

## **PURCHASE AND SALE AGREEMENT & OPTION TO REPURCHASE**

THIS PURCHASE AND SALE AGREEMENT & OPTION TO REPURCHASE (“**Agreement**”) is made and entered into by and between SOUTH ADAMS COUNTY FIRE PROTECTION DISTRICT, a special district formed under the laws of the State of Colorado whose principal address is 6550 East 72nd Avenue, Commerce City (“**Fire District**”) and the CITY OF COMMERCE CITY, a Colorado home rule municipality whose address is 7887 East 60th Avenue, Commerce City (“**City**”).

WHEREAS, the Fire District wishes to acquire real property, together with tangible and intangible rights appurtenant to or benefiting that property, from the City for the purposes of constructing an administrative building;

WHEREAS, after its acquisition of that property from the Finance Authority, the City wishes to transfer and convey such property to the Fire District in exchange for, among other things, the payment of a purchase price and the satisfaction of conditions relating to the construction and use of a shared emergency operations center and a shared community room;

NOW THEREFORE, in consideration of the above premises, the mutual promises and covenants below, and for other good and valuable consideration, the receipt and adequacy of which are acknowledged, the City and the Fire District agree as follows:

**I. Purchase and Sale.** Subject to the terms contained in this Agreement, the City will sell and convey to the Fire District, and the Fire District will purchase and pay the City, for a parcel of real property located in Adams County, Colorado, and more specifically described in **Exhibit A**, attached and incorporated by this reference, together with all easements and rights-of-way appurtenant thereto (the “**Property**”).

**II. Purchase Price and Payment.** In addition to the satisfaction of the conditions of Section III (Administration Building & Shared Facility; Option to Repurchase), the purchase price for the Property shall be **Sixteen Thousand Dollars and Zero Cents (\$16,000.00) per acre plus, the actual acreage to be determined by the Survey under Article V, any closing costs associated with City’s acquisition and transfer of the Property not to exceed \$5,000 (“Purchase Price”)**, delivered to City at closing upon delivery of the deed, and further subject to all terms and conditions set forth in this Agreement.

**III. Administration Building & Shared Facility; Option to Repurchase.** As further consideration for the sale of the Property, the Fire District will construct its administration building on the Property to the point of substantial completion within five (5) years of the date of closing, subject to force majeure. The Fire District acknowledges that the Purchase Price is a discounted rate and that the terms and conditions of this Section are an essential element of consideration for the sale of the Property.

A. **Shared Facilities.** The administration building shall include an emergency operations center consisting of at least 1,000 square feet of usable space (“**EOC**”) and community room consisting of at least 1,000 square feet of usable space with capacity to seat 100 people (“**Community Room**”) to be shared with the City in accordance with this Agreement.

B. **Design & Construction.**

1. At its sole cost, the Fire District will design and construct the administration building (including all required elements) and all related improvements on the Property in accordance with this Agreement and the applicable PUD Development Permit and the various sheets that are contained within. The Fire District shall be responsible for all costs of surveys and platting.

2. The Fire District will engage the services of a technology consultant to assist in space needs assessment and design. Any space needs assessment and design shall include the City's reasonable requirements for the EOC. The Fire District shall allow the City to participate in the space needs assessment and design process. The Fire District will provide the City with any reports prepared by the technology consultant. The City intends to provide its existing emergency operations center equipment for use in the EOC and to maintain that equipment at the City's expense throughout its use.

3. Before construction, the Fire District will submit all architectural and design plans and specifications for the administration building (including the the EOC and Community Room), and any changes to such plans and specifications, to the City for approval, which approval shall not be unreasonably denied, conditioned, or delayed, provided the plans and specifications comply with the provisions of this Agreement, the City's reasonable space needs, and applicable building, use, design, and zoning regulations and guidelines.

4. Before construction, the Fire District shall conduct a survey and have the Property staked by a certified surveying company to ensure all construction is placed accurately.

5. The Fire District recognizes that any private contractor for construction shall be responsible for the payment of all City sales and use taxes assessable in conjunction with any such construction (including the administration building, EOC, and Community Room).

C. Operation of EOC and Community Room; City Priority. The City and the Fire District shall share the EOC and Community Room. The EOC and Community Room shall be subject to the following requirements:

1. Use of the EOC and Community Room by the City or the Fire District for a pending or in-progress public safety event shall have priority over all other uses except as otherwise agreed;

2. The City shall have the right to use and control the EOC during any public safety emergency managed by the City as a priority over all other users, and, in such event, only Fire District personnel involved in the emergency management function shall remain in the EOC, as directed by the City;

3. The Fire District shall likewise have the right to use and control the EOC during any emergency managed by the Fire District and to determine appropriate staffing including the presence of City personnel in the EOC as directed by the Fire District; and

4. The EOC shall be operational and available to the City and the Fire District for use during an emergency at all times (including all nights, weekends, and holidays);

5. The EOC shall not be used by or accessible to the public or used as a public meeting space at any time, except for authorized persons working with public safety personnel to manage a public safety event; and

6. The City and the Fire District will jointly establish appropriate policies and procedures for implementing the use of the EOC as provided in this section.

