

FARMLAND LEASE AGREEMENT

THIS LEASE AGREEMENT is made as of this _____ day of _____, 2024 by and between the City of Longmont, Colorado, a municipal corporation, acting on behalf of its Water Utility Enterprise, 375 Airport Road, Longmont, Colorado 80503 (the "City"), and Gary Bogott, 12748 Weld County Rd #1, Longmont, CO 80503, (the "Lessee").

THE PARTIES' RECITALS ARE AS FOLLOWS:

WHEREAS, the City owns approximately 81 acres of agricultural land at 12748 Weld County Road #1, Longmont, State of Colorado, and desires to permit agricultural use of the property; and

WHEREAS, the parties desire to state their duties and responsibilities regarding the lease of the real property described below.

IN CONSIDERATION of the recitals, lease payments, mutual promises, and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties acknowledge, the parties covenant and agree as follows:

1. Land Parcel

1.1. The City leases unto the Lessee, for the term, use and under the conditions herein, the real property consisting of Parcel #120731000063 located at 12748 Weld County Rd #1, Longmont, CO, 80503 (the "Property"), and more specifically described as follows:

PT NW4 31-3-68 LOT B REC EXEMPT RE-1493

1.2. In years in which the City declares a surplus of water availability, the City shall allow the Lessee, at no additional expense, to use water equivalent to that provided by 100% of the Calkins Lake water right, 33% of the Last Chance Spring Gulch #4 water right, 1.2 shares of the Rough and Ready Ditch water rights and water equivalent to 1.2 shares of the Pleasant Valley water right. The City shall have the right to substitute alternative water for the above-mentioned sources, provided the substituted water yields at least the same quantity of water and at a cost no more than if the above-mentioned sources were delivered. Lessee shall notify the City on or prior to April 1st of any year of the amount of water to reserve under the terms of this lease. Lessee may, at its option, use on the Property any water rights owned or leased by Lessee. Lessee shall not have the right to sell, assign, sublet, or lend the use of any of the water owned by the City, or any portion thereof, to anyone without the prior written consent of the City, and no portion of said water owned by the City shall be used on any lands other than those described in this agreement.

2. Condition of Property

2.1. Prior to signing this Lease Agreement, the Lessee has inspected or caused to be inspected the Property and leases it in an "as-is" condition and subject to all encumbrances,

easements, restrictions, reservations, covenants and rights of way of record, including but not limited to oil and gas leases. No additional representation, statement or warranty, express or implied, has been made by or on behalf of the City as to the condition of the Property. In no event shall the City be liable for any defect in the Property or for any limitation on its use for farmland or pasture.

3. Term

3.1. The term of this Lease Agreement shall be from the date this Lease Agreement is fully executed until December 31, 2024. If Lessee so requests, through written notice to the City sixty days prior to the expiration of the lease term, the City, in its sole discretion, may extend this Lease Agreement upon written notice to Lessee thirty days after receiving Lessee's notice, for up to four (4) additional one-year terms beginning on January 1st of each year for the following years: 2025, 2026, 2027, and 2028. The lease rate for additional terms is subject to negotiation.

4. Delivery of Possession

4.1. The Lessee shall be entitled to possession of the Property at 12:01 a.m. on the date of commencement of the lease term.

5. Lease Payment

5.1. Lease Rate. The Lessee shall pay the City for use and occupancy of the Property the annual sum of \$2,835 annually (\$35.00 per farmable acre, for 81 acres). The lease amount shall be payable to the City on or before December 15th of each year, paid in arrears. Alternatively, in lieu of paying some or all the annual lease rate, and upon mutual written agreement of Lessee and the City, the Lessee may provide in-kind services equal in value up to the annual lease. The City Manager, or designee, is authorized to sign such agreement on behalf of the City.

Should the Lease acreage of farmable property increase or decrease, then the Lease Rate will be adjusted proportionately according to written agreement of the Parties.

5.2. Late Payment. Any payment not paid within thirty days of the due date will be a default of the terms of this Lease Agreement. If the City starts collection procedures or incurs any costs in collecting a payment, the Lessee shall pay all the City's expenses therewith, including reasonable attorneys' fees.

5.3. Place and Manner of Payments. All payments by the Lessee to the City shall be made at the City of Longmont, to the attention of the Water Resources Division, at 375 Airport Road, Longmont, Colorado 80503, or at such other place as the City may designate by notice in writing to the Lessee. Any check received by the City shall be subject to collection. The Lessee agrees to pay all bank charges incurred by the City for the collection of any check.

6. Authorized Use

6.1. The Lessee shall occupy and use the Property solely for cutting of hay and grazing of livestock on the associated pasture area.

