

INTERGOVERNMENTAL AGREEMENT FOR EXCHANGE OF DITCH COMPANY SHARES

This Intergovernmental Agreement for Exchange of Ditch Company Shares (“Agreement”) is entered into this ____ day of _____, 2024, 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 (“City”), and the County of Boulder, a body corporate and politic of the state of Colorado (“County”). The City and County are hereinafter individually referred to as a Party and collectively referred to as the Parties.

RECITALS

A. Pursuant to Section 18 of Article XIV of the Colorado Constitution and CRS §§ 29-1-101, Colorado governments are authorized to cooperate and contract with each other through intergovernmental agreements to provide any function or service authorized to each of the cooperating entities.

B. The City and County each own shares in both the Beckwith Ditch Company and the Bonus Ditch Company. The Beckwith Ditch Company water rights were decreed absolute in Case No. CA-1320. The Bonus Ditch Company water rights were decreed absolute in Case No. CA-1337.

C. The City is the sole owner of 34 shares in the Bonus Ditch Company represented by stock certificate number 130 (the “City Bonus Shares”).

D. The County is the sole owner of 1.66 shares of the Beckwith Ditch Company, represented by stock certificate number 103 (the “County Beckwith Shares”).

E. The City desires to acquire the County Beckwith Shares and, in exchange, the County is willing to acquire the full interest in 0.607 share from the City Bonus Shares (the “County Exchange Bonus Share”).

F. Section 11.1 of the Longmont Municipal Charter authorizes the City to exchange water rights owned by the City for water rights owned by another.

G. The City’s Water Resources Division staff and the County’s Open Space Division staff have performed an equivalency analysis of the proposed exchange of water rights and have concluded that the exchange is equitable to both the City and the County, and in the interests of each Party.

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. Share Exchange. The County and City agree to exchange the County Beckwith Shares for the County Exchange Bonus Share. The County shall convey its interests in the County Beckwith Shares to the City by executing a bargain and sale deed and executing and mailing a stock transfer request to the Beckwith Ditch Company for transfer of the stock certificate on the books of the Beckwith Ditch Company, and other such documents as necessary to effectuate the exchange. The City shall convey its interests in the County Exchange Bonus share by executing a bargain and sale deed and executing and mailing a stock transfer request to the Bonus Ditch Company for transfer of the stock on the books of the Bonus Ditch Company, and other such documents as necessary to effectuate the exchange.

2. Closing. A closing of the share exchange shall take place on _____ at the offices of Dan Grant Bookkeeping, or at such other time and place to which the parties may agree. At Closing, the Parties shall execute and deliver to the other Party the stock transfer requests, deeds, certifications, and assignments attached hereto as Exhibits A & B, and any other necessary documents, all fully executed.

3. Representations.

A. The City represents:

- i) That the City is the sole owner of the County Exchange Bonus Share that is to be transferred to the County.
- ii) That, to the City's knowledge, all assessments have been paid including assessments levied for all prior years and the 2024 year.
- iii) That there are no liens or encumbrances on the County Exchange Bonus Share.
- iv) That the City has not taken any actions that would abandon the water rights represented by the County Exchange Bonus Share or any interests in the County Exchange Bonus Share.
- v) That the City has taken all actions necessary to authorize those persons executing this Agreement to have the authority to do so and this Agreement, when signed is a valid, binding obligation of the City.
- vi) That, to the City's knowledge, the County Exchange Bonus Share is not subject to any legal action or threatened legal action of any kind.

B. The County represents:

- i) That the County is the sole owner of the County Beckwith Shares that are to be transferred to the City.

- ii) That, to the County's knowledge, all assessments have been paid including assessments levied for all prior years and the 2024 year.
- iii) That there are no liens or encumbrances on the County Beckwith Shares.
- iv) That the County has not taken any actions or, in fact, abandoned any of the County Beckwith Shares.
- v) That the County has taken all actions necessary to authorize those persons executing this Agreement to have the authority to do so and this Agreement when signed is a valid, binding obligation of the County.
- vi) That the County's interests in the County Beckwith Shares are not subject to any legal action or threatened legal action of any kind, with the exception of the City's stated intent of applying for a change of water rights for the County Beckwith Shares.

4. Historical Use of County Exchange Bonus Share. The City represents that the County Exchange Bonus Share was used originally to irrigate lands currently located within the corporate limits of Longmont and are currently urbanizing and/or being gravel mined. As such, the County Exchange Bonus Share was previously included in the water rights change decreed in Case No. 20CW3179, District Court, Water Division No. 1. The City has provided the County a copy of the original historical use affidavit obtained by the City from Golden Farms, LLC as part of that corporation's annexation process into Longmont.

