

**WATER SUPPLY AGREEMENT**  
**(Temporary Mining Water Supply)**

This WATER SUPPLY AGREEMENT (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2021, 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, Golden Farm, LLLP, whose mailing address is P. O. Box 54, Longmont, CO 80502-0054 (“Golden”), and Aggregate Industries – WCR, Inc., a Colorado corporation, whose mailing address is 1687 Cole Boulevard, Suite 300 Golden, CO 80401 (“Mine Operator”). Longmont, Golden and Mine Operator may sometimes be referred to herein individually as a “Party” or collectively as “Parties.”

**RECITALS**

A. Longmont, a home rule municipality, duly organized and existing as a home-rule city under Article XX of the State of Colorado 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. Golden historically owned all of, and still owns most of, the approximately 283 acres depicted on Exhibit A, attached hereto and incorporated herein (the “Property”). The Property has been annexed into Longmont, by two separate annexations. The first, Irwin Thomas Annexation #1, is an approximately 245-acre parcel, as shown on Exhibit A (the “Annexation #1 Parcel”). Golden owns approximately 214 acres of the Annexation #1 Parcel (the “Golden Parcel”), and Longmont now owns the remaining approximately 31 acres (the “Longmont Parcel”), as shown on Exhibit A. The second, Irwin Thomas Annexation #2, is an approximately 38-acre parcel, as shown on Exhibit A (the “Annexation #2 Parcel”).

C. Mine Operator is the successor to the rights of the Lessee to mine sand, gravel and other resources on the Property pursuant to that Mining Lease entered into on November 1, 1999 with an affiliate of Golden, as the same may have been modified by that Agreement for the Purchase and Sale of Sand and Gravel Minerals in Place effective March 13, 2018 between Golden Land Company, Golden, and Mine Operator (“2018 PSA”), and as the same may be further amended in the future (such lease, as amended, referred to herein as the “Mining Lease”). Following reclamation of the Property after completion of mining, Golden intends to use portions of the Property for mixed use development.

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

E. Paragraph 14 of the Mining Lease requires in part that a) the Lessor shall supply all water owned by Lessor for Lessee’s operation during the term of the Mining Lease, including any extensions thereof (the “Lease Term”); b) the Lessee shall be responsible for implementing and complying with the requirements of any water augmentation plan during the Lease Term; c)

the Lessor shall be responsible for implementing and complying with the requirements of any water augmentation plan following the termination of the Mining Lease; and d) Lessee and Lessor shall cooperate to achieve the most beneficial augmentation plan for the Leased Premises.

F. The Parties desire to enter into this Agreement to provide a fully-consumable water supply for uses associated with mining operations on the Property pursuant to a substitute water supply plan or any other necessary approval(s) obtained by Mine Operator. This Agreement, together with a separate Water Supply Agreement between the Parties to provide water for post-reclamation water uses on the Property (the “Post-Reclamation Water Supply Agreement”), are collectively intended to satisfy the obligations of Paragraph 14 of the Mining Lease.

## **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. Mining water supply. Longmont hereby agrees to provide to Mining Operator a) up to 375 acre-feet annually of fully-consumable water to offset water depletions which may regularly occur during the mining of the Property pursuant to the Mining Lease, including evaporation from mined-out pit areas while mining continues to occur elsewhere on the Property (the “Mining Operations Water”); and b) a one-time allotment of up to 1260 acre-feet of additional fully-consumable water sufficient to offset any one-time out-of-priority depletions caused by the cessation of previous pumping undertaken by Mine Operator to dewater any alluvial sand and gravel deposits within and adjacent to the pit areas in order to facilitate mining on the Property, including the filling of unlined pit areas and adjacent alluvial deposits with ground water (the “Post-Pumping Depletion Replacement Water”) as more fully set forth herein. The Mining Operations Water and Post-Pumping Depletion Replacement Water, collectively, the “Mining Water Supply”, may be selected and delivered by Longmont, in its discretion, from various sources including reusable effluent, water stored in Union Reservoir, fully consumable water controlled by Longmont, or water from any other source, provided the Mining Water Supply shall be usable by Mine Operator for its stated purpose. Mine Operator may use any portion of the Mining Operations Water not then needed to offset depletions described in subparagraph 1.a in order to offset depletions described in subparagraph 1.b.