6.2. The Lessee shall be responsible for the proper care of the Property, consistent with sound agricultural practices.

6.3. The Lessee shall irrigate the Property.

6.4. The Lessee shall furnish, at the Lessee's sole expense, all labor, machinery, fertilizer, weed spray and other items for farming.

7. Lessee's Covenants and Agreements

7.1. The Lessee shall maintain in a serviceable condition all access roadways used for agricultural purposes and, except for the Lessee's ingress or egress, shall keep all gates closed and locked at all times.

7.2. The Lessee shall make any necessary repairs at the Lessee's expense to all existing perimeter fencing around the Property and shall be responsible for the maintenance of all fencing and gates on the Property throughout the lease term.

7.3. The Lessee shall keep the Property clear of weeds. The Lessee shall apply all weed control chemicals and fertilizers in compliance with applicable federal, state, and local regulations. The Lessee shall not use or permit to be used, any insecticide, pesticide, rodenticide, herbicide or other chemical substance on the Property for weed, pest, or rodent control or fertilization which is prohibited by any federal, state, or local statute, ordinance, resolution, rule, or regulation.

7.4. Lessee shall properly place, store, use, or dispose on the Property, temporarily or permanently, only those substances legally permitted to be used on the Property, and which are approved by the City. Such substances shall include fuel products that are hazardous, toxic, dangerous, or harmful, or which are defined as a hazardous substance by the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601. These substances shall be referred to collectively as "hazardous substances." Lessee shall immediately notify the City of all spills, releases, inspections, correspondence, orders, citations, notices, fines, responses, and/or cleanup actions, and violations of the law, regulations, or ordinances that impact the Property.

7.5. The Lessee shall not assign this Lease Agreement nor sublet the Property or any part thereof, without the prior written consent of the City.

7.6. The Lessee shall not construct, nor permit construction of any structure, building or other improvement, temporary or otherwise, on the Property without City's prior written consent, which consent shall be in the sole discretion of the City.

7.7. The Lessee shall not erect, paint or maintain any signs on the Property without securing the prior written consent of the City, which consent shall be in the sole discretion of the City.

7.8. The Lessee shall not allow any noise, odors, fumes, or vibrations on the Property that would cause disruption of normal activities on adjacent properties.

7.9. The Lessee will not use or permit the Property to be used for any purposes prohibited by the laws of the United States, the State of Colorado, or applicable ordinances, resolutions, rules and regulations of the City of Longmont.

7.10. The Lessee, their heirs, assigns, invitees, or guests shall not hunt or otherwise pursue, trap, molest, disturb, or kill any wildlife (excepting rats and mice) at any time on the Property.

7.11. The Lessee shall not directly or indirectly create, incur, assume or suffer to exist any mortgage, pledge, lien, charge, encumbrance or claim on or with respect to the Property or any crops grown thereon.

7.12. The Lessee agrees, covenants, and warrants to maintain the Property throughout the term of the Lease in as good repair and condition as at the commencement of this Lease Agreement.

7.13. The Lessee agrees to deliver up and surrender to the City possession of the Property at the expiration or termination of this Lease Agreement.

8. Indemnification

8.1. The Lessee assumes the risk of loss or damage to any crops or improvements on the Property whether from windstorm, fire, earthquake, snow, water run-off, soil conditions, or any other causes whatsoever.

8.2. The Lessee warrants, covenants and agrees that the Lessee shall indemnify and save harmless the City and its officers, employees, and agents from and against any and all claims, suits, actions, damages and causes of action arising during the term of the Lease Agreement for personal injury, loss of life, or damage to Property sustained in, or upon the Property and from and against all costs, attorneys' fees, expenses and liabilities incurred in connection with any such claims, the investigation thereof or the defense of any action or proceedings brought thereon, and from any judgments, orders, decrees, or liens resultant therefrom by virtue of nonperformance of a term, condition, warranty, covenant, or work by the Lessee, or the Lessee's contractors, subcontractors, agents, members, stockholders, employees, invitees, or successors.

8.3. By requiring this right to indemnification, the City in no way waives or intends to waive the limitations on liability which are provided to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., and as amended.

9. Reservations

9.1. The City reserves its rights under this Lease Agreement to:

9.1.1. Have its officers, employees and representatives enter and inspect or protect the Property at any time;

9.1.2. Use any portion of the Property for public utilities and as ingress and egress for public use and rights of way;

9.1.3. Use, repair, install, replace and maintain public utilities and rights-of-way on, over or under the Property;

9.1.4. Use any portion of the Property as a site for the application of digested biosolids;

9.1.5. Allow the use of any portion of the Property for geophysical (seismic) surveys;

9.1.6. Enter into or use the property for a different beneficial municipal purpose.

10. Reduction of Acreage

10.1. The City may reduce the size and restrict the area of this agricultural Lease at any time and for any reason, provided that the fee associated with the Lease will be reduced proportionately.