5. Historical Use of County Beckwith Shares. The County represents that the County Beckwith Shares were used to irrigate lands located at the Boulder County Fairgrounds Complex area. These lands are now surrounded by the corporate limits of the City of Longmont. At closing, the County will provide to the City a copy of an original historical use affidavit prepared by the County for the shares. The County further agrees to cooperate with the City in establishing the historic use and historic consumptive use of the County Beckwith Shares in any change of water rights application or plan for augmentation filed by the City including the County Beckwith Shares.

6. Future Cooperation. The City and County both agree to cooperate with each other and provide any and all information requested by the other Party in regard to any water court litigation, administrative proceeding, or other action initiated or filed by either Party concerning the water rights exchanged pursuant to this Agreement. The City agrees not to oppose, in any augmentation plan or change of water right proceeding or portion thereof brought by the County, the use or quantification of the County Exchange Bonus Share. The County agrees not to oppose any current or future water rights change applications by the City for interests in the Beckwith Ditch Company.

7. Binding Effect. This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective legal representatives, successors, and assigns; provided,

however, that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise specifically authorized in this Agreement.

8. Notices. Any notice required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is intended to be given at the address set forth below, or at such other address as has been previously furnished in writing to the other Party or Parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

County of Boulder
Attn: Water Resources Program Supervisor
5201 St. Vrain Road
Longmont, CO 80503

City of Longmont
Attn: Water & Waste Services Director
375 Airport Road
Longmont, CO 80503

Copy:

Office of the County Attorney
P.O. Box 471
Boulder, CO 80306

Copy:

Hayes Poznanovic Korver LLC
Attn: Dave Hayes, Esq.
700 Seventeenth St., Ste. 1800
Denver, CO 80202

9. Survival. The representations and warranties of the City and the County, and the obligations of the City and the County intended to be performed after the Closing, if any, shall survive the Closing.

10. Additional Documents or Actions. The parties agree to execute any additional documents and to take any additional action necessary effectuate the intent of this Agreement.

11. 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 Party besides City or the County receiving services or benefits under this Agreement is only an incidental beneficiary.

12. Integration. This Agreement completely integrates all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment shall have any force or effect unless part of this Agreement. No later novation, renewal, addition, deletion, or other amendment shall have any force or effect except in a written supplemental document the Parties duly sign. Except as specifically stated in this Agreement, no representations, agreements, covenants, warranties, or certifications, express or implied, exist between the Parties.

13. Waiver. No waiver of any breach or default under this Agreement shall be a waiver of any other breach or default.

14. Severability. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.

15. Paragraph Headings. The headings of the paragraphs of this Agreement are inserted solely for the convenience of reference and are not a part of and are not intended to govern, limit, or aid in the construction of any term or provision herein.

Executed as of the date first set forth above.

BOULDER COUNTY

By: _____, Chair

ATTEST:

By: _____
Secretary

CITY OF LONGMONT:

MAYOR

ATTEST:

CITY CLERK

DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM:

SPECIAL WATER COUNSEL

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA file: 24-003022

EXHIBIT A

BARGAIN AND SALE DEED

This Deed dated this ____ day of _____, 2024, is from the **City of Longmont**, a municipal corporation organized under the laws of the State of Colorado, whose legal address is 375 Airport Road, Longmont, CO 80503 of the County of Boulder and State of Colorado (“Grantor”), to the **County of Boulder**, a body corporate and politic, whose legal address is 5201 St. Vrain Road, Longmont, CO 80503, of the County of Boulder and State of Colorado (“Grantee”).

For the consideration of less than ten dollars and other good and valuable consideration, Grantor hereby grants and conveys to the Grantee the water rights described as follows: 0.607 shares of the Bonus Ditch Company, together with all appurtenances thereto.

To have and to hold the same unto Grantee, its successors and assigns forever.

Executed as of the date first set forth above.

Grantor:

City of Longmont, a municipal corporation
organized under the laws of the State of Colorado

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

WATER STOCK TRANSFER REQUEST

TO: Bonus Ditch Company
502 WCR 20
Longmont, CO 80504
303-682-1141

FOR VALUE RECEIVED, there is hereby assigned, transferred, and set over (and you are directed to transfer on the books of said company) the following stock, which is standing in the name of the undersigned and is represented on your books and records by Certificate No. 130:

New Certificate:

The owner of 0.607 shares of the capital stock of said company is:

County of Boulder, a body corporate and politic

Please issue a new certificate to the City of Longmont for the remaining 33.393 shares.

