

## **PURCHASE AND SALE AGREEMENT (Water Storage Tank Parcel)**

This PURCHASE AND SALE AGREEMENT ("Agreement") is made and entered into as of May 27, 2025 ("Effective Date"), by and between the City of Lafayette, a Colorado home rule municipality, whose mailing address, for purposes of this Agreement, is 1290 South Public Road, Lafayette, Colorado 80026 ("Seller"), and the Town of Erie, a Colorado home rule municipality, whose mailing address, for purposes of this Agreement, is 645 Holbrock Street, Erie, Colorado 80516 ("Purchaser"). Seller and Purchaser may be referred to individually as a "Party" and collectively as the "Parties."

### **RECITALS**

- A. Seller owns the certain real property located within the City of Lafayette, County of Boulder, State of Colorado, legally described in **Exhibit A** attached hereto and by this reference made a part of this Agreement ("Property"). The Property consists of approximately 3.04 acres of land.
- B. Purchaser desires to purchase the Property to construct a water storage tank, pump station, generator and associated infrastructure (collectively, the "Water Tank") and to connect the Water Tank to Purchaser's municipal water supply, all to serve the residents and water users of the Town of Erie.
- C. The Parties acknowledge that this Agreement is in furtherance and fulfillment of the Parties' agreement to cooperate to find a suitable location for Purchaser's water storage facility per the Intergovernmental Agreement between Seller, Purchaser, and the Town of Erie Urban Renewal Authority dated June 4, 2019 (the "IGA").

### **AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals and the promises, payments, covenants, and undertakings hereinafter set forth, and other good and valuable consideration, which is hereby acknowledged and receipted for, Purchaser and Seller agree as follows:

#### **1. Property**

- a. Seller agrees to sell and convey, and Purchaser agrees to purchase, subject to the terms and conditions set forth herein, the real property located in the City of Lafayette, County of Boulder, State of Colorado, legally described in **Exhibit A** attached hereto and incorporated herein by this reference (the "Property"). The Property is currently vacant and unimproved, except for perimeter fencing and a gate.
- b. Purchaser may at its sole expense contract for an ALTA engineering survey of the Property sufficient to satisfy the requirements of the Title Company to delete the standard pre-printed exceptions from the Purchaser's title policies, as set

forth in Paragraph 7 below. The survey shall be certified to Seller, Purchaser, and the Title Company and shall include a certificate of acreage of the Property. Within one week of the execution of this Agreement, Seller shall notify Purchaser of any leases, tenancies, or rental agreements, verbal and/or written, which affect the Property in any way.

- c. The Parties acknowledge and agree that this Agreement and Purchaser's acquisition of the Property upon Closing (as defined below) fulfills the Parties' obligations to cooperate to find a suitable location for an above-ground water storage facility of sufficient elevation to provide fire flow, emergency water storage, and drinking water supply for Town of Erie water customers in accordance with Section III.B. of the "INTERGOVERNMENTAL AGREEMENT - CITY OF LAFAYETTE -TOWN OF ERIE -TOWN OF ERIE URBAN RENEWAL AUTHORITY - Comprehensive Development Plan/Dispute Resolution" dated June 4, 2019.

## **2. Purchase Price**

- a. The total purchase price for a fee simple interest in the Property shall be One Million Dollars and No Cents (\$1,000,000.00) ("Purchase Price"), payable by the Purchaser in full at Closing, subject to closing costs and customary prorations.
- b. The Purchase Price for the Property does not include any surface or subsurface water and water rights, ditches or ditch rights, pond or pond rights, well or well rights, whether decreed or not, if any, attached or appurtenant to or used in connection with the Property and owned by Seller.
- c. No earnest money deposit is required in connection with this transaction, the mutuality of the promises of the Parties hereto being deemed adequate consideration.

## **3. Closing Date**

- a. Closing shall occur no later than 60 days after the Effective Date, or such other date as mutually agreed in writing by the Parties ("Closing Date"), at the offices of Fidelity National Title Insurance Company ("Title Company") or remotely by electronic exchange of documents and funds ("Closing").
- b. Except as otherwise provided herein, the Purchaser shall be 100% responsible for the payment of all closing costs.

## **4. Contingencies**

### **a. Closing Contingent Upon Rezoning Property to "Public"**

- 1. Purchaser's obligations under this Agreement are contingent upon the Property being rezoned by the City Council of the City of Lafayette to the

"Public" zone district prior to Closing. Seller shall use good faith and commercially reasonable efforts to process and approve the rezoning in accordance with the City of Lafayette's applicable law and procedure for property owned by the City of Lafayette. If requested by Seller, Purchaser shall cooperate in the rezoning process, including providing letters of support or participation in public hearings.

2. If the rezoning is not completed and effective by the scheduled Closing Date, Purchaser may (i) terminate this Agreement, or (ii) extend the Closing for up to ninety (90) days to allow the rezoning to be completed.

