

**AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY
(City Purchaser)**

Residential Commercial Industrial Vacant Land Conservation Easement

Property Address/APN: Part of 5400 Ziegler Road, Fort Collins, CO 80528/Part of 8604000904

Seller: POUDRE SCHOOL DISTRICT R-1

Seller Signing Authority and Title: Kristen Draper, Board President

Seller Phone Number/Email: (970) 482-7420 kdraper@psdschools.org

Seller Mailing Address: 2407 Laporte Avenue
Fort Collins, CO 80521
Click or tap here to enter text.

Purchaser: City of Fort Collins, Colorado, a municipal corporation

Purchaser Signing Authority and Title: Kelly DiMartino, City Manager

Purchaser Phone Number/Email: (970) 416-2245 / wflowers@fcgov.com

Purchaser Mailing Address: City of Fort Collins, Real Estate Services
P.O. Box 580
Fort Collins, Colorado 80522

Title Company: Land Title Guarantee Company

Title Company Phone Number/Email: (970) 305-8298/customer@ltgc.com

Title Company Mailing Address: 3033 East First Avenue, Suite 600
Denver, CO 80206
Click or tap here to enter text.

Consideration

Purchase Price (as of date of execution; subject to change per terms of Agreement):
3,180,000

Earnest Money Deposit: None

Click or tap here to enter text.

Effective Date: Click or tap to enter a date.

Inspection Deadline: 120 Days after Effective Date

Closing Date: A mutually agreed date after November 7, 2024, but in no event later than December 31, 2024

Exhibit A - Property Legal Description (# of pages): TBD See Paragraph 3. E below

Exhibit B - Form of Conveyance Deed (# of pages): 3

Exhibit C – Escrow Agreement

This **AGREEMENT OF PURCHASE AND SALE OF REAL PROPERTY** (the “Agreement”) is made and entered into on the Effective Date by and between Seller and Purchaser.

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. This Agreement is also subject to any Exhibit A through G checked above, which is attached hereto and incorporated by this reference.

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 a portion of the northwest corner of the property depicted on Exhibit A (the "Property"). Subject to the terms and conditions of that certain Intergovernmental Agreement Related to the Southeast Community Center, dated February 20, 2024 (the "IGA"), the parties have agreed that the Purchaser intends to acquire the Property from Seller for the purpose of constructing a new community center. Section I.1.g. of the IGA provides that the Purchaser intends to acquire from the Seller "approximately 10 acres." The Property has been surveyed to include 10.402 acres. The design and layout of the community center is not complete and the exact boundaries of the property upon which the community center will be constructed are not yet known. To comply with the April 30, 2024, deadline in the IGA for the execution of this Agreement, the parties desire to move forward with this Agreement with the mutual understanding and agreement that the exact legal description of the Property is subject to change. The parties agree that the area of the Property shall not be less than 10.0 acres and shall not be more than 10.99 acres. The parties agree to execute, prior to the Closing Date, an amendment to this Agreement to include a definitive legal description of the parcel to be conveyed based upon the Purchaser's 60% design plans for the community center.

The Seller also agrees to convey sufficient easements for the extension of a sanitary sewer easement and a stormwater easement to existing manhole connection points on the Sellers property as follows:

Stormwater Easement – An easement 20 feet wide and 60 feet long running south of the southern boundary of the 10.402 acre site to the existing Storm Manhole identified on the draft survey as RIM – 4917.88’.

Sanitary Sewer Easement Option #2– An easement 30 feet wide and TBD feet long running east of the eastern boundary of the 10.402 acre site to a Sanitary Manhole in south part of the Teachers parking lot circular asphalt drive identified on the draft survey as RIM – 4915.31’.

Sanitary Sewer Easement Option #2– An easement 30 feet wide and TBD feet long running southeast of the eastern boundary of the 10.402 acre site to a Sanitary Manhole in south of the southeast corner of the band practice field identified on the draft survey as RIM – 4912.61’.

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 Seller's right, title and interest in and to easements, rights-of-way, 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. Taps. All water taps, gas taps, and sewer taps belonging or in any way appertaining to the Property.

C. 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.

D. Mineral Rights. Any and all interests in all minerals, ores, metals of any kind and character, and all coal, asphaltum, oil, gas, or other like substances, including sand and gravel, 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. Purchase Price and Earnest Money Deposit.

