

**Fourth Amendment to Intergovernmental Agreement
Between Boulder County and City of Longmont
Concerning Repair and Remediation From Flooding**

This Fourth Amendment to the Intergovernmental Agreement (the “Fourth Amendment”) is entered into as of the _____ day of _____, 2020, 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 Parties entered into an Intergovernmental Agreement Between Boulder County and City of Longmont Concerning Repair and Remediation From Flooding dated October 8, 2013, which was amended on June 10, 2014, September 23, 2014, and December 20, 2017 (collectively, the “Agreement”), by which parties agreed to collaborate to expeditiously fund and repair facilities and infrastructure caused by severe flooding in September 2013.
- B. The Agreement contemplates how the Parties will manage several flood repairs on co-owned facilities for which flood repairs are eligible for reimbursement by the Federal Highway Administration (“FHWA”) through the Colorado Department of Transportation (“CDOT”), the Federal Emergency Management Agency (“FEMA”), and by the Federal Department of Housing & Urban Development (“HUD”) Community Development Block Grant – Disaster Recovery (“CDBG-DR”) program.
- C. The coordination and cooperation between Boulder County and the City of Longmont has been critical to flood recovery and has resulted in great benefit to both agencies and the residents of Boulder County and the City of Longmont. The continuation of this coordination and cooperation is critical to complete repair and remediation from the 2013 flooding and to develop resiliency for the future of Boulder County and the City of Longmont.
- D. The Parties desire to amend the Agreement to identify coordination efforts on additional projects related to flood repair and remediation.

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 follow:

IRRIGATION DITCH AND RESERVOIR REPAIRS

- 1. Paragraph 3 of the original Agreement, dated October 8, 2013, is hereby amended and restated to read in its entirety as follows:

3. The County and City both own significant interests in the Saint Vrain Creek basin irrigation ditch and reservoir companies. Many of the facilities owned by these ditch and reservoir companies were damaged or destroyed in the flood. The City and County shall cooperate in good faith with each other and the various ditch and reservoir companies to implement repair of these facilities as soon as possible and will work with said companies to improve fish passage at various irrigation diversions.
 - a. The City worked with the Bonus Ditch Company to replace the pre-flood diversion facility destroyed in the 2013 Flood with a new diversion facility, which now includes fish passage to improve aquatic habitat. The City entered into an agreement with the Bonus Ditch Company to take on the maintenance of the improvements that allowed fish passage to be implemented into the new modified irrigation diversion. Said agreement was adopted by the Longmont City Council through Resolution R-2017-113.
 - b. Should Boulder County pursue any project with an irrigation company to improve fish passage at either the Niwot Ditch or Beckwith Ditch, the City shall enter into a separate agreement with the appropriate irrigation company to accept responsibility of ongoing maintenance of the improvements as required by the irrigation company. The City's ongoing maintenance will include routine and regular maintenance and minor repair projects at a maximum of \$5,000.00 per occurrence.
 - c. Should Boulder County pursue any project to improve fish passage at the South Flat Ditch, the City shall enter into a separate agreement with the South Flat Ditch Company to accept responsibility of ongoing maintenance of the improvements as required by the irrigation company, provided that adequate access easements are granted to the City. The City's ongoing maintenance will include routine and regular maintenance and minor repair projects at a maximum of \$5,000 per occurrence.

REPAIR AND REBUILDING OF DAMAGED PORTIONS OF THE CITY'S NORTH PIPELINE

2. Paragraph 6, of the original Agreement, dated October 8, 2013, is hereby amended and restated to read in its entirety as follows:
 6. The City's North Pipeline was damaged, destroyed, or otherwise compromised in several locations during the 2013 Flood and is in need of immediate repair to avoid further damage and failure. Additional rehabilitation efforts and improvements to the North Pipeline are also currently being scheduled to improve resiliency of the City's water system, with funding to be utilized from the FEMA Public Assistance Alternative Procedures ("PAAP") Program. As such, the County commits to conducting reviews as expeditiously as possible, to the extent any are required.

