

**INSTRUCTIONS TO PROSPECTIVE BUYERS FOR SUBMITTING PURCHASE
PROPOSALS FOR THE LITTLE THOMPSON FARM**

Background and Description: Larimer County acquired the 211-acre Little Thompson Farm in 2016 with the intent to protect and ensure conservation of the property in perpetuity. The Little Thompson Farm is approximately 211 deeded acres and located along Highway 287, one mile south of the Town of Berthoud in Larimer County, as described in the legal description attached as Exhibit A and shown on the map attached as Exhibit B. A summary of existing property infrastructure, to be included in the sale, is attached as Exhibit C.

Water: To accompany the sale of the farm, the County is also offering the following water portfolio, to be tied to the conservation easement: 80 units of Colorado-Big Thompson (C-BT) water that is subject to a water sharing agreement (see Exhibit D) for which the Buyer will be assigned the County's interest, 20 units Dry Creek Lateral and 16 shares of Handy Ditch water. The conservation easement will encumber these water rights to ensure they are used to support the protection of the farm's conservation values.

Sale Process and Evaluation Criteria: The Little Thompson Farm will be sold subject to a conservation easement held by Larimer County. Or another qualified entity if the County so chooses. The conservation easement will effectively lower the purchase price, thereby helping a buyer acquire land and water at a reduced price in exchange for a commitment to conserve the property. Interested parties should complete the enclosed "Buyer's Questionnaire" and submit their purchase proposals by mail or email anytime **on or before December 15, 2022** to:

Larimer County Engineering Department
Attn: Justin Core
200 W. Oak Street, Suite 3000
P.O. Box 1190
Fort Collins, CO 80522-1190
jcore@larimer.org
970-498-5710

A prospective buyer will be selected to negotiate a purchase and sale agreement, conservation easement, and management plan for the farm. It is anticipated that a closing and possession of the property will occur in 2023. Larimer County reserves the right to reject any offer for purchase of the property in its sole and absolute discretion, including any offer that meets the terms and conditions of purchase stated in this proposal.

Conservation Easement: A conservation easement, subject to final review and approval by the County Attorney and buyer (and/or buyer's legal counsel), will be placed on the entire property. The conservation values to be protected by the conservation easement include, but are not limited to ecological, agricultural, cultural/historic and scenic values. These values will be protected by a set of reserved rights and prohibited uses that are defined in the conservation easement. The conservation easement will also encumber the water rights described above to ensure they are utilized to protect the conservation values. A copy of a form conservation easement prepared by the County is available upon request.

The conservation easement will address the following issues, although specific terms will be negotiated in conjunction with execution of an Option or Agreement for Purchase and Sale:

- Activities such as ranching, farming, hunting, conservation activities and recreational uses are generally allowed.
- Repair of existing buildings and construction of new buildings around the existing developed area on the property (to be described as a “Building Envelope” in the conservation easement) is allowed. A second building envelope could be reserved. The County prefers to limit development to these areas, but we are willing to evaluate proposals for alternative building sites in other areas that do not negatively impact the conservation values of the farm.
- Agricultural improvements such as fences, stock tanks and corrals may be constructed.
- No partitioning or subdividing of the property is preferred; however, we will entertain proposals that allow for a single division of the property into two parcels.
- Prohibited uses generally include development of buildings outside of designated building envelopes, industrial operations, wind farms and billboards or signs.
- The County and/or a qualified conservation easement holder will have limited access to the property for monitoring of the conservation easement.
- Surface mining will be prohibited. Oil and gas leasing on certain portions of the Ranch may be permitted, subject to the terms of the conservation easement and prior approval by Larimer County and/or a qualified conservation easement holder to minimize the impacts of such development.
- Alteration, modification or destruction of springs, seeps and wetlands will be prohibited.
- Other terms as appropriate, including restrictions on any activity that is detrimental to or inconsistent with the conservation values.

The conservation easement may be accompanied by a management plan, developed by the buyer and Larimer County, to address certain property management goals. When implemented, management plans typically cover the following:

- Plans for soil, water and habitat management to protect and enhance the conservation values of the property.
- A description of the property health goals and an explanation of how the buyer intends to manage the farm to help accomplish these goals.

Offers from prospective buyers should indicate whether these terms are acceptable, recognizing that further negotiations will be necessary to finalize the conservation easement terms. Our preference is to finalize terms of the conservation easement and management plan, on or before executing a purchase and sale agreement.

Trail Easement: The County or other entity as assigned, will retain the right to develop a trailhead parking area within a designated building envelope and a 10-foot wide public trail easement around the perimeter of the property that can be constructed and maintained at the County’s (or assignee’s) sole cost. A copy of a form trail easement prepared by the County is available upon request.

The final purchase price will be based on the appraised value of the land (with a conservation easement and trail easement in place) and value of the C-BT water (encumbered by the existing sharing agreement and tied to the conservation easement) and value of the Handy Ditch water (tied to the conservation easement). An appraisal prepared by a qualified appraiser will be completed prior to closing to ensure that the County receives full fair market value for the sale of these interests.

Site Visit: There will be an opportunity to visit the property on *November 9th, 2022 at 9 am* (weather permitting – the backup date for a visit should weather cause a cancellation is November

17th at 9 am). Please limit your party size to two people. **If you plan to attend the site visit, please RSVP by calling or emailing Justin Core by 5 pm on November 7th to receive information on meeting location, directions and time for the visit.**

Disclaimer: Offering subject to errors, omissions, prior sale, change or withdrawal without notice. All information provided by Larimer County or their representatives is intended only as general guidance and we cannot guarantee its accuracy. Prospective purchasers should independently verify all items of interest with their own sources and conduct their own due diligence.

Sale Terms:

- Cash at closing.
- Earnest money deposit in the amount of \$100,000.00 within five days of signing a purchase and sale agreement.
- Closing within 120 days of signing a purchase and sale agreement.
- Larimer County will provide standard coverage title insurance, closing fees will be split equally and other costs will be paid according to local custom.
- The fee-simple land interest will be conveyed by Special Warranty Deed.
- All land, buildings and infrastructure are being sold on an “AS IS, WHERE IS” basis without any representations or warranties.
- Employees of Larimer County, and their close relatives, are prohibited from submitting proposals.

Offers from prospective buyers should address each of the required sale terms in addition to the attached Buyers Questionnaire; further negotiations will be expected and necessary.

BUYER QUESTIONNAIRE

Please answer the following questions as part of your purchase proposal.

1. Please include the name(s), phone number(s), email address(es) and address(es) for the individual(s) and/or companies interested in buying the property and associated water portfolio.
2. The estimated range of value for the sale of the land and water described, subject to a conservation easement, is between \$2.5M - \$4M. Please acknowledge that you are prepared and willing to pay the fair market appraised value for the land and water, to be determined, knowing the value lies within this range.
3. Please address each of the required sale terms listed on Page 3.
4. Please indicate if you intend to apply for a loan to purchase the property.
5. Please indicate your level of understanding and comfort with the general conservation terms outlined. Do you have any specific concerns or questions around the placement of a conservation easement on the land and water rights?
6. Please indicate if you are willing to consider placing a conservation easement on other land that you own.
7. Preference points will be given for certain types of ranching and farming activities including local food production, organic farming, sustainable grazing, etc. Please indicate the types of land uses you intend to employ on this property.
8. Preference points will be given to land use/management practices that include enhanced conservation outcomes and best practices around land management and herbicide/pesticide use, etc. What additional conservation actions and opportunities will you employ on this property (for example, soil regenerative practices, wildlife friendly fencing, habitat improvements, water conservation measures, etc.)?
9. Please describe if you have other water rights/shares that you intend to use on this property to meet your management goals.
10. If you have past experience with conservation in your work, for example participating in conservation programs with local or federal agencies or placing a conservation easement on land you own, please describe those here.
11. Is there anything else you'd like to add about your interest in this property or yourself?

EXHIBIT A
Legal Description

**The North ½ of the Southwest ¼ of Section 27, Township 4 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado,
INCLUDING Outlot A, WAGON WHEEL MONUMENT SUBDIVISION, according to the plat recorded September 25, 1980 in Book 2873 at Page 107 County of Larimer, State of Colorado.**

AND

Lot 1A of Second Amended Malchow M.R.D. No. 93-EX0382, recorded June 10, 2014 at Reception No. 20140030214, being a part of the Northwest ¼ of Section 27, Township 4 North, Range 69 West of the 6th P.M., County of Larimer, State of Colorado,

EXHIBIT B
Map of the Property

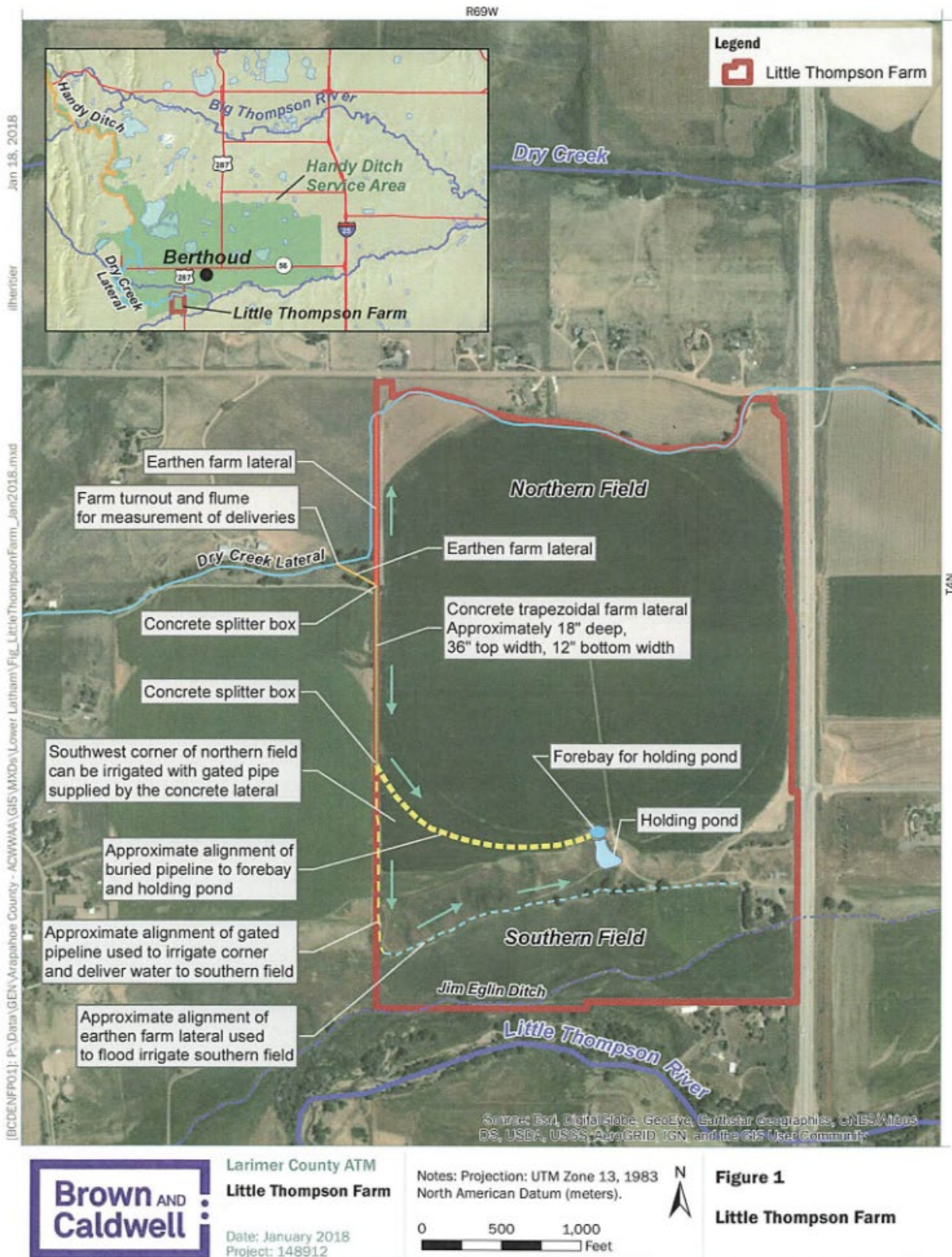


EXHIBIT C

Little Thompson Farm Buildings & Infrastructure*

Residential Area

Horse Barn (2,016 sq. ft.) c. 1907
Corrals and loading chute (removed)
Residence (1,064 sq. ft. + basement) c. 1948
Brooder House (64 sq. ft.) c. 1944
Chicken Coop (200 sq. ft.) c. 1907
Beet shack (280 sq. ft.) and owned by Berthoud
Historic Society c. 1910
Loafing shed (720 sq. ft.) c. 1907
Traveler's Grave c. 1860 with monument