A. While the acreage is subject to change pursuant to paragraph 1 above, Purchaser and Seller agree that the "Purchase Price" shall be calculated using a price per square foot of \$7.30. As of execution of this Agreement, the parties agree the Purchase Price is \$3,307,711.18 based upon the current survey of the parcel at 10.402 acres. The final square footage of the Property and thereby the final Purchase Price shall be determined by an amendment to this Agreement prior to the Closing Date ("Appraised Price").

B. Pursuant to the terms of the IGA, if the voters approve Seller's November 2024 ballot measure, then at closing Seller will convey the Property to Purchaser at no cost as part of the Seller's share of funding of the aquatics facility. If the voters do not approve Seller's November 2024 ballot measure, at closing Purchaser will deposit the Appraised Price of the Property into an interest-bearing escrow account pursuant to an escrow agreement substantially similar to the form attached as Exhibit C. If the voters do not approve Seller's November 2024 ballot but Seller secures a new source of funding for the aquatics facility after execution of this Agreement and conveyance of the Property to Purchaser but before January 31, 2025, the escrowed funds and any accrued interest shall be released to Purchaser as part of Seller's share of funding the aquatics facility. If the voters do not approve Seller's November 2024 ballot measure and Seller does not secure a new source of funding by January 31, 2025, the escrowed funds and any accrued interest shall be released to Seller, unless Purchaser and Seller mutually agree to extend the funding deadline.

C. Except as otherwise provided in this paragraph 2, no Earnest Money Deposit is required in connection with this transaction, the mutuality of the promises of the parties hereto being deemed adequate consideration. Purchaser will pay closing costs and customary prorations at the time of closing.

3. Contingencies. This Agreement is contingent upon the following:

A. Appraisal. Seller obtained an appraisal of the Property, performed by John Vaughan of CBRE who prepared an appraisal report dated July 26, 2023. Neither Seller nor Purchaser objects to said appraisal and both agree that the Property shall be valued at \$7.30 per square foot as set forth in the report.

B. Disclosures. Within ten (10) days following the Effective Date, and immediately upon any later discovery by Seller of any disclosure issue not previously submitted to Purchaser, Seller will provide to Purchaser a disclosure statement describing any and all issues with the Property known to Seller that would reasonably be considered material to whether or not Purchaser would decide to continue with the purchase of the Property or terminate this Agreement. Purchaser may object to any disclosed issue by providing to Seller written notice by the Inspection Deadline in accordance with paragraph 6 below.

C. Intentionally omitted.

D. Title Insurance/Evidence of Title.

1. No later than ten (10) days following the Effective Date, Purchaser will order a Title Insurance Commitment from the Title Company, together with copies of all documents of record related to exceptions identified in the Title Commitment (together referred to as the "Title Commitment"). The Title Commitment must show title to the Property in Seller's name, subject only to those exceptions set forth on Schedule B-2 to the Title Commitment that are acceptable to Purchaser. Purchaser is responsible for the cost of the Title Commitment and Title Insurance.

2. 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) days after Purchaser's receipt of the Title Commitment, and no later than ten (10) 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 closing, at its expense, without any other manner affecting the terms of this Agreement.

3. If any instrument or deposit is necessary in order to correct a defect in or objection to title, the following apply:

- a) Any instrument will be in a form and contain terms and conditions the Title Company may reasonably require so as to be sufficiently satisfied and omit such defects or objection.
- b) Any deposit will be made with the Title Company.
- c) Seller agrees to execute, acknowledge, and deliver any required instrument and to make any required deposit.

4. If the Title Company refuses to omit any title defect or objection prior to closing, then Purchaser, at its election, has the right to:

- a) Accept such title as Seller is able to convey, without any reduction of the purchase price; or
- b) Rescind this Agreement and, upon such rescission pursuant to this paragraph, all parties to this Agreement will be released from all obligations hereunder.

5. If Seller is unable to convey title as provided in this paragraph to Purchaser due to an act or omission of Seller, Seller is in default and continues to be liable under this Agreement.

6. Notwithstanding the foregoing:

- a) 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
- b) 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.

E. Survey/Legal Description.

The parties each acknowledge that a legal description of the Property is attached in Exhibit A 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; or

Purchaser or Seller, at its own expense and within ninety (90) days following the Effective Date, will provide to the other party an draft (i) ALTA/ACSM boundary survey or (ii) Land Survey Plat (“Survey”). The Survey must include the future location of property corners and a plat describing courses and distances between the corners, and total acreage of the Property. The survey is subject to change in accordance with the provisions outlined in Paragraph 1. above.