#### **b. Post-Closing Easement Cooperation**

1. The Parties acknowledge that Purchaser will need to connect the Water Tank to Purchaser's municipal water utility system. Following Closing, Seller will cooperate in good faith with Purchaser to grant easements over, upon, or within Seller's property or Seller's public rights-of-way as necessary to construct, operate, and maintain water lines to connect the Water Tank to Purchaser's municipal water utility system, provided, however, that Seller has no obligation to grant easements to Purchaser that will conflict with or interfere with other public or private facilities, utilities, or easements or the operation or maintenance thereof or access thereto. Seller agrees to reasonably grant such easements, subject to Seller's legal, engineering, and planning review and approval of the location, design, and construction drawings for all facilities to be constructed and operated by Purchaser within such easements, and subject to the execution of mutually acceptable easement agreement(s) between Seller and Purchaser.
2. Seller agrees to waive consideration for the granting of such easements, provided, however, that Purchaser remains responsible for paying all required plan review and inspection fees, building permit fees, right-of-way permit fees, and other then-current City of Lafayette fees related to Purchaser's construction, development, and use of the Property after Closing.
3. Purchaser is solely responsible for obtaining any ditch crossing agreements, easements, or other permissions from other public and private parties as necessary for Purchaser's construction, operation, maintenance, and use of the Property for the Water Tank.

#### **c. Recordation of Disconnection Ordinance**

No later than May 28, 2025, Purchaser will record in the real property records of the Boulder County, Colorado, Clerk and Recorder, the fully executed Town of Erie Ordinance No. 012-2025 to effectuate the disconnection of the real property legally described in the "Exhibit A" attached to such ordinance, which property is generally located at the northeast corner of Highway 287 and Arapahoe Road.

If Purchaser does not provide proof of recording of Town of Erie Ordinance No. 012-2025 to Seller on or before May 29, 2025, this Agreement shall terminate and the Parties shall have no further obligations hereunder.

**d. Purchaser's Obligation to Commence Development of Water Tank**

Purchaser agrees that the Property shall be used solely for the development, construction, and operation of the Water Tank. Purchaser agrees to commence design of the Water Tank on or before May 30, 2026.

**e. Closing Contingent on Purchaser's Conveyance of Prince Lake Parcel**

1. The Closing upon the Property is contingent upon and shall not occur until after Purchaser has closed upon or otherwise conveyed to Tebo Partnership LLLP that real property legally described in the "Exhibit A" attached to Town of Erie Ordinance No. 012-2025.
2. If such conveyance is not completed and effective by the scheduled Closing Date, Seller may (i) terminate this Agreement, or (ii) extend the Closing for up to thirty (30) days to allow the conveyance to be completed.

**f. Closing Contingent on Enactment of Ordinances**

1. In accordance with Sec. 12.1 of the City of Lafayette Home Rule Charter ("Lafayette Charter"), the Closing is contingent upon the City of Lafayette City Council's enactment of an ordinance authorizing the sale and disposal of the Property, and upon such ordinance taking effect in accordance with Sec. 7.3 of the Lafayette Charter.
2. In accordance with Sec. 15.01 of the Town of Erie Home Rule Charter ("Erie Charter"), the Closing is contingent upon the Town of Erie Town Council's enactment of an ordinance authorizing the purchase of the Property, and upon such ordinance taking effect in accordance with Sec. 6.03 of the Erie Charter.
3. If the ordinances referenced in paragraphs 1. and 2. above are not both in effect by the scheduled Closing Date, the Parties may agree to extend the Closing for up to thirty (30) days to allow additional time for the necessary ordinance(s) to be enacted and to take effect. Alternatively, the Parties may mutually agree in writing to terminate this Agreement.

**5. Title and Survey**

1. Purchaser shall obtain a Title Insurance Commitment (the "Title Commitment") from a Colorado-licensed title insurance company ("Title Company") and shall provide a copy of the Title Commitment to the Seller, within five (5) days after the Effective Date. Purchaser shall update such title

work to commitments insuring Purchaser's ownership of a fee simple interest in the Property, in amounts determined by Purchaser, but in an amount no less than the Purchase Price. The Title Commitment shall include copies of all exception documents identified in the Title Commitment. Purchaser is responsible for the cost of the Title Commitment, any updates thereto, and any Title Insurance.

2. The Title Commitment shall be on a form acceptable to Purchaser. Purchaser shall be solely responsible for the cost of the Title Commitment and the owner's policies of title insurance issued pursuant to the Title Commitment. Purchaser may update the Title Commitment up to and including the date of closing and the latest updated Title Commitment shall be attached as **Exhibit C** hereto.
3. Should title not be merchantable, or if the Title Commitment includes exceptions which are not acceptable to Purchaser (even though such exceptions would not make the title unmerchantable), a written notice of the defects shall be given to Seller by Purchaser within five (5) days after receipt of the Title Commitment. Seller agrees to attempt to correct such defects at Seller's expense within ten (10) days from receipt of said notice of defects, and the closing may be postponed for up to twenty (20) days. If Seller has not corrected such defects within the twenty (20) days, Purchaser, at its option, may complete the transaction notwithstanding the defects or may, upon notice to Seller in recordable form, declare this Agreement terminated, whereupon all payment made by Purchaser to Seller shall be returned to Buyer and all Parties shall be released herefrom.
4. Purchaser and Seller shall comply with all Requirements contained in Schedule B, Part I of the Title Commitment, and in the event Seller fails to cause the payment, removal, subordination or elimination of a financial encumbrance against the Property, if any, prior to closing, Purchaser has the right to either pay amounts required to do so at closing, and to receive a credit for such payment against the Purchase Price, or to terminate this Agreement.