### 1.1. Deliveries.

1.1.1 Point of delivery. Longmont shall, at its sole discretion, deliver the Mining Water Supply at the following locations (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 6<sup>th</sup> P.M., Boulder County, Colorado; (2) the confluence of Spring Gulch #2 and the Saint Vrain Creek, presently located in the SW¼ of Section 8, T2N, R68W of the 6<sup>th</sup> P.M., Weld County, Colorado; or (3) at the Bonus Ditch Company’s diversion structure(s), if authorized pursuant to a substitute water supply plan or any decree entered in currently-pending Case No. 20CW3179. Mine Operator shall bear any losses associated with

conveyance of the Mining Water Supply from the Delivery Point to any location where Mine Operator may divert and/or use the Mining Water Supply. Longmont shall be responsible for all losses and/or return obligations associated with delivery of the Mining Water Supply to the Delivery Point.

1.1.2. Timing of deliveries. The Mining Operations Water shall be delivered based upon a schedule provided by Mine Operator, in writing, to Longmont at least ninety (90) days prior to the first requested delivery of each water year in which deliveries are requested under this Agreement. Notwithstanding the foregoing, Mine Operator and Longmont's General Manager of the Public Works and Natural Resources Department may mutually agree in writing to adjust the monthly distribution schedule. The Post-Pumping Depletion Replacement Water shall be delivered to offset any out-of priority depletions directly resulting from Mine Operator's cessation of any dewatering pumping, after consultation between Longmont and Mine Operator concerning the amount and timing of such depletions, including whether the cessation of any pumping contemplated by Mine Operator could reasonably be coordinated such that a portion of the resulting depletions would be projected to occur in-priority (e.g., under "free river" conditions) and thus not require replacement. Mine Operator will use best efforts to cease dewatering pumping to maximize replacement requirements within the period between May 1<sup>st</sup> and October 31<sup>st</sup>. Mine Operator shall provide a copy of any delivery schedule created pursuant to this paragraph to Golden.

1.1.3. Accounting. Longmont shall maintain an accounting of all deliveries of the Mining Water Supply to Golden and Mine Operator, and shall provide copies of such accounting to Golden and Mine Operator upon request. This accounting is limited to tracking of release of Mining Water Supply only.

1.2. Use of Mining Water Supply. Mine Operator will use the Mining Water Supply solely in connection with mining operations on the Property, which may include obligations under a temporary substitute water supply plan to replace of out-of-priority depletions attributable to reclamation of the Property that overlap with mining operations. The Mining Water Supply shall not be used to satisfy post-mining reclamation replacement obligations governed by any decreed augmentation plan for the Property.

1.2.1. Augmentation and/or substitute supply plan. Mine Operator may seek approval from the State Engineer's Office for a temporary substitute water supply plan, using the Mining Water Supply as a source of replacement water; however no change of Longmont's water rights shall be applied for or reviewed in any such plan without the prior written consent of Longmont except for a temporary change of water rights attributable to Bonus Ditch Company shares in such substitute water supply plan. Following the expiration or termination of this Agreement, Mine Operator and Golden acknowledge that Longmont has no duties or obligation to provide water for the replacement of depletions, delayed or otherwise, arising from the operation of such plan except as may be provided in the Post-Reclamation Water Supply Agreement. Longmont shall review any temporary substitute water supply request proposed by Mine Operator using the Mining Water Supply prior to submittal to the State.