Agricultural Infrastructure

2003 Center Pivot Sprinkler
with "arm" or cornering
machine (irrigates 148 ac.
total)
Holding pond with sediment
forebay

Fences

The fences on the property are delineated as follows:

- Approximately 2 miles of perimeter barbed wire fences.
- 0 - miles of internal barbed wire fences.
- 0 - linear feet of corral fencing. (removed)

There may be areas where perimeter fences do not follow legal boundaries,

Water Systems and Deliveries

- Irrigation water is delivered to the property via the Dry Creek Lateral from the turnout via a short earthen ditch. A Parshall flume for water measurement is installed in the earthen ditch just downstream of the turnout. The earthen ditch delivers water to a concrete splitter box located on the west side of the north field and then south via a concrete-lined lateral that runs along the west property boundary. In addition, water can also be conveyed to the north via an earthen ditch from the splitter box to flood irrigate the northeast corner of the north field. A second concrete splitter box is located at the southern end of the concrete lateral, where water can either be conveyed through an underground pipe to a forebay and holding/settling pond or can be conveyed through surface pipe to fields on the southern part of the property.
- Water conveyed via the underground pipeline is delivered first to a small forebay to allow some settlement and removal of sediment before water enters the holding pond and to help prevent sprinkler clogging in the center pivot. From the holding pond water is then pumped to the center pivot on the north field. While unlined, the holding pond has relatively low seepage rates because fine sediments accumulate in the bottom of the pond over time and reduce permeability of soils lining the pond. A diversion gate is also present at the southern end of the holding pond, but is not functional, and can be used to release water from the holding pond to irrigate the south field.
- The Handy Ditch headgate is located on the south side of the Big Thompson River (in the SE ¼ SW ¼ of Section 3, T5N, R70W). The Dry Creek Lateral is unlined and is approximately 8 miles long. The property is the second to last head gate on the lateral, and the lateral runs along the north property boundary once it reaches the property. Seepage losses in the Handy Ditch and Dry Creek Lateral are an important consideration in determining the quantity of water that will be delivered to the farm. The seepage losses are assessed by the Company differently depending on the source of water and this rate is specified in the Company Bylaws.

Water improvements on the property are described below:

- The center pivot operates. Pumps and timers are located at the wells powered with electricity.
- Holding pond with approximately 150,000 +/- gallon capacity impounded behind earthen embankments of compacted soil. Diversion gate outlet and forebay for sediment settling.
- 0 - stock tanks
- Approximately 1,430 feet of waterline or piping

EXHIBIT D

**Agreement by and between the
City and County of Broomfield
and Larimer County, including
associated Subcontracting
Agreement for 80 C-BT Units**

(on following 50 pages.)

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Angela Myers, Clerk & Recorder, Larimer County, CO

INTERGOVERNMENTAL AGREEMENT

**By and between
The City and County of Broomfield and
Larimer County
For the Sale and Shared Use of Colorado-Big Thompson Units**

This Intergovernmental Agreement (“Agreement”) is made and entered into and effective as of the Effective Date (as defined in Section 24 below) by and between the **City and County of Broomfield**, a Colorado municipal corporation and county (“Broomfield” or “City”), and the **Board of County Commissioners of Larimer County, Colorado**, a governmental subdivision of the State of Colorado (“Larimer County” or “County”). Broomfield and Larimer County may be collectively referred to herein as the “Parties” or individually as a “Party.”

RECITALS

WHEREAS, the Parties are authorized pursuant to Article XIV, Section 18(2)(a) of the Constitution of the State of Colorado and C.R.S. § 29-1-201, *et. seq.* to contract with any political subdivision of the State of Colorado concerning any function, service or facility lawfully authorized to each of the contracting parties, including the sharing of costs; and

WHEREAS, Broomfield is responsible for providing a long-term and dependable potable water supply for its citizens and others served by Broomfield; and

WHEREAS, to this end Broomfield is seeking water supplies to meet its anticipated needs, including drought, drought recovery and emergency water supply needs; and

WHEREAS, the citizens of Larimer County, through the Help Preserve Open Spaces ballot initiative and subsequent extensions and its Larimer County Open Lands Program (“LCOLP”) has, as part of its mandate, the task of preserving and protecting significant open space, natural areas, wildlife habitat, and developing parks and trails for future generations. As part of this mandate, Larimer County should seek to conserve working farmland and water within the County; and

WHEREAS, in furtherance of the LCOLP’s efforts to conserve valuable working farmland, Larimer County purchased an irrigated farm of approximately 211 acres

✓ Please Return to Alex Castro, engineering x5710

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located in the NW $\frac{1}{4}$ and the N $\frac{1}{2}$ of the SW $\frac{1}{4}$ of Section 27, Township 4 North, Range 69 West of the 6th P.M., Larimer County, Colorado, as more particularly described in **Exhibit A**, which is attached hereto and incorporated herein by this reference (hereinafter the “Little Thompson Farm”) together with 240 Northern Colorado Water Conservancy District Colorado-Big Thompson Acre-Foot Units under Allotment Contract numbers 7855, 7856, and 7857, 16 shares of capital stock in The Handy Ditch Company, and 20 shares of capital stock in the Dry Creek Lateral Ditch Company; and

WHEREAS, Larimer County is obtaining grant funding in the amount of \$450 per unit toward the cost of the 115 Northern Colorado Water Conservancy District Colorado-Big Thompson Acre-Foot Units to be sold to Broomfield, bringing the total compensation for the 115 units to Two Million Nine Hundred and Ninety Thousand Dollars (\$2,990,000.00); and

WHEREAS, as part of the LCOLP and its effort to economically and efficiently conserve working farmland, Larimer County applied for, and received, a grant of funds from the Colorado Water Conservation Board’s Alternative Agricultural Transfer Methods Grant Program for the purpose of developing a water “sharing”—or interruptible supply agreement—with a municipal water provider; and

WHEREAS, the recently adopted Colorado Water Plan and the South Platte Basin Implementation Plan both identify “interruptible supply agreements” for the sharing of water, in particular, between agricultural water users and municipal water providers, as a promising “alternative transfer method” (“ATM”) to assist in meeting Colorado’s future water supply needs; and

WHEREAS, the recently adopted South Platte Implementation Plan states a goal of minimizing traditional agricultural dry-up and maximizing the use of ATMs to the extent practical and reliable; and

WHEREAS, Larimer County has evaluated the Little Thompson Farm’s long-term water needs and concluded that it can remain an economically viable, working, irrigated farm using an interruptible water supply on terms and conditions set forth in Section 4 below; and

WHEREAS, in furtherance of the Parties’ goals, functions and services, and in recognition of the Statewide benefits that accrue from ATM transfers that reduce the need to permanently fallow or convert productive farmlands, the Parties have agreed to enter

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into the following Agreement.

NOW, THEREFORE, in consideration of the promises and covenants of the Parties, and other consideration, the receipt and adequacy of which is confessed and acknowledged, it is agreed by and between Broomfield and Larimer County as follows:

AGREEMENT

1. **RECITALS.** The foregoing Recitals are incorporated into and made a part of this Agreement as if fully set forth herein.
2. **AUTHORITY.** This Agreement has been duly adopted by the Parties' governing bodies and the undersigned representatives are authorized to execute this Agreement on behalf of each respective Party.
3. **SALE OF 115 C-BT UNITS TO BROOMFIELD.** Contingent upon the approval by the Northern Colorado Water Conservancy District ("NCWCD") of the sale and transfer of 115 of the County's C-BT Units, and also contingent upon NCWCD approval of the "Subcontracting Agreement" defined and set forth below in Section 4 of this Agreement, Larimer County agrees to sell Broomfield One Hundred and Fifteen (115) of the Two Hundred and Forty (240) NCWCD Colorado-Big Thompson Acre-Foot Units ("C-BT Units") acquired with the Little Thompson Farm, as follows:
 - 3.1. Units to be Transferred. Larimer County will sell and Broomfield will buy One Hundred and Fifteen (115) acre-foot CB-T Units currently allocated to Larimer County under NCWCD Allotment Contract number 7857 ("115 Units").
 - 3.2. Consideration. Broomfield shall pay Larimer County Two Million Nine Hundred Thirty Eight Thousand Two Hundred Fifty Dollars (\$2,938,250.00) (the "Purchase Price") to acquire the 115 Units from Larimer County.
 - 3.3. NCWCD Approval. Following the Effective Date, the Parties shall promptly work cooperatively to coordinate and seek approval from the NCWCD Board of Directors for: 1) the transfer of the 115 Units; and 2) the "Subcontracting Agreement" (set forth below in Section 4 of this Agreement) in accordance with NCWCD's "Rule Governing the Subcontracting of Beneficial Use of Colorado Big Thompson Project Allotment Contracts" as it now exists or may be modified prior to Closing, as follows: The Parties shall work expeditiously and in good

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faith with NCWCD and its staff and shall timely provide all relevant information and documentation needed for the NCWCD's staff to schedule the questions of approval of both the transfer of the 115 Units and the Subcontracting Agreement on the agenda for the next available NCWCD Board of Directors meeting. The Parties agree, and the request for approval to the Board of Directors of the NCWCD shall so state, that NCWCD's approval of the transfer of the 115 Units and NCWCD's approval of the Subcontracting Agreement must take place simultaneously, and if either request for approval is to be denied by the NCWCD Board of Directors, for reasons that the Parties cannot remedy in accordance with subparagraph 3.5, the Parties agree to withdraw both requests and the Agreement will be considered null and void.

3.3.1. *Transfer Application and Related Documents.* The Parties shall cooperatively prepare the transfer application to be filed with NCWCD to transfer the 115 Units to Broomfield, and shall also cooperate and coordinate with each other concerning the preparation and submittal of all other documents required or requested by NCWCD to facilitate the transfer of the 115 Units to Broomfield.

3.3.2. *Transfer Fee.* Broomfield shall pay the transfer fee(s) and related costs charged by NCWCD to transfer the 115 Units.

3.3.3. *Assessments of NCWCD.* Larimer County has paid the 2017 NCWCD annual assessments. Broomfield shall pay the 2018 assessments for the 115 Units and all assessments thereafter. Broomfield shall have use of the 115 Units upon Closing, subject to the existing lease of the 115 Units which expires on January 1, 2018.

3.3.4. *Proof of Ownership.* Larimer County warrants that it is the owner of the 115 Units free and clear of any liens and encumbrances and shall timely provide NCWCD and Broomfield with an Ownership Report or Attorney Opinion on ownership and encumbrances related to the 115 Units at the County's expense. Such Ownership Report and/or Attorney Opinion shall be in a form satisfactory to NCWCD.

3.4. Right to Lease 115 Units. Larimer County shall have the first right to lease the 115 Units on a year-to-year basis during years when Broomfield elects to lease the water attributable to the 115 Units. At Closing, the Parties shall execute a

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lease substantially in the form of the lease attached hereto as **Exhibit F**. The Parties shall also provide to NCWCD a copy of the executed lease or such other document satisfactory to the Parties and NCWCD evidencing the existence of Larimer County's first right to lease that will attach as a Claim of Lien, as defined by NCWCD's rules and regulations, on the 115 units and serve as notice to third parties that may seek to purchase or lease the 115 Units.

3.5. Transfer of 115 Units Subject to NCWCD Approval of Subcontracting Agreement. The Parties expressly understand and agree that the sale and transfer of the 115 Units is contingent upon NCWCD's approval of the Subcontracting Agreement described below in Section 4. To this end, consistent with subparagraph 3.3 above, the Parties shall seek and obtain NCWCD's approval of the transfer of the 115 Units at the same time, or after, the Subcontracting Agreement is, or has been, approved by NCWCD. In the event that approval of the transfer of the 115 Units or approval of the Subcontracting Agreement, or both, is/are denied by the NCWCD, the Parties shall, in good faith, seek to remedy any deficiencies (including any modifications that are required to this Agreement) and request approval of the transfer of the 115 Units and the Subcontracting Agreement at subsequent meeting(s) of the Board of Directors of the NCWCD. If for any reason the NCWCD Board refuses to approve either the transfer of the 115 Units or the Subcontracting Agreement for reasons that the Parties cannot remedy to the satisfaction of the Board to obtain both approvals, this entire Agreement shall be null and void and of no further force and effect, and the Escrow Deposit described below in Section 5, including any accrued interest thereon, shall be returned to Broomfield pursuant to the Escrow Agreement. Closing in this matter shall be final as to Broomfield's rights to the 115 Units, which shall not be affected by any future withdrawal by NCWCD of approval of the Subcontracting Agreement.

