

**FARMLAND LEASE AGREEMENT
SHERWOOD OPEN SPACE**

THIS LEASE AGREEMENT is made as of this _____ day of _____, 2021 by and between the City of Longmont, Colorado, a municipal corporation, acting on behalf of its Open Space Program, 7 So. Sunset Street, Longmont, Colorado 80501 (the "City"), and Scott Schlagel, 5429 Wolf Street, Frederick, Colorado 80504, (the "Lessee").

THE PARTIES' RECITALS ARE AS FOLLOWS:

WHEREAS, the City owns 430 acres in fee, more or less, of cropland in the SE ¼ of Section 7 and NW ¼ of Section 17 and N ½ of Section 18 in Township 2 North, Range 68 West of the Sixth Principle Meridian, County of Weld, 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 for farming.

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 292 acres, more or less, south of the St. Vrain River and East of Weld County Road 1 (the "Property") and more specifically described as follows:

A 292 acre parcel, more or less of cropland within that parcel located in the SE ¼ of Section 7 and NW ¼ of Section 17 and N ½ of Section 19 in Township 2 North, Range 68, West of the 6th Principle Meridian, County of Weld, State of Colorado, also more specifically described as the land located south of the St. Vrain River, east of Weld County Road, and to the west of the Camas/Distel property.

1.2. The City shall allow the Lessee, at no additional expense, to use water equivalent to that provided by:

19.6 shares of the Leiggett Ditch and Reservoir Company
6 shares of the Plumb and Daily Ditch
8.5 shares of the Bonus Ditch
47.55% of the Coffin-Davis Ditch

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.

3. Term

3.1. The term of this Lease Agreement shall be from the date this Lease Agreement is fully executed until December 31, 2026.

3.2. If Lessee so requests, the City, in its sole discretion, may extend this Lease Agreement upon written notice to Lessee for five (5) years from the date specified with Section 3.1. This option to extend shall only be effective if the Director of Parks and Natural Resources, or other authorized designee of the City Manager, declares in writing that the extension is in the public's interest.

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 \$29,200.00, or an equivalent value of in-kind service labor, agreed upon in writing by the City, acting through the Director of Parks and Natural Resources, or other authorized designee of the City Manager. One-half of the lease rate is due on or before March 1st of each year of the lease agreement. The remaining balance shall be due on or before September 1st of each year.

5.2. Late Payment. Any payment not paid when due 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. If Lessee is not current with rental payments, then Lessee may not exercise the option to extend within Section 3.2.

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 Community Development Department, Open Space Division 7 So. Sunset Street, Longmont, Colorado 80501, 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 raising crops such as corn, barley, sugar beets, and alfalfa.

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

6.3. The Lessee shall apply all weed control chemicals and fertilizers in compliance with applicable federal, state and local regulations.

6.4. The Lessee shall irrigate the Property.

6.5. The Lessee shall furnish, at the Lessee's sole expense, all labor, machinery, seed, 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.

7.4. The Lessee shall not assign this Lease Agreement nor sublet the Property or any part thereof, without the prior written consent of the City. No assignment, pledge, or mortgage of the Lessee's interest in the Lease Agreement or any crops herein shall be made without the prior written consent of the City, which consent shall be in the sole discretion of the City.

7.5. 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.

7.6. 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.

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

7.8. 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.

7.9. The Lessee, their heirs, assigns, invitees, or guests shall not hunt on the Property.

7.10. 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.

7.11. 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.

7.14. Lessee shall manage the Leased Premises consistent with a Soil and Water Conservation Plan as prepared and approved by the Longmont or Boulder Valley Conservation District or their successors, in cooperation with the Natural Resource Conservation Service, hereinafter referred to as "NRCS", which Plan shall be current during each Lease period.

7.15. Lessee shall file and certify acreage with the Boulder County Consolidated Farm Service Agency, and maintain and submit production, fertilizer and chemical application records as required by the federal government, or as required hereunder. Lessee shall be held responsible and accountable for any degradation to the land and/or ecological integrity of the area as a result of failure to adhere to any of the requirements under the terms of the Soil and Water Conservation Plan. Such failure by Lessee shall be grounds for termination of the Lease.

7.16. Lessee shall provide the City an annual, written agricultural management plan and an annual, written integrated weed management plan prior to each growing season. As the growing season progresses, the plans may be modified as conditions, such as weather, vary. Lessee agrees to implement management according to these plans, and to any modifications made to the plans by the City.

7.17. Lessee shall take all measures necessary to prevent pollutants from entering storm drains of watercourses. For the purpose of eliminating stormwater pollution, Lessee shall implement effective Best Management Practices (BMPs). BMPs include general good housekeeping practices, appropriate scheduling of activities, operational practices, maintenance procedures and other measures to prevent the discharge of pollutants directly or indirectly to the storm drain system. These BMPs shall be maintained for the duration of the Lessee's lease. Lessee shall also be responsible for proper disposal of all waste materials, including wastes generated by the implementation of BMPs.

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 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;

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 reason 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, 2026, unless sooner terminated as stated 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.

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 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.**

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

15.5. 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.

15.6. 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.

15.7. 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.

15.8. No representations, warranties, or certifications, expressed or implied, shall exist as between the parties, except as specifically set forth in the Lease Agreement.

15.9. 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.

15.10. 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.

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

15.12. 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:
Land Program Administrator
City of Longmont
7 So. Sunset Street
Longmont, Colorado 80501

Lessee:
Scott Schlagel
5429 Wolf Street
Frederick, Colorado 80504

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
OPEN SPACE PROGRAM

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

ASSISTANT CITY ATTORNEY

DIRECTOR OF PARKS & NATURAL
RESOURCES

PROOFREAD

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

CA File: 21-001351

SCOTT SCHLAGEL

The foregoing instrument was acknowledged before me this _____ day of _____, 2021 by _____.

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

My Commission expires _____.

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