WATER SUPPLY AGREEMENT

This WATER SUPPLY AGREEMENT ("Agreement") is made and entered into this _____ day of _____, 2020, by and between the City of Longmont, a municipal corporation organized under the laws of the State of Colorado and acting by and through its Water Utility Enterprise ("Longmont"), whose address is 1100 South Sherman Street, Longmont, Colorado 80501, and _____whose mailing address is _____("Customer"). Longmont and Customer may sometimes be referred to herein individually as a "Party" or collectively as "Parties."

RECITALS

A. Longmont, a home rule municipality in Boulder County, Colorado, duly organized and existing under Article XX of the State Constitution, acting on behalf of its water utility enterprise, is authorized, pursuant to Sections 1.2, 1.3, and 11.1 of Longmont's Home Rule Charter and Section 31-15-101, et seq., C.R.S., as amended, to acquire, hold, lease, and dispose of real and personal property, including water and water rights.

B. Longmont owns water, water rights, or water credits in the St. Vrain Creek basin that are fully consumable.

C. Longmont and Customer desire to enter into this Agreement to provide water to be supplied by Longmont to Customer.

D. Pursuant to Section 14.09.030 of the Longmont Municipal Code, Longmont's General Manager of Public Works and Natural Resources, or the General Manager's designee, is authorized to enter into and execute water rights leases or raw water supply agreements, at the then-current rental market rates for agricultural and other uses, or exchange agreements by which Longmont obtains water of equal or greater value, of one year or less.

AGREEMENT

Now, therefore, in consideration of the foregoing recitals, and mutual covenants and agreements herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Supply. Longmont hereby agrees to provide to Customer ____ acre-feet of fully consumable water (the "Subject Water"). The Subject Water may be selected and delivered by Longmont, in its discretion, from various sources including reusable effluent, water stored in Union Reservoir, other fully consumable water controlled by Longmont, or water from any other source, provided the Subject Water shall be usable by Customer for its stated purpose.

2. Deliveries.

2.1. Point of delivery. Longmont shall, at its sole discretion, deliver the Subject Water at either (hereinafter the "Delivery Point"): (1) the outfall of Longmont's municipal wastewater treatment plant, presently located in the SE¼ NW¼ of Section 11, T2N, R69W of the 6th P.M., Boulder County, Colorado; or (2) the confluence of Spring Gulch and the Saint Vrain Creek, presently located in the SE1/4 of Section 7, T2N, R68W of the 6th P.M., Weld County,

Colorado. Customer shall bear any losses associated with conveyance of the Subject Water from the Delivery Point to any location where Customer may use the Subject Water. Longmont shall be responsible for all losses and/or return obligations associated with delivery of the Subject Water to the Delivery Point.

2.2. Timing of deliveries. The Subject Water shall be delivered based upon the following schedule:

Month	Year	Ac-Ft
June		
July		
August		
September		

2.3. Accounting. Longmont shall maintain an accounting of all deliveries of the Subject Water to Customer, and shall provide monthly copies of such accounting to Customer upon request.

3. Use of Subject Water. Customer shall divert the Subject Water at pump locations described in Exhibit A. Customer shall use the Subject water for native re-vegetation establishment located on properties owned by _____ along Saint Vrain Creek (the "Property"). No change of Longmont's water rights shall be applied for or reviewed as part of such use. Customer shall be responsible for obtaining all necessary authorizations, approvals, decrees, and/or permits from any and all private entities, and local, state, and federal agencies, as may be required to effectuate use of the Subject Water by Customer pursuant to this Agreement. If requested, Customer shall provide copies of any such authorizations, approvals, and permits to Longmont.

4. Rate. Customer agrees to pay Longmont $641.00 per acre-foot. The total price for the _____ acre-feet of Subject Water is_____. Payment to Longmont of _____is due upon execution of this Agreement; such payment shall be nonrefundable and not contingent upon whether the Subject Water is actually diverted or used by Customer, so long as Longmont delivered the Subject Water based upon the schedule in paragraph 2 above.

5. Term. The term of this Agreement shall begin at time of execution of this Agreement and payment to Longmont of the Rate as outlined in Paragraph 4, and shall end on_____.

