

ADAM FARM PROPERTY, LLC
and
CITY OF LONGMONT, COLORADO

CONTRACT TO BUY AND SELL REAL ESTATE

1. **SELLER & BUYER DEFINED.** As used in this Contract, the term, "Seller," means **Adam Farm Property, LLC**, a Colorado limited liability company (also referred to herein as "Adams"). As used in this Contract, the term, "Buyer," means **the City of Longmont, Colorado**, a home rule municipality (also referred to herein as the "City") (each individually referred to as a "Party" and collectively referred to as the "Parties").

2. **EARNEST MONEY & PROPERTY.**

2.1 Simultaneous with its execution of this Contract, the City shall tender thirty thousand and 00/100 dollars (\$30,000) in the form of a check, which shall be held by the Land Title Guarantee Company, Boulder, Colorado (the "Title Company," "Earnest Money Holder" or "Closing Agent") in an interest bearing escrow or trustee account, as earnest money (the "Earnest Money") for the real estate described in **Exhibit A**, attached hereto, together with all improvements and appurtenances, located in Weld County, Colorado, also described as a portion of Section 4, Township 2 North, Range 68, West of the 6th P.M., Weld County, Colorado (the "Property"), and including six (6) shares of the Oligarchy Irrigation Ditch Company (the "Water Rights"), but excluding the mineral rights beneath and associated with said Property, and excluding the four lots totaling approximately 11 acres comprising a portion of the Property to be separately platted in accordance with Section 2.3 below, subject to and contingent on the following:

2.2 Execution of a Conservation Easement in Gross between Seller and the City of Longmont for a portion of land owned by Seller consisting of land excluded from this purchase and effective upon execution of this Contract, the Conservation Easement in Gross is attached hereto as **Exhibit C**;

2.3 Approval of a minor subdivision, an amendment to the Annexation Agreement by and between Adams, Thomas W. Adam, and the Town of Firestone dated December 17, 2009 and recorded at Reception No. 3755771 on March 14, 2011, if necessary, and any other required land use approvals from the Town of Firestone to permit the platting of four separate lots to be retained by Seller (or its members or affiliates) totaling approximately 11 acres, as depicted in **Exhibit F** attached hereto (the "Land Use Approvals"). The Parties acknowledge that Closing is contingent on Seller receiving the Land Use Approvals as set forth in Section 7 of this Contract;

2.4 Execution of an Agricultural Lease Back Agreement pursuant to Section 25 of this Agreement and **Exhibit D** attached hereto;

3. **PURCHASE AND SALE.** Subject to the following provisions, the Seller agrees to sell, and the City agrees to purchase, on the terms and conditions stated in this Contract, the real property and water rights described in **Exhibit A**, attached hereto, together with all improvements and appurtenances, but excluding the lots to be retained by Seller as depicted in **Exhibit F**.

4. **PRICE.** The total purchase price for the Property and Water Rights shall be **five million, five hundred thousand and 00/100 dollars (\$5,500,000.00)** ("Purchase Price"). The Purchase Price shall be payable as follows: The Earnest Money and part payment acknowledged above, and the balance to be paid by the City in good funds at Closing.

5. **EARNEST MONEY DISPUTE.** Except as otherwise provided herein, the Title Company must release the Earnest Money following receipt of written mutual instructions, signed by both the City and Seller. In the event of any controversy regarding the Earnest Money, Earnest Money Holder is not required to release the Earnest Money. Earnest Money Holder, in its sole subjective discretion, has several options: (1) wait for any proceeding between the City and Seller; (2) interplead all parties and deposit Earnest Money into a court of competent jurisdiction, (Earnest Money Holder is entitled to recover court costs and reasonable attorney and legal fees incurred with such action); or (3) provide notice to the City and Seller that unless Earnest Money Holder receives a copy of the Summons and Complaint or Claim (between the City and Seller) containing the case number of the lawsuit (Lawsuit) within one hundred twenty (120) days of Earnest Money Holder's notice to the parties, Earnest Money Holder is authorized to return the Earnest Money to the City. In the event Earnest Money Holder does receive a copy of the Lawsuit, and has not interpleaded the monies at the time of any Order, Earnest Money Holder must disburse the Earnest Money pursuant to the Order of the Court. This Section will survive cancellation or termination of this Contract.

6. **SUBJECT TO LEGISLATIVE APPROVAL AND COMPLIANCE WITH LAW.** The Parties hereby acknowledge and agree that the sale of the Property and Water Rights and this Contract is expressly contingent on approval by the City Council of the City of Longmont ("City Council") and compliance with all applicable provisions of the City of Longmont Charter and Municipal Code with regard to conveyance of property and water rights. The City shall not incur any liability whatsoever if the sale of this Property and Water Rights or this Contract are not approved by City Council; provided, however, in such event the City shall not receive reimbursement from Seller for the "Land Use Expenses," as defined in Section 7 below, incurred prior to the date the City notifies Seller that it is terminating this Contract due to disapproval by the City Council.

7. **SUBJECT TO LAND USE APPROVALS.**

7.1 The Parties hereby acknowledge and agree that the sale of this Property and Closing is specifically contingent on Seller obtaining the Land Use Approvals. Promptly after the City makes the initial deposit described in Section 7.2 below, Seller shall reasonably and diligently seek the Land Use Approvals. Seller will provide the City with copies of plans and submittals related to the Land Use Approvals for review and comment prior to submitting them to the Town of Firestone.

7.2 The Parties agree that the City will provide the necessary, actual and reasonable costs and expenses related to the Land Use Approvals, including without limitation, Town of Firestone filing and review fees, surveyor costs, costs for engineering services, land use consultant fees, and recording costs, but excluding Seller's attorneys' fees (the "Land Use Expenses"). Within ten (10) business days after execution of this Contract, as further described in Section 7.3 below, and provided that the City Council has approved this Contract, the City will deposit the

sum of twenty-five thousand dollars (\$25,000.00) into the COLTAF Trust Account of Seller's attorneys, Packard and Dierking, LLC, to be used exclusively for the payment of Land Use Expenses as permitted under this Contract. Seller or its attorneys shall promptly provide the City with a copy of every invoice and check for disbursements made from such Trust Account for the payment of Land Use Expenses. In the event that the City, in good faith, disputes an invoice submitted by Seller for Land Use Expenses, the City shall deliver a written notice, along with a description of the dispute, to Seller within seven (7) days of receipt of said invoice. The Parties shall seek to resolve all such disputes expeditiously and in good faith. If upon resolution, the disputed invoice is found to be in error, Seller shall credit the original amount of the invoice to the Trust Account. Seller shall continue to pursue the Land Use Approvals in accordance with the Contract pending resolution of said dispute; provided, however, that in the event non-payment of a disputed invoice causes a consultant or service provider to cease working on the Land Use Approvals pending payment, Seller shall have no obligation to make such payment from its own funds pending resolution of the City's disputed invoice. In the event the total Land Use Expenses are less than the initial \$25,000 deposit, Seller shall cause its attorneys to promptly refund the remainder to the City. If the initial \$25,000 deposit is insufficient to pay all of the Land Use Expenses, the City will make a supplemental deposit in an amount necessary to cover the remaining Land Use Expenses, as reasonably requested by Seller and approved by the City. The Land Use Expenses shall not include any expenses with regard to any development, site plan or building permit requirement or similar expenses. At Closing, the City shall receive a credit against the Purchase Price for the actual amount of Land Use Expenses paid by the City.

8. CLOSING. The parties shall close this Contract within thirty (30) days after the satisfaction or waiver of all conditions set forth in this Contract, or another date to which the parties may agree, but in no event later than May 1, 2022, unless otherwise agreed to by the parties (the "Closing"). The City and Seller shall mutually agree upon the time of Closing at the offices of the Title Company. A representative of the Title Company shall pay the interest accrued on the Earnest Money, if any, to Seller. Except as otherwise agreed, the City shall pay any Closing or escrow costs or fees, including costs of drafting the deed of conveyance, documentary stamps, and recordation.

8.1. Upon written notice to Seller, the City may conduct an inspection of the Property, including land surveys and phase I and/or phase II environmental survey to be completed within one hundred twenty (120) days after execution of this Contract. Upon such inspection, if there are any material changes to or differences in the Property from the City's prior inspection(s), or if any condition of the Property is contrary to the representations of Seller as herein contained, the City may, in its sole discretion, terminate this Contract by providing Seller written notice of the same no later than one hundred thirty (130) days after execution of this Contract. If this Contract is terminated, the Earnest Money shall be returned to the City and the parties shall be relieved of their obligations hereunder, except those that survive termination.

