

**Agreement Concerning Purchase And Sale Of Real  
Property For Expansion Of The Town Of Johnstown  
Water Treatment Plant**

THIS AGREEMENT CONCERNING PURCHASE AND SALE OF REAL PROPERTY FOR EXPANSION OF THE TOWN OF JOHNSTOWN WATER TREATMENT PLANT (“Agreement”) is made and entered into on this \_\_\_ day of \_\_\_\_\_, 2022 (“Effective Date”), by and between THE TOWN OF JOHNSTOWN, COLORADO, a Colorado home-rule municipality (“Town”), and BRUCE W. GILLAM, an individual (“Gillam”) (Gillam and the Town may be referred to as the “Parties”).

**RECITALS**

WHEREAS, Gillam and White Range, LLC, a Colorado limited liability company (“White Range”), own real property north of State Highway 60, east of Carlson Boulevard and southeast of Ballentine Boulevard, located in Section 1, Township 4 North, Range 68 West of the 6<sup>th</sup> P.M., Town of Johnstown, County of Weld, State of Colorado, consisting of approximately 13.730 acres, known by Parcel No. 106101400047 in the Weld County Assessor’s Office, as more fully described on Exhibit A attached hereto and incorporated herein by reference (“Property”); and

WHEREAS, a portion of the Property is adjacent to the Town’s Water Treatment Plant (“WTP”); and

WHEREAS, the Town desires to expand its WTP and seeks to construct such expansion on approximately six and a half (6.8394) acres of the Property (“WTP Lot”); and

WHEREAS, Gillam desires to convey the WTP Lot to the Town pursuant to the terms and conditions stated herein; and

WHEREAS, to effectuate the sale of the WTP Lot to the Town, the Town will replat the Property (“Replat”) to create the following three lots: (i) the WTP Lot that will be owned exclusively by Gillam, (ii) a lot on the western portion of the Property that will be owned by Gillam and White Range (“West Lot”) and (iii) a lot on the southern portion of the Property that will be owned by Gillam and White Range (“South Lot”) Gillam; and

WHEREAS, a depiction of the WTP Lot, the West Lot and the South Lot, subject to minor modification upon finalization of the Replat, is attached hereto and incorporated herein by reference as Exhibit B; and

WHEREAS, for the avoidance of doubt and to provide clarity, upon finalization of the Replat, White Range intends to convey the WTP Lot to Gillam, who will then convey the WTP Lot to the Town pursuant to the terms of this Agreement; and

WHEREAS, to effectuate the foregoing, the Parties desire to enter into this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the terms, conditions and covenants set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Contingency Period. The Town shall have up to ninety (90) days following recordation of the Replat in the Weld County Clerk and Recorder's Office (the "Contingency Period") within which to conduct an investigation of the WTP Lot. In no event shall the contingency period extend beyond February 19, 2023, without written consent of the Parties.
  - a. Inspection Obligations. All inspection fees and other expenses of any kind incurred by the Town relating to the inspection shall be the Town's sole responsibility. The Town will promptly repair, at its expense, any damage to the Property caused by the Town or its agents in conducting its inspection.
  - b. Access to the Property. During the Contingency Period, Gillam shall permit the Town, its employees, contractors and agents, to enter the Property at reasonable times to conduct physical inspections of the WTP Lot. The Town will coordinate its physical inspections with Gillam prior to entry on the Property.
  - c. Termination of Agreement. If, on or before the expiration of the Contingency Period, the Town delivers to Gillam written notice setting forth the Town's election to terminate this Agreement, at the Town's discretion, then this Agreement will terminate. If the Town does not terminate this Agreement during the Contingency Period, then this Agreement will remain in full force and effect in accordance with its terms.
  - d. Expiration of Contingency Period. The Town may, at its discretion, provide written notice to Gillam of the expiration of the Contingency Period at any time during the ninety (90) day period and the Town's intent to move forward with the purchase of the WTP Lot. If notice is not provided, the Contingency Period shall expire at the end of the ninety (90) day period.
3. Conveyance of WTP Lot. Within ten (10) days following the expiration of Contingency Period, Gillam shall convey the WTP Lot to the Town by special warranty deed, in substantially the same form as attached hereto and incorporated herein by reference as Exhibit C.
4. Consideration. In consideration of the conveyance of the WTP Lot by Gillam to the Town, the Town agrees as follows:
  - a. Corbett Glen Filing 3 Final Plat. Gillam, by and through Gillam Development Corporation, a Colorado corporation ("GDC"), its successors and assigns, shall be entitled to replat Outlot A of the Corbett Glen Filing 3 Final Plat ("Outlot A"), recorded on September 21, 2006 at Reception No. 3421288 in the Weld County Clerk and Recorder's Office, as residential lots in accordance with the