SUNSET STREET BRIDGE OVER ST VRAIN CREEK

3. Paragraph 17 (i) of the original Agreement, dated October 8, 2013, is hereby deleted and replaced in its entirety with the following:

- (i) Boulder County is hereby relieved of any responsibility for capital improvements to sections of Sunset Street in unincorporated Boulder County from Boston Avenue north to the BNSF Tracks to bring that section of Sunset Street up to City standards. The City will annex sections of Sunset Street in unincorporated Boulder County from Boston Avenue north to the BNSF Tracks as those sections become eligible for annexation. Once the properties are annexed into the City, the City shall work with adjacent property owners to complete those capital improvements.

BOSTON AVENUE RECONSTRUCTION

4. Paragraphs 39 (a) – (j) of the Third Amendment, dated December 20, 2017, are hereby deleted and replaced in their entirety with the following:

- (a) The scope of work for the Boston Avenue Reconstruction will include the design and construction of a reconstructed pavement section with a widened typical section that includes through lanes, needed turn lanes, on-street bike lanes and sidewalk connections along both sides of Boston Avenue from Sunset Street to St. Vrain Creek.
- (b) The City shall serve as the lead agency responsible for the design, construction, and shall provide funding of the Reconstruction Project. The City will annex sections of Boston Avenue in unincorporated Boulder County east of Sunset Street as those sections become eligible for annexation. Once the properties are annexed into the City, the City will work with adjacent property owners to complete those capital improvements.
- (c) Boulder County shall transfer ownership of the five (5) following parcels of right-of-way, as referenced and that were originally acquired by Boulder County from private property owners for Boston Avenue, the Boston Avenue Bridge, and Francis Street to the City:
 - a. Parcel 1 – A parcel of land for Francis Avenue right of way containing approximately eight thousand, two hundred, eighty-eight (8,288) square feet and described in a Warranty Deed filed for record in the office of the Boulder County Clerk and Recorder at Reception No. 01025349.
 - b. Parcel 2 – A parcel of land for Boston Avenue Bridge right of way containing approximately nine hundred seventy-six (976) square feet and described in a Warranty Deed Filed for record in the office of the Boulder County Clerk and Recorder at Reception No. 01025349.
 - c. Parcel 3 – A parcel of land for Boston Avenue Bridge right of way containing approximately one thousand, nine hundred, ninety-eight (1,998)

square feet and described in a Warranty Deed filed for record in the office of the Boulder County Clerk and Recorder at Reception No. 01025348.

- d. Parcel 4 – A parcel of land for Boston Avenue Bridge right of way containing approximately two thousand, eighty-two (2,082) square feet and described in a Warranty Deed filed for record in the Office of the Boulder County Clerk and Recorder at Reception No. 01025348.
- e. Parcel 5 – A parcel of Boston Avenue right of way containing approximately one thousand, two hundred, ninety-five (1,295) square feet and being a portion of a parcel of land described in a Right of Way Deed filed for record in the office of the Boulder County Clerk and Recorder at Reception No. 755959.

(d) The City will annex the parcels of right-of-way, as referenced in Paragraph 4(c), for construction of rehabilitation, improvements, and ongoing maintenance to Boston Avenue, the Boston Avenue Bridge, and Francis Street.

(e) All work related to the reconstruction of Boston Avenue and the Boston Avenue Bridge, including related utility relocations, as shown on attached Exhibit A and referenced herein, shall be performed within the Longmont Planning Area, and on a right-of-way or easement annexed to, or planned to be annexed into the City. In order to facilitate requirements of HUD CDBG-DR funding that the City has received for portions of this work, work may need to take place prior to the completion of annexation of all rights-of-way and easements. If work needs to be performed while portions of a right-of-way or easements are still within the jurisdiction of Boulder County, the County shall expedite permit(s) deemed necessary for any such work.