8.2 No later than one hundred twenty (120) days after execution of this Contract, the City shall inspect both recorded and unrecorded property interests associated with the Property provided by Seller and otherwise reviewed by the City with regard to any existing interests held by third parties with regard to the mineral interests associated with the Property. Should the City determine that a recorded or unrecorded property

interests would materially affect conveyance of the Property or the City's proposed use of the Property, the City may in its sole discretion, terminate this Contract by providing Seller written notice of the same no later than one hundred thirty (130) days after execution of this Contract. If this Contract is terminated, the Earnest Money shall be returned to the City and the parties shall be relieved of their obligations hereunder, except those that survive termination.

9. TITLE INSURANCE. Except as provided for in this Section 9, title to the Property and Water Rights shall be conveyed from Seller to Buyer upon final and complete payment of the Purchase Price and subject to all matters of record, and all matters shown as an exception on the title commitment other than the standard exceptions. Such matters shall be Permitted Exceptions, unless any such matters are removed, cured, corrected or otherwise resolved pursuant to this Section 9. Seller shall secure, at Seller's sole expense, an Owner's title insurance commitment for the Property in an amount equal to the value of the Property but excluding the value of the Water Rights, along with copies of all instruments and documents identified as creating title exceptions, a current Treasurer's Certificate of Taxes due on the Property, and shall at the time of closing pay any premium due therefore. Buyer shall procure such commitment within ten (10) business days after the mutual execution and delivery of this Contract. If the City has an existing ALTA survey of the Property, the City shall, at Buyer's sole expense, have the survey certified to date for the benefit of Buyer and the title insurance company. The title commitment shall provide that standard exceptions shall be deleted. If Buyer has any objections as to merchantability of title or any other condition of title, Buyer shall give the Seller written notice of unmerchantable title or of any other unsatisfactory title condition no later than one hundred thirty (130) days after execution of this Contract or such other date to which the Parties may agree ("Buyer's Notice"). If Buyer's Notice is not timely received by Seller, Buyer will be deemed to have accepted the condition of title to the Property and waived all objections thereto in which case all matters of record, all matters shown as an exception on the title commitment other than the standard exceptions, and all matters that would have been revealed by an ALTA survey of the Property and/or by a physical inspection of the Property shall be deemed Permitted Exceptions.

9.1 SELLER'S ELECTION AND RESPONSE. If Buyer's Notice of unmerchantable title or any other unsatisfactory title condition is timely provided to Seller as provided above, in connection with, and as part of such notice, Buyer shall also specifically identify the alleged unsatisfactory title condition(s) and request that Seller use reasonable efforts to cure, eliminate or correct such matters as described herein. In response to such timely notice, Seller, at its sole option and discretion, may elect either:

- (i) to notify Buyer that Seller will not cure, eliminate or correct the matters identified by Buyer as unacceptable to it, in which case the Buyer may either waive such objections or elect to terminate this Contract, in which case the Earnest Money paid by Buyer toward the Purchase Price and other things of value given by Buyer under this Contract shall be immediately returned to Buyer (excluding, however, any Land Use Expenses already incurred pursuant to Section 7.2 above), any items of value given by Seller under this Contract shall be immediately returned to Seller, and the Parties shall have no further obligation or liability to each other under this Contract; or

(ii) to cause Title Company to remove or insure over matters objected to in Buyer's Notice and to otherwise cure, eliminate or correct such alleged unmerchantability of title or other unsatisfactory title condition.

Seller shall give written notice of its election to Buyer and to Title Company no later than ten (10) days after Buyer's Notice or such other date to which the Parties may agree ("Seller's Response").

9.2. SELLER MAY CURE. Seller shall use its good faith efforts to cause the Title Company to remove matters objected to in Buyer's Notice that Seller elects to address, and Buyer and Seller shall cooperate to cure, eliminate or correct any other title matters timely objected to in Buyer's Notice. The Parties may also agree in writing to a resolution of any title objection. However, Seller shall have no obligation to cause Title Company to remove matters objected to, or to cure, eliminate or correct any matter objected to by Buyer, other than matters which Seller agrees to in writing. If Seller elects to cure, eliminate or correct any matter timely raised in Buyer's Notice, Seller shall cure, eliminate or correct such matters and cause the Title Company to remove any such exception prior to closing, and such matters shall not be deemed Permitted Exceptions. If Seller fails to deliver Seller's Response by the date set forth above, it shall be deemed an election by Seller not to cause Title Company to so remove or insure over such objections and not to cure, eliminate or correct any objection.

9.3 BUYER'S REPLY. If Seller elects or is deemed to have elected not to cause Title Company to so remove and not to cure, eliminate or correct any objection, or if the City determines, in its sole discretion, that any proposed cure, correction or endorsement for or insurance over any objected matter is unsatisfactory, then Buyer may elect, by delivering written notice of such election to Seller and Title Company on or before fourteen (14) days after Seller's Response ("Buyer's Reply") to either:

(i) to terminate this Contract, in which case the Earnest Money paid by Buyer toward the Purchase Price and other things of value given by Buyer under this Contract shall be immediately returned to Buyer (excluding, however, any Land Use Expenses already incurred pursuant to Section 7.2 above), any items of value given by Seller under this Contract shall be immediately returned to Seller, and the Parties shall have no further obligation or liability to each other under this Contract; or

(ii) proceed with this transaction, in which event those objected to exceptions or title matters that Seller has elected not to cause Title Company to so remove or insure and that Seller has elected not to cure, eliminate or correct shall be deemed to be Permitted Exceptions.

9.4 WAIVER OF OBJECTION. In the event that Buyer fails to make such written election and provide Buyer's Notice or Buyer's Reply on a timely basis, then Buyer shall be deemed to have elected to waive any such objection to the condition of title.

10. TITLE AND EXCEPTIONS. Except as provided for in Section 9 of this Contract or in a supplemental agreement executed in writing between Buyer and Seller, Title shall be good and merchantable in Seller. Subject to Buyer's payment or tender of the Purchase Price, as above

provided, and Buyer's compliance with the other terms of this Contract, Seller shall execute and deliver to Buyer a good and sufficient Special Warranty Deed upon full and final payment of the Purchase Price at Closing, in substantially the same form as set forth in the attached **Exhibit B**, conveying the Property free and clear of all taxes and liens (including liens for special improvements installed as of the date of the Seller's signature on this Contract, whether assessed or not) and other encumbrances, but subject to applicable building and zoning regulations and subject to any Permitted Exceptions. The legal description attached to such deed shall conform to the final update to the title insurance commitment to reflect the proper legal description of the Property after the Land Use Approvals. In addition, Seller shall execute and deliver to the City a Bargain and Sale Deed, in substantially the same form as set forth in the attached **Exhibit G**, transferring Seller's interest in the Water Rights. Such Bargain and Sale Deed shall be recorded with the Weld County Clerk and Recorder.

11. **ENCUMBRANCES.** Closing agent may use the proceeds of this transaction or any other Seller's funds to remove, pay-off, and extinguish any financial encumbrance or monetary liens not permitted by this Contract at closing, and Seller agrees to allow such encumbrances or monetary liens to be paid-off, removed, and/or extinguished by the Closing agent. However, if the total obligations secured by liens or encumbrances exceed the Purchase Price, then this Contract, at the election of the Seller, shall become void and of no effect. Such election shall release each party from their respective obligations under this Contract, and Seller and Closing agent shall return to the respective Parties all payments and other things of value given under this Contract.

12. **CLOSING ADJUSTMENTS.** The Closing Agent shall apportion general taxes for the year of Closing (based on the most recent levy and the most recent assessment) to date of delivery of the deed. Closing Agent shall deduct from Seller's funds, and pay to the County Treasurer under C.R.S. § 39-3-132, Seller's prorated share, based on the prior year's taxes. The proration shall be a final settlement of taxes.

13. **POSSESSION.** Buyer shall take possession of the Property upon Closing, except that possession of the portion of the Property and Water Rights subject to the Agricultural Lease Back Agreement (as set forth in Section 25 and **Exhibit D**) shall be delivered after the expiration or termination of the Agricultural Lease Back Agreement. Title to the Property and Water Rights shall be transferred to Buyer at Closing upon full and final payment of the Purchase Price.

14. **DEFAULT.** Time is of the essence. If any note or check given as Earnest Money or any other payment due under this Contract is not paid, honored, or tendered when due, or if any party fails to perform any other obligation under this Contract, the Parties shall have the following remedies:

14.1 **IF BUYER DEFAULTS,** then the Buyer shall forfeit to Seller the Earnest Money previously given under this Contract, including interest accrued on the escrowed Earnest Money and part payment, and both parties shall then be released from all further obligations under this Contract except for those matters which expressly survive termination. Such payments and things of value forfeited are **LIQUIDATED DAMAGES** and not a penalty and, except as this Contract otherwise expressly states, are Seller's **SOLE AND ONLY REMEDY** for the City's failure to perform under this Contract. Seller expressly **WAIVES THE REMEDIES OF SPECIFIC PERFORMANCE AND ADDITIONAL DAMAGES.**

14.2 IF SELLER DEFAULTS, Buyer may, in its sole discretion: i) treat this Contract as terminated, in which case the Earnest Money paid by Buyer toward the Purchase Price and other things of value given by Buyer under this Contract shall be immediately returned to Buyer (including reimbursement of the full amount Buyer has deposited in the Seller's attorney's COLTAF Trust Account whether or not previously spent on Land Use Expenses), any items of value given by Seller under this Contract shall be immediately returned to Seller, and the Parties shall have no further obligation or liability to each other under this Contract; or ii) treat this Contract as in full force and effect, in which case Buyer shall have the right to specific performance.

