

**INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LONGMONT
AND THE TOWN OF LYONS FOR ELECTRIC STANDBY DISTRIBUTION SERVICE
BY LONGMONT POWER & COMMUNICATIONS**

This Intergovernmental Agreement (the “Agreement”) is entered into as of the _____ day of _____ 202__, by the Town of Lyons, a statutory municipal corporation organized under the laws of the State of Colorado with its principal office at 432 Fifth Avenue, Lyons, Colorado 80540 (“Town” or “Lyons”), and the City of Longmont, a Colorado home rule municipality acting on behalf of its Electric Utility Enterprise, with its principal office at 1100 South Sherman Street, Longmont, CO 80501 (“Longmont” or the “City”) (Each a “Party” or collectively, the “Parties”).

RECITALS

WHEREAS, The Colorado Constitution Article XIV, Section 18(2)(a), and C.R.S. 29-1-201 et seq., provide that political subdivisions of the State may contract with one another to provide any function, service or facility lawfully authorized to each of the cooperating units; and

WHEREAS, Lyons owns and operates a municipal electric utility and provides service to its citizens and customers; and

WHEREAS, since approximately 2000, Longmont has been providing standby electric distribution service to select Lyons facilities upon the need for electricity due to an emergency or planned outage; and

WHEREAS, Longmont has been billing only for usage on LPC’s Commercial Demand and Commercial Energy rates, and has not recovered its costs for ensuring the availability of standby electric distribution service to Lyons; and

WHEREAS, Longmont will not retroactively bill Lyons for the previous years of service, but must begin to properly collect the system costs described in Attachment A hereto, “Calculation of Monthly Standby Charges;” and

WHEREAS, Longmont and Lyons last entered an agreement for electric standby distribution service effective January 1, 2019, with successive renewal periods of one year, and intend that this Agreement supersede and replace any prior agreement between the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings contained herein, the parties agree as follows

AGREEMENT

1. Type of Service

- 1.1. Longmont shall provide standby electric distribution service to select Lyons facilities as indicated in Exhibit A upon the need for electricity due to an emergency or planned outage.
- 1.2. In the event that emergency conditions exist on the Longmont system, or on interconnected systems affecting the Longmont system, necessary curtailment of loads will be affected, including service provided hereunder to Lyons.
- 1.3. Longmont shall not be liable for injury of persons, damage to property, monetary loss, or loss of business caused by accidents, acts of God, fires, floods, strikes, wars, authority or orders of government, interruption of its power supply, or any other causes and contingencies beyond its control.
- 1.4. Longmont shall not be liable for complete or partial failure or interruptions of service or fluctuations in voltage, resulting from any cause whatsoever.

2. **Term** The term of this Contract shall be one (1) year beginning January 1, 2022. This Contract will automatically renew for successive one-year periods unless either party provides a written notice of cancellation at least ninety (90) days prior to the renewal date. Additionally, either party may give written notice, at least ninety (90) days prior to the renewal date, of the party's desire to renegotiate the terms of this Contract for the renewal period. If the parties cannot agree to mutually acceptable terms, the Contract will not renew.

3. Compensation

- 3.1. Monthly charges to consist of Standby Fee, plus Customer Charge and Energy Charge for monthly usage as provided below:
 - 3.1.1. Lyons shall pay to Longmont for standby electric service a monthly Standby Fee based upon installed transformer capacity. The Standby Fee will be based on a monthly cost of \$3.26 per kilowatt (kW). In addition, Lyons shall pay the monthly Customer Charge, per facility, determined by the facility's rate class then in effect and as defined in Section 14.32 of the City of Longmont's Municipal Code. The Standby Rate and Customer Charge shall be payable whether or not each facility incurs an Energy Charge for usage in a given month.
 - 3.1.2. In the event a facility uses energy from Longmont's electric distribution system, the usage will be billed in accordance with the Energy Charge for the

appropriate rate class then in effect and as defined in Section 14.32 of the City of Longmont's City Code, and the Standby Fee will be prorated to account for the number of days of energy usage. Example: if a facility uses energy for 5 days in January the Standby Fee would be prorated to 26/31 of the monthly fee. The Customer Charge for the appropriate rate class will apply whether or not the facility uses energy in a given month.

