

PURCHASE AND SALE AGREEMENT

13799 County Road 5, Mead, CO 80542 (Parcels 120729100001, 120729100002)

This **PURCHASE AND SALE AGREEMENT** (the "Agreement") is made and entered into as of this _____ day of _____, 2023 (the "Effective Date"), by and between Western Equipment & Truck Inc., a Colorado Corporation, whose address is 2055 1st Avenue, Greeley, CO 80631 ("Seller") and the City of Longmont, a Colorado municipal corporation with an address of 350 Kimbark St., Longmont, CO 80501 (the "City"), and (each a "Party" and collectively, the "Parties").

WHEREAS Seller owns the real property more particularly described in **Exhibit "A,"** attached hereto and incorporated by this reference (the "Property"); and

WHEREAS the City wishes to purchase the Property from Seller, pursuant to the terms set forth in this Agreement.

NOW, THEREFORE, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Conveyance. Seller agrees to convey, sell, and transfer to the City, and the City agrees to purchase from Seller, on the terms and conditions of this Agreement, the Property as described in Exhibit "A."
2. Purchase Price. The Purchase Price to be paid by the City to Seller for the sale and conveyance of the Property is **FOUR MILLION TWO HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,200,000.00)** to be paid by the City at Closing in funds which comply with all applicable Colorado laws, including electronic transfer funds, certified check and cashier's check, as directed by Seller.
3. Earnest Money. Simultaneous with its execution of this Contract, the City shall tender Fifty Thousand Dollars (\$50,000.00) in the form of a wire transfer, which shall be held by the Land Title Company, Longmont, Colorado (the "Title Company," "Earnest Money Holder" or "Closing Agent") in an interest bearing escrow or trustee account, as earnest money (the "Earnest Money") for the real estate described in Exhibit A, attached hereto, together with all improvements and appurtenances.
4. Evaluation Period. The City shall have the period commencing on the Effective Date and continuing for 30 (thirty) days thereafter (the "Evaluation Period") in which to determine whether the Property is satisfactory for the City's proposed use, in the City's sole and absolute discretion.
 - a. The City has obtained a title insurance commitment (the "Title Commitment") proposing to insure the City's ownership of the Property, in a form acceptable to the City, and issued by Land Title Guarantee Company which maintains an office in Longmont and is authorized to do business in the State of Colorado. The Title Commitment includes copies of all exception documents identified in the commitment. The City shall be

responsible for the cost of the Title Commitment and an owner's policy of title insurance issued pursuant to the commitment. The City may, at its sole option and its sole expense, either purchase or decline the title insurance under this Section.

b. During the Evaluation Period, Seller shall make available to the City for inspection and copying all reports and other documents in Seller's possession or under its control, or which the seller may reasonably obtain, which affect the value of the Property or otherwise relate to the Property, including without limitation surveys, environmental reports, soil reports, engineering drawings, utility plans, road plans, rights-of-way, signage licenses, easements, and leases, including:

- i. Oil and Gas Lease dated May 12, 2017, from The Dorothy A. Olander Family Trust to Transcontinent Oil Company (Schedule B, Part II, 23);
- ii. Oil and Gas Lease dated May 12, 2017, from The Dean L. Olander Living Trust to Transcontinent Oil Company Schedule (Schedule B, Part II, 25).

c. The City or any person the City designates may make inspections of the physical condition of the Property and the improvements thereon, at the City's expense. Such inspections may include, but are not limited to, inspections for the existence and extent of mineral development, appraisal and compliance with environmental protection, pollution or land use laws, ordinances, rules, and regulations and for the disposal or existence, in or on the Property, of any pollution or hazardous substance, and may include a Phase 1 or Phase 2 environmental review. Such inspections may include reasonable subsurface boring and excavation.

d. If, after review of the matters submitted pursuant to this section 4 and inspection of the Property through the Evaluation Period, the City determines in its sole discretion that the Property is unsatisfactory for the City's desired purposes in any respect, the City may terminate this Agreement by written notice delivered to Seller and the Title Company within the Evaluation Period. Upon delivery of such notice, this Agreement shall terminate, the Earnest Money shall be returned to the City, and the Parties shall be released from all further obligations hereunder.

5. Earnest money dispute. Except as otherwise provided herein, the Title Company must release the Earnest Money following receipt of written mutual instructions, signed by both the City and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between the City and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction; or (3) provide notice to the City and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between the City and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty (120) days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to the City. In the event Earnest Money Holder does receive a copy of the Lawsuit and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. This Section will survive cancellation or termination of this Contract.