Town's Ordinances and regulations and in a form approved by the Town Council ("Outlot A Replat"), and the Town agrees to relinquish its right to seek dedication of Outlot A;

- b. Water Credit. Upon conveyance of the WTP Lot by Gillam to the Town, the Town agrees to provide Gillam with five and nineteen hundredths (5.19) acre-feet of raw water credit to be held in a water bank with the Town ("Gillam Water Bank");
- c. Carlson Boulevard Financial Contribution. Within ten (10) days of execution of a subdivision development and improvement agreement ("SDIA") concerning development of the residential lots associated with the Outlot A Replat, the Town agrees to provide a financial contribution to Gillam or the developer of the property, as appropriate, in the amount of Eighty Thousand Five Hundred Ninety-Five and Fifty Dollars (\$80,595.50), which amount is derived from a cash-in-lieu payment made in relation to Corbett Glen Filing 2, for construction of Carlson Boulevard from the portion of the roadway adjacent to Outlot A to the northern property boundary of Corbett Glen Filing 3 to a two (2) lane road configuration meeting Town standards and specifications, as shall be specified in the SDIA;
- d. Repavement of Ballentine Boulevard and Carlson Boulevard. Upon completion of construction of the expanded WTP, the Town agrees to repave the portions of Ballentine Boulevard and Carlson Boulevard that are damaged due to the construction. Based on the foregoing, the property owners shall not be required to repave the roadways in connection with development of the West Lot, except that they shall remain obligated to: (i) improve the roadways as required by the Town's rules and regulations; (ii) repair damage to curb and gutter flow lines caused by development of the West Lot; and (iii) repave the roadways after the Town's completion of the repavement if subsequent development of the West Lot causes damage to the roads.
- e. State Highway 60. The Town agrees to work with the Colorado Department of Transportation ("CDOT") to obtain authorization for the property owners to construct an access point, likely a right-in/right-out, on a portion of the Property that abuts State Highway 60. Upon completion of the construction of the access point, if at all, the property owners may be entitled to reimbursement or obligations to cost sharing for the cost from the property owner or developer of the real property that is east of the Property and adjacent to State Highway 60; and
- f. Home Supply Ditch. If CDOT does not provide authorization for access to the Property along State Highway 60 as provided above, then, as mutually agreed between the Town and the property owners, the Town will make a right-of-way available on the WTP Lot to allow access to the South Lot from Ballentine Boulevard to the north side of the Consolidated Home Supply Ditch & Reservoir Company Ditch ("Home Supply Ditch"). In such case, the Town will

construct the segment of the roadway from Ballentine Boulevard south to the north side of the Home Supply Ditch. The property owners will be responsible for crossing the Home Supply Ditch and for construction of all other improvements related thereto.

- g. Oil & Gas Mineral Rights. Conveyance of the WTP Lot will not include any interest in mineral rights. All mineral right interests will stay and remain with the owner of such rights at the time of conveyance.