10.2. Should the City reduce the size of the agricultural Lease during a time after which crops have been sowed, the City shall reimburse the Lessee for loss of crop revenue at an average yield rate per acre at the current market rate.

10.3. Should the Lease acreage be reduced for reasons outside of the City's control, the Lessee may be reimbursed for loss of crops or land by the party responsible for the reduction of the acreage and not the City.

11. Termination

11.1. The Lease Agreement shall terminate automatically at 11:59 p.m. on December 31, 2024, unless sooner terminated as stated herein, or unless the Lease Agreement is extended as contemplated herein.

11.2. If the Lessee, after the expiration or termination of this Lease Agreement, shall remain in possession of the Property without a written Lease Agreement, the holding over shall be a tenancy from month-to-month at a monthly rental rate equivalent to one-twelfth of the last annual rental rate, payable in advance on the first day of each month. No payments of money by the Lessee after the expiration or termination of this Lease Agreement shall reinstate, continue or extend the terms of this Lease Agreement.

11.3. The City in its sole discretion may terminate this Lease Agreement for cause or no cause upon sixty (60) days' written notice to Lessee.

11.4. The Lease shall terminate upon the Lessee's death, unless a successor expresses to the City an interest and ability to take over the lease, in which case, the City may, at its sole option,

continue under the terms of the current Lease with the successor, subject to the potential for changed rates after the first term.

11.5. Lessee shall have the duration of the Lease Term to remove all of Lessee's personal property from the Leased Premises, unless the City terminates this Lease. Lessee agrees that any personal property remaining on the Property after the end of the Lease Term, or termination of the Lease, shall be deemed abandoned by Lessee and the City shall have the right to dispose of any such personal property in any manner the City deems appropriate. Lessee will be liable for any disposal costs incurred by the City.

12. Insurance Requirements

12.1. The Lessee shall purchase and maintain for the full term of this Lease Agreement, including any additional extension period(s), at the Lessee's sole expense, insurance policies providing coverage as follows:

12.1.1. Farm liability insurance, including coverage for bodily injury and property damage, contractual liability, broad form property damage, with minimum coverage and owner/contractor's protective coverage with minimum coverage of not less than the maximum amount that may be recovered against the City under the Colorado Governmental Immunity Act for (a) any injury to one person in any single occurrence, and (b) any injury to two or more persons in any single occurrence, or as approved by the City's Risk Manager; and

12.1.2. Workers' compensation and employers' liability insurance, if applicable, which shall cover the obligations of the Lessee in accordance with the provisions of the Workers Compensation Act, as amended, of the State of Colorado.

12.2. Before commencement of the lease term, the Lessee must present all applicable insurance policies, certificates of insurance, and endorsements, along with a signed copy of this Lease Agreement, to the City's Risk Manager, and receive the Risk Manager's written approval as to adequacy of insurance coverage.

12.3. The insurance policies shall contain an endorsement naming the City of Longmont, Colorado, a municipal corporation and its council members, officers, agents, employees and volunteers, as additional insured parties with respect to all activities the Lessee may perform under this Lease Agreement and shall include a notice provision requiring 30 days' written notice to the City before cancellation.

12.4. Only insurance companies with authority to issue policies in Colorado shall provide insurance coverage under this Lease Agreement.

12.5. For the term of this Lease Agreement, the Lessee shall not cancel, materially change, or fail to renew the insurance coverage, and the Lessee shall notify the City of Longmont's Risk Manager of any material reduction or exhaustion of aggregate policy limits. If the Lessee fails to purchase or maintain the insurance coverage stated in this Lease Agreement, the City shall have

the right to procure such insurance coverage at the Lessee's expense.

12.6. Nothing in this Article shall limit the extent of the Lessee's responsibility for payment of claims, liabilities, damages, fines, penalties, and costs resulting from the Lessee's occupancy, use or control of the premises or the Lessee's performance or nonperformance under this Lease Agreement.

13. Breach

13.1. The Lessee agrees to observe and perform the terms and conditions of this Lease Agreement. If default is made by the Lessee in the payment of rent, or any part thereof, or if the Lessee shall fail to observe or perform any term or condition of this Lease Agreement, then the City, upon written notice to the Lessee, may in its sole discretion terminate this Lease Agreement and re-enter and repossess the Property, with or without legal proceedings, using such force as may be necessary, and remove any property belonging to the Lessee without prejudice to any claim for rent or for the breach of covenants hereof. The Lessee agrees to indemnify and hold the City, its officers, employees, and agents, harmless from and against any costs for the removal and storing of Lessee's property incurred by the City under the provisions of this paragraph.