15. SELLER'S WARRANTIES. Except as this Contract otherwise expressly states, Seller represents and warrants, to the best of Seller's current, actual knowledge as of Seller's signature and as of the closing date, that the following are true and correct:

15.1 AUTHORITY. Seller has the full right, power, and authority to transfer and convey the Property, as provided in this Contract, and to carry out Seller's obligations under this Contract. Seller is a Colorado limited liability company validly existing and in good standing under the laws of the State of Colorado; Seller has not (i) commenced a voluntary case, or had entered against it in a petition, for relief under Title 11 of the United States Code, as amended (the "Bankruptcy Code") or any similar petition, order, or decree under any federal or state law or statute relative to bankruptcy, insolvency, or other relief for debtors; (ii) caused, suffered, or consented to the appointment of a receiver, trustee, administrator, conservator, liquidator, or similar official in any federal, state, or foreign judicial or non-judicial proceeding, to hold, administer, and/or liquidate all or substantially all of its property; or (iii) made an assignment of the Property for the benefit of creditors; and that Seller's signature below is fully authorized and binding upon Seller;

15.2 CONTRACT NOT PROHIBITED. Neither the execution of this Contract nor its consummation constitutes, or will result in, any breach of any of the terms, conditions, or provisions of, or is a default under, any indenture, charter, bylaw, mortgage, loan agreement, lien, lease, license, judgment, decree, order, instrument, or other verbal or written agreement, covenant, or restriction to which Seller is a party or is subject or to which the Property is subject;

15.3 TITLE. Seller has good and merchantable title to the Property and all the assets, properties, rights and interests pertaining to the Property, free and clear of all liens and encumbrances, except for matters of record and any other Permitted Exceptions, and there exist no restrictions on the right of Seller to transfer the Property and to convey good title to Buyer according to this Contract;

15.4 DOCUMENTS. Every document, schedule, item and other information Seller has delivered or will deliver or make available to Buyer for inspection under this Contract will be materially true, accurate, and correct. Either prior to or upon mutual execution and delivery of this Contract, Seller will provide Buyer with the following documentation in Seller's possession or control:

15.4.1 Copies of all Leases of or on the Property whether recorded or unrecorded, if any;

15.4.2 Copies of all Contracts and Licenses affecting the Property, whether recorded or unrecorded, including but not limited to the current Surface Use Agreement and any oil and gas leases between Seller and Kerr-McGee Oil & Gas Onshore LP;

15.4.3 A copy of the Mineral Deed by which Seller conveyed its Mineral Interest associated with the Property.

15.4.4 A copy of all current insurance policies covering the Property, including copies of all insurance claims made in the past five (5) years;

15.4.5 Copies of all "off-record" documents not disclosed in the Title Commitment that affect or may affect title to or possession of the Property, if any; and

15.4.6 All surveys and improvement locations, if any.

15.5 NO SPECIAL ASSESSMENTS. No special assessments now burden or encumber the Property and Seller knows of no special assessments currently proposed for the Property;

15.6 MINERAL RIGHTS AND LEASES. The Seller hereby warrants that the mineral interests associated with the Property have been severed from the Property and are no longer owned by Seller. Seller will provide the City a copy of the Mineral Deed by which it conveyed its mineral interests. At the time of such conveyance, the only mineral lease affecting the property was a Lease with Kerr-McGee Oil and Gas Onshore LP, dated August 22, 1970.

15.7 NO EASEMENTS. Seller has not granted or created, and has no knowledge of any third parties who may have the right to claim or assert any easement, right-of-way, or claim of possession not shown of record, on the Plat or in the Permitted Exceptions, whether by grant, prescription, adverse possession, or otherwise, as to any part of the Property;

15.8 NO LITIGATION. There is no litigation pending (or to Seller's knowledge threatened) against or concerning any part of the Property; nor does Seller know of or have reasonable grounds to know of any basis for any such action.

15.9 NO CONDEMNATION. Seller has no knowledge of any pending or threatened condemnation or eminent domain proceeding concerning any part of the Property.

15.10 NO VIOLATIONS OF LAW. Seller has received no notice of, and to the best of Seller's knowledge, there are no violations of any laws, orders, regulations, or requirements of any governmental authority affecting any part of the Property;

15.11 NO COVENANT VIOLATIONS. Seller has received no notice of default or breach under any covenant, condition, restriction, right-of-way, or easement affecting any portion of the Property; no such default or breach now exists or will exist on the date of closing; and no event has occurred and is continuing which, with or without notice or the passage of time, will constitute such a default or breach.

15.12 CHANGE OF REPRESENTATION OR WARRANTY. If at any time after the date of the last signature of Seller and Buyer (the "Effective Date"), Seller becomes aware of

information which causes a representation or warranty contained in this Contract to become untrue or misleading in any material respect, Seller shall promptly disclose said information in writing to Buyer. So long as the information making the representation or warranty untrue or misleading in any material respect is as a result of knowledge first gained by Seller (or the occurrence of events first arising) after the Effective Date and not caused by the gross negligence or intentional misconduct of Seller, Seller shall not be in default under this Contract.

15.12.1 Upon receipt of such disclosure, and notwithstanding any other provisions of this Contract, if Buyer finds the changed representation or warranty objectionable, it shall give Seller written notice of such objectionable changed representation or warranty within seven (7) days after receipt of the disclosure from Seller, and Seller shall, within seven (7) days after receipt of the notice, either cure such objectionable changed condition or warranty to Buyer's satisfaction, or inform Buyer that it will not cure such objectionable changed condition or warranty.

15.12.2 If Seller does not respond within such 7-day period or if it informs Buyer that it will not cure such objectionable changed condition or warranty, Buyer may either (i) terminate this Contract, in which case the Earnest Money paid by Buyer toward the Purchase Price and other things of value given by Buyer under this Contract shall be immediately returned to Buyer (excluding, however, any Land Use Expenses already incurred pursuant to Section 7.2 above), any items of value given by Seller under this Contract shall be immediately returned to Seller, and the Parties shall have no further obligation or liability to each other under this Contract; or (ii) elect to proceed to Closing in accordance with the terms of this Contract, in which case Buyer shall be deemed to have waived its rights with respect to any such change in representation or warranty.

15.13 Except as Seller may otherwise disclose to Buyer in writing after the date hereof based upon any changes in facts, circumstances or events or any new knowledge obtained by Seller, the provisions of this Section 15 and all representations and warranties contained therein shall be true as of the Closing Date. The representations and warranties contained in this Section 12 shall survive for one (1) years after the Closing of the transaction contemplated herein and the conveyance of the Property to Buyer, after which time no action or claim for breach thereof shall be made. The phrase "current, actual knowledge of Seller" shall be mean only those facts and circumstances known or recalled by George Adam or Tom Adam.

16. CONVEYANCE OF WATER RIGHTS. Title to the Water Rights shall be merchantable in Seller at the time of closing, and upon the City's compliance with the terms of this Contract, Seller shall deliver to City a properly executed and acknowledged bargain and sale deed, substantially in the form of **Exhibit G**, attached hereto, conveying the Water Rights to the City, free and clear of all liens, encumbrances, and assessments, except taxes and assessments for the current year, which shall be adjusted and prorated to the date on which the closing occurs. The Water Rights shall be used only on and for the Property. At the closing, Seller shall also deliver to the City the following:

16.1 A properly executed and acknowledged Transfer Request in the form set forth in **Exhibit H**, and addressed to the water company representing the Water Rights (the "Water Company"), requesting conveyance of the Water Rights to the City;

16.2 Seller's stock certificates reflecting Seller's current ownership of the Water Rights. The City, or the title company, shall send said stock certificates, along with the Transfer Requests to the appropriate Water Company for the issuance of new stock certificates indicating the City's ownership of the Water Rights;

16.3 Seller will exercise commercially reasonable efforts to obtain a letter from the Water Company stating that Seller's ownership of the Water Rights represented by that particular company is free and clear of all liens, encumbrances, and assessments;

16.4 Any additional documents which the City or the Water Company may require for the transfer of the Water Rights, including, without limitation, obtaining a lost instrument bond. The City shall pay for all ordinary costs and fees imposed by the Water Company to transfer the Water Rights to the City with the documents set forth in Subsections 16.1-16.3. Seller shall be responsible for any costs and fees associated with obtaining additional documentation, such as lost instrument bonds, required under this Subsection 16.4.