5. Temporary Construction Easement. In order to construct the expansion of the WTP, Gillam, on behalf of his successors and assigns, agrees to provide a temporary construction easement to the Town, in substantially the same form as attached hereto and incorporated herein by reference as Exhibit D (“TCE”). The TCE shall provide the Town with access to two and one-quarter (2.25) acres on the West Lot until the construction of the WTP is completed. The Town agrees to pay Gillam Nineteen Thousand Six Hundred Dollars (\$19,600) for the TCE. Given that the West Lot will be owned by both Gillam and White Range, or their successors or assigns, and that White Range will also be required to execute the TCE, Gillam represents and agrees that White Range will also execute and convey the TCE to the Town. If White Range does not execute and convey the TCE to the Town as provided herein, the Town shall be entitled to condemn the two and one-quarter (2.25) acres on the West Lot, as provided by law, for the temporary construction purposes and Gillam shall be required to pay all costs associated with such condemnation, including attorneys’ fees. If the compensation ordered by the court exceeds Nineteen Thousand Six Hundred Dollars (\$19,600), Gillam shall be required to pay White Range the difference between the compensation awarded and Nineteen Thousand Six Hundred Dollars (\$19,600).

6. Gillam’s representations, warranties and covenants. Gillam represents, warrants and covenants to the Town that, as of the Effective Date and as of the date of the conveyance of the WTP Lot:

- a. Authority. Gillam has the full right and authority to enter into this Agreement and consummate the transaction(s) contemplated by this Agreement. All requisite entity action has been taken by Gillam in connection with the entering into of this Agreement, the instruments referenced herein, and the consummation of the transaction(s) contemplated hereby. The person signing this Agreement on behalf of Gillam is authorized to do so.
- b. No Consents; Binding Obligations. No third-party approval or consent is required for Gillam to enter into this Agreement or to consummate the transaction(s) contemplated hereby. This Agreement and all documents required hereby to be executed by Gillam are and will be valid, legally binding obligations of and enforceable against Gillam in accordance with their terms.
- c. No Third-Party Interests. Gillam has not granted to any party any option, contract or other right to a purchase the Property, or any portion thereof or any interest therein.

7. Town's representations, warranties and covenants. The Town represents and warrants to the Gillam that:

- a. Authority. The Town has the full right and authority to enter into this Agreement and consummate the transaction(s) contemplated by this Agreement. All requisite action has been taken by the Town in connection with the entering into of this Agreement. The persons signing this Agreement on behalf of the Town are authorized to do so.
- b. No Consents; Binding Obligations. No third party approval or consent is required for the Town to enter into this Agreement or to consummate the transaction(s) contemplated hereby. This Agreement and all documents required hereby to be executed by the Town are and will be valid, legally binding obligations of and enforceable against the Town in accordance with their terms.

8. Casualty. The risk of casualty loss to the WTP Lot will remain with Gillam prior to conveyance of the property to the Town. In the event that the WTP Lot is damaged by fire, flood or other casualty prior to conveyance, then the Town may elect, at its sole option, either (i) to terminate this Agreement, in which case Gillam and the Town will be released from further responsibility hereunder, or (ii) to waive its right to terminate this Agreement and to consummate the transaction contemplated hereby, in which case Gillam will assign to the Town all of Gillam's right to receive the insurance proceeds, if any, payable as a result of such casualty damage.

9. Notices. Any notice required or permitted to be sent pursuant to this Agreement must be in writing and will be deemed given, sent, delivered and received upon the earlier of: (i) when personally or actually delivered; (ii) by e-mail, upon confirmation of delivery; or (iii) one (1) business day after being deposited with a commercial overnight courier and sent by overnight delivery for next business day delivery, with all required charges prepaid; and addressed:

If to Gillam:

Bruce Gillam  
3047 Argyll Lane  
Johnstown, CO 80534  
Email: RHRFOR97@aol.com

If to the Town:

TOWN OF JOHNSTOWN  
Attention: Town Manager  
450 So. Parish  
P. O. Box 609  
Johnstown, CO 80534  
Email: MLeCerf@JohnstownCO.gov

Any address fixed pursuant to the foregoing may be changed by the addressee by notice given

pursuant to this section.

10. Governing Law and Venue. This Agreement and the interpretation thereof shall be governed by the laws of the State of Colorado. Venue for any claim, proceeding or action arising out of this Agreement shall be in the County of Weld, State of Colorado.