13.2. If the City determines that the Lessee has created a public safety hazard, then the City may immediately take action to secure the safe operation of the Property, including without limitation terminating this Lease Agreement and/or removing the Lessee and any of the Lessee's equipment or crops from the Property.

14. Status of Lessee

14.1. The Lessee shall act under this Lease Agreement as an independent contractor and not as an employee, agent or joint venturer of the City. The Lessee's operations will not be supervised by any employee or official of the City, nor will the Lessee exercise supervision over any employee or official of the City. The Lessee shall not represent that Lessee is an employee, agent or joint venturer of the City. The Lessee shall supply all personnel, equipment and materials at Lessee's sole expense. **The Lessee is not entitled to Workers' Compensation benefits from the City. Lessee is not entitled to unemployment benefits unless unemployment compensation coverage is provided by the Lessee or some other entity besides the City. The Lessee is obligated to pay federal and state income tax on money earned pursuant to this Lease Agreement.**

15. Miscellaneous Provisions

15.1. This Lease Agreement shall be construed and enforced in accordance with the laws of the State of Colorado.

15.2. No waiver or default by the City of any of the terms, covenants, warranties or conditions hereof to be performed, kept or observed by the Lessee shall be construed as, or operate as, a waiver by the City of any of the terms, covenants, warranties or conditions herein contained, to be performed, kept or observed by the Lessee.

15.3. The Lessee agrees that the City shall be under no obligation to maintain the Property in a particular condition or for a particular use, and the Lessee waives all claims for damages of any kind or nature, whatsoever, resulting therefrom.

15.4. Article and section headings shall not be deemed to govern, limit, modify or in any manner affect the scope, meaning or intent of the provisions of this Lease Agreement.

15.5. The provisions of this Lease Agreement shall be construed as to their fair meaning, and not for or against any party based upon any attribution to such party of the language in question.

15.6. The Lessee shall perform all obligations under this Lease Agreement in strict compliance with all applicable laws, rules, charters, ordinances and regulations, as now exist or are later enacted or amended, of the City, and all county, state and federal entities having jurisdiction over the Property.

15.7. None of the terms, conditions or covenants in this Lease Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person other than the City or the Lessee receiving services or benefits under this Lease Agreement shall be only an incidental beneficiary.

15.8. This Lease Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. No representations, warranties or certifications, expressed or implied, shall exist as between the parties, except as specifically set forth in this Lease Agreement. The parties shall only amend this Lease Agreement in writing with the proper official signatures attached thereto.

15.9. Invalidation of any specific provisions of this Lease Agreement shall not affect the validity of any other provision of this Lease Agreement.

15.10. The Lessee acknowledges this Lease Agreement may be recorded with the Weld County Clerk & Recorder.

15.11. This Lease Agreement shall extend to and be binding upon the heirs, successors and permitted assigns of the parties.

16. Notices

16.1. Any notice from one party to the other required by the terms of this Lease Agreement shall be delivered in person to such party, or shall be delivered by first class mail, postage prepaid, addressed to the respective parties as follows:

CITY:

Kevin Boden, Water Resources Analyst
City of Longmont Water and Waste Services
375 Airport Road, Longmont, CO 80503

LESSEE:

Gary Bogott
12748 Weld County Rd #1
Longmont, CO 80503

17. Financial Obligations of City:

17.1. All financial obligations of the City under this Agreement, if any, are subject to and contingent upon City appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a debt or multiple fiscal year financial obligation of the City or a pledge of the City's credit, or a collection or payment guarantee by the City.

IN WITNESS WHEREOF, the parties hereto have executed this Lease Agreement as of the date stated in the preamble.

CITY OF LONGMONT, COLORADO
ACTING ON BEHALF OF ITS WATER UTILITY ENTERPRISE

MAYOR

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND CONTENT:

ORIGINATING DEPARTMENT

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

CA File: 24-002701

State of Colorado)
) ss.
County of Boulder)

I attest that the foregoing instrument was acknowledged before me this _____ day of _____, 2024, by _____, as the Mayor of the City of Longmont.

Witness my hand and official seal.

CITY CLERK

Notary Public, State of Colorado

Gary Bogott , (Lessee)
12748 Weld County Rd #1
Longmont, CO 80503

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

(Name of person acknowledged, i.e. signing agreement)

Notary Public