

MEMORANDUM OF UNDERSTANDING BY AND BETWEEN
THE CEMETERY DITCH COMPANY
AND
THE CITY OF LANDER

1. **PARTIES.** This Memorandum of Understanding (hereinafter referred to as “MOU”) is made and entered into by and between and the Cemetery Ditch Company, a Wyoming non-profit mutual ditch company, hereinafter referred to as “Cemetery Ditch” whose address is _____, Lander, WY 82520, and the CITY OF LANDER, a municipal corporation, of 240 Lincoln Street, Lander, Wyoming 82520, herein referred to as “City”; and collectively referred to herein as the “Parties.”
2. **PURPOSE.** The purpose of this MOU is to formalize the cooperative understanding between Lander and Cemetery Ditch to facilitate the exchange of water during periods of priority regulation. Specifically, this MOU outlines the framework under which Lander may divert water under Cemetery Ditch’s senior adjudicated direct flow rights for municipal use, while releasing a corresponding volume of water from Worthen Meadows Reservoir to offset such diversions and preserve Cemetery Ditch’s ability to meet its irrigation demands. This arrangement is hereinafter referred to as the "Exchange."
3. **TERM OF MOU.** This Memorandum of Understanding (“MOU”) shall commence on the date of the last signature affixed below by the duly authorized representatives of the Parties and shall remain in full force and effect indefinitely on a year-to-year basis unless renegotiated or terminated earlier in accordance with Section 5(c) of this MOU.
4. **BACKGROUND AND MUTUAL INTERESTS.**
 - a. Lander holds direct flow municipal water rights diverted through the City of Lander Pipeline (COLP), which supplies the Lander Water Treatment Facility and serves approximately 7,500 residents. These rights are occasionally subject to curtailment under priority administration on the Middle Fork of the Popo Agie River during periods of high municipal demand.
 - b. Lander also holds Reservoir Permit Nos. 6186 Res. and 6365 Res. for the Worthen Meadows Reservoir, authorizing the storage of a total of 1,503.6 acre-feet of water from Roaring Fork Creek, a tributary to the Middle Fork of the Popo Agie River.

- c. Cemetery Ditch holds senior adjudicated direct flow water rights from the Middle Fork of the Popo Agie River. Its shareholders rely on these rights for irrigation and agricultural purposes.
- d. On May 18, 2009, the Parties jointly submitted a Petition to the State Engineer for approval of the Exchange, titled: *“Petition to the State Engineer for the Exchange of the Natural Flow of the Middle Fork of the Popo Agie River Under [Multiple Proofs Listed] to be Replaced by Water from the Worthen Meadows Reservoir”* (the “Exchange Petition”). This Petition describes in detail the operational and accounting framework for the Exchange.

4. **MUTUAL UNDERSTANDINGS AND AGREEMENTS:**

- a. **Implementation of Exchange.** Lander may divert up to 1,503.6 acre-feet of water per year for municipal purposes under Cemetery Ditch’s senior direct flow rights, but only during periods of curtailment under priority administration, and only as authorized under the approved Exchange Petition. Simultaneously, Lander shall release an equivalent volume of water from the Worthen Meadows Reservoir into the Middle Fork of the Popo Agie River to fulfill Cemetery Ditch’s irrigation entitlements.
- b. **Operation and Accounting.** Lander shall maintain transparent and auditable records of all diversions and reservoir releases made under this Exchange. Such records shall be shared with Cemetery Ditch and the Wyoming State Engineer’s Office on a monthly basis during periods of operation. Lander shall be solely responsible for monitoring, measurement, and regulatory compliance.
- c. **No Conveyance of Water Rights.** Nothing in this MOU shall be construed as a sale, lease, assignment, or permanent transfer of any water rights. All rights shall remain in the name of the original adjudicating entity. This MOU only allows for temporary exchange operations as approved by the State Engineer.
- d. **Costs and Expenses.** Lander shall bear all costs associated with implementing and operating the Exchange, including but not limited to monitoring, reporting, infrastructure improvements, legal and engineering fees, and reservoir operations. Cemetery Ditch shall incur no financial burden unless otherwise agreed in writing.

