

## **PURCHASE AND SALE AGREEMENT**

THIS PURCHASE AND SALE AGREEMENT IS made this day of \_\_\_\_\_, 2025 (the "Effective Date") by and between the Portland Water District, a quasi-municipal corporation created by Private and Special Law in Maine, with a business office located at 255 Douglass Street, Cumberland County, Maine, ( hereinafter referred to as "Seller" or "PWD"), and the Town of Windham, a municipal corporation with a place of business at 8 School Rd, Windham, Maine (hereinafter referred to as "BUYER") (Buyer and Seller are referred to in this agreement as the "parties").

### **RECITALS**

WHEREAS, the PWD is the owner of land, located at or about Soccer Drive, Windham Maine, which property is also known a portion of Windham Tax Map 5, Block 8 and as more fully shown on a plan attached to this Agreement as **Exhibit A**, which is incorporated into this Agreement by reference (the "Premises"); and

WHEREAS, BUYER seeks to acquire the Premises from PWD, and PWD desires to sell the same to BUYER on such terms as are set out herein;

NOW THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

#### **1. SALE.**

PWD agrees to sell the Premises to BUYER, and BUYER agrees to purchase the Premises in accordance with the terms and conditions set forth in this Agreement. To the extent that there is any disagreement between the provisions of this Agreement and its attachments, the provisions of this Agreement shall govern.

#### **2. USE.**

The Premises shall be used for recreation and open space only. This requirement shall be a covenant that will run with the land and will be contained in the deed from PWD to BUYER.

#### **3. CONSIDERATION.**

The purchase price for the Premises shall be Three Hundred Eighty Thousand dollars (\$380,000) (the "Purchase Price"), which amount shall be paid at the closing described in Paragraph 11 hereof.

#### **4. TITLE.**

Title to the Premises shall be conveyed by quitclaim deed without covenant. Title to the

Premises shall be subject to (i) easements described herein; (ii) easements for utilities servicing or otherwise affecting the property and (ii) Town of Windham ordinances.

a. PWD shall reserve an easement for a future water pipeline, as shown on Exhibit 1, attached hereto and incorporated herein.

**5. DUE DILIGENCE PERIOD; CONDITION OF PREMISES; PERSONAL PROPERTY.**

BUYER has had and shall continue to have an opportunity to inspect the Premises and to hire professionals to do so during the period of 60 days after the Effective Date (the "Due Diligence Period"), provided that any person entering the Premises must sign a Release, Assumption Of Risk And Indemnity Agreement form provided PWD. BUYER shall provide the PWD with copies of any data, reports, or other documents provided to BUYER as a result of such inspections if requested by PWD. BUYER acknowledges and agrees that the Premises will be conveyed "as is, where is" and "with all faults."

If during the Due Diligence Period the BUYER determines that the title to the Premises is unsatisfactory, or the environmental condition of the Premises is such that BUYER will not be able to utilize the Premises in the manner that is intended by BUYER, BUYER may terminate this agreement and neither party shall owe the other any further obligation hereunder.

PWD and its agents make no representations or warranties with respect to the accuracy of any statement as to boundaries or acreage, or as to any other matters contained in any description of the Premises, or as to the fitness of the Premises for a particular purpose, or as to development rights, merchantability, habitability, or as to any other matter, including without limitation, land use, zoning and subdivision issues or the environmental, mechanical, or structural condition of the Premises.

Furthermore, PWD and its agents make no representations or warranties regarding the condition of any appurtenances or fixtures associated with the concrete reservoir.

Acceptance by BUYER of the Deed and at closing and payment of the purchase price shall be deemed to be full performance and discharge by PWD of every agreement and obligation contained herein.

**6. ENTRY TO PROPERTY; RELEASE AND INDEMNIFICATION.**

BUYER, which term includes its agents, acknowledges that there may be dangerous conditions on the Premises that may expose persons entering the Premises in the course of Due Diligence investigations to bodily injury, death, or property damage, and BUYER agrees its entry to the Premises is at its own risk. BUYER hereby releases PWD and its officers, agents and personnel (collectively, the "Releasees") from any and all claims, liabilities, damages, losses, costs, judgments, fees and expenses arising out of or resulting, directly or indirectly, from BUYER's entry of the Premises, including, without limitation, injuries, losses and damages for bodily injury (including disability or death) and property damage, regardless of cause, including any and all claims, damages and liabilities that arise

out of or result from any actions or omissions, including negligence, on the part of any of the Releasees. BUYER promises not to sue any of the Releasees with respect to any such claims or liabilities. This waiver and release is intended to be as broad as the law allows and shall survive termination of this agreement.

BUYER further agrees, to the fullest extent permitted by law, that BUYER shall defend, indemnify and hold PWD's officers, agents and employees, harmless at all times from any claims, liability, losses, costs, expenses (including, without limitation, reasonable attorney's fees) fines, damages or judgments (collectively, "Claims"), just or unjust, that arise out or are related to any entry of the Premises by BUYER, its agents, officers, directors, employees, contractors, subcontractors, invitees, or anyone else entering the Premises on behalf of BUYER, which Claims include, without being limited to, Claims for personal injury, death, or property damage and including Claims based upon violation of any environmental law or regulation governing hazardous substances.

BUYER's obligations under this paragraph shall survive the termination of this Agreement.

**7. REAL ESTATE TAXES, PRORATIONS AND TRANSFER TAX.**

The parties to this Agreement are exempt from the Maine real estate transfer tax pursuant to 36 M.R.S. §4641-C. Recording fees and costs associated with the closing shall be paid for by BUYER.