4. **SUBCONTRACTING AGREEMENT**. This Section 4 of the Agreement sets forth the rights and obligations of the Parties concerning the subcontracting or "shared" use of the ATM Units ("Subcontracting Agreement"). Larimer County agrees to subcontract with Broomfield in a manner that will allow the Parties to share the beneficial use of Eighty (80) of the C-BT Units acquired by Larimer County with the Little Thompson Farm and remaining in Larimer County's ownership under NCWCD Allotment Contract Number 7856 ("ATM Units"). The Parties agree this sharing will be in a manner consistent with this Agreement and the NCWCD "Rules Governing the Subcontracting of Beneficial Use of the Colorado-Big Thompson Project

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Allotment Contracts” effective August 11, 2016, as such Rules may be amended prior to the approval of this Subcontracting Agreement by the NCWCD Board (“Subcontracting Rules”). A copy of the Subcontracting Rules in effect on the Effective Date of this Agreement is attached hereto and incorporated herein as **Exhibit B**. If, at any time following Closing under Section 6 herein, NCWCD revises or rescinds the Subcontracting Rules and NCWCD asserts the revisions or rescission apply to this Subcontracting Agreement and a Party or the Parties determine that the revisions or rescission substantially alters the Subcontracting Agreement and/or frustrates the purpose and intent of the Parties as described in Section 4.1, below, the Parties agree to in good faith seek to amend the Subcontracting Agreement or otherwise remedy the implications of the revisions to or rescission of the Subcontracting Rules so as to conform as closely as possible to the original purpose and intent of the Parties, and if this requires an amendment to the Subcontracting Agreement, the Parties agree to promptly request renewed approval of the Subcontracting Agreement at the next meeting(s) of the Board of Directors of the NCWCD.

- 4.1. Purpose and Intent. The purpose and intent of this Subcontracting Agreement is to share the beneficial use of the ATM Units to the mutual benefit of the Parties by the County’s granting Broomfield the option to elect to use the ATM Units for 3 years out of every 10 years (based on a rolling 10-year period), or more frequently in accordance with Section 4.3.4, below, to assist in meeting its anticipated short term drought, drought recovery and emergency water supply needs. The County will retain its ability to use the water in the years when Broomfield’s option to use the ATM Units is not exercised. **Exhibit C**, attached hereto and incorporated herein, provides a further description and illustration of the 10 year rolling period to be used in this Agreement.
- 4.2. Consideration. As consideration for the right to subcontract to use the ATM Units, Broomfield shall pay to Larimer County Eight Hundred and Thirty-Two Thousand Dollars (\$832,000.00) (“ATM Purchase Price”).
- 4.3. Broomfield’s Use of the ATM Units. In those years where Broomfield intends to exercise its option to use the water attributable to the ATM Units, Broomfield must notify Larimer County in writing of its intention to exercise the option for that year prior to January 31st, however, Broomfield may also elect to exercise its option after January 31st up until June 1st (“Late Notice”), but only if: (1) Broomfield notifies the County of its intention to exercise its option as soon as

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Broomfield makes the determination to use the water in order to allow for farm planning (e.g. rental of alternative sources); and (2) Broomfield reimburses the County for all crop-related expenses incurred after January 31st through the date on which Broomfield provides the County with the Late Notice, including but not limited to the purchase or planting/application of seed, fertilizer, labor expense, equipment use/rental, and such other reasonable expenses incurred prior to the Late Notice. The following additional terms and conditions shall apply in years when Broomfield elects to exercise its option to use the water attributable to ATM Units.

4.3.1. *Option Applies to all ATM Units.* Broomfield's option to elect to use ATM Units in any year shall apply to all 80 ATM Units; there shall be no partial exercise of the option to use only a portion of the ATM Units.

4.3.2. *ATM Payment.* Broomfield shall pay Larimer County a fee ("ATM Payment") each year that Broomfield exercises its right to use the ATM Units. The ATM Payment will start at Eighteen Thousand Dollars (\$18,000.00) (\$225.00 per ATM Unit). Beginning in 2028, with no "catch-up", the ATM Payment shall be adjusted in accordance with the price adjustment formula attached hereto as **Exhibit D**.

4.3.3. *ATM Units Assessments.* The County shall timely pay the NCWCD assessments, transfer fees and other related fees related to the ATM Units ("NCWCD ATM Unit Fees"). Broomfield shall, within 30 days of being invoiced by the County, reimburse the County for the NCWCD ATM Unit Fees for the years in which Broomfield uses the water attributable to the ATM Units. If the County fails to timely pay the NCWCD ATM Unit Fees when due, Broomfield shall have the right to make such payment(s) and cause NCWCD to remove any lien by NCWCD for the failure to pay the NCWCD ATM Unit Fees, and, in such event, the County shall reimburse Broomfield for all costs, expenses, and reasonable attorneys' fees incurred in paying the NCWCD ATM Unit Fees and obtaining the release of any lien by NCWCD for failure to pay assessments. Any such sums may be deducted by Broomfield from any future payment due to the County under this Agreement. In any year in which the County fails to make any required payment to Northern by March 15th, and, after giving notice to the County, Broomfield reasonably believes it must make such payment to avoid potential loss or forfeiture of the ATM Units, and such payment is made by Broomfield, Broomfield shall be entitled to elect to use the ATM Units under

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this Subcontracting Agreement without making any additional payments under paragraphs 4.3 or 4.3.2. If without good cause the County fails to timely pay the NCWCD assessments and any other related fees and costs to NCWCD for a period of three (3) consecutive years and, after giving notice to the County, Broomfield has made such payments pursuant to this subparagraph, upon request by Broomfield, Broomfield and the County agree to negotiate in good faith to transfer the ATM Units to Broomfield subject to NCWCD approval. In the event Broomfield fails to reimburse the County for the ATM Unit Fees in years when Broomfield uses the water attributable to when due, and after providing written notice to Broomfield of its failure to pay, the County may request that the NCWCD curtail delivery of the water attributable to the ATM Units to Broomfield until such payments are made.

4.3.4. *Limitations on Use.* Consistent with the requirements of the Subcontracting Rules, the Parties agree that Broomfield's use of the ATM Units is limited to no more than 3 years out of every 10 years, using a rolling 10-year period (as further described and illustrated in **Exhibit C** attached hereto). However, Larimer County agrees that during periods of prolonged drought, and should Broomfield request it, the County will evaluate, in good faith and consistent with its goal of maintaining the Little Thompson Farm as a viable, working, irrigated farm, allowing Broomfield to use the ATM Units in excess of 3 out of every 10 years under the specific circumstances identified in paragraph 5.6.1 of the Subcontracting Rules, attached as **Exhibit B**. Nothing herein is intended to prevent the Parties from agreeing to seek, by separate agreement, prior authorization from NCWCD to provide certainty as to additional drought, drought recovery and emergency situations in which NCWCD would authorize Broomfield to use the water attributable to the ATM Units more than 3 out of every 10 years (not already specifically mentioned in paragraph 5.6.1 of the Subcontracting Rules) and consistent with the purpose and intent of this Subcontracting Agreement as set forth in subparagraph 4.1 above.

4.3.5. *No Rental of ATM Units.* As the intent of this Subcontracting Agreement is to provide Broomfield with an additional drought, drought recovery, and emergency source of water, Broomfield shall not exercise its option to use the water attributable to the ATM Units as a means of creating or increasing a supply of water for rental to any third party(ies) or for purposes of renting the water attributable to the ATM Units to any third party unless such

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party(ies) is or will be using the water attributable to the ATM Units to provide said water to provide water to Broomfield and its citizens and others served by Broomfield. Nothing in this paragraph shall prevent Broomfield from allowing the use of the ATM Units by a governmental entity or entities, such as an enterprise, with the purpose and obligation to provide municipal water to Broomfield and its citizens and others served by Broomfield.

4.3.6. *Subcontracting Rules.* The Parties agree and understand that this Subcontracting Agreement is subject to all of the rules and requirements of the Subcontracting Rules and shall be construed accordingly. The Subcontracting Rules which apply to this Agreement are attached hereto as **Exhibit B** and incorporated herein as if fully set forth and shall be considered part of this Subcontracting Agreement. Without limiting the generality of the foregoing statement, the Parties acknowledge and shall comply with the requirements of Sections 5.4 through 5.6 of the Subcontracting Rules in **Exhibit B**.

4.4. Subcontracting Agreement Subject to NCWCD Approval. The Parties shall seek NCWCD approval of the Subcontracting Agreement in accordance with subparagraph 3.3 above. If the NCWCD Board refuses to approve either or both the transfer of the 115 Units or the Subcontracting Agreement for reasons that the Parties cannot remedy, this entire Agreement shall be null and void and of no further force and effect and the ATM Payment shall be returned to Broomfield, as more particularly provided in subparagraph 3.5, above.

4.5. Parties' Compliance with NCWCD Rules. The Parties further understand and agree that it shall be each Party's continuing responsibility to comply with all of the NCWCD's rules, regulations, requirements and policies, and that each shall be responsible for its own legal and physical ability to take delivery of the water attributable to ATM Units when said Party is using the same. This Agreement provides no guarantee of water, and the timing, location and amount of water delivered shall be coordinated individually with NCWCD. If, at any time following Closing under Section 6 herein, approval of the Subcontracting Agreement is withdrawn by the NCWCD due to changes to or rescission of the Subcontracting Rules or other reasons, the Parties shall, in good faith, seek to remedy the implications of the alteration to the Subcontracting Rules so as to conform as closely as possible to the original purpose and intent of the Parties as described in Section 4.1 above, and if this requires an amendment to the

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Subcontracting Agreement, the Parties agree to promptly request renewed approval of the Subcontracting Agreement at the next meeting(s) of the Board of Directors of the NCWCD. Closing in this matter shall be final as to Broomfield's rights to the 115 Units, which shall not be affected by any future withdrawal by NCWCD of approval of the Subcontracting Agreement.

- 4.6. Transfer Fee. The Parties shall split equally the transfer fee(s) and related costs charged by NCWCD for the review of the Subcontracting Agreement for the 80 ATM Units.
- 4.7. No liens or Encumbrances: Broomfield and the County agree that Broomfield's rights under this Agreement shall constitute a lien upon and encumber the ATM Units. Unless Broomfield's prior written consent is given, the County shall not suffer or allow any other lien or encumbrance to attach to the ATM Units except the Conservation Easement explicitly referenced in Section 8 below. If the County suffers or allows a lien or encumbrance to attach to the ATM Units without the prior written consent of Broomfield, Broomfield after notice to the County giving the County 60 days to release the lien or encumbrance, shall have the right to cause any such lien holder or encumbrancer to release the ATM Units free of the lien or encumbrance, and, in such event, Broomfield shall be entitled to recover from the County all of Broomfield's costs, expenses, and reasonable attorneys' fees incurred in obtaining the release of such lien or encumbrance.
- 4.8. Term. The terms of this Subcontracting Agreement shall be perpetual.
5. **ESCROW.** On or before August 10, 2017, Broomfield shall deposit the Purchase Price and the ATM Purchase Price ("Escrow Deposit") into an escrow account ("Escrow Account") with Colorado Escrow and Title Services, LLC ("Escrow Agent"), together with the Escrow Agreement ("Escrow Agreement"), in the form attached hereto as **Exhibit E** signed by Broomfield, the County, and the Escrow Agent and consistent with the terms and conditions of this Agreement.
6. **CLOSING.** Closing of escrow (the "Closing") shall take place promptly after both of the following occur: 1) the NCWCD Board approves the transfer of the 115 Units pursuant to its transfer rules and policies and Broomfield receives written notification that approval is final; and 2) the NCWCD Board approves the Subcontracting Agreement set forth in Section 4 of this Agreement in accordance with NCWCD's Subcontracting Rules in the form in which they now exist in **Exhibit B** or as they

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may be modified prior to Closing. Within two (2) business days of receipt of both approvals from NCWCD, the Parties shall jointly provide the Escrow Agent written confirmation that the approvals have occurred, and authorization for the Escrow Agent to distribute the Escrow Deposit to Larimer County consistent with the terms of the Escrow Agreement. Written Confirmation of NCWCD approvals may be provided electronically in conformance with Section 10 of this Agreement. Closing in this matter shall be final as to Broomfield's rights to the 115 Units, which shall not be affected by any future withdrawal by NCWCD of approval of the Subcontracting Agreement.