3.1.3. Longmont periodically performs cost of service studies related to electric rates. Rates by the various rate classes can be found in Section 14.32 of the City of Longmont's Municipal code.

3.2. Additional Costs: All costs for outage response, interconnection, metering and associated telecommunications, and eventual disconnection of standby service will be billed to Lyons on a time and materials basis, and is due within thirty (30) days of billing by Longmont.

3.3. If either the Longmont or Lyons system requires upgrades to facilitate the standby service, Lyons shall be entitled to receive an estimate of the cost of the upgrades and may terminate this Agreement upon 30 days written notice if, in its sole discretion, it deems the additional cost excessive.

4. **Metering** Longmont or its designee shall be solely responsible for the installation, maintenance, repair, and monitoring of metering equipment at the point of delivery.
5. **Default** In the event either party shall fail to observe or perform any of the terms or provisions of this Agreement and such failure shall continue for a period of thirty (30) days after receipt of written notice from the non-defaulting party, a default ("Default") shall have occurred. In such event, the non-defaulting party may resort to all remedies at law or in equity, including termination of this Agreement, provided however, that where such Default cannot reasonably be cured within such thirty-day period, and the defaulting party has proceeded promptly to cure the same and is prosecuting such cure with diligence, the time for curing such Default shall be extended up to an additional thirty (30) days, for a total of sixty (60) days, as may be necessary under the circumstances to complete such cure.
6. **Termination** Notwithstanding the provisions of Article 2, "Term" and Article 5, "Default," Longmont may, at its sole discretion, terminate this Agreement in the event that any payment or amount is not furnished by Lyons when due as set forth in this Agreement, upon giving fifteen (15) days' written notice to Lyons of Longmont's intention to terminate. Lyons may cure the nonpayment and avoid termination of this Agreement by making full payment of all amounts due and owing to Longmont on or before the expiration of the fifteen-day period indicated in the notice.

7. General Provisions

7.1 **Confidentiality.** If either party provides confidential information to the other in writing that is identified as such, the receiving party shall protect the confidential information from disclosure to third parties to the extent allowed by law with the same degree of care afforded its own confidential and proprietary information. Neither party shall, however, be required to hold confidential any information which: (a) becomes publicly available other than through the recipient; (b) is required to be disclosed by governmental or judicial order or by statute, including without limitation the Colorado Open Records Act; (c) is independently developed by the receiving party; or (d) becomes available to the receiving party from a third party with no known restrictions.

7.2 **No Third Party Beneficiaries.** None of the terms or conditions in this Agreement shall give or allow any claim, benefit, or right of action by any third person not a party hereto. Any person or entity other than Longmont or Lyons receiving services or benefits under this Agreement shall be only an incidental beneficiary.

7.3 **No Partnership, Joint Venture or Employment Relationship.** The parties acknowledge and agree that this Agreement does not create a partnership between, or a joint venture of, Longmont and Lyons. The parties further acknowledge and agree that each is an independent contractor for purposes of this Agreement, and that nothing in this Agreement shall be construed so as to create an employer/employee relationship. **Neither party shall be entitled to workers compensation or other insurance coverage or benefits from the other, and each party shall remain responsible for payment of its own state and federal income taxes.**

7.4 **Binding Effect.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and assigns.

7.5 **Governing Law and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado without giving effect to the principles of conflicts of laws. Venue for any dispute arising under this Agreement shall be in Boulder County, Colorado.

7.6 **Severability.** In the event any term, covenant or condition of this Agreement, or the application of such term, covenant or condition, shall be held invalid as to any person or circumstance by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application shall not be affected thereby, but shall remain in force and effect unless a court holds that the invalid term, covenant or condition is not separable from all other terms, covenants and conditions of Agreement.

7.7 **Force Majeure.** Neither party shall be liable to the other for any failure of performance under this Agreement due to causes beyond its control, including, but not limited to: acts of God, fire, flood or other catastrophes, adverse weather conditions, material or facility shortages or unavailability not resulting from such party's failure to

7.8 Waiver. No delay or omission by either party to exercise any right or power occurring upon non-compliance or failure of performance by the other party shall impair that right or power or be construed to be a waiver thereof. A waiver by either party of any of the covenants, conditions or agreements to be performed by the other party shall not be construed to be a general waiver of any such covenants, conditions or agreements, but the same shall be and remain at all times in full force and effect.