1.2.2. Other approvals. Mine Operator shall be responsible for obtaining

all necessary authorizations, approvals, water court 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 Mining Water Supply by Mine Operator pursuant to this Agreement. If requested, Mine Operator shall provide copies of any such authorizations, approvals, and permits to Longmont or Golden.

### 1.3. Payment/Rate.

1.3.1. Mining Operations Water. A portion of the Mining Operations Water is contemplated to be supplied by water rights attributable to Bonus Ditch Company shares historically used on these properties (“Historical Bonus Ditch Shares”). For the first five (5) years during the term of this Agreement, Golden shall pay Longmont at a rate of 115% of the Bonus Ditch Company yearly assessment rate (operations assessment and special flood assessment) for water supplied by the Historical Bonus Ditch Shares (the “Golden Water”). For any Mining Operations Water in excess of the Golden Water, Mine Operator shall pay Longmont \$641.00 per acre-foot of such Mining Operations Water each year under this Agreement. For Mining Operations Water, such annual payments shall be nonrefundable and not contingent upon whether the Mining Operations Water is actually diverted or used pursuant to this Agreement, so long as Longmont either delivered or was ready to deliver the Mining Operations Water. Payment for the Mining Operations Water deliverable during the first year requested under this Agreement shall be due prior to the commencement of any deliveries by Longmont, and payment for all subsequent years shall be due no later than November 1<sup>st</sup> for the Mining Operations Water deliverable the following year.

1.3.2. Post-Pumping Depletion Replacement Water. During the term of this Agreement, Golden shall continue to pay for the Mining Operations Water, as provided in section 1.3.1. and Mine Operator shall pay Longmont \$641 per acre-foot for any additional acre-feet of Post-Pumping Depletion Replacement Water actually requested and used as described in Paragraph 1.1.2 of this Agreement. Payment for the Post-Pumping Depletion Replacement Water estimated to be needed pursuant to such paragraph shall be due fifteen (15) days prior to the commencement of any deliveries by Longmont, with any payment adjustments in the amount of water actually required to be delivered, based upon the determination of whether the depletions in question occurred out-of-priority within a given month, due within thirty (30) days of such determination.

1.3.3. Rate Adjustment. After the first five (5) years of this Agreement, the initial water lease rates charged to Mine Operator and described in Paragraphs 1.3.1 and 1.3.2 shall be subject to increases (the “Adjusted Rates”) based on Longmont’s analysis of the pro rata cost of the Longmont water system facilities used for providing the Mining Operations Water (“Cost of Service Analysis”). Longmont may conduct Cost of Service Analyses at its sole discretion during the term of this Agreement. Factors included in Longmont’s Cost of Service Analyses and determinations of the Adjusted Rates may include, without limitation, the costs attributable to developing Longmont’s base raw water supply, yearly assessment costs to acquire raw water from third party suppliers, costs to construct, operate and maintain Longmont’s raw water system, losses attributable to developing a reusable water supply, and the then-current

market value of fully-consumable water. Upon completion of a Cost of Services Analysis, Longmont shall notify Mine Operator, in writing, of the Adjusted Rate for the Mining Operations Water and/or Post-Pumping Depletion Replacement Water, as applicable, which Adjusted Rates per acre-foot shall become effective for the next payment due no later than November 1<sup>st</sup>, as described above. The Adjusted Rates charged to Mine Operator shall be the same Adjusted Rates charged to other contract purchasers, as adjusted to reflect those costs or increased costs that may be specific to only Mine Operator and not to other contract purchasers. The initial rates shall remain in effect until a Cost of Service Analysis is completed, as set forth above. The Adjusted Rates may be further adjusted pursuant to subsequent Cost of Service Analyses.