7. **DEFAULT.** If either Party is in default, the other Party shall first provide notice to the defaulting Party of the nature of the default and the defaulting Party shall have thirty (30) days to correct or otherwise remedy the default. In the event the defaulting Party does not correct or remedy the default, the non-defaulting Party may elect to treat this Agreement as terminated, or the non-defaulting Party may elect to treat this Agreement as being in full force and effect and shall have the right to an action for specific performance or damages or both, and such other remedies as may be available to the non-defaulting Party. In the event of any litigation arising out of this Agreement, the court may award all reasonable costs and expenses, including attorney's fees to the prevailing party.

8. **ASSIGNMENT; CONVEYANCE OF LITTLE THOMPSON FARM; CONVEYANCE OF ATM UNITS.**

8.1. Assignment of Agreement. The Parties may not assign this Agreement without prior written consent from the other Party and approval of the NCWCD Board of Directors. The foregoing notwithstanding, and despite anything in this Agreement that might be construed to the contrary, it is understood and agreed that this Agreement may be assigned or conveyed by Broomfield to a governmental entity or entities, such as an enterprise, with the purpose and obligation to provide municipal water to Broomfield and its citizens and others served by Broomfield. Further, the County may assign this Agreement, subject to Broomfield's consent which shall not be unreasonably withheld or delayed, to an unrelated third party that acquires the Little Thompson Farm, provided said third party explicitly accepts and adopts in writing the terms of this Agreement.

8.2. Conveyance of Little Thompson Farm. The County may convey the Little Thompson Farm to an unrelated third party. In that event, the County may place a

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Conservation Easement on the Little Thompson Farm and, subject to Broomfield's approval which shall not unreasonably be withheld or delayed, the associated water rights, including the 80 ATM Units, to ensure that the uses of the farm and water remain consistent with the conservation purposes stated in the Conservation Easement. Any such Conservation Easement shall specifically refer to, and shall be subject to this Agreement, including, but not limited to, Section 4, above.

- 8.3. Conveyance of 80 ATM Units. The County may convey the 80 ATM Units to an unrelated third party. In the event the County conveys the ATM Units to a third party for use(s) other than the irrigation of the Little Thompson Farm, Broomfield may elect to terminate the Subcontracting Agreement herein, in which case the County shall pay to Broomfield 40% of any proceeds from the conveyance of the 80 ATM Units to said third party. The County shall promptly notify Broomfield of its intent to convey the 80 ATM Units to a third party for use(s) other than irrigation of the Little Thompson Farm, the name of the third party, and the terms of the conveyance. Upon notification by the County of the County's intent to convey the 80 ATM Units to a third party for use(s) other than irrigation of the Little Thompson Farm and the terms of said conveyance, Broomfield shall promptly notify the County whether Broomfield elects to terminate the Subcontracting Agreement upon the conveyance of the 80 ATM Units.
- 8.4. Conveyance of 115 Units. Following Closing and transfer to Broomfield of the 115 Units, Broomfield may lease, assign or transfer said 115 Units to a third party subject to NCWCD approval, and provided said third party explicitly accepts and adopts in writing the County's first right to lease said 115 Units under subparagraph 3.4 herein.
9. **BROOMFIELD'S RIGHT OF FIRST REFUSAL.** In the event the County elects to sell the ATM Units separate from the Little Thompson Farm, Broomfield shall have the right to purchase all or any portion of the ATM Units upon the same terms and conditions and purchase price offered to or by the County by or to any third party for the purchase of all or any portion of the ATM Units. The County shall promptly notify Broomfield in writing of the County's intent to sell to a third party all or any portion of said ATM Units separate from the Little Thompson Farm, the name of the third party, and the terms of the proposed sale. Broomfield shall have fifteen (15) days after Broomfield's receipt of any such notice to give notice to the County of Broomfield's intent to exercise the right of first refusal granted herein.

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10. **NOTICE.** All notices, demands, or other written communication required or permitted to be given by this Agreement shall be by electronic mail, hand delivered, or sent by certified or registered mail, postage prepaid, and return receipt requested, to the parties as follows, or to such other address as a Party may designate by notice to the other Party:

If to Larimer County:

Director of Natural Resources
1800 S CR 31
Loveland, CO 80537
Telephone: 970-619-4560
E-mail: gbuffington@larimer.org

With a copy to:

Larimer County Attorney's Office
Attention: Jeannine Haag, County Attorney
224 Canyon Avenue, Suite 200
Fort Collins, CO 80521
Telephone: 970-498-7450
Email: jeanninehaag@larimer.org

AND

Daniel K. Brown
Fischer, Brown, Bartlett & Gunn, P.C.
1319 West Prospect Road
Fort Collins, CO 80525
Telephone: 970 401-9000 x 212
Email: danbrown@fbgpc.com

AND

Open Lands Program Manager
Larimer County of Natural Resources Dept.
1800 S CR 31
Loveland, CO 80537

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Telephone: 970-619-4577
E-mail: krollins@larimer.org

If to Broomfield:

Director of Public Works
City and County of Broomfield
One Des Combes Drive
Broomfield, CO 80020
E-mail: dallen@broomfield.org
publicworks@broomfield.org

With a copy to:

Harvey W. Curtis
Harvey W. Curtis and Associates
8310 South Valley Highway, Suite 230
Englewood, CO 80112
Telephone: 303 292-1144
E-mail: hcurtis@curtis-law.com

AND

Water Resources Manager
City and County of Broomfield
4395 West 144th Avenue
Broomfield, CO 80023
Telephone: 303-464-5605
E-mail: mcalvert@broomfield.org

11. NO WAIVER OF IMMUNITY; LIABILITY. Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, *et seq.*, as applicable, as now or hereafter amended nor shall any portion of this Agreement be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Agreement. Subject to the limits, notice requirements,

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immunities, rights, benefits, defenses, limitations, and protections of the CGIA, each party agrees to be responsible and assume liability for losses, costs (including reasonable attorney's fees), demands, or actions caused by its own wrongful or negligent acts and omissions, and those of its officers, agents and employees acting in the course of their employment in connection therewith.

12. **OBLIGATIONS SUBJECT TO APPROPRIATION.** The obligations of Broomfield and of the County to commit or expend funds after calendar year 2017 are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by the Broomfield City Council and the Larimer County Board of County Commissioners, respectively, in the City's and County's sole discretion.
13. **GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado. The forum for any dispute regarding this Agreement shall be in the Weld County District Court, State of Colorado.
14. **COMPLETE AGREEMENT.** This Agreement consists of all the agreements, understandings, and promises between the Parties, and there are no agreements, understandings or promises between the Parties other than those set forth in this Agreement. This Agreement governs 195 C-BT Units (the 115 C-BT Units under NCWCD Allotment contract number 7857 plus the 80 ATM Units under NCWCD allotment contract number 7856) of the 240 C-BT Units associated with Little Thompson Farm. The remaining 45 C-BT Units under NCWCD Allotment contract number 7855, 16 shares of capital stock in The Handy Ditch Company, and 20 shares of capital stock in the Dry Creek Lateral Ditch Company associated with the Little Thompson Farm are not subject to this Agreement.
15. **BROKER FEES.** The Parties hereto covenant that no brokerage fees are due to anyone based on the transactions in this Agreement.
16. **SURVIVAL OF TERMS.** The terms of this Agreement, including, but not limited to, Section 3.4 and Section 4, above, shall survive the Closing under Section 6.
17. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Agreement shall be liberally construed in favor of the grant to effect the Purpose and Intent set forth in Section 4.1, above. If any provision in this Agreement is found to be ambiguous, an interpretation consistent with the Purpose and Intent that would

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render the provision valid shall be favored over any interpretation that would render it invalid.

18. **AMENDMENTS.** Any amendments or modifications to this Agreement must be in writing and executed by all parties to be valid and binding.
19. **NO THIRD PARTY BENEFICIARIES.** This Agreement shall inure only to the benefit of the signatories below. There are no third party beneficiaries intended under this Agreement.
20. **COUNTERPARTS.** This Agreement may be executed in counterparts and, as so executed, shall constitute one Agreement, binding on the Parties, even though all the Parties have not signed the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages, which altogether contain the signatures of all the Parties, shall be deemed a fully executed instrument.
21. **RECORDATION.** Upon receipt of the approvals from NCWCD described in subparagraphs 3.7 and 4.5 above, this Agreement shall be recorded by Larimer County at the County's expense with the Larimer County Clerk and Recorder and shall be recorded at Broomfield's expense with the Broomfield County Clerk and Recorder. A copy of the Agreement recorded by a Party shall be provided by that Party to the other Party.
22. **BINDING EFFECT.** This Agreement, when executed and delivered, shall bind the Parties and their successors and assigns.
23. **SEVERABILITY.** If any provision of this Agreement is invalidated by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.
24. **EFFECTIVE DATE.** The "Effective Date" shall be the date on which this Agreement is executed by Broomfield or by the County, whichever is later in time.
25. **CAPTIONS.** The captions in this Agreement are for the convenience of the Parties and the captions shall have no meaning, force, or effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date as set forth above.

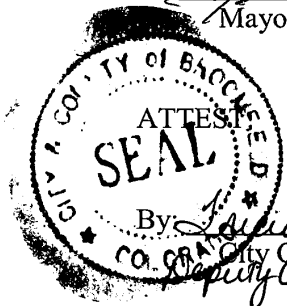
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THE CITY AND COUNTY
OF BROOMFIELD

BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO

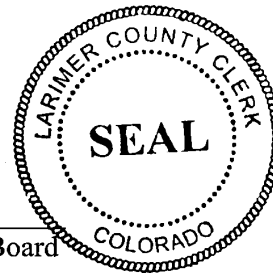
By: [Signature]
Mayor

By: [Signature]
Chair, Lew Gaiter III



ATTEST:

By: [Signature]
Deputy Clerk of the Board



APPROVED AS TO FORM FOR BROOMFIELD:

By: [Signature]
City and County Attorney - ASSISTANT

DATE: 7-27-17
APPROVED AS TO FORM:
[Signature]
DEPUTY COUNTY ATTORNEY

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Exhibit A

PROPERTY DESCRIPTION

THE NORTH ½ OF THE SOUTHWEST ¼ OF SECTION 27, TOWNSHIP 4 NORTH,
RANGE 69 WEST OF THE 6TH P.M., COUNTY OF LARIMER, STATE OF
COLORADO.

INCLUDING OUTLOT A, WAGON WHEEL MONUMENT SUBDIVISION,
ACCORDING TO THE PLAT RECORDED SEPTEMBER 25, 1980 IN BOOK 2873
AT PAGE 107 COUNTY OF LARIMER, STATE OF COLORADO.

AND

LOT 1A OF SECOND AMENDED MALCHOW M.R.D. NO. 93-EX0382, RECORDED
JUNE 10, 2014 AT RECEPTION NO. 20140030214, BEING A PART OF THE
NORTHWEST ¼ OF SECTION 27, TOWNSHIP 4 NORTH, RANGE 69 WEST OF
THE 6TH P.M., COUNTY OF LARIMER, STATE OF COLORADO.

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Exhibit B

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Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts

(Effective Date: August 11, 2016)

Historical Background

Since 1938 the Northern Colorado Water Conservancy District (Northern Water) has issued Allotment Contracts to provide for the beneficial use of water yielded from the Colorado-Big Thompson (C-BT) Project by water users located within Northern Water boundaries. Those beneficial uses include irrigation, domestic, municipal, and industrial uses. The Northern Water Board of Directors (Board) issues Allotment Contracts in accordance with Northern Water's defined rules, regulations, policies and procedures. C-BT Project water is intended to supplement an Allottee's existing non-C-BT Project water supply portfolio.

The finite water supply available to meet future water needs within Northern Water boundaries, when combined with the ever-increasing demands for water, requires that water users strive to accomplish the maximum beneficial use of all available water supplies in the region. These factors, coupled with the recognized ability to transfer C-BT Project water contribute to the functionality, utility, and value of C-BT Project water. As pressures on existing water supplies increase, various water users are entering into innovative water sharing agreements such as interruptible water supply contracts. These agreements, when entered into by an Allottee utilizing water yielded from a C-BT Project Allotment Contract, represent the subcontracting of beneficial use of the water yielded from that Allotment Contract.

Further complicating these transactions is Northern Water's requirement that the beneficial use of water yielded from the C-BT Project be accomplished in full compliance with the terms and conditions of the Allotment Contract, the Water Conservancy Act, the terms and conditions of the contractual documents between Northern Water and the United States Bureau of Reclamation that govern the operation and administration of the C-BT Project, and Northern Water's rules, regulations, policies, and procedures.

