

**AGREEMENT FOR PURCHASE AND SALE OF
EQUIVALENT RESIDENTIAL UNITS OF WATER (EQRs) BETWEEN
GAIL M. HARTLEY NON-EXEMPT MARITAL TRUST AND THE CITY OF EVANS**

This Agreement for Purchase and Sale of Equivalent Residential Units of Water ("EQRs") ("Agreement") is entered into on April _____, 2021, ("Effective Date") between the Gail M. Hartley Non-Exempt Marital Trust ("Seller") and the City of Evans, a Colorado Municipality. (When the City of Evans is being referred to in its capacity as the purchaser of the EQRs under this Agreement, the City will be referred to as "Buyer.") For purposes hereof, the Seller and Buyer may be referred to individually as a "Party" and collectively as the "Parties."

RECITALS

A. The City of Evans, in the administration of its water rights dedication ordinance, recognizes an interest known as an "equivalent residential unit" of water (an "EQR") as defined at Sec. 13.08.030 of the City's municipal code. Each EQR represents a right to receive a specified level of water service as more fully described in the City code. Seller owns and controls not less than one hundred thirty-three and three-quarters (133.75) such EQRs. The Sellers' EQRs are currently banked in Seller's name within the records maintained by City's Director of Public Works. Seller's EQRs are not currently dedicated to any specific development or parcel of real property and may be transferred pursuant to provisions of Evans City Code Sec. 13.08.072.

B. Seller desires to sell, convey, and transfer unto Buyer, and Buyer desires to purchase, acquire, and receive from Seller, the beneficial title to exactly 133.75 EQRs.

AGREEMENT

In consideration of the foregoing recitals, which are incorporated herein, the mutual promises of the Parties under this Agreement, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller and Buyer agree as follows:

1. Acknowledgement of Parties. The Parties acknowledge and agree that the foregoing recitals are true and correct statements of fact.
2. Purchase and Sale. Seller hereby agrees to sell, transfer, and assign to Buyer all of Seller's right, title, and interest in and to the 133.75 EQRs, as set forth herein, free and clear of all liens and encumbrances and Buyer hereby agrees to purchase all of Seller's right title and interest in and to the 133.75 EQRs from Seller upon and subject to the terms and conditions set forth in this Agreement.
3. Purchase Price. The total purchase price to be paid by Buyer to Seller at the Closing (as defined below) shall be Two Million Eight Hundred Seventy-five Thousand Six Hundred Twenty-Five (\$2,875,625.00) Dollars (the "Purchase Price"), which is calculated on the basis of \$21,500.00 per EQR multiplied by the 133.75 EQRs that are the object of this transaction.
4. Payment of Purchase Price. Upon mutual execution of this Agreement and all accompanying documents, Buyer shall deliver to Seller via Attorney Douglas W. Brown of Brown Dunning Walker Fein, PC, a check in the amount of the purchase price. Seller's attorney shall sign an acknowledgement of receipt of purchase price when he takes possession of it.
5. Transfer of Ownership. Upon mutual execution of this Agreement and all accompanying transactional documents, the ownership of the 133.75 EQRs which are the subject of this transaction shall be conveyed from Seller to Buyer free and clear of all liens and encumbrances.
6. Documents. The documents required for this transaction shall be as follows:
 - a. This Agreement;

- b. An Acknowledgement of Transfer Notification; and
- c. An acknowledgement of receipt of purchase price by Seller.

8. Cooperation. Seller agrees to take all necessary actions necessary to ensure that the EQRs are transferred free and clear of liens and encumbrances and that the City acknowledges such transfer and has updated its records to reflect Buyer as the owner of the EQRs within the City's records. To the extent any documents or additional approvals are required after any Closing, Buyer and Seller shall cooperate to execute any such additional documents or assist in securing any such additional approvals as may be reasonably required to complete transfer and assignment of the EQRs from Seller to Buyer.