1.3.4. Payment Rights and Obligations. If Golden fails to make any payment owed to Longmont for the Mining Operations Water under this Agreement when it is due, Longmont shall promptly provide written notice of such failure to Mine Operator, together with any default notice to Golden pursuant to Paragraph 6, below. Notwithstanding any other provision of this Agreement, Mine Operator may, within twenty-one (21) days from the date of such notice, make such overdue payment, together with a \$500 late fee, to Longmont to cure the non-payment default by Golden. Mine Operator may thereafter collect any such overdue payments and late fees which it has paid from Golden, together with interest at eight percent (8 %), compounded annually, and reasonable costs and attorney fees associated with such collection.

1.4. Term. The term of this Agreement shall be until the later of the expiration of the term of the Mining Lease, as the same may be further amended in the future, or December 31, 2028, unless terminated earlier in accordance with the provisions of this Agreement. If Mine Operator has not commenced mining on the Property within two years of the approval of any amendment to the current permit issued by the Colorado Division of Reclamation, Mining and Safety (DRMS) needed to authorize mining and reclamation as mutually agreed by the Parties, then this Agreement shall be deemed terminated.

1.5. Curtailment. Golden and Mine Operator acknowledge that the availability of the Mining Water Supply provided for hereunder is dependent upon natural water resources that are variable in quantity of supply from year to year, and which can be affected by causes beyond Longmont's control. Accordingly, deliveries of Mining Water Supply pursuant to this Agreement may be curtailed by Longmont during: 1) force majeure events, or 3) if otherwise required by Longmont's Water Supply and Drought Management Plan ("Drought Plan"), as it may be amended from time to time. Golden and Mine Operator acknowledge that this Agreement is subject to all provisions of the Drought Plan. Curtailments of such deliveries pursuant to the Drought Plan shall be consistent with curtailments of deliveries to other similar customers. In the event of curtailment or reduction of deliveries caused by such events, Longmont shall refund to Golden or Miner Operator, as applicable, the advanced payment received for any amount of the Mining Water Supply that is not delivered. Longmont shall use best efforts to inform Golden and Mine Operator of any event which it reasonably foresees may cause an interruption in deliveries pursuant to the events 1-3, above. Longmont shall notify Golden and Mine Operator, in writing, of any curtailment of deliveries of Mining Water Supply under this Agreement and shall include in such notice the reasons for curtailment, the extent of the curtailment, and a reasonable estimate of the length of such curtailment; the notice of

curtailment shall also provide that curtailment shall not take effect sooner than 14 days from Mine Operator's receipt of the notice.

1.6. Untreated water. The Mining Water Supply delivered 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 water or its suitability for any particular purpose. Golden and Mine Operator shall not make any claim against Longmont arising from the quality of water delivered, and Longmont shall have no treatment responsibility for the water made available under this Agreement.

2. Indemnification. Golden and Mine Operator shall bear all responsibility for the use of the Mining Water Supply provided under this Agreement, together with the costs associated therewith. Golden and Mine Operator 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 the use of the Mining Water Supply provided under this Agreement.

3. Transfer and assignment. This Agreement, and the right to use the Mining Water Supply, may not be transferred, assigned or otherwise conveyed by Mine Operator or Golden for use at locations other than the Property without the prior written consent of Longmont. The rights and obligations of Golden pursuant to this Agreement may be assigned by Golden to a future owners association formed to manage the portions of the Property, not to include any affordable housing development site(s), contingent upon Longmont's and Mine Operator's written notices of acceptance of the transfer and a written acceptance by such owners association of the terms of this Agreement. Longmont's and Mine Operator's acceptance of the transfer shall not be unreasonably withheld.

4. Water Conservation. Golden and Mine Operator agree to implement or continue reasonable Best Management Practices ("BMP") for water conservation during the term of this Agreement. This subparagraph 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 Golden and Mine Operator under this Agreement which are consistent with the requirements of any governmental approval required for mining of the Property (e.g., dust suppression). Examples of BMP's for agricultural uses include the conservation practices promoted by the Natural Resources Conservation Service. Golden's current BMP's include planting of native landscaping in many areas of the reclamation plan, conversion of some areas of open gravel pits to native wetland areas and promotion of conservation practices in developable areas of the Property.