It has become apparent to Northern Water that there are instances when the beneficial use of C-BT Project Allotment Contracts may be subcontracted by the Allottee to one or more water users. As such, it is the responsibility of the Board to assure that these Subcontracts result in C-BT Project water being used in accordance with all controlling rules, regulations, policies, procedures, statutes, and contractual requirements while also meeting the responsibilities, and obligations of Northern Water. To assure compliance with statutes, the terms and conditions of the contractual documents associated with the C-BT Project, and the terms and conditions of the involved Allotment Contract(s), and to assure the Board is meeting its obligations and responsibilities, the Subcontracting of the beneficial use of C-BT Project water yielded from the Allotment Contract by an Allottee must be done only with the full knowledge and approval of the Board.

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This Rule is promulgated to clearly state the Board's requirements associated with existing, currently proposed, and future Subcontracts for the beneficial use of C-BT Project water yielded from an Allotment Contract.

Rule

1.0 Rule Purpose

- 1.1 This Rule defines the requirements of Northern Water pertaining to the Subcontracting of the beneficial use of water yielded by a C-BT Project Allotment Contract by the Allotment Contract owner (referred to herein as the Allottee) to another water user (referred to herein as the Subcontractor).

2.0 Rule Definitions

- 2.1 Account Entity - An Account Entity may be comprised of a single C-BT Project water user, or multiple C-BT Project water users. In most instances, one or more Allotment Contracts have been certified for delivery through an Account Entity's respective quota account. An Account Entity may have multiple physical delivery points from the C-BT Project. For some agricultural Water Users, a "C-BT carrier" may be synonymous with an Account Entity having the same name.
- 2.2 Acre Foot Unit (AFU) - Unit of measurement used for the allocation of C-BT Project water to an Allottee in an Allotment Contract. An AFU receives 1/310,000th of the water annually declared to be available from the C-BT Project by the Board. Historically, an AFU annually yields 0.5 to 1.0 acre feet per AFU.
- 2.3 Allotment Contract - The contract between the Allottee and Northern Water that allocates C-BT Project water to the Allottee for a specified beneficial use. Allotment Contracts are issued on an AFU basis.
- 2.4 Allottee - An entity (person, corporation, company, or otherwise) that owns one or more Allotment Contracts for C-BT Project Water as issued by Northern Water. For purposes of this Rule, the Allottee is the entity subcontracting water to another water user (the Subcontractor).
- 2.5 Base Supply - Any permanent non-C-BT Project water supply held and/or controlled by a water user or an Allottee.
- 2.6 Board - Northern Colorado Water Conservancy District Board of Directors
- 2.7 C-BT - Colorado-Big Thompson
- 2.8 Forfeiture - As stated in 37-45-134 (c) C.R.S.

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- 2.9 Irrigation – The application of water for beneficial use, without waste for the primary purpose of growing and producing crops to be harvested, or consumed by livestock, including pasture lands, and for uses incidental to the primary production of such crops.
- 2.10 Northern Water - Northern Colorado Water Conservancy District
- 2.11 Quota Water - The amount of C-BT Project water declared available each year by the Board from the yield of the C-BT Project to an Allottee through the determination of the annual quota. The declared quota represents the percentage of an acre-foot of C-BT Project water made available for each AFU owned by the Allottee.
- 2.12 Rule 11 Charge - The payment due to Northern Water resulting from some Seasonal Transfers in accordance with Northern Water Rule 11.
- 2.13 Seasonal Transfer - The transfer of Quota Water through Northern Water's administrative process. This transfer may be done electronically through Northern Water's accounting system Allottee interface or through the use of a CD-4 card.
- 2.14 Subcontract – For purposes of this Rule, any type of agreement (contract, lease, or otherwise) or concurrent agreements that transfer the beneficial use of an Allottee's C-BT Project water to a Subcontractor for an aggregate time period of two years or longer. The Subsections to this Section provide additional definition concerning Subcontracts.
 - 2.14.1 Bridge Supply Subcontract - This type of Subcontract provides the Subcontractor C-BT Project water for a predetermined and definite period of time. As an example, a Subcontractor might need the interim water supply in anticipation of a new water supply project becoming operational, as an emergency supply in response to failed infrastructure or water quality issues, or as a supply to meet a temporary demand.
 - 2.14.2 Interruptible Supply Subcontract - This type of Subcontract provides the Subcontractor C-BT Project water under certain conditions for the duration of the Subcontract. As an example, an Interruptible Supply Subcontract may provide water to a municipal or industrial supplier during a drought period or during certain years following a drought. For the purposes of this Rule, an Interruptible Supply Subcontract is not to provide yield from the C-BT Project to the Subcontractor each and every year.
 - 2.14.3 Other Subcontract - Any Subcontract that provides the Subcontractor C-BT Project water that is not either an Interruptible Supply or Bridge Supply Subcontract.

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2.15 Subcontractor - An entity (person, corporation, company, partnership, limited liability company or other legally defined entity) that is Subcontracting for the beneficial use of C-BT Project water from an Allottee. The Subcontractor may or may not be an Allottee. However, a Subcontractor must have a defined beneficial use of C-BT Project water within the boundaries of Northern Water and comply with all applicable rules, regulations, guidelines, policies and procedures of Northern Water.

2.16 Tract - A unit of land identified by Northern Water in a Class D Allotment Contract.

3.0 Required Approval of Subcontracts

3.1 All Subcontracts, as defined in Section 2.14, entered into after the effective date of this Rule are prohibited without the approval of the Board pursuant to this Rule. Subcontracts representing internal trades of C-BT Project water for other water of similar value or arrangements where a water supplier provides treated water service in exchange for receiving C-BT Project water from an Allottee resulting in the beneficial use of C-BT Project water being primarily made by the Allottee will be exempt from this Rule subsequent to Northern Water making such a determination after its review of the Subcontract.

3.2 Subcontracts that are in existence as of the effective date of this Rule shall be exempt from this Rule if: (A) the Allottee provides a copy of the executed Subcontract to Northern Water within nine months of the effective date of this Rule, and (B) Northern Water determines the Subcontract does not contain terms or conditions that violate statutes, rules that existed at the time of the Subcontract, or applicable contract conditions associated with the beneficial use of C-BT Project water. Northern Water will take no enforcement action regarding a Subcontract that has been provided pursuant to this Rule until Northern Water's review of the Subcontract is complete and Northern Water either: confirms in writing that the Subcontract is exempt from this Rule, or informs the Allottee in writing of the violation(s). Northern Water will only consider a Subcontract exempt from this Rule if Northern Water has affirmatively stated so in writing. Once notified by Northern Water of a violation(s), the Allottee shall have six months to amend the Subcontract to correct the violation(s).

4.0 Request for Exemption From or Approval of a Subcontract(s)

4.1 An Allottee seeking exemption from or approval of a Subcontract(s) must follow the Procedures for this Rule. The administrative fee assessed by Northern Water to review a Subcontract shall be determined as described in the Procedures to this Rule.

5.0 Criteria Used for Subcontract Review and Approval

5.1 The Board's review and approval of Subcontracts shall be limited and applicable only to those terms and conditions of the Subcontract which pertain to the

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beneficial use of water yielded by an Allotment Contract, shall be on a specific case-by-case basis, and shall incorporate consideration of all rules, regulations, policies and procedures that govern, or are related to, the approval and issuance of an Allotment Contract.

- 5.2 The Board may approve or deny approval of any Subcontract for the beneficial use of water yielded by an Allotment Contract. In the event the Board of Directors denies approval of such a Subcontract, the Board shall state the bases for the denial.
- 5.3 The Board may approve a Bridge Supply Subcontract or Other Subcontract for a maximum term of five years except as provided below. The Board will consider requests to reapprove a Subcontract if its previous approval has expired or will expire. The Board is not obligated to reapprove a Subcontract. However, if a Subcontractor identifies a specific water supply project that is under development and will provide a future water supply for the Subcontractor, the Board may approve a Bridge Supply Subcontract for a term longer than five years. The term for any such Subcontract approved for longer than five years may be for: (A) a fixed term reasonably anticipated to coincide with the completion of the water supply project; or (B) an indefinite term to terminate upon completion of the water supply project. In any event, a Subcontract shall not exceed five years following the denial of an indispensable permit approval for said water supply project, or the Subcontractor's decision not to move forward with or continue its participation in the water supply project. Completion of a water supply project shall mean completion of project infrastructure and operation of the project as necessary to produce the anticipated water supply yield of the Project.
- 5.4 The Board will only consider approval of a Subcontract if the Subcontractor meets the following minimum requirements:
- 5.4.1 The C-BT Project water described in the Subcontract will be considered in calculations of AFU ownership limitations for the Subcontractor if water will be used for non-irrigation purposes. The Subcontractor cannot exceed its limitation for the ownership of Allotment contracted AFUs when considering both AFUs owned through its Allotment Contract(s) and the water represented by the Subcontract. In the case of a water supply emergency which temporarily affects the Subcontractors' base supply, the Board may choose to consider a proposed Subcontract of specified and limited duration disregarding AFU ownership limitations.
- 5.4.2 The Northern Water 1995 Interim Ownership Limitation Guidelines, or whatever then existing Northern Water ownership limitation policy or rule, will be used as the primary criteria in evaluating Subcontractor ownership limitations when the Subcontractor is using water for purposes other than irrigation. A simplified example of a C-BT ownership limitation calculation is included in Appendix A to this Rule. C-BT ownership limitations shall

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not be applied when the beneficial use of the C-BT Project water by the Subcontractor is for irrigation.

- 5.4.3 The Subcontractor must be in compliance with the conditions in the Northern Water 1997 Base Water Supply Policy, or with whatever then existing Northern Water base water supply policy or rule that is in place.
- 5.5 A Subcontract will only be considered for approval if the Subcontract meets the following minimum requirements:
- 5.5.1 Requires C-BT Project water only be placed to beneficial use on land situated within the boundaries of Northern Water.
- 5.5.2 Assures use will be for a beneficial use(s) approved by Northern Water.
- 5.5.3 Requires that C-BT Project water not be reused, and any return flows resulting from its initial use, if and when they occur, must be returned within the boundaries of Northern Water.
- 5.5.4 The Subcontract is based on AFUs.
- 5.5.5 The AFUs associated with the proposed Subcontract plus the aggregated sum of AFUs associated with all previous Subcontracts associated with a specific Allotment Contract do not exceed the total number of AFUs associated with that Allotment Contract.
- 5.5.6 Does not create a joint or undivided interest or other form of concurrent property interest in a C-BT Project Allotment Contract beyond that which is provided in the Allotment Contract.
- 5.5.7 Does not include a provision requiring the Allotment Contract be transferred to the Subcontractor unless such transfer is contingent upon the review and approval by the Board.
- 5.5.8 Limits the sale of the Subcontractor's base supply to a maximum of 15% during the pendency of the Subcontract and, furthermore, provides that no base supply be sold or transferred outside the boundaries of Northern Water.
- 5.5.9 Recognizes Northern Water's authority to prevent the annual certification of C-BT Project water to the Allottee's designated Account Entity if an Allottee is not in good standing with the Allotment Contract or this Rule.
- 5.5.10 Recognizes Northern Water will not arbitrate any disputes, if such occur, between the Allottee and Subcontractor.

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- 5.5.11 Provides adequate terms and conditions needed to address existing or future encumbrances on the subject Allotment Contract and specifically eliminates any and all liability to Northern Water resulting from the enforcement of those encumbrances by the Allottee, the Subcontractor, or other parties that may hold or have interest in such encumbrances.
- 5.5.12 Does not create liability for Northern Water.
- 5.5.13 Does not contain terms or conditions that violate rules, regulations, policies and procedures of Northern Water.
- 5.6 In addition, the Board will only consider an Interruptible Supply Subcontract that meets the following additional minimum requirements:
 - 5.6.1 When the Allottee's use is irrigation and the Subcontract use is non-irrigation, the Subcontract must limit the Subcontractor's use of the associated C-BT Project water to a maximum of 3 out of 10 years (rolling 10-year period) except as provided for as follows: On a case by case basis, the Board may consider approval of a Subcontract that allows the Subcontractor's use of the associated C-BT Project water more than a maximum of 3 out of 10 years if the Subcontract contains additional requirements prior to the Subcontractor's usage more than a maximum of 3 out of 10 years. These requirements may include, but are not limited to: (A) restrictions on lawn watering to less than 3 days per week; (B) a Governor-issued drought declaration for the water supplier's geographical region; or (C) a C-BT quota based upon supply limitations rather than anticipated demand. However, when the Allottee is using water for non-irrigation purposes and Subcontracting for irrigation purposes, there will not be a limit on the number of years water can be used for irrigation purposes.
 - 5.6.2 Is the only Subcontract between the Allottee and Subcontractor associated with a specific tract of irrigated land.
 - 5.6.3 Confirms that the Allottee issuing the Subcontract will not rent C-BT Project water to the Subcontractor outside the terms of the proposed Subcontract or through previously entered Subcontracts.