7.10 Notices. All notices, requests or other communications (other than those normally required during the Agreement start-up process) under this Agreement or required by law shall be in writing and shall be hand-delivered, sent by overnight delivery service, mailed by first-class, registered or certified mail, postage prepaid and return receipt requested, or transmitted by telegram or facsimile, addressed as follows:

Longmont Power & Communications 303-651-8386
1100 South Sherman Street
Longmont, CO 80501

Town of Lyons 303-823-6622
432 Fifth Avenue
Lyons, Colorado 80540

7.12 Integrated Agreement and Amendments. This Agreement is an integration of the entire understanding of the parties with respect to the matters set forth herein. The parties shall only amend this Agreement in writing with the proper official signatures attached thereto.

EXECUTED as of the date first set forth above.

TOWN OF LYONS:

Nicholas Angelo, Mayor
Town of Lyons Board of Trustees

Attest: _____
Dolores Vasquez, Town Clerk

CITY OF LONGMONT:

MAYOR

ATTEST:

CITY CLERK

DATE

APPROVED AS TO FORM:

DEPUTY CITY ATTORNEY

DATE

PROOFREAD

DATE

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

CA File: 21-001387

Exhibit A

EXHIBIT A TO THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF LONGMONT AND THE TOWN OF LYONS FOR ELECTRIC STANDBY DISTRIBUTION SERVICE BY LONGMONT POWER & COMMUNICATIONS

Calculation of Monthly Standby Charges

Longmont Power & Communications (LPC) currently provides standby power to four facilities (identified below) owned and operated by the Town of Lyons. Erroneously these facilities have been historically billed only for usage on LPC's Commercial Demand (CD) and Commercial Energy (CE) rates. Due to the nature of the service provided, a standby rate is applicable. LPC has developed the standby rate based on cost of service and it will be effective beginning January 1, 2021.

LPC will not retroactively bill for the previous years that the standby rate costs were not collected from the Town of Lyons.

The standby rate is necessary to properly collect the system costs required to reserve the capacity needs for these facilities and to maintain the associated infrastructure in order to ensure that energy is available and can be delivered when required by the Town of Lyons. LPC must design its system to meet all customer's peak demand and recover an appropriate portion of the system's costs from every customer to avoid subsidization from other customers.

LPC periodically performs cost of service studies related to electric rates, which incorporate any new wholesale rate structure from its wholesale provider, Platte River Power Authority (PRPA). The implementation of a new wholesale rate structure from PRPA may require changes to all of LPC's rates, including the standby rate. If the standby rate should change, the parties will amend this agreement to reflect the new rate. All other charges shall be as be as defined in Section 14.32 of the City of Longmont's Municipal Code then in effect, and amendment of this agreement will not be necessary to implement updated published rates.

Standby Rate Summary

Monthly Standby Charge per kW of Installed Transformer Capacity	\$	3.26
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Monthly Customer Charges are based on a facility's rate class, and energy and demand charges are based on usage. Customer Charges and Standby Charges will be added to the monthly bill, in addition to any Energy Charges in a given month. The facility at 198 2nd Ave. will be billed at the Commercial Demand (CD) rate. The remaining facilities below will be billed at the Commercial Energy (CE) rate. All current rates can be found in the City of Longmont's Municipal Code.

Calculation of monthly standby charges

198 2nd Ave

Installed Transformer Capacity: 150 kW

Rate: \$ 3.26 per kW

Standby Charge \$ 489.00

Any energy charges will be added to the monthly bill along with the customer charge

324 McConnell Dr

Installed Transformer Capacity: 75 kW

Rate: \$ 3.26 per kW

Standby Charge \$ 244.50

Any energy charges will be added to the monthly bill along with the customer charge

4100 Ute Hwy

Installed Transformer Capacity: 25 kW

Rate: \$ 3.26 per kW

Standby Charge \$ 81.50

Any energy charges will be added to the monthly bill along with the customer charge

19659 N. St. Vrain Drive

Installed Transformer Capacity: 45 kW

Rate: \$ 3.26 per kW

Monthly Standby Charge \$146.70

Any energy charges will be added to the monthly bill along with the customer charge