## **6. Due Diligence and Inspection Period**

1. Purchaser shall have thirty (30) days from the Effective Date ("Inspection Period") to conduct investigations of the Property, including environmental, geotechnical, title, and survey due diligence.
2. Purchaser may terminate this Agreement at any time during the Inspection Period, in its sole discretion, by written notice to Seller. If Purchaser so terminates, neither Party shall have further obligation.

## **7. Seller's Warranties**

Seller hereby represents and warrants to Purchaser that as of the date of the signing of this Agreement:

- a. Seller has received no notice of and to the best of Seller's knowledge has no other knowledge of any litigation, claim, proceeding or investigation, pending or currently threatened, which in any manner affects the Property; and
- b. Seller has received no notice and to the best of Seller's knowledge has no other knowledge of any current, existing violations or pending investigations into possible violations of any federal, state or local law, code, ordinance, rule, regulation or requirement affecting the Property; and
- c. Seller has the full right, power and authority to transfer and convey a fee simple interest in the Property to Purchaser as provided in this Agreement and to carry out Seller's obligations under this Agreement; and
- d. Each and every document, schedule, item, and other information delivered or to be delivered by Seller to Purchaser hereunder, or made available to Purchaser for inspection hereunder, is true, accurate, and correct; and
- e. There are no leases, tenancies, or rental agreements relating to the Property, or to any part thereof, which cannot be terminated by Seller on or prior to the date of closing of the transactions provided in the Agreement.

## **7. Closing Deliverables**

At Closing, the Parties shall deliver the following:

- a. Seller:
  - Special warranty deed;
- b. Purchaser:
  - Balance of Purchase Price;

## **8. Costs and Prorations**

- a. Purchaser shall pay the title insurance premium(s) and deed recording fees.
- b. Purchaser shall pay its own legal and engineering costs, and 100% of the Closing costs.
- c. Taxes (if any) shall be prorated between the Parties as of the Closing Date.

- d. Any real estate commission due to any broker upon sale of the Property to Purchaser shall be paid by Purchaser. Seller represents to Purchaser that Seller is not a party to a contract which requires the payment of any real estate commission upon sale of a fee simple interest in the Property to Purchaser.
- e. Each Party shall bear its own attorneys' fees.

## **8. Possession.**

Seller will deliver possession of the Property to Purchaser immediately after Closing.

## **9. Remedies on Default.**

If any obligation hereunder is not performed as herein provided, the remedies are as follows:

- a. If Purchaser is in default, then Seller may terminate this Agreement and both Parties will be released from all obligations under this Agreement. Seller may thereafter recover damages as may be proper, but Seller expressly waives the remedy of specific performance.
- b. If Seller is in default, Purchaser may elect to treat this Agreement as terminated, and Purchaser may also recover such damages as may be proper, or alternatively, Purchaser may elect to treat this Agreement as being in full force and effect, and Purchaser will have the right to an action for specific performance or damages, or both.

## **10. Agreement to Survive Closing**

The Parties agree that, except for such of the terms, conditions, covenants and agreements hereof which are, by their very nature fully and completely performed upon the Closing of the purchase-sale transactions herein provided for, all of the terms, conditions, representations, warranties, covenants, and agreements herein set forth and contained shall survive the Closing of the purchase-sale transaction herein provided for and shall continue after said closing to be binding upon and inure to the benefit of the Parties, their successors and assigns.

## **10. Miscellaneous**

- a. Governmental Authority  
Each Party represents it has full power and authority to enter into and perform this Agreement. Each person executing this Agreement represents and warrants that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.

- b. Public Purpose  
Purchaser affirms that it is acquiring the Property for public purposes in furtherance of its governmental function.
- c. Appropriation of Funds  
The Closing of this Agreement is contingent upon the appropriation of funds by the Town of Erie Town Council sufficient to pay the Purchase Price on or before the Closing Date. In the event there is no such appropriation, this Agreement shall terminate.
- d. Governing Law  
This Agreement shall be governed by the laws of the State of Colorado.
- e. Entire Agreement  
This Agreement constitutes the entire agreement and supersedes all prior understandings, written or oral.
- f. Amendment  
This Agreement may only be amended in writing signed by both Parties.
- g. Counterparts  
This Agreement may be executed in counterparts and by electronic signature.

*[The remainder of this page is intentionally blank. Signatures begin on the following page.]*



IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

SELLER:

**CITY OF LAFAYETTE**

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

Name: Kady Doelling

Title: City Manager

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

PURCHASER:

**TOWN OF ERIE**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **Exhibit A – Legal Description of the Property**

Lot 1A, WEST RIDGE FILING NO. 1, REPLAT A, in the City of Lafayette,  
County of Boulder, State of Colorado,

also known by Boulder County Assessor's Account Number **R0608973** and  
Parcel Number **146534071001**