6.0 Enforcement Action

- 6.1 In the event Northern Water learns of a Subcontract for the beneficial use of water yielded by an Allotment Contract that has not been previously exempted or approved by the Board in accordance with Section 3.1 or been exempted within the allowable period of time described in Section 3.2 of this Rule, Northern Water shall deny delivery of C-BT Project water to the Subcontractor or beneficiary of the Subcontract. Further, Northern Water will deny the transfer and delivery of C-BT Project water that would result in the Subcontractor receiving the benefits of the

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Subcontract by any other means of transfer, including but not limited to, two-party or multiple-party transfers that may utilize the annual rental or lease program administered by Northern Water.

7.0 Other Considerations Associated with Subcontracts

- 7.1 The C-BT Project water associated with a Subcontract will not be considered a demand or commitment to serve in the calculations to determine the ownership limitations for C-BT Project water for the Allottee.
- 7.2 Use of water by the Subcontractor shall be subject to a Northern Water Rule 11 Charge if applicable.
- 7.3 The Board will not approve transfer of an Allotment Contract or any of the associated AFUs of an Allotment Contract until any and all encumbrances represented by the Subcontract are either released, or the new Allottee accepts the encumbrances represented by the Subcontract.
- 7.4 Northern Water shall notify the Subcontractor of any Allotment Contract Transfer applications received from the Allottee that are connected to the Subcontract. In the event all or a portion of an Allotment Contract associated with a Subcontract is being considered for forfeiture by the Board, Northern Water shall notify the Subcontractor of the hearing and subsequent decision concerning forfeiture, but will not recognize the Subcontract as an encumbrance on the Allotment Contract when disposing of forfeited AFUs.
- 7.5 C-BT Project water seasonally transferred from an Allottee to a Subcontractor (as described by a Subcontract) must use the same administrative procedures as seasonally transferred "rental" water. The transfer request must be accompanied by adequate documentation indicating that the seasonal transfer is associated with the specified Subcontract. The Subcontract will be considered as having been fully operated even if only a portion of the water under a Subcontract is seasonally transferred.

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**Appendix A - Simplified Example of A C-BT Ownership Limitation
 Calculation For A Hypothetical Water Supplier Who Owns 200 Units and
 Has a Subcontract for 100 units 3 in 10 Years**

Water Supplier Information

| | Average Yield (AF/YR) | Firm Yield (AF/YR) |
|--------------|-----------------------------|--------------------------|
| Ditch A | 100 | 40 |
| Ditch B | <u>200</u> | <u>100</u> |
| Total | 300 | 140 |

- Current C-BT Unit Ownership is 200 units.
- Subcontract for 100 units 3 in 10 years. This results in 30 units available in average years and 100 units in dry years.
- Total Water Demand is 500 AF/YR.

Ownership Limitation Calculation

| Row | <u>Average Yield Method</u> | Formula | |
|-----|---|-----------|-------------|
| A | Total Water Demand X 2 | | 1000 |
| B | Average Yield of Native Supplies | | <u>-300</u> |
| C | Maximum Number of C-BT Units | A - B | 700 |
| D | Currently Owned C-BT Units | | -200 |
| E | Subcontracted C-BT Units Available on Average | | <u>-30</u> |
| F | Additional C-BT Units | C - D - E | 470 |

| Row | <u>Firm Yield Method</u> | Formula | |
|-----|--|-----------|-------------|
| A | Total Water Demand | | 500 |
| B | Firm Yield of Native Supplies | | <u>-140</u> |
| C | Maximum Volume of C-BT | A - B | <u>360</u> |
| D | Maximum Number of C-BT Units | C X 2 | 720 |
| E | Currently Owned C-BT Units | | -200 |
| F | Subcontracted C-BT Units Available During a Dry Year | | <u>-100</u> |
| G | Additional C-BT Units | D - E - F | 420 |

**Additional C-BT Units Available - Use the
 Smaller of the Average and Firm Yield Method** **420**

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Procedures for the Rule Governing the Subcontracting Of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts

(Effective Date: August 11, 2016)

1.0 Purpose of Procedures and Potential Future Modifications to the Procedures

- 1.1 To provide additional direction for implementing the Rule Governing the Subcontracting of Beneficial Use of Colorado-Big Thompson Project Allotment Contracts (Rule) (Effective Date: August 11, 2016).
- 1.2 To assist Allottees and other water users in understanding the administration of the Rule.
- 1.3 The Board may modify the provisions of the Procedures by a resolution or motion duly adopted at any regular Board meeting.

2.0 Definitions – Terms used in the Procedures shall have the same meaning as in the Rule governing the Subcontracting of Beneficial Use adopted concurrently with the Procedures.

3.0 Allottee Submittal Requirements and Fees

- 3.1 To facilitate the review and, if applicable, the approval of a Subcontract, adequate information and documentation must be submitted to Northern Water. Needed information and documentation include:
 - 3.1.1 Allottee name, address, contact name, contact telephone number, and contact e-mail address.
 - 3.1.2 A copy of the proposed or signed Subcontract. The Allottee may redact financial arrangements and other proprietary information from the Subcontract provided sufficient information is retained for the Board to make a determination as to whether the Subcontract is in compliance with the Rule or is exempt from the Rule.
 - 3.1.3 In accordance with Rule Section 3.2, the Allottee may submit a proposed amended draft of an existing Subcontract entered into prior to the adoption of the Rule that corrects known violations of the existing Subcontract pursuant to Rule requirements.
- 3.2 All Subcontract information and documentation shall be submitted to:

Northern Water
c/o General Manager
220 Water Avenue
Berthoud, CO 80513

Procedures for Subcontracting of Allotment Contracts Rule
August 11, 2016

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3.3 Fee to Review

- 3.3.1 There will be no fee to review the request for exemption from the Rule.
- 3.3.2 The fee to review a proposed Subcontract under the Rule shall be two and one half times the fee charged for the transfer of an allotment contract or such future fee as the Board may adopt from time to time.

4.0 Request for Exemption from the Rule

4.1 Northern Water Staff Evaluation

- 4.1.1 Staff will assure that all necessary information has been submitted in accordance with Section 3 of the Procedures.
- 4.1.2 Within 30 business days following submittal staff will consider compliance with the Rule criteria. If Northern Water staff believes there is a term(s) in the Subcontract which would bar or delay the Board from a determination that the Subcontract is exempt from the Rule, staff will notify the Allottee of such term(s) and suggest or allow the Allottee to propose an alternative Subcontract term(s) to correct the violation(s). The Allottee will make the final decision as to the Subcontract (original or modified) that is submitted to the Board for consideration for exemption.

4.2 Board Consideration

- 4.2.1 Not later than 60 days after an initial submittal of an existing (or modified) Subcontract entered into prior to the adoption of the Rule, staff shall provide a recommendation to the Board at a regularly scheduled Board meeting whether the existing Subcontract submitted: 1) should be considered exempt from the Rule; or 2) should not be considered exempt from the Rule.
- 4.2.2 The Allottee or any other person or entity may make written or verbal comments to the Board concerning why the Subcontract should or should not be considered exempt from the Rule.
- 4.2.3 Upon review of the information and documentation provided by the Allottee, the Board shall make a determination whether the existing Subcontract is exempt from the Rule. If the Board determines the Subcontract is not exempt and violations may be corrected, it will provide direction concerning what violations of the Rule must be corrected for the Subcontract to be exempt from the Rule.
- 4.2.4 The Allottee shall have six months from the date of Northern Water's notice as to the exempt status to amend or modify the Subcontract to correct violations identified by the Board and resubmit a request for a Board determination that the Subcontract is exempt.

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4.2.5 If the Subcontract that the Board exempts under the Rule has not been signed by the parties at the time of approval, the Allottee will provide Northern Water a copy of the fully executed Subcontract with all required signatures.

5.0 Request for Approval of a Subcontract in Accordance with the Rule

5.1 Northern Water Staff Evaluation

5.1.1 Staff will assure that the administrative fee has been paid and all necessary information has been submitted in accordance with Section 3 of these Procedures. The proposed Subcontract will not be reviewed until the administrative fee has been paid.

5.1.2 Within 30 business days following submittal staff will evaluate compliance with Rule and Procedures requirements. If staff believes there are violations of Rule or Procedures requirements, staff will notify the Allottee of such violations and propose, or allow the Allottee to propose, new draft language to correct the violations. The Allottee will make the final decision concerning Subcontract language that is submitted to the Board for consideration and approval.

5.2 Board Consideration

5.2.1 Not later than 60 days after an initial submittal staff will make recommendations to the Board concerning approving or the bases for denying approval of the Subcontract as submitted.

5.2.2 The Allottee or any other person or entity may make written or verbal comments to the Board concerning why the Subcontract should be approved or denied.

5.2.3 In accordance with the Rule the Board may approve or not approve the Subcontract. If the Board does not approve the Subcontract, it will provide the bases why the Subcontract was not approved. The Allottee may address the Board concerns and resubmit a Subcontract for approval. No additional fees will be assessed for resubmitted, modified proposed Subcontracts.

5.2.4 If the Subcontract that the Board approves under the Rule has not been signed by the parties at the time of approval, the Allottee will provide Northern Water a copy of the fully executed Subcontract with all required signatures.

6.0 Future Violation of the Rule and Enforcement Actions

6.1 Within 10 days after becoming aware of a violation, or potential violation, of the Rule Northern Water staff will provide notice of such a violation to the Allottee

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and Subcontractor via certified mail. The Allottee shall respond to Northern Water in writing within 10 days of receipt of such notification describing the action the Allottee and/or Subcontractor will undertake to correct the violation. If the violation is not corrected, Northern Water staff will recommend to the Board the enforcement of the Rule. Consideration of the violation shall be placed on the agenda of the next regularly scheduled Board meeting or as soon thereafter as can be scheduled with the Allottee and other affected parties, and the Board may take action concerning staff's recommendation at that Board meeting.

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Exhibit C

10-Year Rolling Period

For the purpose of this Agreement, a 10-year rolling period is defined as a 10-year period of time that begins when Broomfield first exercises its option to use the ATM water and is updated annually. Unless otherwise agreed, Broomfield is limited to exercise its option 3 years in any 10-year rolling period.

The graphic below illustrates a range of scenarios where Broomfield can exercise its option for the ATM water over a period of 25 years. For example, if Broomfield exercised its option in 2020 (Year 3), it could exercise its right two additional times through 2029 (Year 12).

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| Water option exercised by city? (Y/N) | Year | | | | | | | | | | | | | | | | | | | | | | | | | Can the city exercise its option to use the water in the current year? |
|---------------------------------------|------|---|---|---|---|---|---|---|---|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|----|--|
| | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | No |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |
| Y | Y | Y | N | N | N | N | N | N | N | Y | Y | Y | Y | N | N | N | N | N | N | Y | Y | N | N | N | N | Yes |

*** This chart assumes that the city is allowed to exercise its option to take water a maximum of 3 out of 10 years.

X Represents year the City is considering exercising water option

and Represent 10-year time periods

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Exhibit D

Description of and Instruction for Calculating the Escalator for the ATM Payment

MEMORANDUM

TO: TODD DOHERTY

FROM: BEN NORMAN, HARVEY ECONOMICS

DATE: APRIL 21, 2017

RE: LEASE ESCALATOR CALCULATION
INSTRUCTIONS

Introduction

Briefly, the transaction between Larimer County and Broomfield involves the sale of a number of Colorado-Big Thompson (C-BT) units and an agreement between the two parties to enter into a perpetual water lease agreement for a further number of C-BT units. For an upfront fee, Broomfield has the option to lease this further number of C-BT units for three out of ten years on a rolling ten-year period basis. The lease price of the water will be adjusted every year, based on the lease price escalator.