16.5 A fully executed and notarized Statement of Historic Use of Water Rights affidavit in a form attached hereto as **Exhibit I**, attached hereto.

16.6 Seller hereby represents and warrants to the City that as of the date of the signing of this Agreement:

16.6.1 Seller has received no notice of and has no other knowledge of any litigation, claim or proceeding pending or currently threatened, which in any manner affects the Water Rights;

16.6.2 Seller has the full right, power, and authority to sell and convey the Water Rights to the City as provided in this Agreement and to carry out its obligations under this Agreement;

16.6.3 Seller has not entered into any agreement with any private person or entity or with any governmental or quasi-governmental entity with respect to the Water Rights that may result in liability or expense to City upon City's acquisition of the Water Rights;

16.6.4 The execution and delivery of this Contract and the performance of all of the obligations of Seller hereunder, will not result in a breach of or constitute a default under any agreement entered into by Seller or under any covenant or restriction affecting the Water Rights;

16.6.5 The Water Rights have been fully used to irrigate the Property during the period Seller has owned the Property and during the historic irrigation season, except for non-regular leasing or loaning of portions of the irrigation water in the past during years that Seller had sufficient irrigation water, subject only to the availability of water in priority for diversion upon the Property in accordance with such water rights;

16.6.6 To Seller's knowledge, there are no agreements or operating procedures in effect between Seller and any other water users which would preclude or diminish the full and unencumbered utilization of the Water Rights and upon the Property for the same purposes such water rights have historically been utilized; and

16.6.7 Seller hereby expressly waives any right to revoke this Contract as it applies to the Water Rights or associated ditch right, where such right of revocation may exist pursuant to applicable law, including without limitation C.R.S. § 38-30.5-104(5);

Seller shall, at time of closing, certify to the City in writing that the above and foregoing representations and warranties remain true and correct as of the date of Closing.

17. POLLUTION. Seller warrants that, to the best of its current, actual knowledge:

17.1 NO LANDFILL. No part of the Property has ever been used as a commercial or public landfill, and Seller has not used any part of the Property as a private landfill for household or commercial waste or rubbish.

17.2 NO POLLUTION. Seller has farmed the Property for over 60 years, and during that time has used the Property in accordance with standard agricultural practices in effect from time to time that included settling ponds, silage pits, animal manure and urine spreading, burning and burying agricultural debris, use of fertilizers, pesticides and herbicides and similar agricultural activities. Except as otherwise disclosed in the Environmental Reports and/or Inspections delivered by Seller to the City or otherwise obtained by the City: (i) the Property is not contaminated with any hazardous substance; (ii) Seller has not caused and will not cause, and to the best of Seller's current, actual knowledge, there has never occurred, the release of any hazardous substance on the Property; (iii) the Property is not subject to any federal, state or local "superfund" lien, proceedings, claim, liability or action, or the threat or likelihood thereof, for the cleanup, removal, or remediation of any such hazardous substance; (iv) there is no asbestos on the Property, the Property complies with the requirements of the Occupational Health and Safety Administration of the U.S. Department of Labor (OSHA) asbestos standards; (v) there is no underground storage tank on the Property other than the floor water storage tank in the dairy barn and the septic tank connected to the dairy barn restroom; (vi) by acquiring the Property, the City will not incur or be subject to any "superfund" liability for the cleanup, removal or remediation of any hazardous substance from the Property or any liability, cost, or expense for the removal of any asbestos or underground storage tank from the Property. The terms "hazardous substance", "release" and "removal" shall have the same meaning and definitions as in 42 U.S.C. Section 9601; provided, however, that the term "hazardous substance" as used herein also shall include "hazardous waste", as defined in 42 U.S.C. Section 6903 and "Petroleum", as defined in 42 U.S.C. 6991. The term "superfund" means the Comprehensive Environment Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq., as amended, and any similar state statute or local ordinance applicable to the Property, and all rules and regulations promulgated, administered or enforced by any governmental agency or authority. The term

"underground storage tank" shall have the same meaning and definitions as in 42 U.S.C. Section 6991.

18. **INDEMNIFICATION.** Seller will indemnify, defend, and hold the Buyer harmless from and against all claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses and expenses (including, without limitation, attorney fees) to the extent proximately caused by the breach of any representation or warranty of Seller set forth in this Agreement for a period of one (1) year after Closing, after which no claim for such indemnification shall be made. Additionally, Seller will indemnify, defend and hold Buyer harmless from and against all third-party claims, demands, liabilities, damages, suits, actions, judgments, fines, penalties, losses and expenses (including, without limitation, attorney fees) to the extent proximately caused by any negligent or wrongful act of Seller on the Property prior to Closing.

19. **CASUALTY.** In case of substantial damage to the Property by fire, flood, or casualty between the date of this Contract and the date of Closing, Buyer may declare this Contract void and of no further force or effect; and the Parties to this Contract shall be released from all obligations under this Contract; and Seller and Closing agent shall refund to Buyer the full amount paid to Seller, and Seller shall cause its attorneys to refund any remaining funds of the City from its COLTAF Trust Account. "Substantial damage" shall mean a casualty resulting in more than \$100,000 of damage.

20. **TERMINATION.** Besides all other rights and remedies of Buyer and Seller, as stated in this Contract, Buyer shall have the right to terminate this Contract, if any representations or warranties of Seller stated in this Contract are not true and correct as of the Closing Date.

21. **REAL ESTATE COMMISSION.** Any real estate commission due to any broker engaged by Seller upon sale of the Property to the Buyer shall be paid by Seller. The City is not a party to any contract which requires the payment of any real estate commission upon the sale of the Property.

22. **CONTRACT TO SURVIVE CLOSING.** Except as otherwise set forth in Section 15.13, upon a successful closing and transfer of title to the Property from Seller to Buyer, the terms, conditions, representations, warranties, covenants and agreements stated in this Contract shall merge into the deed and be of no further force and effect.

23. **ADDITIONAL DOCUMENTS.** The Parties agree to execute any additional documents necessary to carry out the purposes of this Contract, consistent with its terms.

24. **THE AGRICULTURAL LEASE BACK AGREEMENT.** The City and Seller have agreed that as part of the consideration for this Contract and the purchase and sale of the Property, Seller shall have the right to lease back a portion of the Property from Buyer for agricultural purposes only, commencing on the date of Closing and terminating ten (10) years thereafter, subject to the terms and conditions contained in the Agricultural Lease Back Agreement, attached hereto as **Exhibit D**. Seller's right to continue to occupy and possess this portion of the Property after Closing shall be expressly conditioned upon Seller's compliance with the terms and conditions in the Agricultural Lease Back Agreement. This Section 24 shall only be valid and enforceable upon Closing of the sale of the Property to Buyer. The provisions of this Section 24 (and **Exhibit D**)

shall survive closing of the purchase and sale of the Property and shall not be merged into the deed or other documents executed and delivered at closing.

25. **GOVERNING LAW AND ATTORNEY FEES.** The law of the State of Colorado shall govern interpretation, construction, and enforcement of this Contract. Exclusive jurisdiction and venue for any action to enforce this Contract or for any claims related hereto shall only be in Boulder County District Court, State of Colorado. In any such action, the prevailing party shall be awarded its costs and reasonable attorney fees associated with the action.

26. **CONSTRUCTION.** In this Contract, words of the masculine gender include the feminine and neuter gender and words of the neuter gender refer to any gender. Words in the singular include the plural and *vice versa*. This Contract shall be construed according to its fair meaning, as if prepared by both Parties, and not in favor of or against either party. This document and any other documents incorporated by reference contain the entire understanding and agreement between the Parties. There are no other terms, conditions, promises, understandings, statements, or representations, expressed or implied, concerning the subject of this Contract unless stated in writing and signed by both Parties. This Contract shall not be construed or interpreted for or against either Party, regardless of the drafter.

27. **SALE IN LIEU OF CONDEMNATION.** The City has the power of eminent domain under Colorado law and has previously given Seller a Notice of Intent to requisition and acquire the Property for public purposes. The transaction contemplated in this Contract is a settlement and sale in lieu of exercise of the power of eminent domain.

Dated this _____ day of _____ 2021.

BUYER
CITY OF LONGMONT
A home-rule municipality

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 19-000561

SELLER
ADAM FARM PROPERTY, LLC
A Limited Liability Company

By: _____

Title: _____

State of _____)

) ss:

County of _____)

The foregoing Contract to Buy and Sell Real Estate was acknowledged before me by _____
_____, a member/partner/manager/limited partner/agent (select one)
(Name of party signing)

on behalf of _____ a limited liability company, this _____ day of _____
_____, 2021.

