

CONTRACT TO BUY AND SELL REAL ESTATE

PARTIES AND PROPERTY.

Buyer: **City of Salida, Colorado**, a statutory municipal corporation
448 E. First Street
Salida, CO 81201

Sellers: **David H. Armstrong**
Kathleen C. Armstrong
7032 County Road 107
Salida, CO 81201

Whereas, Buyer desires to acquire approximately two acres of vacant real property owned by the Sellers in unincorporated Chaffee County, and as depicted in **Exhibit B**, for active park and recreation purposes, such as multi-use fields, and other incidental or access-related purposes; and,

Whereas, Buyer intends for said property (“Property”), as further described in **Exhibit A**; to be part of the Vandaveer Ranch planning process; and,

Whereas, to that end, it is the City’s intent to publicize a Request for Proposals for the Vandaveer Ranch Master Planning process in Summer 2022, with the intent for master planning process to occur through the end of 2022, and with infrastructure installation planned for 2025, and the first phases of development of Vandaveer Ranch intended to be completed by 2026; and,

Whereas, the Buyer intends to apply for a Boundary Line Adjustment with Chaffee County in the next forty five days; and,

Whereas, the Buyer intends to apply for annexation, re-zoning and any other land use and/or subdivision requests with the City as soon as practicable after conveyance of the Property; and

Whereas, Sellers desire to sell Property; and,

Whereas, Buyer desires to purchase said Property.

Therefore, parties agree as follows:

Buyer agrees to buy and Sellers agree to sell, contingent upon on the terms and conditions set forth in this **Contract**, approximately 2.00 acres of unimproved, vacant real property in the County of Chaffee, State of Colorado as further described in **Exhibit A**, attached hereto and incorporated herein.

TOGETHER, with all interest of the Sellers in all applicable vacated streets and alleys adjacent thereto, all applicable easements and appurtenances thereto, all improvements thereon and all

attached fixtures thereto, except as herein excluded (collectively referred to hereinafter as the "Property").

1. CONTINGENCIES: Parties acknowledge and agree that the entirety of this **Contract** shall be void and without effect unless and until the successful completion of the following:

(a) Buyer shall have thirty (30) days from the full execution of this Contract for a due diligence period, in which Buyer may accept clear title, conduct an environmental assessment pursuant to section 2(e) below, and prepare/conduct any feasibility analysis for Buyer's intended use of the property.

(b) In the event that clear title or the results of any environmental assessment are unacceptable to Buyer, in the sole subjective discretion of the Buyer, then Buyer shall have the right to terminate this Contract by delivering written notice to Sellers not later than the due diligence period contemplated in 1(a) above. In the event that Buyer terminates the Contract pursuant to this subsection, all payments and things of value received hereunder, including Earnest Money, shall be returned in accordance with Section 18 and the parties shall be relieved of any further obligations hereunder.

(c) Prior to Closing, Sellers shall obtain approval from their lender for a partial release of their current deed of trust, to ensure that Property is being conveyed free and clear of all taxes, liens and encumbrances. Sellers shall notify Buyer in writing that such approval has been obtained, prior to Closing. In the event that Seller does not obtain such approval from their lender, Seller shall immediately notify Buyer in writing that the Contract is terminated pursuant to this subsection, and all payments and things of value received hereunder, including Earnest Money, shall be returned in accordance with Section 18 and the parties shall be relieved of any further obligations hereunder.

(d) Within forty (45) days from the full execution of this Contract, Buyer shall apply for a Boundary Line Adjustment with Chaffee County. Such Boundary Line Adjustment shall be approved, granted and adopted by Chaffee County prior to Closing. In the event that said Boundary Line Adjustment is not processed and approved, granted or adopted by Chaffee County, Sellers shall have the option to terminate this contract, and Sellers choose to terminate this contract, all payments and things of value received hereunder, including Earnest Money, shall be returned in accordance with Section 18 and the parties shall be relieved of any further obligations hereunder.

(e) Sellers are required to obtain new mortgage terms from their mortgage holder in connection with the partial release described above. This Contract is conditional upon Seller determining, in Seller's sole subjective discretion, whether the proposed New Loan's payments, interest rate, conditions and costs or any other loan terms (New Loan Terms) are satisfactory to Seller. This condition is for the sole benefit of the Seller. If the New Loan Terms are not satisfactory to Seller, in Seller's sole subjective discretion, Sellers shall

have the option to terminate this Contract on or before thirty (30) days from the full execution of this Contract. If Sellers choose to terminate this Contract, Sellers shall immediately notify Buyer in writing, and all payments and things of value received hereunder, including Earnest Money, shall be returned in accordance with Section 18 and the parties shall be relieved of any further obligations hereunder.