Harvey Economics was tasked with developing an escalator for the lease price of water in this agreement. After the initial base price is agreed upon between Larimer and the Broomfield, an agreement must be reached about how the base water price will be adjusted each time the water is leased. This escalator is important because either party may worry that they will be "short-changed" in a long term deal. Over time, the prevailing price of water can and will change and the parties will want to track that change, so that neither side in the deal is unfairly disadvantaged. To this end, escalators are built around the underlying factors that drive the price of the good, in this case, water.

Lease Escalator

This section describes the steps for calculating the lease price escalator.

Price of Corn

The origin of the corn price is USDA's National Agricultural Statistics Service's (NASS) prices

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report titled "Agricultural Prices."

The report is available from the NASS website (www.nass.usda.gov) under the Data and Statistics drop down menu, accessible by clicking the Economic and Prices link. Agricultural Prices is the first link under the Prices Reports heading. These reports are archived and available electronically from the Mann library at Cornell University. In fact, the NASS link sends you to the archive at Cornell. The monthly reports are available back to the 1960s.

Annual Average Corn Price

The annual average corn price for the US is available in the November issue in the table entitled "Market Year Average Prices Received for Corn – States and United States: Marketing Years xxxx and yyyy," where xxxx and yyyy represent the previous two years. However, this requires you to open the November edition for each year that you need the data. There is an easier method of retrieving the data, described below:

Historic Corn Price Archive

The USDA's Economic Research Service (ERS) maintains a Feed Grains Database that includes a table of historical corn prices.

From the ERS website (<http://www.ers.usda.gov>), click on the data tab (at the top), and then scroll down to the Feed Grains Database. Click on the link and it will take you to an overview page. Click on the "Feed Grains: Yearbook Tables" link to get to the tables. Scroll down and click on the Feed Grains Data-Recent link. Clicking this link will open an Excel spreadsheet. In the spreadsheet, go to the tab labeled FGYearbookTable09. This table contains corn and sorghum prices; the corn price is in the top table. Use the value in the "Wt avg" column (the right-most column). The dates represent a marketing year. Choose the value where the year in the escalator corresponds with the latest year in the two-year marketing year (e.g. if you are looking for the 2015 value, use the 2014/15 marketing year).

Purpose

The intent of this index is to act as a proxy for the change in the amount of money that farmers would receive if they used their water to farm. The price that farmers receive for their crops is an indicator of the amount of revenue that they will forego by leasing their water. Corn was chosen because it is the predominant crop in the area, and as the price of corn increases, the value of water increases, as farmers will now require more money for water leasing to be more attractive than farming. Any successor index will need to have these same characteristics: availability, relevance to the area, and a positive relationship to farmers' revenues.

Rational for Choosing National Price

The national price of corn was chosen over the Colorado price for two reasons. Firstly, the national price is less subject to large annual fluctuations than the Colorado price, and secondly, it

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is probably that the national corn price statistical series will outlast the Colorado statistical series.

Municipal Cost Data Index

The Municipal Cost Data Index comes from American City and County magazine. While this information is primarily intended for city and county employees, there are no restrictions on who can register and access the data.

Obtaining data from the Municipal Cost Data Index

To obtain the data, go to the magazine's website (<http://americancityandcounty.com>) and click on the Cost Index at the top. Either log in or register for the site (Note: Other is a value response to the employment questions). Scroll to the bottom of the Municipal Cost Index page to the Municipal Cost Index Archives section. Click on the appropriate year and use the December value as that year's value.

Purpose

The intent of this index was to provide a balance to the farm-side index by including a municipal-side index. This index should track the costs of running a municipality and reflect the impacts of inflation on the cost of providing municipal services.

Escalator Calculation

Below are detailed instructions to calculate the five-year moving average of the composite index and the ten-year lease rate escalator.

Calculating the Five-Year Average

- 1) Determine the latest year that you have data for both the price of corn and the municipal cost index. This is the final year of the combined dataset.
 - a. Ensure you have data for all the years back to (2027) and including the final year for both the price of corn and the municipal cost index.
 - b. The initial year is the first year of the dataset; i.e. 2027
 - c. Use the initial year (2027) as the base year for the indices.
- 2) Convert both the Municipal Cost Index (or successor) and the Corn Prices into an index using the same base year.
 - a. For the Municipal Cost Index, divide each year's index value by the base year value and multiply by 100.
 - b. For the corn price, divide each year's price by the price from the base year.
 - i. If this was done correctly, the base year index value would be 100 for each index.
- 3) Combine the Municipal Cost Index and the newly created Corn Price Index by averaging the two index values for each year to create a new composite index.

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- a. For each year, add the index values for both the Corn Price Index (created in step 4b) and the Municipal Cost Index (from step 4a) and then divide the total by two.
- b. The result of these calculations is the composite index.
- 4) Create a five-year moving average of the composite index.
 - a. Calculate the five-year average for a year by adding together that year's value with the previous four years' values, and divide the result by five.
 - i. You will need five years' worth of data to do this calculation, so it is not possible to calculate the five-year average for the first four years of the composite index.
 - b. Continue to calculate the next year's five-year average until you reach the final year.
- 5) To calculate the lease rate escalator, divide the value of the five-year average from the final year by the five-year average from the initial year (2027).
 - a. The final year's five-year average is the average of the final year and the previous four years.
- 6) To obtain the lease rate, multiple the original lease rate (\$225/unit) by the lease rate escalator calculated in step 5.
 - a. For example, if the previous lease rate was \$100, and the lease rate escalator was 1.59 (a 59% increase over the period), then the new lease rate would be \$159.

The steps detailed in this memo will allow anyone to update the lease rate escalator and determine the proper lease price for the water.

Data Sources

HE identified individual selection criteria for picking data series or indices which should be considered in a composite index. Criteria for a good price driver include simplicity, intuitiveness and availability. Simplicity refers to the ease of including the price driver data in the calculations of the final index; the more complicated the calculations, the less likely that the index will be updated properly. The intuitive criterion is important due to logic and expectations; an intuitive price driver is one that logically should be included whether it is simple or complex as it clearly ought to have an impact on prices. Additionally, if people understand a particular driver and expect it to be included in the index, its inclusion will increase the likelihood that the index will be understood and accepted. The availability criterion means that the price drivers are regularly available data from a reputable source.

Based on these criteria, HE chose two price drivers, a crop price index and a municipal cost index. Together, these two drivers reflect the situations faced by a farmer as well as by a municipality, without adding unnecessary complexity. A fuller description of each component price index is provided below.

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Crop Price Index. A farmer's annual revenue is based on the amount of crop that they grow and the price of that crop. The higher the price, the more revenue a farmer will receive for a given amount of production. If a farmer leases their water, and is unable to produce a crop, they would prefer to do it in a year with low crop prices, when they would give up less revenue. Therefore, the price that farmers receive for their crops is an indicator of the amount of revenue that they will forego by leasing their water. As the crop price index increases, the price of water is expected to increase since farmers will require more money for water leasing to be more attractive than farming. The predominant crop grown in on the particular farm in this agreement is corn therefore HE developed a crop price index based on the price of corn. The price of corn was obtained from the USDA.¹

Municipal Cost Index. The Municipal Cost Index is produced by American City and County Magazine and is designed to show the effects of inflation on the cost of providing municipal services. As the cost of providing municipal services increases, an increasing price paid for water will represent the same percentage cost to municipalities. Farmers will expect them to pay more for water since that municipality is paying more for everything.

Composite Index. HE applied the two component indices with equal weighting to generate the preliminary composite index. Before the indices could be combined, they both had to be set to the same base year (the base year for both indices was set to 1982) to ensure that both indices were on the same scale. HE then calculated the five-year moving average of the preliminary composite index to smooth out any single year aberrations, generating the final composite index. The average annual change from 1984 to 2015 is 2.1 percent. In a single year the highest increase was 8.4 percent and the lowest was negative 2.5 percent.

Conclusion

HE investigated water lease-price drivers in Larimer County with the aim of developing a lease-price escalator for a long-term water lease. We found two indices that satisfy the criteria and combined them into a composite index designed to escalate the lease price of a long-term lease. This escalator will be useful to account for changes in water lease prices over time to ensure that one side is not unfairly disadvantaged by changes in the price of water.

¹ Agricultural Prices. USDA, National Agricultural Statistics Service. November edition, Various years.
https://www.nass.usda.gov/Statistics_by_Subject/Economics_and_Prices/index.php

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Exhibit E

ESCROW AGREEMENT FOR INTERGOVERNMENTAL AGREEMENT FOR SALE AND SHARED USE OF C-BT UNITS

1. **PARTIES.** The parties to this Escrow Agreement are the **CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation and county** ("Broomfield"), **THE BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO, a governmental subdivision of the State of Colorado** ("County"), and **COLORADO ESCROW AND TITLE SERVICES, LLC** ("Escrow Agent").
2. **RECITAL.** Broomfield and the County have entered into an Intergovernmental Agreement ("IGA") for the transfer of 115 Units ("115 CBT Units") and for the shared use of 80 Units (the "ATM Units") in the Colorado Big Thompson Project which is operated by the Northern Colorado Water Conservancy District ("Northern"). The IGA is attached to this Escrow Agreement.
3. **DEPOSIT INTO ESCROW.** On or before August 10, 2017, Broomfield will deposit \$3,770,250.00 (the "Escrow Deposit") with the Escrow Agent, said amount representing \$2,938,250.00 for Broomfield's portion of the purchase of the 115 CBT Units, and \$832,000.00 as consideration for the right to subcontract to use the ATM Units. The Escrow Agent shall place the Escrow Deposit in an interest-bearing account, and disperse any interest in accordance with this Agreement.
4. **ESCROW ACCOUNT FEES.** Broomfield and the County shall each pay \$150.00 to the Escrow Agent, for a total of \$300.00, as consideration for this Escrow Agreement. The County's portion of this expense shall be deducted from the Escrow Deposit prior to the distribution of proceeds to the County.
5. **CONDITIONS FOR CLOSING.** All of the Escrow Deposit shall be released by the Escrow Agent from the escrow account to the County within seven (7) days after Broomfield and the County jointly deliver written notice to Escrow Agent that they have received:
 - a. Written approval by Northern of the transfer of 115 CBT Units to Broomfield;
 - b. Any and all other documents required for the transfer of the 115 CBT Units; and
 - c. Written approval by Northern of the subcontracting agreement for the ATM Units set forth in Section 4 of the IGA.
6. **DISTRIBUTION OF FUNDS.** Within seven (7) days of the written notice from Broomfield and the County, the Escrow Deposit shall be distributed as follows:

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- \$3,770,250.00 to the County minus the County's Escrow Account Fees described above in Section 4.

- Any interest accrued on the Escrow Deposit during the period of time the Escrow Deposit is escrowed with the Escrow Agent shall be released to Broomfield at the time the Escrow Deposit is released to the County.

7. **FAILURE TO CLOSE.** In the event the conditions in paragraph 5 and in the IGA are not satisfied on or before October 31, 2017, or upon joint notice from Broomfield and the County that the IGA has been terminated by its terms, Escrow Agent shall deliver all funds in the escrow account, along with any interest accrued thereto, to Broomfield, unless the County and Broomfield extend that deadline and provide written notice thereof to the Escrow Agent. This Escrow Agreement may be extended upon written approval by all parties.

8. **ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action necessary to carry out this Escrow Agreement.

9. **INDEMNIFICATION.** In the event of any conflicting demand upon it in connection with this Escrow Agreement, Escrow Agent may continue to hold the escrowed funds until receipt of instructions from the County and Broomfield or until a final order by a court of competent jurisdiction resolving the subject dispute. Escrow Agent shall be entitled to rely upon any such final order. If for any reason the County and Broomfield fail to resolve such dispute, Escrow Agent may, at its discretion, commence a civil action to interplead any conflicting demands made upon it. Escrow Agent's deposit with a court of competent jurisdiction of the escrowed funds shall relieve Escrow Agent from all further liability and responsibility hereunder. The County and Broomfield, to the extent permitted by law, agree to indemnify and save Escrow Agent harmless against all costs, damages, attorney's fees, expenses and liabilities which Escrow Agent may incur or sustain in connection with this Escrow Agreement, including any interpleaded action brought by Escrow Agent. Escrow Agent shall not be liable for any act it may do or omit to do hereunder while acting in good faith and in the exercise of its reasonable judgment, and any act done or omitted by Escrow Agent pursuant to the advice of its attorney shall be conclusive of such good faith and reasonable judgment.

10. **NOTICES.** Any notice required or permitted by this Escrow Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if sent by certified or registered mail, postage and fees prepaid, addressed to the party to whom such notice is intended to be given at the address as has been previously furnished in the IGA or otherwise in writing to the other party or parties. Such notice shall be deemed to have been given when deposited in the U.S. Mail.