4. Representations of Seller. Seller represents and warrants, as of the Effective Date and as of closing that, to the best of Seller’s knowledge:

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 all or any part of the Property.

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 at the time 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 any other documentation in Seller’s possession related to the Property.

5. Seller’s Environmental Representations. Seller represents and warrants as of the Effective Date and as of closing, that, to the best of Seller’s knowledge:

A. The Property has never been used as a landfill, waste dump, or mine.

B. No property in the vicinity of the Property has ever been used as a landfill, waste dump or mine.

C. There has been no installation in, or production, release, disposal, or storage in the vicinity of the Property of any hazardous material, hazardous waste or other toxic or regulated substances by any owner, tenant or previous owner or previous tenant, or any other activity which could have resulted in an environmental condition requiring investigation or remediation on the Property.

D. There is no anticipated, threatened, or pending proceeding or inquiry by any governmental authority or agency with respect thereto.

6. 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 in Purchaser's sole discretion, signed by an authorized representative of Purchaser, on or before the Inspection Deadline, 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 the Inspection Deadline, and Seller does not 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 within ten (10) days. 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.

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 closing, 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. Risk of Loss. Seller shall bear all risk of loss with respect to the Property up until closing in accordance with this Agreement. In the event of damage to any portion of the Property by fire or other casualty prior to closing, 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 ten (10) days after receipt of written notice from Seller 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. If Purchaser does not elect to terminate, Seller shall assign and transfer to Purchaser at closing all of Seller's right, title and interest in and to all insurance proceeds or other compensation paid or payable to Seller on account of such fire or casualty together with the amount of the deductible relating thereto.

9. Closing. All references to "close" or "closing" in this Agreement are deemed to mean the successful transfer of title of the Property from Seller to Purchaser. The parties agree to close on

or before the Closing Date at the office location of the Title Company or at such other reasonable time, date, or location as the parties may mutually agree. All Title Company escrow fees shall be paid by Purchaser. If the close does not occur on or before the Closing Date, then the remedies on default pursuant to paragraph 15 below shall apply.

10. Proration. Real property taxes and assessments and similar expenses, if any, will be prorated as of the date of closing in accordance with local practice.

11. Method of Conveyance. Seller will convey the real property portion of the Property to Purchaser at the time of closing by deed in the form attached hereto 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.

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

13. Brokers.

Seller represents and warrants to the Purchaser that Seller has not employed, retained, or consulted any broker, agent, or other real estate professional with respect to the Property William C. Flowers, REALTOR®, licensed Employing Broker in the State of Colorado, has assisted the Purchaser with this transaction in his capacity as an employee of the City of Fort Collins, Real Estate Services department..

14. Remedies on Default. If any note or check received as the Earnest Money Deposit 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 Purchaser is in default, then the Earnest Money Deposit, if any, is forfeited by Purchaser and may be retained by Seller, and both parties will be released from all obligations under this Agreement. It is agreed that the Earnest Money Deposit is liquidated damages and is Seller's sole and only remedy for Purchaser's failure to perform the obligations of this Agreement. Seller may recover direct damages as may be proper and Seller expressly waives the remedies of specific performance and additional damages.

B. If Seller is in default, Purchaser 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 Purchaser may recover such damages as may be proper, or 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.

15. 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.

16. 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.

17. Recommendation of Legal and Tax Counsel. By signing this Agreement, Seller acknowledges that Seller 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.

18. 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; (ii) on the first business day which is three (3) days following mailing by certified mail, return receipt requested or with tracking, 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 set forth above.

19. 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.

20. 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.

21. 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.

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

23. Time Frames. All periods and time frames referred to in this Agreement shall be defined as calendar days and not business days.

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

25. 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,

EXHIBIT A TO RESOLUTION 2024-062

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:

Date

Signature of Signing Authority

(If Seller is a corporation)
ATTESTED BY:

Corporate Secretary

If checked, notary below is required:

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

PURCHASER:

Date

Kelly DiMartino, City Manager

ATTEST:

City Clerk

(Print Name)

APPROVED AS TO FORM:

Assistant City Attorney

(Print Name)

EXHIBIT A TO RESOLUTION 2024-062