2. INCLUSIONS / EXCLUSIONS. Sellers certify that the property consists of undeveloped and vacant open space; therefore, the Purchase Price includes the following items:

(a) if attached to the Property on the date of this **Contract**: None.

(b) if on the Property whether attached or not on the date of this **Contract**: Personal Property belonging to Sellers on Property shall be excluded.

(c) **Water Rights.** There are no water rights being transferred by this Contract.

(d) **Reserved.**

(e) **Environmental Studies.** A phase I was not conducted on the property when it was purchased by Sellers. The Buyer may, at its own cost, cause a phase I environmental report to be prepared. In accordance with Paragraph 1(b) above, in the event that the results of the environmental assessment are unacceptable to the Buyer, in the sole subjective discretion of the Buyer, then the Buyer shall have the right to terminate this Contract by delivering written notice to Sellers not later than the 30 day due diligence period contemplated in Paragraph 1(a) above.

The above-described included items (Inclusions) are to be conveyed to Buyer by Sellers by **Special Warranty Deed** at the Closing, free and clear of all taxes, liens and encumbrances, except as hereinafter provided. The following attached fixtures are excluded from this sale: **None**

3. PURCHASE PRICE AND TERMS. The Purchase Price shall be **One Hundred Seventy-Five Thousand Dollars (\$175,000.00)**, payable in U.S. dollars by Buyer as follows:

(a) **Earnest Money.** Earnest money of **Five Thousand Dollars (\$5,000)** shall be required by the Buyer upon the signing of this Contract, to be credited to the total purchase price at Closing.

(b) **Consideration at Closing.** Remaining amounts due at Closing, which may consist of cash, electronic transfer funds, certified check, or Cashier's Check (Good Funds), as agreed upon by the Parties.

(c) Purchase Price may be increased, only if applicable pursuant to the provisions in Section 5.

4. DEED RESTRICTION. The **Special Warranty Deed** delivered at closing shall specify that the Property will be restricted, in perpetuity, for the following uses: for active park and recreational purposes, such as multi-use fields, and other incidental or access-related purposes, such as a roadway or drive and parking and the ability to relocate a small ditch that runs through the Property, if deemed necessary by the Buyer in order to better accommodate proposed uses. Seller and Buyer shall agree upon deed restriction language within forty five (45) days of the complete execution of this Contract. If the parties do not agree on the final form of the deed restriction within forty five (45) days of the complete execution of this Contract, this Contract shall terminate, and all payments and things of value received hereunder, including Earnest Money, shall be returned in accordance with Section 18 and the parties shall be relieved of any further obligations hereunder.

5. APPRAISAL AND SURVEY. The Buyer has requested and ordered a survey of the Property. The Buyer is waiving its request for an appraisal. The cost of the survey shall be paid by the Buyer. Sellers may provide Buyer with any previously obtained appraisals or surveys in the possession of Sellers. Should the 2022 survey ordered by the Buyer conclude that the Property is greater than two (2.00) acres, the Purchase Price shall be increased by a price of Eighty-Seven Thousand Five Hundred (\$87,500.00) per acre, prorated to the nearest hundredth of an acre, for any acreage above the two (2.00) acres.

6. NOT ASSIGNABLE. This **Contract** shall not be assignable by either party without prior written consent of both parties. Except as so restricted, this **Contract** shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

7. EVIDENCE OF TITLE. Buyer will obtain, at Buyer's expense, a current commitment for Owner's Title Insurance Policy in an amount equal to the Purchase Price within fifteen (15) days after the due diligence period pursuant to Section 1 above (Title Deadline). Sellers shall also deliver to Buyer any Abstract(s) of Title in their possession, certified to the last date of any previous certification. The Title Insurance Commitment, together with any copies or abstracts of instruments furnished pursuant to this Section, constitutes the title documents (Title Documents). Buyer, or Buyer's designee, must request Sellers, in writing, to furnish copies or abstracts of instruments in their possession listed in the Schedule of Exception no later than ten (10) calendar days after Title Deadline.