11. **TIME OF THE ESSENCE.** Time is of the essence to all performance required by this Escrow Agreement.

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12. **PARAGRAPH CAPTIONS.** The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Escrow Agreement.

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**CITY AND COUNTY OF BROOMFIELD, A COLORADO MUNICIPAL CORPORATION
AND COUNTY**

Charles Ozaki
CHARLES OZAKI
CITY AND COUNTY MANAGER
DATE SIGNED: 7/28, 2017
ADDRESS: One DesCombes Drive, Broomfield, CO 80020

ATTEST

Ingrid Begenas
CITY AND COUNTY CLERK
SEAL
CITY & COUNTY CLERK

[Signature] APPROVED AS TO FORM:
[Signature]
CITY AND COUNTY ATTORNEY - ASSISTANT

**BOARD OF COUNTY COMMISSIONERS OF LARIMER COUNTY, COLORADO, A
GOVERNMENTAL SUBDIVISION OF THE STATE OF COLORADO**

[Signature]
LEW GATER III
BOARD CHAIR
DATE SIGNED: August 1, 2017
ADDRESS: 200 W Oak Street, Fort Collins, CO 80521



ATTEST:
[Signature]
DEPUTY CLERK OF THE BOARD

DATE: 8/1/17

APPROVED AS TO FORM:

[Signature]
COUNTY ATTORNEY
Deputy

DATE: 7-27-17

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**ESCROW AGENT:
COLORADO ESCROW AND TITLE SERVICES, LLC
BY: _____
Title: _____
DATE SIGNED: _____, 2017
ADDRESS: 520 Main Street, Suite C, Longmont, CO 80501**

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Exhibit F

LEASE AGREEMENT Lease of Colorado-Big Thompson Units

This Lease Agreement ("Lease") is made and entered into this _____ day of _____, 2017 by and between the **City and County of Broomfield**, a Colorado municipal corporation and county ("Broomfield" or "City"), and the **Board of County Commissioners of Larimer County, Colorado**, a governmental subdivision of the State of Colorado ("Larimer County" or "County"). Broomfield and Larimer County may be collectively referred to herein as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, as part of a separate agreement entitled "Intergovernmental Agreement by and between the City and County of Broomfield and Larimer County for the Sale and Shared Use of Colorado-Big Thompson Units" dated _____, 2017, the County conveyed 115 Colorado-Big Thompson (C-BT) Units to Broomfield ("115 Units" or "Leased Units") represented by Northern Colorado Water Conservancy District ("NCWCD") Allotment Contract no. 7857; and

WHEREAS, pursuant to Section 3.4 of that separate agreement, Broomfield and the County agreed that the County was reserving a first right of refusal to lease the 115 Units represented by Allotment Contract no. 7857 in years when Broomfield elects to lease the water attributable to the 115 Units; and

WHEREAS, the purpose of this Lease is to set forth the terms and conditions of the County's right of first refusal to lease the 115 Units; and

WHEREAS, the 115 Units are administered by NCWCD and all transfers, either temporary or permanent, are subject to approval by the NCWCD Board of Directors.

NOW, THEREFORE, in consideration of the promises and covenants of the Parties, and other consideration, the receipt and adequacy of which is confessed and acknowledged, it is agreed by and between Broomfield and Larimer County as follows:

AGREEMENT

- RECITALS.** The foregoing Recitals are incorporated into and made a part of this Lease as if fully set forth herein.

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6. **AUTHORITY.** This Lease has been duly adopted by the Parties' governing bodies and the undersigned representatives are authorized to execute this Lease on behalf of each respective Party.
7. **PROVISION OF LEASE TO NORTHERN.** Promptly after execution of this Lease, the County shall provide to NCWCD a copy of the executed Lease or such other documents satisfactory to the Parties and NCWCD evidencing the existence of the Lease that will constitute a Claim of Lien, as defined by NCWCD's rules and regulations, on the 115 Units in NCWCD's records for Allotment Contract no. 7857 and serve as notice to third parties that may seek to purchase or lease the 115 Units.

8. **LEASE OF 115 C-BT UNITS TO BROOMFIELD.** Contingent upon the approval by NCWCD of the sale and transfer of the 115 Units to Broomfield, the County shall have a perpetual right of first refusal to lease the 115 Units on a year-to-year basis during years when Broomfield elects to lease the water attributable to the 115 Units, as follows:

8.1. Notice to Lease. In such years when Broomfield determines, in its sole discretion, that it is electing to lease all or any portion of the water attributable to the 115 Units, Broomfield shall notify the County of its intention in writing pursuant to Section 7, below, and such notice shall include the number of units being offered for lease and the lease price per unit ("Lease Price") for those units ("Notice to Lease"). Broomfield shall provide such Notice to Lease to the County promptly after the decision is made by Broomfield to lease the water attributable to all or any portion of the 115 Units and Broomfield shall endeavor in good faith to provide the Notice to Lease within seven (7) days after NCWCD's second setting of the quota for C-BT units for that year.

8.2. Exercise of Right of First Refusal to Lease. Upon Receipt of the Notice to Lease from Broomfield, Larimer County shall have fifteen (15) days to notify Broomfield in writing pursuant to Section 7, below, of its intention to exercise its right to lease all or any portion of the units being offered for lease and shall specify the number of units the County will lease ("Leased Units"). The County shall also promptly pay Broomfield the Lease Price.

8.3. Lease Price. The Lease Price shall equal the equivalent of the NCWCD municipal Assessments rate and transfer fees for the Leased Units, plus a 10% administrative fee.

8.4. NCWCD Documentation. The Parties agree to cooperate and coordinate concerning the prompt preparation and submittal of the CD-4 card, and/or such other documentation required by NCWCD to allow the County to utilize the water attributable to the Leased Units when the County exercises its right of first refusal to lease.

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9. **NO LIENS OR ENCUMBRANCES.** Broomfield and the County agree the County's rights under this Lease shall constitute a Claim of Lien, as defined by NCWCD's rules and regulations, upon and shall encumber the 115 Units. Unless the County's prior written consent is given, Broomfield shall not suffer or allow any other lien or encumbrance to attach to the 115 Units, except for bonds issued by Broomfield or its enterprise(s) which bonds are secured by Broomfield's water service infrastructure, water contract rights, and water rights. If Broomfield suffers or allows an unauthorized lien or encumbrance to attach to the 115 Units without the prior written consent of the County, the County, after notice to Broomfield giving Broomfield 60 days to release the lien or encumbrance, shall have the right to cause any such lien holder or encumbrancer to release the 115 Units free of the lien or encumbrance, and, in such event, the County shall be entitled to recover from Broomfield all of the County's costs, expenses, and reasonable attorneys' fees incurred in obtaining the release of such lien or encumbrance.
10. **ASSIGNMENT.** Upon the written consent of the other Party, which shall not be unreasonably delayed or withheld, a Party may assign its rights under this Lease subject to NCWCD approval. Assignment of this Lease by Larimer County shall be restricted to the owner of the Little Thompson Farm for agricultural irrigation.
11. **NOTICE.** All notices, demands, or other written communication required or permitted to be given by either Party to the other Party shall be made in writing and: hand delivered; sent by first class United States mail, postage prepaid, addressed as follows; or via electronic mail addressed as follows, or to such other address as a Party may designate by notice to the other Party:

If to Larimer County:

Gary Buffington, Director of Natural Resources
1800 S CR 31
Loveland, CO 80537
Telephone: 970-619-4560
E-mail: gbuffington@larimer.org

With a copy to:

Larimer County Attorney's Office
Attention: Jeannine Haag, County Attorney
224 Canyon Avenue, Suite 200
Fort Collins, CO 80521
Telephone: 970-498-7450
Email: jeanninehaag@larimer.org

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AND

Daniel K. Brown
Fischer, Brown, Bartlett & Gunn, P.C.
1319 West Prospect Road
Fort Collins, CO 80525
Telephone: 970 401-9000 x 212
Email: danbrown@fbgpc.com

AND

Kerri Rollins, Open Lands Program Manager
Larimer County of Natural Resources Dept
1800 S CR 31
Loveland, CO 80537
Telephone: 970-619-4577
E-mail: krollins@larimer.org

If to Broomfield:

Director of Public Works
City and County of Broomfield
One Des Combes Drive
Broomfield, CO 80020
E-mail: dallen@broomfield.org

With a copy to:

Harvey W. Curtis
Harvey W. Curtis and Associates
8310 South Valley Highway, Suite 230
Englewood, CO 80112
Telephone: 303 292-1144
E-mail: hcurtis@curtis-law.com

AND

Water Resources Manager
City and County of Broomfield
4395 West 144th Avenue
Broomfield, CO 80023
Telephone: 303-464-5605

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E-mail: mcalvert@broomfield.org

12. **ENTIRE AGREEMENT.** This Lease represents the entire agreement between the Parties on the matters set forth herein and supersedes all prior negotiations, representations or agreements respecting said matters whether written or verbal, other than those set forth in the _____, 2017 Intergovernmental Agreement by and between the City and County of Broomfield and Larimer County for the Sale and Shared Use of Colorado-Big Thompson Units.
13. **NO WAIVER OF IMMUNITY; LIABILITY.** Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act ("CGIA"), C.R.S. §24-10-101, *et seq.*, as applicable, as now or hereafter amended nor shall any portion of this Lease be deemed to have created a duty of care which did not previously exist with respect to any person not a party to this Lease. Subject to the limits, notice requirements, immunities, rights, benefits, defenses, limitations, and protections of the CGIA, each Party agrees to be responsible and assume liability for losses, costs (including reasonable attorney's fees), demands, or actions caused by its own wrongful or negligent acts and omissions, and those of that Party's officers, agents and employees acting in the course of their employment in connection therewith.
14. **OBLIGATIONS SUBJECT TO APPROPRIATION.** The obligations of the County to commit or expend funds after calendar year 2017 are subject to and conditioned upon the annual appropriation of funds sufficient and intended to carry out said obligations by the Larimer County Board of County Commissioners, in the County's sole discretion.
15. **GOVERNING LAW.** This Lease shall be governed by and construed in accordance with the laws of the State of Colorado. The forum for any dispute regarding this Lease shall be in the Weld County District Court, State of Colorado.
16. **AMENDMENTS.** Any amendments or modifications to this Lease must be in writing and executed by the Parties to be valid and binding.
17. **NO THIRD PARTY BENEFICIARIES.** This Lease shall inure only to the benefit of the signatories below. There are no third party beneficiaries intended under this Lease.
18. **COUNTERPARTS.** This Lease may be executed in counterparts and, as so executed, shall constitute one Lease, binding on the Parties, even though all the Parties have not signed the same counterpart. Any counterpart of this Lease which has attached to it separate signature pages, which altogether contain the signatures of all the Parties, shall be deemed a fully executed instrument.

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19. **BINDING EFFECT.** This Lease, when executed, shall bind the Parties and their successors and assigns.

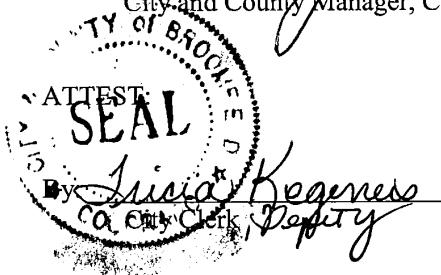
20. **SEVERABILITY.** If any provision of this Lease is invalidated by any court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

21. **CAPTIONS.** The captions in this Lease are for the convenience of the Parties and the captions shall have no meaning, force, or effect.

IN WITNESS WHEREOF the Parties hereto have executed this Lease as of the day and year first above written.

THE CITY AND COUNTY
OF BROOMFIELD

By: Charles Ozaki
City and County Manager, Charles Ozaki



APPROVED AS TO FORM
FOR BROOMFIELD:

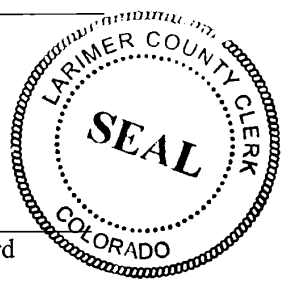
By: [Signature]
City and County Attorney -
ASSISTANT

BOARD OF COUNTY COMMISSIONERS
LARIMER COUNTY, COLORADO

By: [Signature]
Chair, Lew Gaiter III

ATTEST:

By: [Signature]
Deputy Clerk of the Board



APPROVED AS TO FORM
FOR COUNTY:

By: [Signature]
Deputy County Attorney