

WATER RIGHTS AGREEMENT

This Water Rights Agreement (“Agreement”), dated August [], 2022, is among COUNTY OF BOULDER, COLORADO, a body corporate and politic (“County”); CITY OF LAFAYETTE, a Colorado home rule municipal corporation (“City”); and HOUSING AUTHORITY OF THE COUNTY OF BOULDER, COLORADO, a body corporate and politic (“Authority”).

The County, the City, and the Authority have worked collaboratively since 2017 on the acquisition and planning for a multi-phased affordable housing development known as Willoughby Corner (“Project”). The Project will be subject to other agreements between the City and the Authority, which include the Willoughby Corner Planned Unit Development, a Development Agreement, Incentives Agreement, and Community Housing Plan (“Project Agreements”).

The Project requires raw water rights to satisfy the City’s water dedication requirements. The County entered into a Purchase Agreement for Water Shares and CBT Units with a third party (“Rademacher Agreement”) to buy raw water rights that include 184 Colorado-Big Thompson Project units (“CBT Units”). By this Agreement, the County assigns to the City the right to buy 184 CBT Units under the Rademacher Agreement, the City commits to pay half the cost for 157 CBT Units for the Project, and the Authority agrees to reimburse the City for up to the other half the cost of 157 CBT Units for the Project.

The parties therefore agree as follows:

1. Partial Assignment of Rademacher Agreement. The County hereby assigns to the City the right to purchase the 184 CBT Units under the Rademacher Agreement. The City shall deposit \$12,512,000 in the CBT Escrow Account (as the Rademacher Agreement defines that term) on or before August 8, 2022. The City shall pay a transfer fee of \$500 and assessments of \$5,336 to the Northern Colorado Water Conservancy District (“NCWCD”) and fulfill all other obligations of the County under the Rademacher Agreement that relate to the purchase of the CBT Units.

2. City Incentive and Authority Reimbursement. Subject to the City’s acquisition of the CBT Units and the City entering into an allotment contract with NCWCD that allows the CBT Units to be used for the Project, the City will subsidize the Project by requiring the Authority to reimburse the City for only half of the purchase price for the 157 CBT Units, i.e., the City shall dedicate, without reimbursement from the Authority, 78.5 CBT Units to the Project (“Incentive Units”), and the Authority shall reimburse the City for the remaining 78.5 CBT Units (“Reimbursement Units”). The City has no obligation to provide the Authority with more than 157 CBT Units for the Project. The City and the Authority shall execute any documents required by NCWCD or reasonably requested by the other to evidence and effectuate the dedication. The City and the Authority shall each pay one-half of any fees or assessments imposed on the dedication.

3. Deferment of Water Right Dedication Obligation. The Project consists of 24.096 acres, and the Authority anticipates the Project will include about 400 dwelling units. The anticipated total water right obligation is 157 CBT Units (“Total Water Rights Obligation”). For the purpose of complying with Division 4 of Section 120 of the City’s Code of Ordinances (“Code”), the Authority will develop the Project in two phases. Pursuant to Sections 120-117 and -119 of the Code, the City hereby allows a two-phase water dedication and grants the Authority a deferral of 50% of the Total Water Rights Obligation.

4. Sequence of Incentive and Reimbursement Contributions. As the CBT Units must be dedicated to the Project pursuant to the Code and the Project Agreements, the City shall dedicate the Incentive Units first. Once the Incentive Units have been fully dedicated to the Project, the Authority shall pay the City \$5,338,000 for the Reimbursement Units. Once the City receives the Reimbursement payment, the City shall dedicate the Reimbursement Units to the Project when required by the Code and the Project Agreements.

5. Term. This Agreement becomes effective once all parties have signed (“Effective Date”) and will automatically terminate at the earlier of: (i) the full build out of the Project; or (ii) ten years after the Effective Date.

6. Termination. The Authority may terminate this Agreement if it determines it cannot complete the Project due to economic infeasibility, casualty or condemnation, changes in law that affect the financing or development of affordable housing, changes in laws, regulations, or rules that prohibit the use of the CBT Units for the Project, or any other reason that makes the Authority’s ability to perform its obligations under this Agreement practically impossible or unduly burdensome. Upon termination, the parties will have no further obligations under this Agreement, and the City may sell or use the undedicated CBT Units.

7. City Warranty. The City shall not sell, convey, or encumber the 157 CBT Units required to be dedicated to the Project, and, as of the date on which it dedicates the CBT Units to the Project, the City warrants it holds good and marketable title to the dedicated CBT Units free of all liens, encumbrances, and security interests.

8. No Cross-Default. No default by either party under the Project Agreements will automatically create a default under this Agreement.

9. Amendments. Any amendment to this Agreement requires a written agreement of the parties.

10. Entire Agreement. This Agreement constitutes the entire understanding between the parties regarding its subject matter.

11. Waiver. No waiver of satisfaction of a condition or non-performance of an obligation under this Agreement will be effective unless it is in writing and signed by the party granting the waiver.

12. Notices. The parties shall give all notices and demands related to this Agreement in writing delivered by (i) personal delivery, (ii) a nationally recognized, next-day courier service, or (iii) first-class certified mail, postage prepaid. A notice is deemed given on the other party's receipt of it, or if mailed, on the earlier of the other party's receipt of it or the fifth business day after its mailing. The parties may change their addresses for notice by notifying the other parties in the manner provided in this Section. The parties hereby designate their addresses as follows:

County: Boulder County
P.O. Box 471
Boulder, CO 80302
attn.: County Attorney's Office

City: City of Lafayette
1290 S. Public Road
Lafayette, CO 80026
attn.: City Administrator

Authority: Boulder County Housing Authority
3460 Broadway
Boulder, Colorado 80304
attn.: Executive Director

[signature pages follow]

The parties are entering into this Water Rights Assignment and Reimbursement Agreement effective as of the Effective Date.

CITY OF LAFAYETTE, COLORADO

By: _____
JD Mangat, Mayor

ATTEST:

City Clerk

(Print name)

APPROVED AS TO FORM:

City Attorney

(Print name)

THE COUNTY OF BOULDER, COLORADO

By: _____
Marta Loachamin, Chair
Board of County Commissioners

ATTEST:

County Clerk

(Print name)

APPROVED AS TO FORM:

County Attorney

(Print name)

BOULDER COUNTY HOUSING AUTHORITY

By: _____
Norrie Boyd, Executive Director