use of water on the Property, and any other water or water rights, located on or appurtenant to the Property, whether or not the same have been adjudicated.
- C. Taps. All water taps, gas taps, and sewer taps belonging or in any way appertaining to the Property.
- D. Mineral Rights. Any and all interests in all minerals, ores, and metals of any kind and character, and all coal, asphaltum, oil, gas, or other like substances including sand and gravel, and all geothermal resources in, on, or under the Property and all other mineral rights as are owned by Seller at the time of this Agreement.

2. Method of Conveyance.

A. Form of Deed. Seller will convey the real property portion of the Property to Purchaser at the time of closing by quitclaim deed in the form attached as **Exhibit B**. The personal property portion of the Property, if any, shall be transferred to Purchaser by Seller at the time of closing by bill of sale or other appropriate transfer document, free and clear of all liens and encumbrances.

3. Purchase Price. The total purchase price of the Property will be \_\_\_\_\_ dollars (\$ \_\_\_\_\_) and will be payable by Purchaser to Seller as follows:

A. The sum of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), representing an earnest money deposit, will be paid by Purchaser by check or immediately available funds to the Title Company as part payment to Seller within three (3) calendar days of the Effective Date.

B. The balance of the purchase price in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_), subject to closing costs and customary prorations, is payable by Purchaser in immediately available funds to the Title Company at the time of closing.

4. Title Insurance.

A. Within ten (10) calendar days following the Effective Date, Seller will provide to Purchaser a Title Insurance Commitment (the "Title Commitment") from **LAND TITLE GUARANTEE COMPANY** ("Title Company"). The Title Commitment must show title to the Property in Seller, subject only to those exceptions set forth on Schedule B-2 to the Title Commitment that are acceptable to Purchaser. Seller is responsible for the cost of the Title Commitment and Title Insurance.

B. If the Title Commitment discloses title defects unsatisfactory to Purchaser and subject to which Purchaser need not take title, Purchaser may give Seller written notice of such defects by the date ten (10) calendar days after the Effective Date or the date ten (10) calendar days after Purchaser's receipt of the Title Commitment, whichever is later, and no later than ten (10) calendar days after notice of any title change or discovery of any title defect not disclosed by the Title Commitment. Seller must attempt in good faith to cure such defects prior to the date of closing, at its expense, without in any other manner affecting the terms of this Agreement.

- C. If any instrument or deposit is necessary in order to correct a defect in or objection to title, the following apply:
- (1) Any instrument will be in a form and contain terms and conditions Title Company may reasonably require so as to be sufficiently satisfied and omit such defects or objection.
  - (2) Any deposit will be made with Title Company.
  - (3) Seller agrees to execute, acknowledge and deliver any required instrument and to make any required deposit.
- D. If Title Company refuses to omit any title defect or objection prior to closing, then Purchaser, at its election, has the right to:
- (1) accept such title as Seller is able to convey, without any reduction of the purchase price; or
  - (2) rescind this Agreement and, upon such rescission pursuant to this paragraph, Purchaser will be entitled to the return of the amount of money theretofore paid to Seller or its agent. Upon such payment, this Agreement will be null and void and of no further effect, and all parties to this Agreement will be released from all obligations hereunder.
- E. If Seller is unable to convey title as provided in this paragraph 4 to Purchaser due to an act or omission of Seller that is within the authority of Seller's City Manager, Seller is in default and continues to be liable under this Agreement.
- F. Notwithstanding the foregoing,
- (1) any title condition consisting of monetary liens, deeds of trust or other financial encumbrances against the Property must be removed by Seller at or prior to closing, and Seller's failure to cause the removal of the same will constitute a default by Seller under this Agreement; and
  - (2) in the event Seller fails to cause the removal of a financial encumbrance against the Property prior to closing, Purchaser has the right to pay amounts required to do so at closing, and to receive a credit for such payment against the Purchase Price.

5. Survey/Legal Description. The parties each acknowledge that a legal description of the Property is attached to and incorporated by reference into this Agreement, and each acknowledges having received a copy of any such description. The parties agree that it is their intent that the referenced legal description describes the Property except as otherwise expressly provided, and agree to work in good faith and cooperatively to correct technical errors that any such legal description is determined to contain.

6. Special Taxing Districts. Special taxing districts may be subject to general obligation indebtedness that is paid by revenues produced from annual tax levies on the taxable property within such districts. Property owners in such districts may be placed at risk for increased mill levies and excessive tax burdens to support the servicing of such debt where circumstances arise resulting in the inability of such a district to discharge such indebtedness without such an increase in mill levies. Purchaser should investigate the debt financing requirements of the authorized general obligation indebtedness of such districts, existing mill levies of such district servicing such indebtedness, and the potential for an increase in such mill levies.

