

**INTERGOVERNMENTAL AGREEMENT BY AND BETWEEN THE TOWN OF
LYONS AND THE CITY OF LONGMONT FOR A PERMANENT UTILITY
EASEMENT FOR THE DEVELOPMENT OF A SUBTERRANEAN PUMP STATION**

This Intergovernmental Agreement (“Agreement”) is made and entered into as of this _____ day of _____, 2021, between 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 municipal corporation organized under the laws of the State of Colorado and acting by and through its Water Utility Enterprise (“Longmont”), with its principal office at 1100 South Sherman Street, Longmont, Colorado 80501 (“City” or “Longmont”) (Each a “Party” or collectively, the “Parties”).

RECITALS

A. Whereas, the Colorado Constitution Article XIV, Section 18(2)(a), and C.R.S. 29-1-201 et. seq., provides 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

B. Whereas, Lyons and Longmont desire to cooperate to improve Longmont’s long-term raw water supply; and

C. Whereas, Lyons is the owner of certain real property and improvements located outside the municipal boundaries of Longmont, commonly referred to as 346 Evans Street, a parcel of land identified with the Boulder County parcel identification number 120318400001 (“Property”); and

D. Whereas, Lyons currently uses the Property as a parking lot and a public street known as Railroad Avenue, and would like to continue to use the Property in the same manner; and

E. Whereas, Longmont desires to improve its water service by constructing and adding a pump station and associated appurtenances that will transfer water from a 24-inch raw water line (the “South St Vrain Pipeline”) to a nearby 24-inch raw water line (the “North St Vrain Pipeline”) by pumping water from the south side to the north side of 346 Evans Street. The pump station and associated appurtenances will increase redundancy and resiliency of the raw-water supply by access to the South St. Vrain Creek water supply if the Highland ditch is out of service; and

F. Whereas, Longmont desires to obtain a permanent utility easement from Lyons for the construction of the pump station and associated appurtenances, and Lyons has agreed to grant such an easement; and

G. Whereas, Longmont has agreed to pay for all costs associate with the creation of such an easement and will design the pump station and associated appurtenances to

accommodate the current and future needs of the Town. To assist in that effort, the pump station design will be subterranean; and

H. Whereas, Longmont has agreed to work with the Lyons Ditch to relocate their lateral ditch line to place the pump station as far to the South and East as possible; and

AGREEMENT

Now, therefore, in consideration of the above recitals and of the mutual covenants, agreements and promises set forth herein, the parties agree as follows:

1. Recitals. The Recitals set forth above are incorporated herein by reference.
2. Construction, Operation, and Maintenance of Pump Station.

2.1 Longmont shall be responsible for the operation and maintenance of the Pump Station. Longmont shall, at its expense, construct, install, repair, modify, replace, own and provide all utilities needed for the pump station (excluding primary electric improvements) and for any repairs to vegetation and Property due to construction, operation, or maintenance of the pump station.

2.2 Longmont will construct and dedicate to Lyons all primary electrical improvements. The electrical service will be provided by the Town of Lyons.

2.3 Lyons shall review and approve the site plans and site improvements for the pump station prior to construction and all changes during construction. The review shall consist of a 2-week engineering review. Site plan approval and a public hearing are not required.

3. Grant of Easement from Lyons to Longmont.

3.1 Lyons shall execute and grant an easement to Longmont for the right to construct the pump station and appurtenances, and the right to access the said Property (the "Easement") for all purposes reasonably necessary to implement the construction, operation and maintenance of the pump station.

3.2 The Easement area shall cover the land necessary to construct the conceptual design of the pump station and related appurtenances as reflected on Exhibit A.

3.3 Lyons and Longmont shall work in good faith to finalize and execute an Easement Agreement, in a form substantially similar as that attached as Exhibit B, necessary to permit the final design of the pump station. Upon execution, the Easement Agreement will be recorded in the real property records of Boulder County. Said Easement Agreement shall provide that Lyons reserves the right to construct,

reconstruct, repair, or replace a sidewalk placed to separate pedestrian traffic from automobile traffic on Railroad Avenue. The Easement Agreement shall further provide that any improvements installed by Longmont for the construction of the pump station will not interfere with Lyons' designs for the placement of the sidewalk.

4. Consideration. The purchase price for the Easement shall be \$1.00.

5. Default. If either party to this Agreement fails to perform or otherwise breaches any of the covenants, terms, conditions, or obligations of this Agreement, then such failure shall constitute a default. In the event of a default by either party, the non-defaulting party shall give written notice of the default to the defaulting party, in accordance with the notice requirements of this Agreement. Following such written notice, the defaulting party may cure the default within thirty (30) days. Upon cure, this Agreement shall remain in full force and effect. If the defaulting party fails to cure, the non-defaulting party shall be entitled to any and all legal and equitable remedies, including, but not limited to, any specific remedies provided for in this Agreement.