9. Seller's Representations and Warranties. Seller hereby represents and warrants to Buyer that the following are true and correct as of the Effective Date, and shall be true and correct at the time of closing: (a) Seller is the sole owner of the 133.75 EQRs; (b) Seller warrants good, absolute, and unencumbered title to the EQRs and Seller has the full right, power, and authority to enter into this Agreement, to sell and convey the 133.75 EQRs and to perform its other obligations hereunder; (c) upon closing, Buyer will be the legal owner of the EQRs being sold and seized with all legal rights to and in the right to receive water service represented thereby, subject only to the limitations and conditions arising out of the City's municipal code; and (d) upon closing, the specific number of EQRs will be transferred to Buyer free and clear from any lien, encumbrance, or third-party claim of any kind.

10. Buyer's Representations and Warranties. Buyer hereby represents and warrants to Seller that Buyer has all requisite power and authority to execute, deliver, and perform this Agreement, and to consummate the transactions contemplated by it as of the effective date and the same shall be true and correct at the time of closing. Buyer further represents and warrants that: (a) Buyer has, as of effective date and shall have at closing, the financial ability to close this transaction by delivering the full amount of the purchase price when due; (b) Buyer will take ownership of the 133.75 EQRs subject to applicable City code provisions, including the limitations relative to use or application of the water represented by the EQRs; (c) As of the closing, Buyer will have personally investigated, to its complete satisfaction, all material matters pertaining to the 133.75 EQRs which Buyer deems in any manner desirable to evaluate in connection with its performance of this Agreement, the acquisition of the 133.75 EQRs and the giving of Buyer's representations and warranties hereunder; (d) Buyer is relying upon its own business judgment and decision in entering into and consummating the within transaction, and has not relied and will not attempt to rely upon Seller's representations and warranties in lieu of or as a substitute for Buyer's own independent investigation, except for Seller's representations and warranties set forth herein.

11. Default.

- a. Seller's default. In the event Seller fails to perform any obligation, agreement, or condition of this Agreement, including but not limited to not conveying any of the EQRs free and clear of all liens and encumbrances, Buyer shall provide Seller with written notice of such default and Seller shall have thirty (30) days to cure such default. In the event that the default is not cured within such thirty (30) day period, Buyer may elect to (i) terminate this Agreement; or (ii) treat this Agreement as being in full force and effect with the right to an action for specific performance or damages, or both.
- b. Buyer's default. In the event Buyer defaults in the performance of its obligations under this Agreement, Seller may elect to (i) terminate this Agreement by providing notice to Buyer; or (ii) treat this Agreement as being in full force and effect with the right to an action for specific performance or damages, or both.

12. Indemnification. Seller shall indemnify and hold Buyer harmless from and against any losses relating to any material breach by Seller of Seller's representations and warranties in this Agreement; and Buyer shall indemnify and hold Seller harmless from and against any losses relating to any material breach by Buyer of Buyer's representations and warranties in this Agreement.

13. Survival of Warranties. The representations and warranties in this Agreement shall be deemed to be remade as of closing and shall survive the closing and the execution of all documents subsequently executed by the Parties pursuant to the closing.

14. Costs and Expenses. The costs and expenses of closing, including the payment of EQRs transfer fees (if any) assessed by the City, and the costs of recording, certification, attorney's fees, or delivery of closing documents and materials shall be paid by Seller. Unless otherwise specified in this Agreement, all other costs and expenses incurred by either Party in connection with negotiation and performance under this Agreement, including fees and costs of attorneys, accountants and other professionals, and the cost of performing due diligence, shall be borne solely by the Party incurring such costs and expenses.

15. Additional Instruments. The Parties shall from time to time execute and deliver such further instruments as the other Party or its counsel may reasonably request in order to effectuate the intent of this Agreement.