5. 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; however, the foregoing shall not apply to a modification of the

delivery requirements for the Mining Operations Water as expressly provided for in Paragraph 1.1.2., above.

6. Default; remedies. A default shall be deemed to have occurred if either Party breaches its obligations hereunder and fails to cure such breach within thirty (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.

7. 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  
Water Resources 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

Golden:                        Golden Farm, LLLP  
PO Box 54  
Longmont, CO 80502-0054

With a Copy to:              Lyons Gaddis  
PO Box 978  
Longmont, CO 80502-0978

Mine Operator:              Aggregate Industries – WCR, Inc.  
Attn: Regional Manager – Land and Environment  
1687 Cole Boulevard, Suite 300  
Golden, CO 80401

With a Copy to: James Witwer  
Davis Graham & Stubbs LLP  
1550 17<sup>th</sup> Street, Suite 500  
Denver, CO 80202

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

8. 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.

9. 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.

10. 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.

11. Force majeure. Golden and Mine Operator acknowledge that the availability of the Mining Water Supply 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 Golden and Mine Operator 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 Golden and Mine Operator describing the actions taken to remedy the consequences of the event or condition.

12. Independent contractors. The Parties shall perform all services under this Agreement as independent contractors, and not as an agent or employee of any other Party. No official or employee of one Party shall supervise any other Party. No Party shall represent that it is an employee or agent of any other Party in any capacity. No Party owes any other Party a fiduciary duty pursuant to the terms or conditions of this Agreement. **No Party has any right to Worker's Compensation benefits from any other Party or its insurance carriers or funds.**



13. No continuing duty to supply water. Longmont shall have no obligation to supply water to Golden or Mine Operator after this Agreement expires or is otherwise terminated except as may be provided in the Post-Reclamation Water Supply Agreement. By agreeing to deliver water under this Agreement, Longmont does not intend to represent itself as a public utility to any Party in such regard nor shall it be deemed to operate as a public utility. Golden and Mine Operator 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.

14. 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.

15. 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.

16. 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 all Parties have contributed substantially and materially to the preparation of this Agreement.

17. 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 to bind them to its terms.

Executed as of the date first set forth above.

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

\_\_\_\_\_  
MAYOR

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

\_\_\_\_\_  
DATE

\_\_\_\_\_  
SPECIAL WATER COUNSEL

\_\_\_\_\_  
DATE

\_\_\_\_\_  
PROOFREAD

\_\_\_\_\_  
DATE

APPROVED AS TO FORM AND SUBSTANCE:

\_\_\_\_\_  
ORIGINATING DEPARTMENT

\_\_\_\_\_  
DATE

CA File: 10535

State of Colorado                    )  
  ) ss.  
County of Boulder                    )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_  
day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as the Mayor of the City of  
Longmont.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK

Notary Public, State of Colorado

My commission expires: \_\_\_\_\_

GOLDEN FARM, LLC

By \_\_\_\_\_  
Reginald V. Golden, General Partner

\_\_\_\_\_  
Date

State of Colorado                    )  
  ) ss.  
County of Boulder                    )

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by \_\_\_\_\_, as the General Partner of Golden Farms, LLC.

Witness my hand and official seal.

\_\_\_\_\_  
CITY CLERK

Notary Public, State of Colorado

My commission expires: \_\_\_\_\_

AGGREGATE INDUSTRIES – WCR, INC.

By \_\_\_\_\_  
W. Chance Allen, General Manager

\_\_\_\_\_  
Date

State of Colorado                    )  
  ) ss.  
County of \_\_\_\_\_)

I attest that the foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by W. Chance Allen, as the General Manager of Aggregate Industries – WCR, Inc.

Witness my hand and official seal.

\_\_\_\_\_  
Notary Public, State of Colorado

My commission expires: \_\_\_\_\_

**EXHIBIT A**  
(To Water Supply Agreement)