6. No Implied Waiver. No failure by a party to insist upon strict performance of any term, covenant or provision contained in this Agreement shall constitute a waiver of any such term, covenant or provision unless such waiver is made in writing by the party to be bound thereby. Any waiver of a breach of a term or condition of this Agreement shall not prevent a subsequent act, which would have originally constituted a default under this Agreement, from having all the force and effect of a default.

7. Governmental Immunity. Nothing in this Agreement shall be construed to waive either Lyons' or Longmont's protection from liability or the limitations on its liability due to its sovereign immunity under the Colorado Governmental Immunity Act or otherwise.

8. No Third-Party Enforcement. Only Lyons and Longmont, as parties to this Agreement, shall have the right to bring an action to enforce the respective rights and obligations under this Agreement. No other third-party shall have the right or standing to enforce the terms of this Agreement, directly or by derivative action on behalf of either party.

9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. In the event of litigation over this Agreement, jurisdiction and venue shall be proper and exclusive in the District Court in and for Boulder County, State of Colorado.

10. Defense of Claims. The Parties shall defend any claim brought based upon the existence of or provisions of this Agreement and shall be jointly and severally liable for any damages awarded in that connection.

11. Further Assurances. Longmont and Lyons agree and consent to execute such additional documents and to cooperate and to give such further assurances as may be reasonably necessary to further the intent and purpose of this Agreement.

12. Funding Availability. All of Longmont's and Lyons' financial obligations under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge those obligations. Nothing in this Agreement shall be deemed a debt, direct or indirect multi-year fiscal obligation on the part of either Longmont or Lyons, a pledge of either Longmont's or Lyons' credit, or a payment guarantee by either party to the other.

13. Amendments. This Agreement may be amended, modified or altered only by a written amendment executed by both Lyons and Longmont.

14. Negotiated Provisions. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared by counsel for one of the parties, it being recognized that both Lyons and Longmont have contributed substantially and materially to the preparation of this Agreement.

15. **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Agreement, and there shall be substituted for the affected provision, a valid and enforceable provision as similar as possible to the affected provision. If the obligation of Lyons to provide water and water rights to Longmont for treatment is deemed invalid, illegal and unenforceable, and no valid and enforceable substitute provision is available as provided for herein, then this Agreement shall terminate in its entirety.

16. Payments and Notices. All notices and other communications under this Agreement shall be in writing. All such notices and communications and all payments shall be deemed to have been duly given on the date of service, if delivered and served personally, or served via facsimile (with respect to notices and communications only) on the person to whom notice is given; on the next business day after deposit for overnight delivery by a courier service such as Federal Express; or on the third day after mailing, if mailed to the party to whom payment and notice is to be given by first class mail, postage prepaid, and properly addressed as follows:

Longmont: City of Longmont
Deputy City Manager
1100 South Sherman Street
Longmont, Colorado 80501
Facsimile (303) 651-8812

With a Copy to: City of Longmont
City Attorney
408 Third Avenue Longmont, Colorado 80501

The Town: Town of Lyons
c/o Town Administrator
432 5th Avenue
P.O. Box 49
Lyons, CO 80540

Facsimile (303) 823-8257

With a Copy to: Brandon Dittman
Kissinger & Fellman, P.C.
Ptarmigan Place, Suite 900
3773 Cherry Creek North Drive
Denver, Colorado 80209

17. Paragraph Headings. The headings of the paragraphs of this Agreement are inserted solely for ease of reference and are not intended to govern, limit or aid in the construction of any term or provision hereof.

18. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same agreement. Facsimile signatures shall be acceptable and binding upon all parties.

This AGREEMENT is made and entered into to be effective on the date as set forth above.

THE TOWN OF LYONS

NICHOLAS ANGELO, MAYOR

ATTEST

DOLORES VASQUEZ, TOWN CLERK

APPROVED AS TO FORM:

ATTORNEY FOR TOWN OF LYONS

DATE

APPROVED AS TO CONTENT:

VICTORIA SIMONSEN
TOWN ADMINISTRATOR

DATE

**THE CITY OF LONGMONT,
acting by and through its
WATER UTILITY ENTERPRISE**

MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM AND SUBSTANCE:

ORIGINATING DEPARTMENT

DATE

APPROVED AS TO FORM:

ASSISTANT CITY ATTORNEY

DATE

PROOFREAD

DATE

CA File: 20-001008

EXHIBIT A
Easement Area

EXHIBIT B
Form of Easement Agreement

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT is made this _____ day of _____, 2020, by and between [Type the legal name of the Grantor, type of business entity - corporation, LLC, if applicable and press f11 to proceed.] ("Grantor"), and the City of Longmont, Colorado, a municipal corporation ("Grantee"), whose mailing address is 350 Kimbark Street, Longmont, Colorado 80501.