8. TITLE.

(a) Title Review. Buyer shall have the right to inspect the Title Documents. Written notice by Buyer of unmerchantability of title or of any other unsatisfactory title condition shown by the Title Documents shall be signed by or on behalf of Buyer and given to Sellers on or before ten (10) calendar days after Buyer's receipt of the Title Insurance Commitment, or within five (5) calendar days after receipt by Buyer of any Title Document(s) or endorsement(s) adding new Exception(s) to the Title Commitment

together with a copy of the Title Document adding new Exception(s) to title. If Sellers do not receive Buyer's notice by the date(s) specified above, Buyer accepts the condition of title as disclosed by the Title Documents as satisfactory.

(b) Matters Not Shown by the Public Records. Sellers shall deliver to Buyer, on or before the Title Deadline set forth in Section 7, true copies of all lease(s) and survey(s) in Sellers' possession pertaining to the Property and shall disclose to Buyer all easements, liens or other title matters not shown by the public records of which Sellers have actual knowledge. Buyer shall have the right to inspect the Property to determine if any third party(s) has any right in the Property not shown by the public records (such as an unrecorded easement, unrecorded lease, or boundary line discrepancy). Written notice of any unsatisfactory condition(s) disclosed by Sellers or revealed by such inspection shall be signed by or on behalf of Buyer and given to Sellers on or before Buyer acquires the property. If Sellers do not receive Buyer's notice by said date, Buyer accepts title subject to such rights, if any, of third parties of which Buyer has actual knowledge.

(c) Right to Cure. If Sellers receive notice of unmerchantability of title or any other unsatisfactory title condition(s) as provided in subsection (a) or (b) above, Sellers shall use reasonable effort to correct said unsatisfactory title condition(s) prior to the date of closing. If Sellers fail to correct said unsatisfactory title condition(s) on or before the date of closing, this **Contract** shall then terminate; provided, however, Buyer may, by written notice received by Sellers, on or before closing, waive objection to said unsatisfactory title condition(s).

9. INSPECTION. Buyer or any designee shall have the right to have inspection(s) of the physical condition of the Property and Inclusions, at Buyer's expense. If written notice of any unsatisfactory condition, signed by or on behalf of Buyer, is not received by Sellers on or before **thirty (30) days** after the effective date of this Contract, the physical condition of the Property and Inclusions shall be deemed to be satisfactory to Buyer. If such notice is received by Sellers as set forth above, and if Buyer and Sellers have not agreed, in writing, to a settlement thereof on or before **ten (10) days** after Sellers' Receipt of the notice (Resolution Deadline), this **Contract** shall terminate three (3) calendar days following Resolution Deadline; unless, within the three (3) calendar days, Sellers receive written notice from Buyer waiving objection to any unsatisfactory condition. Buyer is responsible for and shall pay for any damage which occurs to the Property and Inclusions as a result of such inspection.

10. DATE OF CLOSING. The date of closing shall be within ninety (90) days of this contract, or by mutual agreement at an earlier or later date. The location of the closing shall be at Central Colorado Title & Escrow, 129 E. Hwy 50, Salida, Colorado 81201.

11. TRANSFER OF TITLE. Subject to the terms of payment at, and after, Closing, as required and specified herein, and compliance by Buyer with the other terms and provisions

hereof, Sellers shall execute and deliver a good and sufficient **Special Warranty Deed** to Buyer, on Closing, conveying the Property free and clear of all taxes. Title shall be conveyed free and clear of all liens for special improvements installed as of the date of Buyer's signature hereon, whether assessed or not; except: (i) distribution utility easements (including cable TV); (ii) those matters reflected by the Title Documents accepted by Buyer in accordance with subsection 8(a); (iii) those rights, if any, of third parties in the Property not shown by the public records in accordance with subsection 8(b); and (iv) subject to building and zoning regulations.

12. PAYMENT OF ENCUMBRANCES. Any encumbrance required to be paid shall be paid at or before closing from the proceeds of this transaction or from any other source.

13. CLOSING COSTS, DOCUMENTS AND SERVICES. Buyer shall pay all closing costs and all other items required to be paid at closing, except as otherwise provided herein. Buyer and Sellers shall sign and complete all customary or required documents at or before closing. All fees for real estate closing services shall be paid at closing by the Buyer.

14. PRORATIONS. Buyer shall be solely responsible for and shall pay all of the accrued general property taxes after the date of closing, due in the subsequent year, after the date the property is added from the tax rolls by the Chaffee County Assessor.