6. Untreated water. The water delivered to Customer under this Agreement is untreated or non-potable water of whatever quality that is now or in the future available from the sources specified herein. Delivery of non-potable water under this Agreement will be on an "as is" basis only, and Longmont does not warrant the quality of the Subject Water or the suitability of the Subject Water for any particular purpose. Customer shall not make any claim against Longmont arising from the quality of water delivered, and Longmont shall have no treatment responsibility for the Subject Water made available under this Agreement.

7. Indemnification. Customer shall bear all responsibility for its use of the Subject Water provided under this Agreement, together with the costs associated therewith. To the extent allowed by law, Customer shall defend, indemnify, and hold harmless Longmont from and against any and all damages, claims, losses, obligations, other costs, and other liabilities arising out of Customer's use of the Subject Water provided under this Agreement. [Unless this is an exchange, delete the remainder of this paragraph. If this is an exchange, delete this prompt and press f11 to proceed]Similarly, Longmont shall bear all responsibility for its use of the exchanged C-BT Project Water provided under this Agreement. To the extent allowed by law, Longmont shall defend, indemnify, and hold harmless Customer from and against any and all damages, claims, losses, obligations, other costs, and other liabilities arising out of Longmont's use of the exchanged C-BT Project Water provided under this Agreement.

8. Transfer and assignment. This Agreement, and the right to use the Subject Water, may not be transferred, assigned, subleased, or otherwise conveyed by Customer for use at locations other than the Property without the prior written consent of Longmont.

9. Use Restrictions and Accounting. Customer shall not use any water provided by Longmont under this Agreement for any oil and gas operation, nor suffer such water to be put to such use by anyone to whom Customer conveys the water, or their ultimate successors or assigns. Customer shall not provide this water to any subject political entity or for any use within an urbanized area, as those terms are defined in Chapter 14.09 of the Longmont Municipal Code, as amended, nor suffer the water to be transferred to such entities or used in such areas by anyone to whom Customer conveys the water, or their ultimate successors or assigns. [Unless this water is being used to satisfy an augmentation plan, delete the following sentence. If it is being used to satisfy an augmentation plan, be sure to define the Depletion Points and Augmentation Program in § 3, above.]Water used solely at the Depletion Points to satisfy the Customer's Augmentation Program obligations complies with these restrictions. Customer shall account for, and make record of, all uses, deliveries, and transfers of the water provided by Longmont under this Agreement; shall include such information in the monthly State accounting form required to be submitted to the State Engineer's Office, Division One Engineer; and shall provide Longmont a copy of such form when it is submitted thereto or required to be submitted thereto, whichever is sooner. [Unless this water is being used to satisfy an augmentation plan, delete the following sentence.]Satisfaction of Customer's Augmentation Program obligations shall qualify as a final use of the water.

10. Water conservation. Customer agrees to implement or continue reasonable Best Management Practices ("BMP") for water conservation during the term of this Agreement. This paragraph shall not be construed to require any specific BMP but shall broadly be held to encourage reasonable, cost effective efforts to conserve water used by Customer both under this Agreement and for base water supplies used by Customer. Procedures and application processes for this paragraph shall be as outlined in the City's annual Water Supply and Drought Management Plan.

11. Integration. This instrument embodies the whole agreement of the Parties with respect to the subject matter contained herein. This Agreement shall supersede all previous communications, representations, or agreements, whether verbal or written, between the Parties hereto. There shall be no modification of this Agreement nor waiver of any of its provisions,

except upon mutual agreement of the Parties expressed in writing, executed with the same formalities as this instrument.

12. Default; Remedies. A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within 30 days of written notice from the non-breaching Party specifying the breach. Waiver or failure to give notice of a particular default or defaults shall not be construed as condoning or acquiescing to any continuing or subsequent default. In addition to other legal remedies available to it, including specific performance and damages, the non-breaching Party shall also have the right to cancel this Agreement for noncompliance with any provision hereunder by giving written notice of cancellation; provided that such Party has previously given the other Party written notice of such noncompliance and the other Party has not cured such noncompliance.

13. Notices and payments. All notices, payments, and other communications under this Agreement shall be in writing, except as otherwise provided for in this Agreement. All such notices and communications and all payments shall be deemed to have been duly given on the date of service, if delivered and served personally, or served via facsimile (with respect to notices and communications only) on the person to whom notice is given; on the next business day after deposit for overnight delivery by a courier service such as Federal Express; or on the third day after mailing, if mailed to the Party to whom payment and notice is to be given by first class mail, postage prepaid, and properly addressed as follows:

Longmont:	City of Longmont P W & N R General Manager 1100 South Sherman Street Longmont, Colorado 80501 Facsimile (303) 651-8812
With a Copy to:	City of Longmont City Attorney 408 Third Avenue Longmont, Colorado 80501
Customer:	

Persons and addresses to which notices are to be sent may be changed by the same method.