7. Maintenance of the Property/Title. Seller must keep, or cause to be kept, the Property in its condition as of the Effective Date until the closing of this transaction, subject to normal wear-and-tear and seasonal changes, and agrees not to commit or permit waste thereon. Seller must not cause or permit new liens, easements or other encumbrances on the title to the Property, except as expressly agreed by Purchaser in writing.

8. Representations of Seller. Based on a reasonable inquiry within Seller's municipal organization on behalf of Seller's City Manager, Seller represents and warrants to the best of Seller's knowledge, as of the Effective Date and as of the closing, as follows:

- A. There is no litigation proceeding, including but not limited to any eminent domain proceeding, pending (or to Seller's knowledge threatened) against or relating to any part of the Property, nor does Seller know of or have reasonable grounds to know of any basis for any such action.
- B. Seller has not received notice of, and to the best of Seller's knowledge, there are no violations of any laws, orders, regulations or requirements of any governmental authority affecting the Property or any part thereof.
- C. Seller has the unconditional right and power to execute and deliver this Agreement and to consummate the transaction(s) contemplated by this Agreement.
- D. Seller has not received notice of default or breach by Seller of any of the covenants, conditions, restrictions, rights-of-way or easements affecting the Property or any portion thereof; no default or breach now exists or will exist on the date of closing; and no event or condition has occurred and is

continuing that, with or without notice and/or the passage of time, will constitute such a default or breach.

E. Seller represents that it has provided to Purchaser all environmental reports and, to the extent permitted by law, any other documentation in Seller's possession related to Seller's ownership of the Property.

F. **THE SURFACE ESTATE OF THE PROPERTY MAY BE OWNED SEPARATELY FROM THE UNDERLYING MINERAL ESTATE, AND TRANSFER OF THE SURFACE ESTATE MAY NOT INCLUDE TRANSFER OF THE MINERAL ESTATE. THIRD PARTIES MAY OWN OR LEASE INTERESTS IN OIL, GAS, OR OTHER MINERALS UNDER THE SURFACE, AND THEY MAY ENTER AND USE THE SURFACE ESTATE TO ACCESS THE MINERAL ESTATE.**

**THE USE OF THE SURFACE ESTATE TO ACCESS THE MINERALS MAY BE GOVERNED BY A SURFACE USE AGREEMENT, A MEMORANDUM OR OTHER NOTICE OF WHICH MAY BE RECORDED WITH THE COUNTY CLERK AND RECORDER.**

**THE OIL AND GAS ACTIVITY THAT MAY OCCUR ON OR ADJACENT TO THIS PROPERTY MAY INCLUDE, BUT IS NOT LIMITED TO, SURVEYING, DRILLING, WELL COMPLETION OPERATIONS, STORAGE, OIL AND GAS, OR PRODUCTION FACILITIES, PRODUCING WELLS, REWORKING OF CURRENT WELLS, AND GAS GATHERING AND PROCESSING FACILITIES.**

**THE BUYER IS ENCOURAGED TO SEEK ADDITIONAL INFORMATION REGARDING OIL AND GAS ACTIVITY ON OR ADJACENT TO THIS PROPERTY, INCLUDING DRILLING PERMIT APPLICATIONS. THIS INFORMATION MAY BE AVAILABLE FROM THE COLORADO OIL AND GAS CONSERVATION COMMISSION.**

9. Condition of the Property.

A. Purchaser acknowledges and agrees that except as specifically set forth elsewhere in this Agreement, Seller has not made, and does not make, any representations, warranties, promises, covenants or agreements of any kind or nature, whether express or implied, oral or written, concerning or with respect to:

- (1) the value, nature, quality or condition of the Property;
- (2) suitability of the Property for any uses contemplated by Purchaser;  
or
- (3) compliance of or by the Property or its operation with any laws, rules, ordinances or regulations of any applicable governmental authority, including, without limitation, any such laws, rules ordinances or regulations concerning environmental protection, pollution or land use.

B. By closing, Purchaser will be acknowledging that Purchaser has had the opportunity to inspect the Property, and that with the exception of any representations or warranties specifically set forth in this Agreement, Purchaser is relying solely on its own investigation of the Property. Purchaser furthermore acknowledges that its acquisition of the Property shall be on an "AS IS basis" without further improvement or remediation by Seller, and any claims against Seller in connection with any representations or warranties (except those specifically set forth elsewhere in this Agreement and except any warranties of title contained in the deed to be delivered at closing) are hereby released and waived by Purchaser.