16. Choice of Venue. This Agreement and all disputes arising under it, shall be governed by and construed in accordance with the laws of the State of Colorado. Any arbitration or litigation related to this Agreement or the 133.75 EQRs shall be conducted exclusively in the State District Court situated in Weld County, Colorado, and the Parties irrevocably consent to jurisdiction and venue in such court.

17. Interpretation. The language in all parts of this Agreement shall be, in all cases, construed simply according to its fair meaning and not strictly for or against any of the Parties to this Agreement. Unless a clear contrary intention appears (1) the singular includes the plural and vice versa, (2) "include" or "including" means including without limiting the generality of the description preceding such term, (3) headings are provided for the convenience of the Parties and shall not affect the interpretation of any provision; and (4) in the Parties material communications concerning this Agreement the phrase MEC or "Mutual Execution of Contract" shall mean the Effective Date set forth on the first page hereof.

18. Attorneys' Fees. If either Party resorts to litigation to enforce any of the terms and provisions of this Agreement, the substantially prevailing Party shall recover reasonable attorneys' fees, court costs, and expenses of suit from the other Party.

19. Notices. All notices, requests, demands, applications, consents, approvals, services of process, and other communications which are required to be or may be given under this Agreement shall be in writing and delivered by (1) overnight courier; (2) certified first class mail, postage prepaid, return receipt requested; (3) personal delivery; facsimile; or (4) email at the addresses set forth below. Notices will be deemed given on the date of delivery for personal delivery, email or facsimile; or on the delivery or refusal date, as specified on the return receipt in the case of certified mail or on the tracking report in the case of overnight courier. A party may change its contact information by notifying the other party of such change in accordance with the notice procedures in this paragraph.

Contact Information for Seller:

Gail M. Hartley Non-Exempt Marital Trust
Douglas W. Brown, Attorney
Brown Dunning Walker Fein, PC
2000 South Colorado Blvd. Tower Two, Suite 700
Denver, CO 80222
(303) 329-3363
dbrown@bdwf-firm.com

Contact Information for Buyer:

City of Evans
Scotty P. Krob, City Attorney
Krob Law Office, LLC
8400 Prentice Ave., Penthouse
Greenwood Village, CO 80111
Phone: 303-694-0099
Email: scott@kroblaw.com

And

James Becklenberg
Evans City Manager
1100 37th Street
Evans, CO 80620
Phone: 303-475-1119
Email address: JBecklenberg@evanscolorado.gov

20. Entire Agreement; Amendment. This Agreement constitutes the entire contract between the Parties relating to the 133.75 EQRs, and any prior agreements pertaining to the 133.75 EQRs, whether oral or written, have been merged and integrated into this Agreement. No subsequent modification of any of the terms of this Agreement shall be valid, binding upon the Parties, or enforceable unless made in writing and signed by the Parties. Any obligation in this Agreement that, by its terms, is intended to be performed after termination or Closing shall survive the same.

21. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile or other electronic means, and the Parties agree to accept and be bound by signatures delivered by facsimile or other electronic means. Documents with original signatures shall be provided upon request of any Party.

22. Binding Agreement. This Agreement shall be binding upon, and shall inure to the benefit of, each of the Parties and their respective successors and assigns.

23. Waiver of Jury Trial. The Parties hereby waive their rights to a trial by jury in the event of a dispute between the Parties concerning this Agreement.

IN WITNESS, the Parties have duly executed this Agreement as of the Effective Date.

SELLER
Gail M. Hartley Non-Exempt Marital Trust

Dated: _____

By: _____
Gail M. Hartley, Trustee

STATE OF _____)
) ss.
_____ COUNTY)

SUBSCRIBED AND SWORN TO before me this _____ day of _____, 2021, by
Trustee for Seller herein.

Notary Public in and for _____;
My Commission expires: _____

BUYER
CITY OF EVANS

Dated: _____

By: _____
Brian Rudy, Mayor

Attest: _____
Julie Kamka, City Clerk