The parties may enter into further agreements not inconsistent with this Agreement to formalize the parties understanding as to the shared usage and sharing of maintenance costs of these facilities and the use of the City's Civic Center parking lot.

D. Future Roadway Design & Construction. The Fire District, at its sole cost, shall design, construct and install all roadway and related improvements within the Property at the time it is needed for the use of the Property, as shown in Exhibit B. This requirement may be excused by the design and construction of such improvements if performed by the adjacent commercial property owner.

E. City Option to Repurchase. The City shall have the exclusive and irrevocable option to repurchase the Property, together with all easements and rights-of-way appurtenant thereto, and all partial and completed improvements and fixtures of a permanent nature, from the Fire District at the price of \$16,000 per acre plus customary closing costs and the fair market value as of the date of the City's exercise of the option of any improvements and fixtures on the Property by the Fire District, if any, as determined by a licensed real estate appraiser jointly selected by the parties, if:

1. At any time within ninety-nine (99) years from date of closing, the Fire District sells, conveys, donates, gifts, exchanges, disposes of, or otherwise transfers the Property or any interest in the Property, or any portion thereof, or agrees to do any of the foregoing; or

2. Subject to force majeure, if the Fire District fails to substantially complete the administration building, including the EOC and Community Room, in accordance with this Agreement within five (5) years of the date of closing.

In either event, the City shall exercise this option by sending written notice to the Fire District stating its intent to exercise the option granted by this Agreement and agreeing to close within one-hundred and twenty (120) days. The City's written notice shall be sent within ninety (90) days of the City's actual knowledge of the occurrence of either event. Any sale, conveyance, donation, gift, exchange, disposal, or transfer of the Property or any interest in the Property, or any portion thereof, or attempt or agree to do any of the foregoing, in violation of this paragraph shall be void and of no effect, unless the City fails to timely deliver its notice of intent to exercise the option. The City will provide documents necessary to release any lien if the City does not exercise the option.

F. Terms Survive Closing; Real Covenants. The provisions of this Section III are intended to be performed after closing and shall survive closing. The provisions of this Section III (Administration Building & Shared Facility; Option to Repurchase) shall constitute covenants touching and concerning the land and shall run with the land.

G. Remedies. The City shall be entitled to all remedies available at law and equity, including specific performance and injunctive relief, to enforce the terms of this Section.

**IV. Merchantability of Title; Objections to Title**. The City represents to the Fire District that:

A. At closing, the City will have and will convey to the Fire District good, merchantable and insurable title to the Property, including fee simple title to the Property, and subject to any burdens, easements, rights-of-way, agreements, reservations, restrictions and encumbrances described in the title commitment.

B. It comprises all of the parties who have a fee interest in said Property and that, to the best of the City's knowledge, there are no other interested parties in said property;

C. If the Fire District deems, in its sole discretion, that title for any reason is not merchantable in the City, the Fire District shall give immediate notice thereof to the City, and the City shall make a reasonable effort to correct any defects objectionable to the Fire District prior to the closing date;

D. If the City is unable or unwilling to correct such defects on or before the closing date, this Agreement, at the Fire District's option, may be declared void and of no force or effect. In the event of such termination, the parties shall have no further rights or obligations under this Agreement; and

E. The Purchase Price and satisfaction of the conditions of Sections II and III are full and just compensation for all interests in the Property.

V. **Survey.** The Fire District, at its expense, shall obtain a survey and legal description of the Property acceptable to the City, and provide the City with the original or certified copies of the survey and legal description, no later than two (2) weeks prior to the date of closing.

VI. **Plat.** The Fire District shall be responsible for all costs of the plat(s) required for the Property.

VII. **Title Commitment; Title Policy.** The Fire District, at its expense, may obtain a current commitment for a title insurance policy and obtain a title insurance policy current as of the date of closing.

VIII. **Closing Documents.** At closing, the City shall execute and deliver to the Fire District a general warranty deed conveying the Property to the Fire District in fee simple, free and clear of all easements, covenants, liens and encumbrances which are shown on the title commitment and are not accepted by the Fire District at closing, and the conditions and option contained in this Agreement. The deed delivered by the City may include the conditions of Section III of this Agreement.

IX. **Closing.** The date, time and location of closing shall be mutually agreed upon by the City and the Fire District within thirty (30) days of the Effective Date.

X. **Closing Costs.** The Fire District shall pay any closing costs, including survey costs, inspection and environmental assessment costs, fees charged by the title insurance company, and all recording fees for the documents delivered by the City to the Fire District. Each party shall be responsible for the payment of its own attorney's fees incurred in connection with the transaction that is the subject of this Agreement.