5. **GENERAL PROVISIONS.**

- a. **Amendments.** Either party may request changes in this MOU. Any changes, modifications, revisions, or amendments to this MOU which are mutually agreed upon by and between the parties to this MOU shall be incorporated by written instrument, executed, and signed by all parties to this MOU;
- b. **Applicable Law.** The construction, interpretation, and enforcement of this MOU shall be governed by the laws of the State of Wyoming. The courts of the State of Wyoming shall have jurisdiction over any action arising out of this MOU and over the parties, and the venue shall be the Ninth Judicial District, Fremont County, Wyoming;
- c. **Termination.** This MOU and the Exchange shall remain in effect indefinitely unless:
 - i. Either Party submits a formal written request to the Wyoming State Engineer's Office seeking termination of the Exchange;
 - ii. A material change in law, regulation, or factual circumstance renders the Exchange unworkable or injurious to either Party;
 - iii. Written notice is provided at least 90 days in advance, unless a shorter notice period is mutually agreed upon or mandated by emergency circumstances.
- d. **Entirety of Agreement.** This MOU, consisting of six (6) pages, represents the entire and integrated agreement between the parties and supersedes all prior negotiations, representations and agreements, whether written or oral;
- e. **Prior Approval.** This MOU shall not be binding upon either party unless this MOU has been reduced to writing before performance begins as described under the terms of this MOU, and unless this MOU is approved as to form by the Attorney General or their representative;
- f. **Severability.** Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either party may renegotiate the terms affected by the severance;
- g. **Indemnification and Sovereign Immunity.** Each party shall be solely responsible for its own acts and omissions and the results thereof. The parties expressly agree that neither shall indemnify, defend, or hold

harmless the other, and nothing in this MOU shall be construed to create any such obligation. The City of Lander does not agree to indemnify Cemetery Ditch or any third party, and Cemetery Ditch does not agree to indemnify the City of Lander or any third party.

The parties further acknowledge and agree that nothing in this MOU shall be construed as a waiver of any sovereign or governmental immunity. Each party retains all immunities and defenses available under applicable law, including, without limitation, those set forth in the Wyoming Governmental Claims Act, Wyo. Stat. Ann. § 1-39-101 et seq. By entering into this MOU, the City of Lander does not waive any governmental immunity or create any legal obligations or liabilities not expressly authorized by Wyoming law.

- h. Dispute Resolution.** The Parties agree to first attempt to resolve disputes through good faith negotiation. If unresolved, disputes may be submitted to non-binding mediation in Fremont County, Wyoming, prior to any court filing. This provision does not limit any Party's right to seek injunctive relief or legal remedies as may be necessary to protect water rights.

- i. Third Party Beneficiary Rights.** The parties do not intend to create in any other individual or entity the status of any third-party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties, and obligations contained in this MOU shall operate only between the parties to this MOU, and shall inure solely to the benefit of the parties to this MOU. The provisions of this MOU are intended only to assist the parties in determining and performing their obligations under this MOU. The parties to this MOU intend and expressly agree that only party's signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

6. PRINCIPAL CONTACTS OF THE PARTIES

City

Lance Hopkin, City Engineer
240 Lincoln Street
Lander, Wyoming 82520
Phone: 307-332-2870
Fax: 307-330-4956
Email: lhopkin@landerwyoming.org

Cemetery Ditch Company

Travis Shoopman, President
PO Box 778
Lander, Wyoming 82520
Phone: 307-332-4480
Fax: N/A
Email: tinajcunningham@gmail.com

7. SIGNATURES. The parties to this MOU, through their duly authorized representatives, have executed this MOU on the days and dates set out below, and certify that they have read, understood and agreed to the terms and conditions of this MOU as set forth herein.

IN WITNESS WHEREOF, the effective date of this MOU is this ____ day of _____, 20____, which said date is that of the signatures affixed to this page.

CITY OF LANDER:

BY:

Missy White, Mayor

ATTEST:

Rachelle Fontaine, City Clerk

CEMETERY DITCH COMPANY:

BY:

Travis Shoopman

ATTEST:

RaJean Strube Fossen Treasurer/Secretary