

**INTERGOVERNMENTAL AGREEMENT  
BETWEEN BOULDER COUNTY AND CITY OF LONGMONT  
CONCERNING REPAIR AND REMEDIATION OF THE PESCHEL PROPERTY  
FROM FLOODING**

This Intergovernmental Agreement (the "Agreement") is entered into as of the 15<sup>th</sup> day of July, 2014, by the County of Boulder, a body corporate and politic of the State of Colorado ("Boulder County" or "County"), and the City of Longmont, a Colorado home rule municipality (the "City") (each a "Party" or, collectively, the "Parties").

**RECITALS**

- A. The Colorado Constitution Article XIV, Section 18(2)(a), and C.R.S. 29-1-201, et seq., provide that political subdivisions of the State may contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating units.
- B. In September 2013, severe flooding caused extensive damage to the Parties' jointly owned Peschel property ("Property"), including the re-channeling of the St. Vrain Creek on the Property from the pre-flood creek bed to a new route through the reclaimed gravel mining pits.
- C. The Parties desire to collaborate to expeditiously plan, fund and repair the Property.

**AGREEMENT**

In consideration of the mutual covenants and promises set forth here, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. The Parties agree to support a coordinated planning effort to determine the restoration needs on the Property.
- 2. The City shall serve as the lead agency responsible for coordinating a planning team and will serve as the lead agency for construction of all restoration work necessary to repair the Property. The restoration work will commence only when both Parties have approved the plan for repair.
- 3. Design work is anticipated to start during the fall of 2014 and construction is anticipated to occur in 2015, subject to the availability of funds. Nothing in this provision is intended to condition the project on the receipt of funding from the Federal Emergency Management Agency ("FEMA").
- 4. The Parties also agree to jointly coordinate work with all applicable State and federal agencies.

5. The City shall be the official applicant with FEMA and the County will need to approve the application prior to submittal and any Public Assistance Alternate Procedures application for the Property.
6. The City and the County will jointly pursue grants that would fund restoration improvements of the site and St. Vrain Creek. The City shall be the official applicant for any grant applications and/or awards and shall receive County approval prior to making such applications.
7. If additional funding is needed beyond that currently available from the City, County, FEMA, or grants, the City and County will develop a future funding plan to equitably allocate such costs. If the FEMA authorized allocation on the Property that would restore the Property to its pre-flood condition is greater than the amount required to complete an Alternate Project or other project with a reduced scope, the City and the County will jointly decide how those extra funds will be spent on other flood hazard mitigation projects along the St. Vrain Creek.

#### **FUNDING**

8. The Parties shall cooperate to secure reimbursement from appropriate agencies, including FEMA and the State for the activities contemplated herein, and the cost sharing allocation for those expenses not otherwise reimbursed, unless otherwise provided herein.

#### **MISCELLANEOUS**

9. The activities set forth in this Agreement may be undertaken by the Parties directly or by their contractors or subcontractors, as each Party determines in its sole discretion.
10. The Parties will procure and maintain in full force and effect such insurance or self-insurance that will insure its obligations and liabilities under this Agreement, including workers' compensation, automobile liability and general liability.
11. Each Party assumes responsibility for the actions and/or omissions of its agents and its employees in the performance or failure to perform under this Agreement, and further, each party, to the extent authorized by law, agrees to hold harmless the other for such actions or omissions of its own employees and/or agents. It is agreed that such liability for actions and omissions of agents and employees is not intended to increase the amounts set forth in the Colorado Governmental Immunity Act, now existing, or as may be amended. By agreeing to this provision, neither Party waives or intends to waive the limitations on liability which are provided to the Party under the Colorado Governmental Immunity Act§ 24-10-101, et seq., C.R.S.
12. The Parties shall perform all services under this Agreement as independent

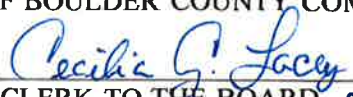
contractors and not as an agent or employee of the other Party. It is mutually agreed and understood that nothing contained in this Agreement is intended or shall be construed as in any way establishing the relationship of co-partners or joint ventures between the Parties hereto, or as construing either Party, including its agents and employees, as an agent of the other Party. Each Party shall remain an independent and separate entity. Neither Party shall be supervised by any employee or official of the other Party. Neither Party shall represent that it is an employee or agent of the other Party in any capacity.

13. All financial obligations of the Parties under this Agreement are contingent upon appropriation, budgeting, and availability of specific funds to discharge such obligations. Nothing in this Agreement shall be deemed a pledge of the Party's credit, or a payment guarantee by one Party to the other Party. If appropriated funds are not available, both Parties shall be relieved of their obligations hereunder.
14. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.
15. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.
16. This Agreement shall be governed and construed in accordance with the laws of the State of Colorado. Venue for any action arising under this Agreement shall be in Boulder County, Colorado.
17. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same Agreement. Facsimile signatures shall be acceptable and binding upon all Parties.

EXECUTED as of the date first set forth above.

**BOULDER COUNTY:**

  
for **DEB GARDNER, VICE-CHAIR**  
**CINDY DOMENICO, CHAIR**  
**BOARD OF BOULDER COUNTY COMMISSIONERS**

ATTEST:   
**CLERK TO THE BOARD 07/15/2014**



**CITY OF LONGMONT:**

\_\_\_\_\_  
MAYOR

ATTEST: \_\_\_\_\_  
CITY CLERK

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**BOULDER COUNTY:**

\_\_\_\_\_  
CINDY DOMENICO, CHAIR  
BOARD OF BOULDER COUNTY COMMISSIONERS

ATTEST: \_\_\_\_\_  
CLERK TO THE BOARD

**CITY OF LONGMONT:**

Dennis L. Corral  
MAYOR


ATTEST: [Signature]  
Deputy CITY CLERK



APPROVED AS TO FORM AND SUBSTANCE:

  
\_\_\_\_\_  
ORIGINATING DEPARTMENT

APPROVED AS TO FORM:

  
\_\_\_\_\_  
ASSISTANT CITY ATTORNEY

APPROVED AS TO  
INSURANCE PROVISIONS:

  
\_\_\_\_\_  
RISK MANAGER

PROOFREAD:

  
\_\_\_\_\_