XI. **Entry.** The City shall allow the Fire District and its authorized representatives to enter upon the Property from time to time prior to closing for the purpose of placing markers and conducting visual inspections, surveys, subsurface drilling, soil tests, groundwater tests and environmental audits to determine adverse environmental conditions and contamination. The Fire District shall give reasonable notice to the City upon entering the Property for these purposes. The Fire District shall bear costs of such inspection(s). The Fire District shall have the right to terminate this agreement prior to closing, if, in the sole judgment of the Fire District, those tests or inspections disclose conditions which make the property unusable for its intended use.

XII. **Risk of Loss; Damage.** If any improvements are placed on the Property by or on behalf of the Fire District, loss or damage to the improvements from any cause, including, but not limited to, fire, vandalism, or acts of God, from the date of this Agreement until the conveyance of said deed from the City to the Fire District shall be the risk of the Fire District.

XIII. **City Representations.** The City represents that to the best of its knowledge, as of the Effective Date, and as of the date of the closing, that the following are true and correct:

A. **Soils.** The City has no knowledge of any patent or latent defects, soil deficiencies or subsurface anomalies existing on the Property.

B. No litigation or investigations. There is no pending or threatened litigation, proceeding, or investigation by any governmental authority or any other person known to the City against or otherwise affecting the Property, nor does the City know of any ground for any such litigation, proceedings or investigations.

C. Documents. Each and every document, schedule, item and other information delivered or to be delivered by the City to the Fire District under this Agreement, or made available to the Fire District for inspection, shall be accurate and correct.

D. Assessments. There are no special assessments which now burden or encumber the Property, there are no special assessments currently proposed as to the Property, and the Property shall be free and clear of all liens for special improvements installed as of the date of closing, whether assessed or not.

E. Leases. The City has notified the Fire District of all encumbrances known to the City relating to the Property, or to any part thereof.

F. Easements. The City has notified the Fire District of any easements, rights-of-way or claims of possession not shown by record but known by the City, whether by grant, prescription, adverse possession or otherwise, as to any part of the Property.

#### **XIV. Contingencies.**

A. Performance by the Fire District under this Agreement is expressly contingent upon the Fire District's inspection of the Property (including environmental review), review of all agreements and information affecting the Property, review and approval of the title commitment and title documents, any appraisal of the Property which the Fire District has obtained, the Fire District's ability to obtain financing, and approval by the Fire District's governing body of the acquisition of the Property.

B. The City agrees that closing of this Agreement is contingent upon the release and/or satisfaction of the exceptions shown in the title commitment for the property, unless the Fire District agrees in writing to acquire the Property subject to any such exceptions.

C. If this Agreement is terminated due to the failure of any contingency, the parties shall have no further rights or obligations under this Agreement.

XV. **Remedies.** If either party fails to close on this Agreement for any reason, the other party shall not be entitled to enforce this Agreement through an action for specific performance, nor shall either party be entitled to any damages from the failure to close except that the Fire District will reimburse the City for reasonable costs of acquiring or preparing to transfer the Property not to exceed \$5,000. Except as otherwise provided in this Agreement, if either party defaults or terminates this Agreement, the parties shall have no further rights or obligations under this Agreement.

#### **XVI. Miscellaneous.**

A. Time of the Essence. Time is of the essence and all terms, conditions and covenants shall be tendered or performed as specified in this Agreement.

B. Agreement Binding. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties. The parties agree that, except for such of the terms, conditions, covenants and agreements that are, by their very nature, fully and completely performed upon closing, all of the terms, conditions, representations, warranties, covenants and agreements set forth and contained in

this Agreement shall survive the closing and shall continue to be binding upon the parties (expressly including all terms, conditions, requirements, and options provided in Section III).

C. Prohibition of Assignment. The rights and obligations under this Agreement shall not be assigned to or assumed by any third parties without the prior written consent of the City and the Fire District.

D. Authority. The City and the Fire District warrant that each has the full right and legal authority to enter into this Agreement.

E. Governing Law and Venue. This Agreement and the rights and obligations of the parties under this Agreement shall be governed by the laws of the State of Colorado, and any legal action brought under or as a result of this Agreement shall be brought in Adams County, Colorado.

F. Recording. This Agreement may be recorded in the records of the Clerk and Recorder of Adams County, Colorado.

G. Modification. This Agreement may be modified only upon written agreement of the parties.

H. Integration. The foregoing constitutes the entire agreement between the parties regarding the Property and no additional or different oral representation, promise or agreement shall be binding on any of the parties with respect to the Property.

I. Effective Date. This Agreement shall be effective on the date of execution by the last party to sign this Agreement (the "Effective Date").

IN WITNESS WHEREOF, this Agreement is executed by Fire District and the City as of the Effective Date.

**[Signature page(s) follow.]**