Witness my hand and official Seal.

My Commission expires _____.

Notary Public

EXHIBIT A

**Legal Description of Property
and
Water Rights**

Lot B, Recorded Exemption No. 1313-4-2-RE1085 recorded May 24, 1988 at Reception No. 2142263 in Book 1197, being located in the North ½ of Section 4, Township 2 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado;

LESS AND EXCEPT that portion conveyed by Special Warranty Deed recorded November 1, 2017 at Reception No. 4348745 of Weld County Records;

And Ditch Company shares associated with the Property: Six (6) shares of the Oligarchy Irrigation Ditch Company.

** Legal Description To Be Conformed to the Final Title Insurance Commitment After Completion of the Land Use Approvals

EXHIBIT B-1
Legal Description

Lot B, Recorded Exemption No. 1313-4-2-RE1085 recorded May 24, 1988 at Reception No. 2142263 in Book 1197, being located in the North ½ of Section 4, Township 2 North, Range 68 West of the 6th P.M., County of Weld, State of Colorado;

LESS AND EXCEPT that portion conveyed by Special Warranty Deed recorded November 1, 2017 at Reception No. 4348745 of Weld County Records.

** Legal Description To Be Conformed to the Final Title Insurance Commitment After Completion of the Land Use Approvals

EXHIBIT B-2

Permitted Exceptions (from title commitment)

1. Any facts, rights, interests or claims that are not shown by the Public Records but which could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
2. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
3. Any encroachments, encumbrances, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by Public Records.
4. Any lien or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records.
5. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the Public Records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires of record for the value the estate or interest or mortgage thereon covered by this Commitment.
6. Water rights, claims of title to water, whether or not these matters are shown by the Public Records.
7. All taxes and assessments, now or heretofore assessed, due or payable.
8. Reservations contained in the Patent
From: The United States of America
Recording Date: March 6, 1878
Recording No: Book 20 at Page 166

Which among other things recites as follows: Any vested and accrued water rights for mining, agricultural, manufacturing or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by local customs, laws and decisions of courts. The right of the proprietor of a vein or lode to extract and remove his ore therefrom should the same be found to penetrate or intersect the premises hereby granted as provided by law.

9. Terms, conditions, provisions, agreements and obligations contained in the Agreement as set forth below:
Recording Date: January 29, 1947
Recording No.: Book 1196 at Page 377

10. An oil and gas lease for the term therein provided with certain covenants, conditions and provisions, together with easements, if any, as set forth therein, and any and all assignments thereof or interests therein.

Recording Date: October 14, 1970

Recording No: Reception No. 1556075

Surface Use Agreement in connection with the above Oil and Gas Lease

Recording Date: April 6, 2009

Recording No.: Reception No. 3614808

11. Terms, conditions, provisions, agreements and obligations contained in the Request for Notification (Mineral Estate Owner) as set forth below:

Recording Date: December 21, 2007

Recording No.: Reception No. 3525268

12. Any tax, lien, fee, or assessment by reason of inclusion of the Land in the Left Hand Water District, as evidenced by instrument(s) recorded August 28, 1990 at Reception No. 2224977.

13. The affect of the Hamm Pit Amendment Plan recorded January 8, 1999 at Reception No. 2665829, amended by 3rd Amended USR-1199 recorded September 13, 2002 at Reception No. 2987221.

14. Any tax, lien, fee, or assessment by reason of inclusion of the Land in the Northern Colorado Water Conservancy District, as evidenced by instrument(s) recorded September 29, 2010 at Reception No. 3721790.

15. All oil, gas and other mineral rights granted by the instrument set forth below, and any and all assignments thereof or interests therein:

Granted to: Cirrus Minerals, LLC

Recording Date: January 4, 2011

Recording No.: Reception No. 3742778

16. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Longs Peak Water District

Purpose: water pipeline purposes and appurtenances thereto

Recording Date: October 2, 2001

Recording No: Reception No. 2888263

17. Easement(s) for the purpose(s) shown below and rights incidental thereto, as granted in a document:

Granted to: Kerr-McGee Gathering LLC

Purpose: pipeline purposes and appurtenances thereto

Recording Date: November 2, 2009

Recording No: Reception No. 3657042

18. Terms, conditions, provisions, agreements and obligations contained in the Annexation Agreement as set forth below:
 - Recording Date: March 14, 2011
 - Recording No.: Reception No. 3755771
 - Annexation Map recorded March 14, 2011 at Reception No. 3755770

19. Terms, conditions, provisions, agreements and obligations contained in the Development Agreement Pertaining to Vested Property Rights (Adam Farm Annexation) as set forth below:
 - Recording Date: March 14, 2011
 - Recording No.: Reception No. 3755775

 - Development Map recorded March 14, 2011 at Reception No. 3755773

 - Ordinance No. 737 approving said Development Agreement recorded March 14, 2011 at Reception No. 3755774

20. Any tax, lien, fee, or assessment by reason of inclusion of the Land in the Carbon Valley Park and Recreation District, as evidenced by instrument(s) recorded May 18, 2015 at Reception No. 4108080.

21. Terms, conditions, provisions, agreements and obligations contained in the Request for Notification of Application for Development as set forth below:
 - Recording Date: July 12, 2016
 - Recording No.: Reception No. 4218393

22. Any rights, interest or easements in favor of the United States, the State of Colorado or the Public, which exists or are claimed to exist in and over the present and past bed, banks or waters of St. Vrain Creek.

23. Right of Way and rights incidental thereto for County Roads 30 feet on either side of Section and Township lines as established by the Board of County Commissioners for Weld County, as set forth in a document:
 - Recording Date: October 14, 1889
 - Recording No: Book 86, page 273

24. The following Notices concerning underground facilities have been filed with the Weld County Clerk and Recorder. These statements are general and do not necessarily give notice of underground facilities within the Land:
 - Mountain Bell Telephone Company, recorded October 1, 1981, in Book 949 at Reception No. 1870705.

 - Union Rural Electric Association, Inc., recorded October 5, 1981, in Book 949, at Reception No. 1871004.

Public Service Company of Colorado, recorded November 9, 1981, in Book 952 at Reception No. 1874084.

Colorado Interstate Gas Company, recorded August 31, 1984, in Book 1041 at Reception No. 1979784.

Western Gas Supply Company, recorded April 2, 1985, in Book 1063 at Reception No. 2004300.

Associated Natural Gas, Inc., recorded April 23, 1986, in Book 1110 at Reception No. 2050953.

Panhandle Eastern Pipe Line Company, recorded June 26, 1986, in Book 1117 at Reception No. 2058722.

Associated Natural Gas, Inc., recorded April 10, 1989, in Book 1229 at Reception No. 2175917.

United Power, Inc., formerly Union Rural Electric Association, Inc., recorded January 24, 1991, in Book 1288 at Reception No. 2239296.

25. Any existing leases or tenancies, and any and all parties claiming by, through or under said lessees.

EXHIBIT C

DEED OF CONSERVATION EASEMENT IN GROSS (ADAM DAIRY)

THIS DEED OF CONSERVATION EASEMENT IN GROSS (the "Easement") is entered into this _____ day of _____ 2021, by and between Adam Farm Property, LLC, a Colorado limited liability company ("Grantor") and the City of Longmont, Colorado, a home rule municipality of the State of Colorado ("Grantee").

RECITALS

A. Grantor is the owner, in fee simple, of the property described in Exhibit "C-1," attached hereto and incorporated herein by reference (the "Property"); and

B. The Property possesses conservation value of great importance to the Parties and to the people of the City of Longmont, of Weld County, and of the State of Colorado. Namely, the Property provides agricultural acreage of state and national significance and possesses agricultural use, scenic, open space, rural character, and environmental values that provide unique visual corridors and urban shaping buffers which serve as community buffers between municipal service areas. These features constitute the Property's primary conservation values (the "Conservation Values").

C. The Parties intend to preserve the Property for agricultural use, scenic, open space, rural character, and environmental values, along with the allowed uses specified in paragraph 3 hereof.

D. Grantor further intends, as owner of the Property, to convey to Grantee the right to preserve and protect the Property as agricultural use, scenic, open space, rural character, and environmental values in perpetuity.

E. Grantee, as a governmental entity, is qualified to hold a conservation easement under C.R.S. § 38-30.5-104(2).

F. Grantee agrees, by accepting this grant, to honor the Parties' intentions stated herein.

NOW, THEREFORE, in consideration of mutual covenants contained herein, the receipt and sufficiency of which is hereby confessed and acknowledged, Grantor conveys this Easement to Grantee, and Grantee accepts this Easement and further agrees to the perpetual holding, monitoring and enforcement of this Easement. Both Parties agree to the mutual covenants, terms, recitals, conditions, and restrictions contained herein. Pursuant to the laws of the State of Colorado, and in particular Section 38-30.5-101, *et seq.*, C.R.S., Grantor hereby voluntarily grants and conveys to Grantee, and Grantee hereby voluntarily accepts and will monitor and enforce this Easement in perpetuity over the Property of the nature and character and to the extent hereinafter set forth.