14. No beneficiaries. This Agreement is for the sole benefit of and binds the Parties, their successors and assigns. This Agreement affords no claim, benefit, or right of action to any third party. Any person besides Longmont or Customer receiving services or benefits under this Agreement is only an incidental beneficiary.

15. Governmental immunity. Nothing in this Agreement shall be construed to waive Longmont's protection from liability or the limitations on its liability due to its sovereign immunity under the Colorado Governmental Immunity Act or otherwise.

16. Governing law. This Agreement shall be governed by and construed in accordance

with the laws of the State of Colorado. In the event of litigation over this Agreement, jurisdiction and venue shall be proper and exclusive in the District Court in and for Boulder County, State of Colorado.

17. Force majeure. Customer acknowledges that the availability of the Subject Water provided for hereunder is dependent upon natural water resources that are variable in quantity of supply, and which can be affected by causes beyond Longmont's control. Moreover, Longmont shall not be liable for any delay or failure to perform its obligations under this Agreement caused by an event or condition beyond the reasonable control of, and without the fault of Longmont, including, without limitation, failure of facilities, flood, earthquake, storm, lightning, fire, epidemic, contamination, war, terrorist act, riot, civil disturbance, labor disturbance, accidents, sabotage, or restraint by court or restrictions by other public authority which delays or prevents performance (including, but not limited to, the adoption or change in any rule, policy, or regulation or environmental constraints imposed by federal, state, or local governments), which Longmont could not reasonably have avoided by exercise of due diligence and foresight. Upon the occurrence of such an event or condition, the obligations of Longmont under this Agreement shall be excused and suspended without penalty or damages, provided that Longmont shall give Customer written notice describing the particulars of the occurrence or condition, the suspension of performance is of no greater scope and of no longer duration than is required by the event or condition, and Longmont proceeds with reasonable diligence to remedy its inability to perform and provides progress reports to Customer describing the actions taken to remedy the consequences of the event or condition.

18. Independent contractors. Both Parties shall perform all services under this Agreement as independent contractors and not as an agent or employee of the other Party. No official or employee of Longmont shall supervise Customer. No official or employee of Customer shall supervise Longmont. Neither Party shall represent that it is an employee or agent of the other Party in any capacity. **Neither Party has any right to workers' compensation benefits from the other Party or its insurance carriers or funds. Customer shall pay any federal and state income tax on money earned under this Agreement.**

19. No continuing duty to supply water. Longmont shall have no obligation to supply water to Customer after this Agreement expires or is otherwise terminated. By agreeing to deliver water to Customer under this Agreement, Longmont does not intend to represent itself as a public utility to Customer or others in such regard nor shall it be deemed to operate as a public utility. Customer shall not assert that Longmont is a public utility by reason of delivering water pursuant to this Agreement nor that it is subject to regulation as a public utility or subject to regulation by the Colorado Public Utilities Commission or to rate regulation by any other public entity.

20. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures shall be acceptable and binding upon all Parties.

21. Headings. All paragraph headings used herein are for the convenience of the Parties and shall have no meaning in the interpretation or effect of this Agreement.

22. Negotiated provisions. This Agreement shall not be construed more strictly against

one Party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that both Longmont and Customer have contributed substantially and materially to the preparation of this Agreement.

23. Authority. The Parties warrant that they have taken all actions necessary or required by their own procedures, bylaws, or applicable law to authorize their respective signatories to sign this Agreement for them and bind them to its terms.

Executed as of the date first set forth above.

Signatures on following page

CITY OF LONGMONT, acting by and through its Water Utility Enterprise:

_____
Water Resources Manager

APPROVED AS TO FORM

_____ _____
Assistant City Attorney Date

CA File:

State of Colorado)
) ss:
County of Boulder)

The foregoing instrument was acknowledged before me by _____ of the City of Longmont**,** this _____ day of _____, 2020.

Witness my hand and official Seal.

_____
Notary Public

My Commission expires _____.

CUSTOMER:

_____

By: _____

Title: _____