11. Non-Appropriation. Pursuant to Section 29-1-110, C.R.S., as amended, financial obligations of the Town payable as set forth herein, after the current fiscal year, are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

12. Mediation. If a dispute arises under this Agreement that the Parties are not able to mutually resolve, prior to commencing litigation, the non-breaching Party shall first submit the matter to mediation conducted by a neutral mediator. The Parties shall attempt to agree upon a mediator. If the Parties are unable to agree upon a mediator, either Party may apply to the Judicial Arbiter Group in Denver, Colorado, for appointment of a mediator. The cost of the mediation shall be shared equally by the Parties.

13. Severability. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining or substantially deprive such Party of the benefit of its bargain under this Agreement. The Parties shall cooperate in reforming this Agreement to the extent required to most fully effect the intent of any such invalid, void or unenforceable term, provision, covenant or condition.

14. Successors and Assigns. This Agreement will be binding upon and inure to the benefit of the Parties and their respective heirs, successors and assigns.

15. Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties related to the subject matter contained herein and supersedes all prior agreements or understandings.

16. No Presumption. Each Party acknowledges that it has obtained, or has had the opportunity to obtain, the advice of legal counsel of its own choosing in connection with the negotiation and execution of this Agreement and with respect to all matters set forth herein. In the event of any dispute, disagreement or controversy arising from this Agreement, the Parties shall be considered joint authors and no provision shall be interpreted against any Party because of authorship.

17. Findings. The Town hereby finds and determines that execution of this Agreement is in the best interests of the public health, safety and general welfare of the citizens of the Town.

18. Further Assurances. Each Party agrees to execute and deliver to the others all such other further instruments and documents as may be reasonably necessary or requested by another Party to confirm or clarify the intent of the provisions of this Agreement, and to carry out and effectuate this Agreement in order to provide and secure to the other Parties the full and complete enjoyment of their rights and privileges under this Agreement.

19. Headings. The paragraph headings herein are for the convenience and reference of the parties and are not intended to define or limit the scope or intent of this Agreement.

20. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

[Remainder of page intentionally left blank.]



**EXHIBIT A**  
**Property**

JOH PT SE4 1-4-68 BEG SE COR SE4 S89D43'W 1322.16' N04D05'E 31.32' TO TRUE POB  
N89D57'W 284.27' S89D38'W 316.29' N12D35'E 18.60' N23D52'E 42.98' N44D47'E 20.11'  
N60D25'E 35.93' N77D37'E 100.36' N86D39'E 97.02' N76D43'E 123.11' N66D52'E 159.31'  
N36D57'E 53.24' N47D26'W 353.24' N42D52'W 222.36' N40D27'W 139.61' N71D18'W 272.94'  
S21D45'W 161.63' S04D47'W 148.11' S89D38'W 161.74' N02D45'W 541.03' N89D33'E 176.49'  
CURVE TO LEFT 507.36 CHORD=N62D16'E 487.43' RAD=519.55' S63D3152'E 104.72'  
N74D46'E 90.21' N26D28'E 80' N88D08'E 149.28' S78D57'E 422.26' S01D22'W 127.75'  
S78D09'W 156.81' S61D20'W 22.85' S47D13'W 47.66' S34D16'W 73.03' S28D15'W 97.98'  
S04D05'W 387.77' TO POB



**EXHIBIT C**  
**Special Warranty Deed**



**EXHIBIT D**  
**Temporary Construction Easement**

## TOWN OF JOHNSTOWN

### TEMPORARY CONSTRUCTION STAGING EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION STAGING EASEMENT AGREEMENT (“Agreement”) is made this \_\_\_ day of \_\_\_\_\_ 2023, by and between Bruce W. Gillam, an individual, and White Range, LLC, a Colorado limited liability company (collectively, “Grantor”), and the Town of Johnstown, a Colorado home-rule municipal corporation of the State of Colorado (“Town”), whose legal address is 450 S. Parish Avenue, Johnstown CO 80534. Grantor and the Town may be collectively referred to herein as the “Parties.”