1. Purpose. It is the purpose of this Easement to assure that the Property will be retained forever in its agricultural use, scenic, open space, rural character, and environmental condition.

2. Rights and Obligations of Grantee. To accomplish the purpose of this Easement, the following rights and obligations are conveyed to, and accepted by Grantee:

- a. To enforce this Easement and to prevent any activity on or use of the Property that is inconsistent with this Easement and to require the restoration of such areas or features of the Property that may be damaged by any inconsistent activity or use.
- b. To enter upon the Property at reasonable times in order to monitor compliance with and to otherwise enforce the terms of this Easement; provided that such entry shall be upon prior reasonable notice to Grantor, and Grantee shall not unreasonably interfere with Grantor's use and quiet enjoyment of the Property provided that such use and quiet enjoyment is consistent with the terms of this Easement.

3. Restricted and Allowed Uses. The following describes the extent to which certain uses are allowed or are restricted on the Property:

- a. Agriculture. Agricultural uses, including but not limited to, evolving agricultural practices, that are consistent with the NRCS Technical Guide and with the Town of Firestone land use regulations in effect at the time of use, to the extent those regulations apply to the Property, are allowed. The agricultural activities shall not result in the material degradation of any surface or subsurface waters.
- b. Wildlife Controls. Control of predatory and problem animals by the use of selected control techniques approved by the City, whose effect shall be only upon specific animals or species that have caused or are likely to cause damage to crops, livestock or other property, is allowed. Such control techniques shall not have material detrimental impacts upon water quality and the continued permitted uses of the Property. The use of leg-hold traps is prohibited.
- c. Use and Development of the Property. It is the intention of Grantor and Grantee to limit the uses of the Property under this Easement, in perpetuity, to one single-family residential dwelling per subdivided lot, together with garages, sheds, barns, and any other agricultural-related outbuildings, use for home-occupation as defined in the Town of Firestone land use code, the growing of crops and agricultural products, and agricultural uses as defined in the Town of Firestone land-use code. Grantor shall not be permitted to further subdivide the Property. Grantor and its successors and assigns shall have the right to construct, remodel, repair, or replace the residential dwellings together with any outbuildings as permitted by the Town of Firestone land-use code, so long as the total square footage of the buildings does not exceed 15,000 square feet per subdivided lot. Notwithstanding anything to the contrary contained herein, the subdivided lot for George and Bonita Adam's existing home located at 11684 Weld County Road 5-1/2 shall be permitted to retain the existing use of a mobile home as an accessory residential dwelling on such lot,

and the square footage of such mobile home shall count against the maximum square feet permitted for that subdivided lot. The mobile home shall comply with all applicable Town of Firestone laws, rules and regulations governing accessory dwelling units (subject to existing grandfather rights) and cannot be rebuilt or replaced with a permanent structure. Further, in the event the lot upon which the mobile home is located is sold or conveyed to anyone who is not a lineal descendent of George and Bonita Adam, the right to retain the mobile home as an accessory dwelling shall be terminated.

- d. Construction of Buildings and Other Structures The construction, remodel, repair or replacement of any structure shall be in accordance with all applicable land use regulations in effect at the time the proposed construction, repair, razing or remodeling is to take place, and all required permits and approvals must be obtained.
- e. Subdivision. Any further division or subdivision of the Property is prohibited, whether by physical or legal process, except subdivision to facilitate disposition of a portion of the Property to a public entity for transportation corridor or utility purposes as described respectively in paragraph (h) or (i), below.
- f. Timber Harvesting. Commercial timber harvesting on the Property shall be prohibited.
- g. Mining. Disturbance of the surface of the Property due to the mining of soil, sand, gravel, rock, oil, gas, or any other mineral substance is prohibited unless a third party has preexisting rights to so disturb the surface. Grantor shall not transfer, lease or otherwise separate the soil, sand, gravel, rock, oil, natural gas, fuel or any other mineral substance from the Property.
- h. Roadways and Transportation Corridors. The conveyance of any right-of-way or the construction of any public roadways is strictly prohibited without the written consent of the Grantee, which consent shall be in Grantee's sole discretion, except that Grantor may construct such private roadways to serve the additional building site as permitted in subsection (c) herein, or those necessary to access outbuildings. Any such permitted roadways shall be constructed so as to reasonably minimize the impact on the purpose of this Easement and Grantor shall reasonably endeavor to minimize the environmental, aesthetic, and recreational impact of any construction of such roadways or corridors.
- i. Utilities. Except as allowed under any existing utility easements, or under any additional utility easements that may be established pursuant to an exercise of eminent domain, or as is necessary to conduct any of the permitted uses of this Easement (including, without limitation, the construction of additional dwellings on the retained lots as provided in Section 3.(c) above) no new utility transmission lines or other utility facilities shall be constructed or allowed on the Property, without the written consent of the Grantee, which consent shall be in Grantee's sole

discretion, except that Grantor may grant utility easements as necessary to provide utility service to the additional building sites as permitted in subsection (c) herein. Further, the erection, construction, installation, relocation or use of a commercial communication facility, a telecommunication facility, a network element, telecommunication equipment, or any other equipment (except for Customer Premises Equipment, defined as typical residential or agricultural equipment) or material that may be used for telecommunications or to provide telecommunications services as such terms are defined in the Federal Telecommunication Act of 1996, is prohibited. Any such permitted utilities shall be constructed so as to reasonably minimize any adverse impacts on the Conservation Values of the Property.

- j. Trash. The dumping or uncontained accumulation of any kind of trash or refuse on the Property is prohibited, including but not limited to, hazardous chemicals; provided, however, that agricultural equipment and machinery used on the Property for the permitted uses and that products and by-products produced on the Property may be placed or stored on the Property, so long as such placement or storage is consistent with public health standards, all applicable government laws and regulations, and sound agricultural practices.
- k. Commercial and Industrial Activity. Except as specifically provided for herein, no commercial or industrial uses shall be allowed on the Property.
- l. Public Infrastructure. Public utility infrastructure may be placed on the Property to service such uses outside the Property only if the infrastructure, once installed, will be entirely underground and the surface reclaimed.

4. Reserved Rights. Except as specified herein, Grantor reserves to itself all rights in and to the Property. Further, Grantor reserves to itself and to its agents, invitees, licensees, successors, and assigns, all rights accruing from its ownership of the Property and including the right to engage in or permit or invite others to engage in all uses of the Property that are not expressly prohibited herein.

5. Notice of Intention to Undertake Certain Permitted Actions. Whenever Grantee has an aforementioned right to consult on a particular activity of Grantor, Grantor shall notify Grantee in writing not less than sixty (60) days prior to the date Grantor intends to undertake the activity. The notice shall describe the nature, scope, design, location, timetable, and any other material aspect of the proposed activity.

6. Enforcement. Grantee shall have the right to prevent and correct or require correction of violations of the terms and purposes of this Easement. Grantee may enter the Property at reasonable times and in a reasonable manner for the purpose of inspecting for violations. If Grantee finds what it believes is a violation, Grantee shall immediately notify Grantor in writing of the nature of the alleged violation. Upon receipt of this written notice, Grantor shall either: (a) restore the Property to its condition prior to the violation; or (b) provide a written explanation to Grantee of the reason why the alleged violation is permitted or that such violation was not caused

or permitted by Grantor. If the condition described in clause (b) above occurs, both Parties agree to meet as soon as possible to resolve this difference. If a resolution of this difference cannot be achieved at the meeting, both parties agree to meet with a mutually acceptable mediator to attempt to resolve the dispute. Grantor shall discontinue any activity which could increase or expand the alleged violation during the mediation process.

Should mediation fail to resolve the dispute, Grantee may then, at its discretion, take appropriate legal action. If a court with jurisdiction determines that a violation is imminent, exists, or has occurred, Grantee may request an injunction to stop it, temporarily or permanently. A court may also issue an injunction to require Grantor to restore the Property to its condition prior to the violation. When, in Grantee's reasonable opinion, an ongoing or imminent violation could irreversibly diminish or impair the Conservation Values of the Property, Grantee may, at its discretion, take appropriate legal action without first participating in mediation. However, nothing in this Easement shall entitle Grantee to bring an action for monetary damages against Grantor.

7. Costs of Enforcement. If Grantor is required to restore any portion of the Property affected by a prohibited activity to the condition that existed prior to the undertaking of such prohibited activity, those costs shall be borne by Grantor.