**8. DEFAULT AND REMEDIES.**

In the event that BUYER defaults hereunder for a reason other than the default of the PWD, PWD shall retain the deposit and shall have the right to pursue all legal or equitable remedies available to the PWD. In the event PWD defaults under this Agreement, and if BUYER is not then in default hereunder, BUYER shall have the right to pursue specific performance, but at all times may elect in substitution therefor, as its sole remedy, the right to a return of its deposit.

**9. ENVIRONMENTAL INDEMNIFICATION.**

BUYER covenants and agrees to indemnify, defend, and hold PWD harmless from and against any and all claims, damages, losses, liabilities, obligations, settlement payments, penalties, assessments, citations, directives, claims, litigation, demands, defenses, judgments, costs, or expenses of any kind, including, without limitation, reasonable attorneys', consultants', and experts' fees incurred in investigating, defending, settling, or prosecuting any claim, litigation or proceeding, that may at any time be imposed upon, incurred by or asserted or awarded against BUYER or PWD and relating directly or indirectly to the violation of or compliance with any federal, state, or local environmental laws, rules, or regulations governing the release, handling or storage of hazardous wastes or hazardous materials and affecting all or any portion of the Premises. This duty to indemnify, defend, and hold harmless shall be included in a covenant in the deed and shall run with the land conveyed and be binding upon BUYER's successors, assigns, and transferees.

## **10. CONDITIONS TO CLOSING.**

PWD's and BUYER's obligation to close hereunder are conditioned upon the satisfaction of the conditions described herein.

(a) BUYER shall obtain necessary Town Council approval for the purchase of the property and an appropriation of funding to complete the purchase;

(b) PWD shall obtain necessary approval for the sale of the property from its Board of Trustees.

Failure to satisfy any of these conditions shall not constitute a default under this Agreement, provided that the party whose obligation it is to secure the described approvals has attempted to do so diligently and in good faith.

## **11. CLOSING.**

The closing shall be held at PWD offices at a time and date mutually agreeable to the parties within sixty (90) days of the satisfaction or all conditions to closing described in Section 8 of this Agreement ("Closing Date"), unless extended as provided herein; but in no event shall the Closing Date be any later than the date that is twelve (12) months from the Effective Date hereof (i.e., the first anniversary of the Effective Date), unless the delay or extension is due to PWD's right to extend the closing date set forth elsewhere in this Agreement. All conditions to close hereunder shall be considered conditions of both parties.

At the closing, PWD and BUYER shall execute and deliver all customary documentation necessary to close this transaction and other documents specifically set forth below, the form and content of which shall be mutually satisfactory to each party, including without limit, execution and delivery to BUYER, a "Seller's Affidavit" regarding mechanics liens and persons in possession in the customary form and reasonable evidence of PWD's authority to convey the Property.

## **12. ENTIRE AGREEMENT.**

This Agreement represents the entire and complete Agreement and understanding between the parties and supersedes any prior agreement or understanding, written or oral, between the parties with respect to the acquisition or exchange of the Premises hereunder. This Agreement cannot be amended except by written instrument executed by PWD and BUYER.

## **13. NON-WAIVER.**

No waiver of any breach of any one or more of the conditions of this Agreement by either party shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.

**14. HEADINGS AND CAPTIONS.**

The headings and captions appearing herein are for the convenience of reference only and shall not in any way affect the substantive provisions hereof.

**15. BINDING EFFECT.**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, administrators, successors and assigns.

**16. TIME.**

PWD and BUYER each confirm and agree that each of the time periods set forth herein are essential provisions of the terms of this Agreement.

**17. GOVERNING LAW.**

This Agreement shall be construed in all respects in accordance with, and governed by, the laws of the State of Maine. All parties hereto hereby consent to the exclusive jurisdiction of the Superior Court for the County of Cumberland in the State of Maine, for all actions, proceedings and litigation arising from or relating directly or indirectly to this Agreement or any of the obligations hereunder, and any dispute not otherwise resolved as provided herein shall be litigated solely in said Court. If any provision of this Agreement is determined to be invalid or unenforceable, it shall not affect the validity or enforcement of the remaining provisions hereof.

**18. NOTICE.**

All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given on the date of service if served personally on the party to whom notice is to be given, or on the first business day after mailing if mailed to the party to whom notice is to be given by first class mail, postage prepaid, certified, return receipt requested, addressed to the recipient at the addresses set forth below. Either party may change addresses for purposes of this paragraph by giving the other party notice of the new address in the manner described herein.

**Portland Water District:**      General Manager  
Portland Water District  
P.O. Box 3553  
Portland, Maine 04104  
With a copy to the Corporate Counsel (same address)

**Buyer:**                                      Town Manager

Town of Windham  
8 School Road  
Windham, ME 04062

**19. SIGNATURES; MULTIPLE COUNTERPARTS.**

This Agreement may be executed in any number of counterparts and by different parties in separate counterparts. Each counterpart when so executed shall be deemed to be an original and all of which together shall constitute one and the same agreement. A signature in a faxed, pdf or other reproduced or electronic document shall be considered the equivalent of an original signature.

**20. BROKERS.**

PWD and BUYER each represent and warrant that they have not dealt with a real estate broker in connection with this transaction.

**21. RECITALS INCORPORATED BY REFERENCE.**

The recitals set forth above are incorporated herein by reference and made a part of this Agreement.

**22. ASSIGNMENT.**

BUYER may not assign its rights and obligations under this Agreement without the PWD's prior written consent.

*Signature page follows.*

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be executed by their duly authorized officers or representatives, as of the day and year first written above.

**PORTLAND WATER DISTRICT**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Christopher Crovo  
Interim General Manager

**TOWN OF WINDHAM**

\_\_\_\_\_  
WITNESS

\_\_\_\_\_  
Barry A. Tibbetts  
Town Manager