15. POSSESSION. Possession of the Property shall be delivered to Buyer immediately upon Closing.

16. CONDITION OF AND DAMAGE TO PROPERTY. Except as otherwise provided in this **Contract**, the Property and Inclusions shall be delivered in the condition existing as the date of this **Contract**, ordinary wear and tear excepted. In the event the Property shall be damaged by fire or other casualty prior to time of closing, in an amount of not more than ten percent of the total Purchase Price, Sellers shall be obligated to repair the same before the date of closing. In the event such damage is not repaired within said time or if the damage exceeds such sum, this **Contract** may be terminated at the option of Buyer. Should Buyer elect to carry out this **Contract** despite such damage, Buyer shall be entitled to credit for all the insurance proceeds resulting from such damage to the Property and Inclusions, not exceeding, however, the total Purchase Price.

17. TIME OF ESSENCE / REMEDIES. Time is of the essence hereof. 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 or waived as herein provided, there shall be the following remedies:

(a) **IF BUYER IS IN DEFAULT:** Sellers may elect to treat this **Contract** as cancelled, in which case all payments and things of value received hereunder shall be forfeited and retained on behalf of Sellers, and Sellers may recover such damages as may be proper, or

Sellers may elect to treat this **Contract** as being in full force and effect and Sellers shall have the right to specific performance or damages, or both.

(b) IF SELLERS IN DEFAULT: Buyer may elect to treat this **Contract** as cancelled, in which case all payments and things of value received hereunder, including Earnest Money, shall be returned and Buyer may recover such damages as may be proper, or Buyer may elect to treat this **Contract** as being in full force and effect and Buyer shall have the right to specific performance or damages, or both.

(c) COSTS AND EXPENSES: Anything to the contrary herein notwithstanding, in the event of any litigation arising out of this **Contract**, the court shall award to the prevailing party all reasonable costs and expenses, including attorney fees.

18. TERMINATION. In the event this **Contract** is terminated before closing, all payments and things of value received hereunder shall be returned and the parties shall be relieved of all obligations hereunder, subject to Section 17.

19. MODIFICATION OF THIS CONTRACT. No subsequent modification of any of the terms of this **Contract** shall be valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

20. ENTIRE AGREEMENT. This **Contract** constitutes the entire contact between the parties relating to the subject hereof, and any prior agreements pertaining thereto, whether oral or written, have been merged and integrated into this **Contract**.

21. NOTICE OF ACCEPTANCE; COUNTERPARTS. This offer to sell and enter into this **Contract** shall expire unless accepted in writing by Buyer, as evidenced by its signatures below, and the Sellers receive notice of such acceptance on or before Sellers' acquisition of the property (Acceptance Deadline). If accepted, this document shall become a contract between Sellers and Buyer. A copy of this document may be executed by each party, separately, and when each party has executed a copy thereof, such copies taken together shall be deemed to be a full and complete contract between the parties.

22. COVENANTS SURVIVING CLOSING. Upon Closing of this contract, the following covenants shall be enforceable until conditions surrounding the covenants are met. Failure to enforce any provision contained herein shall not be considered a waiver to that provision or any other provision contained herein.

- a. Buyer shall be responsible for the installation of a fence along the Property line, in a design to be mutually agreed upon by the Buyer and the Sellers.
- b. Any lighting installed on the Property by the Buyer will be directed and oriented away from County Road 107.
- c. Buyer shall have the right following closing to relocate a small drainage ditch that runs through the property, if deemed necessary by the Buyer, in order to better accommodate the proposed uses.

23. BROKERS, COMMISSIONS, AND OTHER THIRD-PARTY FEES. Buyer and Sellers shall be responsible for their own respective costs and fees for attorney reviews, brokerage or agent arrangements, or other commissions, as applicable. Such arrangements, if applicable shall be handled in separate contracts as this Contract is not intended to create any third-party rights. Buyer is responsible for all closing costs, pursuant to Section 13.

BUYER: CITY OF SALIDA, COLORADO

By: _____

Dan Shore, Mayor

Date: _____, 2022

Attest:

By: _____

City Clerk

SELLER: DAVID H. ARMSTRONG

By: _____

David H. Armstrong, Owner Date: _____

SELLER: KATHLEEN C. ARMSTRONG

By: _____

Kathleen C. Armstrong, Owner Date: _____

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by David H. Armstrong.

Witness my hand and official seal:

[SEAL]

Notary Public, State of Colorado

STATE OF COLORADO)
) ss.
COUNTY OF CHAFFEE)

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Kathleen C. Armstrong.

Witness my hand and official seal:

[SEAL]

Notary Public, State of Colorado

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B

VISUAL DEPICTION OF PROPERTY