10. Inspection. Purchaser or any designee of Purchaser has the right to make inspections of the physical condition of the Property and the improvements located thereon at Purchaser's expense. These inspections may include, but are not limited to, environmental assessments and inspections regarding compliance with any building or fire code, environmental protection, pollution or land use or zoning laws, rules or regulations, including, but not limited to any laws relating to the disposal or existence of any hazardous substance or other regulated substance in or on the Property. If Purchaser does not provide to Seller written notice of any unsatisfactory condition, as determined at Purchaser's sole discretion, signed by an authorized representative of Purchaser, on or before [ ], Purchaser waives any objection to the physical condition of the Property and the improvements located thereon as of that date. If Purchaser provides written notice of any unsatisfactory condition, signed by an authorized representative of Purchaser, to Seller on or before [ ], and Seller does not provide written notice to Purchaser by [ ], that Seller will cure such conditions prior to closing, Purchaser may terminate this Agreement. Upon such termination, all payments and things of value received hereunder by Seller must be returned to Purchaser. Purchaser is responsible and will pay for any damage that occurs to the Property and the improvements located thereon as a result of these inspections. If Purchaser does not provide written notice to Seller by [ ], that Purchaser has opted to terminate this agreement, then Purchaser accepts all physical conditions of the Property and is obligated to perform pursuant to the remainder of this Agreement.

11. Closing. The parties agree to close this transaction by [ ], at 5:00 p.m. at 772 Whalers Way Suite 100, Fort Collins, CO 80525 or at such other reasonable time, date or

location as the parties may mutually agree.

12. Possession. Seller will deliver possession of the Property to Purchaser at closing.

13. Proration. Real property taxes and assessments and similar expenses, in accordance with local practice, will be prorated as of the date of closing, to the extent such taxes, assessments and expenses apply to Seller.

14. Remedies on Default. If any note or check received as earnest money hereunder or any other payment due hereunder is not paid, honored or tendered when due, or if any other obligation hereunder is not performed as herein provided, the remedies are:

- A. If Seller is in default, then the earnest money deposit, if any, is forfeited by Seller and must be returned to Purchaser, and both parties will be released from all obligations under this Agreement. Purchaser may recover direct damages as may be proper and Purchaser expressly waives the remedies of specific performance and additional damages.
- B. If Purchaser is in default, Seller may elect to treat this Agreement as terminated, in which case all payments and things of value received hereunder will be returned to Purchaser, and Seller may recover such damages as may be proper, or Seller may elect to treat this Agreement as being in full force and effect, and Seller will have the right to an action for specific performance or damages, or both.

15. Notices. Any notice or other communication given by either party to the other relating to this Agreement must be in writing and shall be deemed given (i) when delivered personally, or (ii) on the first business day which is three (3) days following mailing by certified mail, return receipt requested and postage prepaid, or (iii) the next business day after sending by a nationally recognized overnight delivery service, and addressed to the party at its respective address as follows:

If to Purchaser:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, CO [zip]

With a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_, CO [zip]

If to Seller:  
Real Estate Services Manager  
City of Fort Collins  
300 Laporte Avenue, Bldg. B  
Fort Collins, CO 80521

With a copy to:  
City Attorney's Office  
City of Fort Collins  
**Mailing Address:**  
P.O. Box 580  
Fort Collins, CO 80522-0580  
**Hand Delivery:**  
300 Laporte Avenue, Bldg. A  
Fort Collins, CO 80521

16. Assignment. This Agreement must not be assigned by either of the parties hereto without the prior written consent of the other party.

17. Risk of Loss. Seller shall bear all risk of loss with respect to the Property up to the date title is transferred in accordance with this Agreement. In the event of damage to any portion of the Property by fire or other casualty prior to the closing which damage either affects 5% of the usable facilities on the Property or reduces the value of the Property by 5%, then this Agreement may be terminated at the option of Purchaser. This option shall be exercised, if at all, by Purchaser's written notice thereof to Seller within thirty (30) calendar days after receipt of written notice of such fire or other casualty. Upon the exercise of such option to terminate, this Agreement shall become null and void, and neither party shall have any further liability or obligations hereunder, except as otherwise provided in this Agreement. Closing may be delayed for up to thirty (30) calendar days for Purchaser to decide whether to exercise this option.

18. Lead-Based Paint. Unless exempt, if the improvements, if any, on the Property include one or more residential dwellings for which a building permit was issued prior to January 1, 1978, this Agreement shall be void unless a completed Lead-Based Paint Disclosure (Sales) form is signed by Seller and the required real estate professionals, if any, which shall have occurred prior to the parties signing this Agreement.

19. Recommendation of Legal and Tax Counsel. By signing this document, Purchaser acknowledges that Purchaser has been advised that this Agreement has important legal consequences and has received the recommendation to consider the examination of title and consultation with legal and tax or other counsel before signing this Agreement.

20. Entire Agreement, Modification. This Agreement constitutes the entire contract between the parties relating to the conveyance of the Property, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this Agreement.



No subsequent modification of any of the terms of this Agreement will be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

21. Headings. Paragraph headings are used for convenience of reference and in no way define, limit or prescribe the scope or intent of any provision under this Agreement.