8. Grantee's Discretion. Enforcement of the terms of this Easement shall be at the discretion of Grantee, and any forbearance by Grantee to exercise its rights under this Easement in the event of any breach of any term of this Easement by Grantor shall not be deemed or construed to be a waiver by Grantee of such term or of any subsequent breach of the same or any other term of this Easement or of any of Grantee's rights under this Easement. No delay or omission by Grantee in the exercise of any right or remedy upon any breach by Grantor shall impair such right or remedy or be construed as a waiver.

9. Acts Beyond Grantor's Control. Nothing contained in this Easement shall be construed to entitle Grantee to bring any action against Grantor for any injury to or change in the Property resulting from causes beyond Grantor's control, including, without limitation, actions of third parties not caused or consented to by Grantor, fire, flood, storm, and earth movement, or from any prudent action taken by Grantor under emergency conditions to prevent, abate, or mitigate significant injury to the Property, or to human health or safety, resulting from such causes, so long as the Property is restored to its original or better condition if damaged by Grantor's actions under emergency conditions. Further, the conveyance of this Easement is subject to all valid prior matters of record with the Weld County Clerk and Recorder's Office.

10. Costs and Liabilities. Grantor retains all responsibilities related to the ownership, operation, upkeep, and maintenance of the Property and does hereby indemnify Grantee therefrom. In addition, Grantor agrees to pay any and all real property taxes and assessments levied by competent authority of the Property, and Grantor shall keep the Property free of any liens arising out of any work performed for, materials furnished to, or obligations incurred by Grantor.

11. Condemnation. In the event of condemnation of all or a portion of the Property, the Grantee shall be entitled to a share of the proceeds of the condemnation award, based on the value of this Easement at the time of the taking.

12. Assignment. Grantee may assign its rights and obligations under this Easement only to an organization that is authorized to acquire and hold conservation easements under Colorado law, and only if Grantor, in its reasonable discretion, approves the assignment. As a condition of assignment, Grantee shall require that this Easement's conservation purposes continue to be carried out.

13. Subsequent Transfers. Grantor agrees to incorporate or reference the terms of this Easement in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Property including, without limitation, a leasehold interest. Grantor further agrees to give written notice to Grantee of the transfer of any interest at least twenty (20) days prior to the date of such transfer. The failure of Grantor to perform any act required by this paragraph shall not impair the validity of this Easement or limit its enforceability in any way.

14. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and either served personally or sent by first-class mail, postage prepaid, addressed as follows:

To Grantor: Adam Farm Property, LLC.
11684 County Road 5-1/2,
Longmont, Colorado 80504

To Grantee:
City of Longmont
7 S. Sunset Street
Longmont, CO 80501

with a copy to:
City Attorney's Office
408 Third Avenue
Longmont, CO 80501

or to such other address as either party from time to time shall designate by written notice to the other.

15. Recordation. Grantee shall record this instrument in a timely fashion in the official records of each county in which the Property is situated, and may re-record it at any time as may be required to preserve its rights in this Easement.

16. General Provisions.

- a. Controlling Law. The interpretation and performance of this Easement shall be governed by the laws of the State of Colorado. Venue and jurisdiction over any matter arising from this Easement shall be in Weld County District Court.

- b. Liberal Construction. Any general rule of construction to the contrary notwithstanding, this Easement shall be liberally construed in favor of the grant to effect the purpose of this Easement and the policy and purpose of section 38-30.5-101, C.R.S., *et seq.* If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purpose of this Easement that would render the provision valid shall be favored over any interpretation that would render it invalid.
- c. Severability. If any provision of this Easement, or the application thereof to any person or circumstance is found to be invalid, the remainder of the provisions of this Easement or the application of such provisions to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
- d. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the Easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Easement.
- e. No Forfeiture. Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.
- f. Successors. The covenants, terms, conditions, and restrictions of this Easement shall run with the land and be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property.
- g. Termination of Rights and Obligations. A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.
- h. Captions. The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.
- i. Amendment. If the circumstances arise under which an amendment to or modification of this instrument would be appropriate, Grantor and Grantee are free to jointly amend this instrument; provided that any such amendment shall be consistent with the purposes of this Easement and that no amendment shall be allowed that will affect this Easement's perpetual duration or the qualifications of this Easement under any applicable laws. Any such amendment shall be recorded in the office of the Clerk and Recorder of each county in which the Property is situated.
- j. Financial Obligations. The Parties' obligations under this Easement are contingent upon appropriation, budgeting and availability of specific funds to

discharge those obligations. Nothing in this Easement shall be deemed a debt, direct or indirect, multi-year fiscal obligation, a pledge of credit, or a payment guarantee on the part of either Party.

k. Governmental Immunity. Nothing in this Easement shall be deemed to constitute a waiver or modification of either Party's right to governmental immunity as provided by section 24-10-101, C.R.S., *et seq.* or otherwise. By executing this Easement, either Party waives or intends to waive any such immunity.

SIGNATURES APPEAR ON FOLLOWING PAGES

CITY OF LONGMONT

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 19-000561

EXHIBIT C-1

(Legal Description of property subject to conservation easement)

** Legal Description To Be Conformed to the Final Title Insurance Commitment After Completion of the Land Use Approvals

EXHIBIT D

AGRICULTURAL LEASE BACK AGREEMENT

This Agricultural Lease Back Agreement ("Agreement") is entered into by and between **THE CITY OF LONGMONT** ("Buyer" in the Contract and "Lessor" in this Agreement) and **ADAM FARM PROPERTY, LLC** ("Seller" in the Contract and "Lessee" in this Agreement) (collectively referred to as the "Parties"). This Agreement is **Exhibit D** to Buyer's and Seller's Contract to Buy and Sell Real Estate (the "Contract") attached hereto. That Contract and this Agreement relate to certain real property, with all improvements and appurtenances, a portion of which is subject to this Agreement, as described in **Exhibit D-1**, attached hereto (the "Property").

1. Lessor and Lessee hereby agree that upon the closing of the sale of the Property from Lessee to Lessor pursuant to the Contract ("Closing"), Lessee shall be entitled to continue to possess and occupy the Property for a period of ten (10) years until _____ for agricultural purposes only, subject to the terms and conditions contained herein. This Agreement shall constitute a lease of the Property from Lessor to Lessee. Seller's right to continued possession and/or occupancy of the Property pursuant to this Agreement shall expire on _____ (the "Expiration Date") if not sooner terminated, as provided for herein.

2. The Parties hereby acknowledge that this Agreement serves as additional consideration for the Contract between the Parties and Lessee shall not be required to pay rent during the term of this Agreement.

3. Lessee acknowledges and agrees that the characteristics, status, suitability and condition of the Property are acceptable and adequate to Lessee and that Lessor has not made any representations, warranties or other statements or promises with respect to the characteristics, status, suitability and/or condition of the Property. Lessee further acknowledges and agrees that Lessor has not previously had possession or control of the Property and that Lessor is and shall not be responsible or liable for the characteristics, status, suitability and condition of the Property, nor shall Lessor be responsible or liable for any repair, maintenance, defect or dangerous condition that exists on or in the Property. Lessee hereby releases and discharges Lessor from any claim, loss, injury or damage resulting or arising from the characteristics, status, suitability and condition of the Property and/or Lessee's continued possession and/or occupancy of the Property.

4. Lessor shall allow the Lessee, at no additional expense, to use water equivalent to that provided by 6 shares of the Oligarchy Irrigation Ditch Company. Lessor 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 may, at its option, use on the Property any water right 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 Lessor, or any portion thereof, to anyone without the prior written consent of Lessor, and no portion of said water owned by Lessor shall be used on any lands other than those described in this Agreement. Lessee shall maintain the existing irrigation system in good repair, normal wear and tear excepted.

5. For so long as Lessee continues to possess and/or occupy the Property pursuant to this Agreement, Lessee shall be solely responsible and liable for: a) the physical condition of the Property; b) all maintenance and repairs to the Property (including the improvements and appurtenances); c) any necessary landscaping, mowing, weed and trash removal, irrigation and watering, and snow plowing and snow and ice removal; and d) any other matters necessary to comply with all applicable federal, state and local laws, regulations and requirements.

6. For so long as Lessee continues to possess and/or occupy the Property pursuant to this Agreement: a) Lessee shall use and maintain the Property in conformance with all applicable federal, state and local laws, regulations and requirements; b) Lessee shall not use the Property for any illegal purpose and shall not permit a nuisance to exist or continue to exist on the Property; and c) Lessee shall not sub-let or let others occupy or possess the Property.

7. For so long as Lessee continues to possess and/or occupy the Property pursuant to this Agreement, Lessee shall maintain: a) property, casualty and liability insurance in the amount of not less than \$1,000,000.00 per claim and \$2,000,000.00 in the aggregate, and shall name Lessor as an additional insured on such policy; and b) appropriate insurance coverage for all of their personal property, including automobiles, that are kept, stored or used on the Property.