Assessments:

Boulder County will be responsible for ditch assessments on the 0.607 shares, so please send all future ditch assessments for that certificate to:

Water Resources Program Supervisor
Boulder County Parks & Open Space
Administration Building
5201 St. Vrain Road
Longmont, CO 80503

Longmont will be responsible for ditch assessments on the remaining 33.393 shares.

Original Certificate(s):

Please send the new County certificate(s) via certified mail to the following address:

Lisa Steele
Boulder County Parks & Open Space Department
Administration Building
5201 St. Vrain Rd.
Longmont, CO 80503

Please send the new City certificate(s) via certified mail to the following address:

Water Resources Division
375 Airport Road
Longmont, CO 80503

Thank you for your attention to this request.

**[Seller's name(s) exactly as they appear on the original water stock certificate]*

State of Colorado
County of Boulder

The foregoing Water Stock Transfer Request was acknowledged before me this ____ day of _____, 2024, by _____ as _____ of _____, a Colorado _____.

(Notary Official Signature)

NOTARY
S E A L

(Commission Expiration)

CERTIFICATION

CITY OF LONGMONT, pursuant to the provisions of that certain Intergovernmental Agreement for Exchange of Ditch Company Shares dated _____, 2024 (the “Agreement”), by and between the **City of Longmont** (the “City”), a municipal corporation organized under the laws of the State of Colorado and the **County of Boulder**, State of Colorado, a body corporate and politic (the “County”), hereby certifies to the County that the Representations contained in Paragraph 3B of the Agreement remain true and correct as of this date which is as of the date of closing on the exchange of the water by the County and the City.

Dated this _____ day of _____, 2024.

City of Longmont, a municipal corporation
organized under the laws of the State of Colorado

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by _____.

(Notary official signature)

NOTARY
S E A L

(Commission expiration)

EXHIBIT B

BARGAIN AND SALE DEED

This Deed dated this ____ day of _____, 2024, is from the **County of Boulder**, a body corporate and politic, whose legal address is 5201 St. Vrain Road, Longmont, CO 80503, of the County of Boulder and State of Colorado (“Grantor”) to the **City of Longmont**, a municipal corporation organized under the laws of the State of Colorado, whose legal address is 375 Airport Road, Longmont, CO 80503 of the County of Boulder and State of Colorado (“Grantee”).

For the consideration of less than ten dollars and other good and valuable consideration, Grantor hereby grants and conveys to the Grantee the water rights described as follows: 1.66 shares of the Beckwith Ditch and Reservoir Company, together with all appurtenances thereto.

To have and to hold the same unto Grantee, its successors and assigns forever.

Executed as of the date first set forth above.

Grantor:

County of Boulder, a body corporate and politic of
the State of Colorado

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this ____ day of _____, 2024 by _____.

(Notary official signature)

NOTARY
SEAL

(Commission expiration)

WATER STOCK TRANSFER REQUEST

TO: Beckwith Ditch and Reservoir Company
1500 Florida
Longmont, CO 80501

FOR VALUE RECEIVED, there is hereby assigned, transferred, and set over (and you are directed to transfer on the books of said company) the following stock, which is standing in the name of the undersigned and is represented on your books and records by Certificate No. 103:

New Certificate:

The owner of 1.66 shares of the capital stock of said company is:

**City of Longmont, a municipal corporation organized under the laws of the
State of Colorado**

Assessments:

The City of Longmont will be responsible for ditch assessments on these shares, so please send all future ditch assessments to:

Water Resources Division
375 Airport Road
Longmont, CO 80503

Original Certificate(s):

Please send the new certificate(s) via certified mail to the following address:

Water Resources Division
375 Airport Road
Longmont, CO 80503

Thank you for your attention to this request.

County of Boulder, a body corporate and politic

State of Colorado
County of Boulder

The foregoing Water Stock Transfer Request was acknowledged before me this ____ day of _____, 2024, by _____ as _____ of _____, a Colorado _____.

(Notary Official Signature)

NOTARY
S E A L

(Commission Expiration)

CERTIFICATION

COUNTY OF BOULDER, pursuant to the provisions of that certain Intergovernmental Agreement for Exchange of Ditch Company Shares dated _____, 2024 (the “Agreement”), by and between the **County of Boulder**, a body corporate and politic (the “County”), and the **City of Longmont** a municipal corporation organized under the laws of the State of Colorado (the “City”), hereby certifies to the City that the Representations contained in Paragraph 3B of the Agreement remain true and correct as of this date which is as of the date of closing on the exchange of the water by the County and the City.

Dated this _____ day of _____, 2024.

County of Boulder, a body corporate and politic

State of Colorado
County of Boulder

The foregoing instrument was acknowledged before me this _____ day of _____, 2024 by _____.

(Notary official signature)

NOTARY
S E A L

(Commission expiration)