22. Construction. Words of the masculine gender include the feminine and neuter gender and when the sentence so indicates, words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa. Definitions of defined terms are intended to apply throughout this Agreement. This Agreement is to be construed according to its fair meaning, and as if prepared by all parties, and is deemed to be and contain the entire understanding and agreement between the parties.

23. Time is of the Essence. It is agreed that time is of the essence of this Agreement and each and every provision.

24. Binding Effect / Joint and Several Liability. This Agreement is binding upon and inures to the benefit of the parties and their respective heirs, administrators, successors and assigns. If Seller consists of more than one individual or entity, each such individual or entity is jointly and severally liable for any and all obligations of Seller hereunder.

25. Litigation Expenses. In the event any party defaults in any of its covenants or obligations and a party not in default commences and prevails in any legal or equitable action against the defaulting party, the defaulting party expressly agrees to pay all reasonable expenses of the litigation, including a reasonable sum for attorneys' fees or similar costs of legal representation.

26. Brokers. [\*EITHER; Seller and Purchaser each represent and warrant to the other that such party has not employed, retained or consulted any broker, agent or other real estate professional with respect to the Property. OR: The [\*Seller / Purchaser\*] has retained a real estate broker and shall be and hereby is solely responsible for paying any and all commission due as a result of this sale transaction to said broker, [fill in name]. [\*Purchaser / Seller \*] hereby warrants that it has neither employed nor retained or consulted any broker, agent, or other finder with respect to the Property, nor is any such broker, agent, or other finder the procuring cause for [\*Purchaser / Seller\*] entering into this Agreement.\*] Purchaser and, to the extent permitted by law, Seller, each indemnify and hold the other harmless from and against all claims, demands, causes of action, debts, liabilities, judgments and damages, including, without limitation, any related litigation expenses, that may be asserted or recovered against the other on account of any breach of this representation and warranty.

27. Contingencies. This Agreement is hereby made expressly contingent upon the City Council of the City of Fort Collins (the "Council") approving the conveyance of the Property by its final adoption of a related ordinance, in its discretion, on or before **January 31, 2019**. If the Council does not pass such an ordinance on second reading on or before that date

then this Agreement shall be automatically terminated, all parties shall be released from all obligations hereunder and any monies paid to Seller by Purchaser pursuant to this Agreement shall be refunded in full.

If, however, the Council does pass such an ordinance on or before [DATE], but within ten (10) days of the passage of the ordinance a notice of protest against the ordinance is filed with the City Clerk of the City of Fort Collins pursuant to Section 2(b) of Article X of the Charter of the City of Fort Collins, then this Agreement shall remain in full force and effect until either the Council repeals the ordinance or the electors vote to repeal the ordinance in accordance with Section 2(c) of Article X of the Charter of the City of Fort Collins. In the event the ordinance is repealed by Council or by the electors, then this Agreement shall be automatically terminated, all parties shall be released from all obligations hereunder and any monies paid to Seller by Purchaser pursuant to this Agreement shall be refunded in full.

If the Council does not repeal the ordinance and if the electors approve the ordinance, then the closing of this transaction shall be held in accordance with paragraph 11, above, no less than eleven (11) days after the date of the elector's approval of the ordinance.

28. Authority. Each person executing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement in his or her individual or representative capacity as indicated.

29. Counterpart and Electronic Signatures. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement. Signatures may be delivered by electronic copy. Electronic signatures are binding on the parties as if they were originals.

30. Recording. Purchaser may record this Agreement in the real property records of the Larimer County Clerk and Recorder.

31. Governing Law/Venue. The parties intend and agree that this Agreement is to be construed and enforced according to the laws of Colorado, and that venue in any proceeding related to the subject matter of this Agreement will be in Larimer County, Colorado.

**[Signatures on pages 11 and 12]**

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

**PURCHASER:**

\_\_\_\_\_,  
a \_\_\_\_\_

Date: \_\_\_\_\_

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

STATE OF COLORADO    )  
  ) ss  
COUNTY OF \_\_\_\_\_)

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_, \_\_\_\_\_, by \_\_\_\_\_, [as \_\_\_\_\_ for \_\_\_\_\_].

Witness my hand and official seal.

My Commission expires:

\_\_\_\_\_  
Notary Public

**SELLER:**

**THE CITY OF FORT COLLINS, COLORADO**  
**a Municipal Corporation**

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Darin A. Atteberry, City Manager

ATTEST:

\_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Assistant City Attorney

STATE OF COLORADO     )

) ss

COUNTY OF LARIMER     )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_, by Darin A. Atteberry as City Manager of the City of Fort Collins.

Witness my hand and official seal.

My Commission expires:

\_\_\_\_\_  
Notary Public