RECITALS

WHEREAS, the Grantor is the owner of real property located in [Type Name of County, then press F11 to proceed] County, Colorado, and more particularly described on Exhibit "A," attached hereto and incorporated herein by reference (the "Easement Property");

WHEREAS, the Grantor has agreed to grant the easement pursuant to the terms and conditions of this Easement Agreement.

NOW THEREFORE, and FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. That the Grantor has granted, sold and conveyed, and by this Easement Agreement does grant, sell, convey and confirm to the Grantee, its successors and assigns, forever, a permanent non-exclusive easement on, over, under, and across the Easement Property for the purposes of the following, (the "Easement"):
 - 0.1 Surveying, locating, installing, constructing, using, operating, maintaining, inspecting, repairing, altering, removing and replacing a [Fill in the type of facility, e.g. water line, electric line, etc., and press f11 to proceed.], in whole or in part, and all necessary subsurface and surface appurtenances related thereto ("Improvements") required in connection with the development, operation, use, and maintenance of the Easement Property;
 - 0.2 Marking the location of the Easement, and any Improvements, by suitable markers set and maintained in the ground at locations which shall not interfere with such reasonable use as Grantor shall make of the Easement under the terms of this Easement Agreement; and
 - 0.3 Right of ingress and egress to, from, over, across, and on the Easement Property as is reasonably necessary, from time-to-time, to perform the activities listed herein in connection with the ongoing development, operation, use, and maintenance of the Easement Property and any

Improvements, and to enforce the rights, terms and conditions given by this Easement Agreement.

2. The Grantor reserves the right to use and occupy the Easement for any lawful purpose consistent with the rights and privileges granted herein, which will not interfere with or endanger any of the Grantee's rights or Improvements on, over, under, or across the Easement or Grantee's use thereof.
3. That the Grantee shall have and exercise the right of lateral and subjacent support to whatever extent is necessary or desirable for the full, complete, and unmolested enjoyment of the rights herein described.
4. If it shall be necessary to disturb the surface of the Easement Property for any of the purposes listed herein, the Grantee shall restore the ground surface, including any authorized paving and any appurtenances, except as may be necessary to accommodate any of Grantee's Improvements, as near as practical to their original condition prior to any construction, within twelve (12) months, unless Grantor and Grantee mutually agree in writing otherwise.
5. That the Grantor shall not construct or allow the construction of any building, structure, or other improvements, such as any fence, gate, or ground utility connections or appurtenances on, over, under, or across the Easement, or take any action which would impair or in any way modify the Improvements or lateral or subjacent support for the Improvements, without obtaining the specific written permission of the Grantee, except as agreed upon by the parties in the executed Intergovernmental Agreement, passed by the City Council of the City of Longmont via Resolution R-_____ and the Board of Trustees of the Town of Lyons via _____. In the event that the Grantee's specific written permission is not obtained, the Grantee shall be permitted to immediately remove or relocate, without any liability for damages and at the sole expense of Grantor, any obstruction that interferes with or impairs the Grantee's rights hereunder.
6. That the Grantor covenants and agrees to cause the Easement area and any improvements installed by the Grantor, subject to paragraph 5, thereon to be maintained and kept, at its sole cost and expense, in good condition and state of repair.
7. That the obligations of the Grantor contained in this Easement Agreement shall constitute a covenant which shall run with and burden the land, shall bind all future owners of the land, and shall be enforceable against the Grantor, and the Grantor's successors and assigns by the Grantee, and its successors and assigns.
8. That the Grantor warrants that Grantor, and all persons claiming under the Grantor, have full right, title, ownership, and lawful authority to make the grant contained here, and promises and agrees to defend the Grantee in the exercise of its rights hereunder against any defect in Grantor's title to the Easement from persons claiming the whole or any part thereto against lawful claims of all persons whatsoever, subject to easements,

encumbrances, exceptions, limitations, restrictions, and reservations contained in instruments of record prior to the date of this Easement Agreement.

9. No representations, warranties, or certifications express or implied shall exist as between the parties, except as specially stated in this Easement Agreement.

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

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

12. This Easement Agreement is an integration of the entire understanding of the parties with respect to the matters stated herein. The parties shall only amend this Easement Agreement in writing with the proper official signatures attached hereto.

13. No waiver of any breach or default under this Easement Agreement shall be a waiver of any other or subsequent breach or default.

14. Upon full execution hereof, the Grantee shall record this Agreement in the real property records of [Type Name of County, then press F11 to proceed] County, Colorado.

15. This Easement Agreement shall be governed and construed in accordance with the laws of the State of Colorado.

IN WITNESS WHEREOF, the parties have executed this Easement Agreement as of the date first above written.

THE TOWN OF LYONS

NICHOLAS ANGELO, MAYOR

ATTEST

DOLORES VASQUEZ, TOWN CLERK

APPROVED AS TO FORM:

ATTORNEY FOR TOWN OF LYONS

DATE