6. Title Matters. The City shall be entitled to object to any matters shown in the Title Commitment or the Survey by a written notice of objections delivered to Seller within the first 20 days of the Evaluation Period. Seller may, but is not required to, respond to the City's objections in writing within seven (7) days of receiving said objection, proposing to take actions to satisfy any or all of such objections or declining to take action to satisfy any of such objections. The City may waive or approve a title objection by providing written notice of the waiver or approval prior to the end of the Evaluation Period. If the City fails to deliver a notice of objections to Seller prior to the end of the Evaluation Period, then the City shall be deemed to have waived objection to all matters shown or noted on the Survey or appearing as exceptions to title on the Title Commitment, and all such matters shall be deemed to be "Permitted Exceptions". If Seller declines to satisfy any of the City's stated objections and the City does not terminate this Agreement at the end of the Evaluation Period as set forth in section 4, any matters previously listed in a notice of objections to title hereunder and not removed or otherwise eliminated shall also be deemed to be Permitted Exceptions.

7. Closing. The Closing will occur at the office of the Title Company, or at such other mutually agreeable location. The date of Closing shall be January 2024, or by written mutual agreement at a later or earlier date. The City shall pay all Closing costs and all other items required to be paid at Closing by the City, except as otherwise provided herein. The City and Seller shall sign and complete all customary or required documents at or before Closing.

8. Possession. Possession of the Property shall be delivered to the City at Closing.

9. Seller's Deliverables. On or prior to Closing, Seller shall deliver to the City a Special Warranty Deed duly executed and acknowledged by Seller, conveying title to the Property to the City, and such other instruments of transfer, certificates and additional documents as may be required hereunder or reasonably required by the City or the Title Company.

10. The City's Deliverables. On or prior to Closing, the City shall deliver to Seller the Purchase Price and other funds required to be paid or provided by the City under this Agreement, and such other documents as may be required hereunder or reasonably required by Seller or the Title Company.

11. Seller Representations and Warranties. Seller hereby represents and warrants that the following statements are now, and will be as of the Closing date, true and correct, to the best of Seller's knowledge.

a. There is no action, suit or proceeding pending, threatened, against or otherwise affecting Seller or the Property in any court of law or equity, or before any governmental authority, in which an adverse decision might materially impair Seller's ability to perform its obligations under this Agreement.

b. There is no pending or threatened condemnation or similar proceeding affecting the Property.

- c. The Property is being sold free and clear of all agreements, leases and other occupancy rights.
- d. Seller has not received any notice of any violations of any applicable law related to the Property.
- e. There are no special assessments to be levied against the Property after its acquisition by the City.
- f. No part of the property has been used as a landfill, and no materials have been stored or deposited upon the Property that would, under any applicable governmental law or regulation require treatment of the Property or removal of materials from the Property before use of the Property for any otherwise lawful purpose to the best of Seller's knowledge. Specifically:
 - i. The Property is not contaminated with any hazardous substance;
 - ii. Seller has not caused and will not cause, and to the best of Seller's knowledge, there has never occurred, the release of any hazardous substance on the Property; (C) the Property is not subject to any federal, state or local "superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal, or remediation of any such hazardous substance; (D) there is no asbestos on the Property, the Property complies with the requirements of the Occupational Health and Safety Administration of the U.S. Department of Labor (OSHA) asbestos standards, and Seller will, at least twenty days before closing, provide the City all records the OSHA asbestos standards (29 C.F.R. Parts 1910, 1915, and 1926) require; (E) there is no underground storage tank on the Property; (F) by acquiring the Property, the City will not incur or be subject to any "superfund" liability for the cleanup, removal or remediation of any hazardous substance from the Property or any liability, cost, or expense for the removal of any asbestos or underground storage tank from the Property. The terms "hazardous substance", "release" and "removal" shall have the same meaning and definitions as in 42 U.S.C. section 9601; provided, however, that the term "hazardous substance" as used herein also shall include "hazardous waste", as defined in 42 U.S.C. section 6903 and "Petroleum", as defined in 42 U.S.C. 6991. The term "superfund" means the Comprehensive Environment Response, Compensation and Liability Act, as amended, 42 U.S.C. section 9601, et seq., as amended, and any similar state statute or local ordinance applicable to the Property, and all rules and regulations promulgated, administered or enforced by any governmental agency or authority. The term "underground storage tank" shall have the same meaning and definitions as in 42 U.S.C. section 6991.
- g. Through the date of Closing, Seller shall give the City prompt written notice if any of the representations or warranties made herein are no longer true or correct in any material manner.