#### I. CONVEYANCE OF REAL PROPERTY

In consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, and the further consideration of the covenants and agreements set forth below, Grantor hereby sells, conveys, transfers, and delivers to the Town, the Town’s employees, contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns, a non-exclusive easement (the “Easement”) for the real property described in **Exhibit A**, a copy of which is attached and incorporated by this reference (the “Property”), with the rights set forth below, to facilitate the Town’s construction, expansion and installation of the Town of Johnstown Water Treatment Plant and all improvements related thereto (“Project”). The Town will not utilize the Property for any other purposes under this Agreement.

#### II. TERMS AND CONDITIONS

This Easement is granted in accordance with, and subject to, the following terms, conditions, requirements, and limitations:

1. The Easement is granted for vehicular and pedestrian ingress and egress to and from the Property and for the Town’s use to do all things reasonably necessary to stage materials to construct and install the Project including, but not limited to, the transport, stockpiling, staging and storage of construction materials, soil, equipment and vehicles. During the term of this Easement, the Town shall not leave any rubbish or debris on or about the Property. Upon the termination of this Easement, the Town, at the Town’s expense, shall restore the Property to substantially the same condition it was in prior to the Town’s use.

2. The term of this Agreement shall begin on \_\_\_\_\_, 202\_\_, and shall extend until \_\_\_\_\_, 202\_, or until the Project is complete, whichever first occurs.

3. Upon termination of this Agreement, all covenants in this Easement shall be released and the Property shall be considered free and clear of any restriction or any right or privilege attaching to the grant of the Easement.

4. The Easement permits the Town, the Town’s employees, contractors, consultants, subcontractors, subconsultants, materialmen, suppliers, workers, successor and assigns to use the Property until completion of the Project.

5. Grantor retains the right to undisturbed use and occupancy of the Property, insofar as such use and occupancy is consistent with and does not impair any rights herein granted to the Town. Excepting existing improvements, if any, Grantor warrants that no building, structure, or other above or below ground obstruction shall interfere with the purposes for which this Easement is granted and that no building, structure, or other above or below ground obstruction shall be placed, erected, installed or permitted upon the Property during the term of this Easement. Grantor further agrees that, in the event the terms of this Easement are violated, such violation shall immediately be corrected by Grantor at Grantor's sole expense upon receipt of written notice from the Town.

a.

6. Grantor warrants that Grantor has the full right and lawful authority to convey the real property interests contained herein and promises and agrees to indemnify and defend the Town in the exercise of any rights granted to Town under this Agreement against any defect in Grantor's title to the property involved or Grantor's right to make any of the grants herein contained.

7. All notices provided for herein shall be in writing and shall be personally delivered or mailed by registered or certified United States mail, postage prepaid, return receipt requested, to the parties at the addresses given below, or sent via electronic mail on the condition of notice of receipt by the intended recipient:

b.

If to Grantor:

Bruce Gillam  
3047 Argyll Lane  
Johnstown, CO 80534  
Email: RHRFOR97@aol.com

White Range, LLC  
Email:

If to the Town:

Town of Johnstown  
Attention: Town Manager  
450 S. Parish Avenue  
P.O. Box 609  
Johnstown, CO 80534  
Email: mlecerf@johnstownco.gov

8. The Parties agree that the Town is relying on, and does not waive or intend to waive by any provision of the Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 *et seq.*, C.R.S., as amended from time, or otherwise available to the Town, its elected officials, employees or agents.

9. This Agreement represents the entire agreement between Grantor and the Town as relates to the Easement and supersedes all prior negotiations, representations, or agreements, either written or oral. Amendments to this Agreement must be in writing and signed by the Parties.



WITNESS my hand and official seal.

My commission expires: \_\_\_\_\_

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

**TOWN OF JOHNSTOWN, COLORADO**

By: \_\_\_\_\_  
Matt LeCerf, Town Manager

ATTEST:

\_\_\_\_\_  
Hannah Hill, Town Clerk

[TOWN SEAL]

**EXHIBIT A**

Legal Description

**EXHIBIT B**

Project Description