8. Lessee hereby indemnifies and holds Lessor harmless from any claim, loss, injury or damage resulting or arising from the condition of the Property during Lessee's continued possession and/or occupancy of the Property, and for all acts and/or omissions of Lessee during Lessee's continued possession and/or occupancy of the Property. The foregoing indemnity shall not apply to the extent that such claim, loss, injury or damage is caused in whole or in part by the willful misconduct or gross negligence of the Lessor. Nothing in this Agreement is intended to waive or alter the requirements and protections Lessor has under statutory or common law governmental immunity.

9. Lessee, its heirs, assigns, invitees or guests shall not hunt on the Property.

10. Lessee shall have the right to terminate their right to continued possession and/or occupancy of the Property earlier than the Expiration Date upon giving written notice to Lessor of their intent to do so and notice of the date upon which they shall relinquish exclusive possession of the Property to Lessor (the "Termination Date").

11. Lessor shall have the right to terminate Lessee's right to continued possession and/or occupancy of the Property earlier than the Expiration Date if Lessee breaches any term or condition of this Agreement and fails to cure such breach as provided herein. Upon such default or breach, Lessor shall give Lessee notice of such default or breach and thirty (30) days to the same, unless by the nature of such default or breach it is not reasonably possible to cure the same within 30 days, in which case Lessee must commence such cure within 30 days after notice and diligently prosecute the same to completion. If not cured within thirty (30) days of notice (or such longer time as provided in the preceding sentence), Lessor may terminate Lessee's right to continued possession and/or occupancy of the Property. Should Lessor terminate Lessee's right to continued possession and/or occupancy of the Property pursuant to this paragraph, such termination shall be effective upon Lessor giving Lessee written notice of such termination and

the date upon which Lessee must vacate and relinquish possession of the Property to Lessor (the "Termination Date").

12. Should the Property be materially damaged, destroyed, condemned or otherwise rendered uninhabitable or unusable for the purposes contemplated herein, Lessee's right to continued possession and/or occupancy of the Property shall terminate on the date the Property becomes damaged, destroyed, condemned or otherwise uninhabitable (the "Termination Date").

13. No later than the Expiration Date or, if applicable, the Termination Date, Lessee shall vacate the Property and shall remove all of their personal property and belongings as of such date. Any personal property or other items that remain on the Property after the Expiration Date or, if applicable, the Termination Date, may be removed and disposed of by Lessor without liability. Any expenses associated with the removal and disposition of said personal property and other items shall be at the Lessee's sole expense.

14. Lessor, upon reasonable notice to Lessee, shall also have the right to enter the Property prior to Expiration Date or, if applicable, the Termination Date, to verify compliance with this Agreement.

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

16. Lessor further reserves the right to enter and otherwise occupy the Property during the term of this Agreement for the purpose of installation of public utilities, rights-of-way, and public trail expansion, in the sole discretion of Lessor.

17. Lessee shall have the right to make a one-time assignment of this Agreement to Adam Dairy, a partnership solely owned and controlled by the Adam family (the owners of Seller), and in such event, Lessee shall give Lessor written notice thereof and a copy of such assignment and written confirmation that the assignee assumes all of Lessee's obligations hereunder. Except as provided in the foregoing sentence, Lessee shall not assign this Agreement nor sublet the Property or any part thereof, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. No assignment, pledge, or mortgage of Lessee's interest in this Agreement (or any crops) herein shall be made without the prior, written consent of Lessor, which consent shall not be unreasonably withheld.

18. Any dispute concerning this Agreement shall be governed by the provision of Section 26 of the Contract. Nothing in this Agreement is intended to modify or negate the provisions of the Contract.

APPROVED AND AGREED TO BY THE CITY OF LONGMONT, COLORADO

LESSOR, CITY OF LONGMONT:

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

APPROVED AS TO INSURANCE PROVISIONS:

RISK MANAGER

DATE

CA File: 19-000561

EXHIBIT D-1

(Legal description of property subject to agricultural lease back)

** Legal Description To Be Conformed to the Final Title Insurance Commitment After Completion of the Land Use Approvals

EXHIBIT E
INTENTIONALLY OMITTED

EXHIBIT F
LOT SUBDIVISION

** Legal Description To Be Conformed to the Final Title Insurance Commitment After Completion of the Land Use Approvals

**Adam & LLC Combined, with 4 Lot Split
To Be Configured Upon Completion of Firestone Land Use
Process**



Example of possible lot split

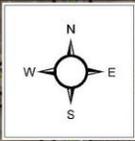


EXHIBIT H

WATER STOCK TRANSFER REQUEST

TO: OLIGARCHY IRRIGATION COMPANY

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. 1956, issued on February 22, 2006 of six (6) shares.

New Certificate:

The owners of six (6) shares of the capital stock of said company is:

1. The City of Longmont, 350 Kimbark Street, Longmont, CO, 80501; and

This encumbrance language should appear on the front or back of the certificate:

"NONE."

Assessments:

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

350 Kimbark Street, Longmont, CO, 80501

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

**City of Longmont
350 Kimbark Street
Longmont, CO 80501**

By: _____

Adam Farm Property, LLC

State of Colorado
County of Boulder

The foregoing Water Stock Transfer Request was acknowledged before me this ____ day of _____, 2021 by Adam Farm Property, LLC.

(Notary Official Signature)

NOTARY
SEAL

(Co

EXHIBIT I
HISTORIC WATER USAGE AFFIDAVIT

Statement of Historical Use of Water Rights

(Use one affidavit for each ditch company)
(Show minimum of last 10 years consecutive use)

WATER RIGHTS: The Oligarchy Irrigation CO,
Ditch or Reservoir Company The Oligarchy Extension Ditch CO, Lower Oligarchy Ditch CO.
Number of Shares or Undivided Interest 6, 9, 9 Certificate Number 1156, 1492
Name and Address of owner(s) of Water Rights:
Adam Farm Property LLC
11684 Weld County Road 5 1/2
Longmont, CO 80504

IRRIGATED LAND:
Description of land irrigated by above mentioned Water Rights: (attach if necessary)
Flood irrigated from the Oligarchy Irrigation Ditch
through 3 head gates out of Oligarchy Irrigation Ditch,
ground slopes toward the Stillman River on the
South, and the Liberty Gulch on the east.
Name and Address of owner(s) of described property:
Adam Farm Property LLC
11684 Weld County Road 5 1/2
Longmont, CO 80504

CROP SUMMARY:

Type of Crop	Number of Acres	Frequency (Yearly, Rotation)
<u>CORN</u>	<u>73</u>	<u>Yearly, Consistent 2010</u>
<u>Grass Hay</u>	<u>10</u>	<u>Yearly, Consistent 2010</u>

Name and Address of irrigator of above mentioned crops:
George C. Adam JR
11684 Weld County Road 5 1/2
Longmont, CO 80504
Years above-mentioned crops were irrigated by Water Rights: 19 60 through 20 20.

CROP SUMMARY (continued):

Type of Crop	Number of Acres	Frequency (Yearly, Rotation)
CORN	73	Yearly, Consistent 2010
GRASS Hay	10	Yearly, Consistent 2010

Name and Address of irrigator of above mentioned crops:

Thomas W. Adam
 11700 Weld County Road 5 1/2
 Longmont, CO 80504

Years above-mentioned crops were irrigated by Water Rights: 19 80 through 20 20.

Type of Crop	Number of Acres	Frequency (Yearly, Rotation)
CORN	73	Yearly, Consistent 2010
GRASS Hay	10	Yearly, Consistent 2010

Name and Address of irrigator of above mentioned crops:

Robert J. Adam
 5533 Triple Crown Dr.
 Frederick, CO 80504

Years above-mentioned crops were irrigated by Water Rights: 19 80 through 20 20.

Type of Crop	Number of Acres	Frequency (Yearly, Rotation)

Name and Address of irrigator of above mentioned crops:

Years above-mentioned crops were irrigated by Water Rights: 19 ____ through 20 ____.

**Statement of Historical Use of Water Rights
Crop Acreage Summary**

Annexation: _____
 Ditch Company: Oligarchy Irrigation CO
 Cert. Number: 1956 No. of Shares: 1956

Year	Alfalfa	Barley	Beans	Corn	Garden	Grain	Hay	Lawn	Oats	Orchard	Pasture Grass	Pumpkins	Raspberries	Sugar Beets	Veg- etables	Wheat	Yearly Total Acres
<u>2010- 2020</u>				<u>73</u>		<u>1</u>	<u>10</u>										<u>83</u>
Totals																	

For Office Use Only

L:\DEPTWATER RESOURCES\CROP ACREAGE SUMM.DOC