12. Remedies.

a. Seller's Remedies. If the Closing does not occur by reason of a breach of the City, neither Party shall have any further obligation hereunder.

b. The City's Remedies. If the Closing does not occur by reason of a breach of Seller, and the City has complied with the terms of this Agreement, the City may, in its sole discretion: (a) treat this Agreement as terminated, and the City may pursue and recover such damages as may be proper; or (b) treat this Agreement as in full force and effect, in which case the City shall have the right to specific performance or damages, or both; or (c) begin eminent domain proceedings and claim full credit against any just compensation award for any payment or things of value given under this Agreement. If the Purchaser pursues eminent domain, this Contract shall conclusively establish good faith negotiations between the parties, and Purchaser's inability to obtain the Property through such good faith negotiations. The entire just compensation for taking the subject property, including any damages to any remainder of Seller's property, shall be the purchase price in this Contract and, upon deposit of that price, Purchaser shall have immediate possession of the property.

13. Indemnification. Seller will indemnify, defend, and hold the City harmless from and against all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses and expenses (including, without limitation, attorney fees) arising or resulting (directly or indirectly) from the untruth or inaccuracy of any representation or warranties, from the breach of any covenant or warranties, and from Seller's use, possession, activities, or omissions on the Property and to the extent proximately caused by any negligent or wrongful act of Seller on the Property prior to Closing.

14. Miscellaneous.

a. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Boulder County, Colorado. In any such action, the prevailing party shall be awarded its costs and reasonable attorney fees associated with the action.

b. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the City shall not constitute a waiver of any of the other terms or obligation of this Agreement.

c. Integration. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

d. Third Parties. Buyer is aware that seller intends to perform an IRC Section 1031 tax-deferred exchange. Seller requests buyer's cooperation in such an exchange and agrees to hold buyer harmless from any and all claims, costs, liabilities, or delays in time resulting from such an exchange. Buyer agrees to an assignment of this contract to a qualified intermediary by the seller.

- e. Notice. Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent prepaid, first-class United States Mail to the Party at the address set forth on the first page of this Agreement.
- f. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.
- g. Modification. This Agreement may only be modified upon written agreement of the Parties.
- h. Governmental Immunity. The City and its officers, attorneys and employees, are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities or protections provided by the Colorado Governmental Immunity Act, C.R.S. section 24-10-101, *et seq.*, as amended, or otherwise available to the City and its officers, attorneys or employees.
- i. Subject to legislative approval and compliance with law. The Parties hereby acknowledge and agree that the sale of the Property and this Contract is expressly contingent on approval by the City Council of the City of Longmont ("City Council") and compliance with all applicable provisions of the City of Longmont Charter and Municipal Code with regard to conveyance of property. The City shall not incur any liability whatsoever if the sale of this Property or this Contract are not approved by City Council.
- j. Subject to Annual Appropriation. Consistent with Article X, section 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.
- k. Real estate commission. Any real estate commission due to any broker engaged by Seller upon sale of the Property to the City shall be paid by Seller. The City is not a party to any contract which requires the payment of any real estate commission upon the sale of the Property.
- l. Contract to survive closing. Except as otherwise set forth herein, upon a successful closing and transfer of title to the Property from Seller to the City, the terms, conditions, representations, warranties, covenants and agreements stated in this Contract shall merge into the deed and be of no further force and effect.
- m. Construction. In this Contract, words of the masculine gender include the feminine and neuter gender and words of the neuter gender refer to any gender. Words in the singular include the plural and vice versa. This Contract shall be construed according to its fair meaning, as if prepared by both Parties, and not in favor of or against either party. This document and any other documents incorporated by reference contain

the entire understanding and agreement between the Parties. There are no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning the subject of this Contract unless stated in writing and signed by both Parties. This Contract shall not be construed or interpreted for or against either Party, regardless of the drafter.

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

Dated this _____ day of _____, 202__

BUYER
CITY OF LONGMONT:

MAYOR

ATTEST:

CITY CLERK

DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 23-002527

SELLER:

Craig Sparrow

State of Colorado)
) ss.
County of)

I attest that the foregoing instrument was acknowledged before me this _____day of _____, 202_____by Craig Sparrow, as President of Western Equipment and Truck Inc., a Colorado corporation.

Witness my hand and official seal.

Notary Public

EXHIBIT "A" LEGAL DESCRIPTION

LOT B, RECORDED EXEMPTION NO. 1207-29-1-RE2395, ACCORDING TO THE MAP RECORDED APRIL 27, 1999 AT RECEPTION NO. 2689632 BEING LOCATED IN THE NORTHEAST QUARTER OF SECTION 29, TOWNSHIP 3 NORTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, COUNTY OF WELD, STATE OF COLORADO.