- a. The relocation of the sanitary sewer line and water line within Izaak Walton Reach 1 are necessary for improvements to the Boston Avenue Bridge and St. Vrain Creek channel as part of the City's Resilient St. Vrain Project. Boulder County Land Use Code Article 8-407 exempts specific uses from the permit process in areas of State interest. The Izaak Walton Reach 1 utility relocation qualifies as an exemption under Article 8-407 and consists of the replacement of existing water and sewage collection facilities and associated works that do not expand the level of service beyond existing design capacity and do not materially alter the location of the existing facilities. As such, the Parties agree that the relocation of said utilities are exempt from Boulder County Land Use Code, Article 8 – Location & Extent Areas & Activities of State Interest (1041).
- b. The existing Boston Avenue Bridge is currently located within the Longmont City Limits; however, the reconstruction of said Bridge will extend onto right-of-way and easements planned to be annexed into the City. The timing of the Bridge reconstruction may take place prior to the completion of annexation of all rights-of-way and easements necessary for this reconstruction. Boulder County Land Use Code Article 8-407 exempts

specific uses from the permit process in areas of State interest. The reconstruction of the Boston Avenue Bridge qualifies as an exemption under Article 8-407 and consists of replacement of an existing transportation link that serves the City of Longmont and does not increase capacity or expand the level of service of the existing facility. As such, the Parties agree that the relocation of said utilities are exempt from Boulder County Land Use Code, Article 8 – Location & Extent Areas & Activities of State Interest (1041).

RESILIENT ST. VRAIN PROJECT- IZAAK WALTON REACH 2

5. The Agreement is hereby amended by adding a new Paragraph 40, titled “Resilient St. Vrain Project – Izaak Walton Reach 2,” to read as follows:

40. The City is partnering with the United States Army Corp of Engineers for design and construction of the section of the City’s Resilient St. Vrain Project generally located between Boston Avenue and Sunset Street, and referred to as Izaak Walton Reach 2. All work related to Izaak Walton Reach 2 shall be performed on right-of-way or easements annexed to the City, or within the City of Longmont Planning Area and planned to be annexed to City. In order to facilitate the project schedule and funding available for the project, portions of the work may need to take place prior to the completion of annexation of all right-of-way or easements. If work needs to be performed while portions of a right-of-way or easement are still within the jurisdiction of Boulder County, the County commits to conducting the reviews as expeditiously as possible, to the extent any are required.

RESILIENT ST. VRAIN PROJECT – REACH 3, SUNSET ST. TO HOVER RD.

6. The Agreement is hereby amended by adding a new Paragraph 41, titled “Resilient St. Vrain Project – Reach 3, Sunset St. to Hover Rd.” to read as follows:

41. The City has developed an initial preliminary plan for the implementation of the Resilient St. Vrain Project to protect the community from future flood events and improve resiliency in the community. Reach 3 of the preliminary plan, as shown on the attached Exhibit B, hereby incorporated and made a part hereof, extends from Sunset Street to the upstream westerly edge of the City of Longmont Planning Area at Airport Road. Boulder County supports the attached preliminary design option and agrees to work with the City to support this phase of the project.
- a. The City is moving forward with the first phase of Reach 3, which extends from Sunset Street to the upstream side of Hover Street and includes work to be performed within the area of Rogers Grove Nature Area, including Fairground Pond. The City granted a conservation easement to Boulder County at Rogers Grove Nature Area, dated February 26, 2013, and recorded in the office of the Boulder County Clerk and Recorder at Reception No. 03293122 on February 27, 2013. Both parties shall continue

to comply with all terms and conditions stated within said conservation easement, in light of the work to be performed under Reach 3.

- b. The preferred conceptual alternative for Reach 3 is the split flow option that would design and construct an overflow channel through Rogers Grove and the Fairgrounds Pond to channel flood flows back to St. Vrain Creek. The completion of this phase of the Resilient St. Vrain Project would protect a substantial area of the City downstream of Hover and south of St. Vrain Creek, including the affordable housing development at St. Vrain Village Mobile Home Park (approximately 134 residential units). The preferred split flow option would eliminate substantial environmental impacts along St. Vrain Creek compared to the single thread option, and maintain the primary riparian area along the main thread of St. Vrain Creek from Sunset Street upstream to Lykins Gulch.
- c. The City shall ensure that the flow of irrigation water diverted through the project area for use on adjacent County property shall be maintained during construction of improvements in Reach 3, maintaining the time, quantity and quality of the irrigation flows without additional cost or impact to the County.
- d. The City shall ensure that appropriate County staff are involved in the review of plans and specifications for improvements to be constructed in the area of Reach 3 within the Rogers Grove Nature Area.
- e. If and where existing trees are impacted by the project and are to be replaced within the Rogers Grove Nature Area, the City will utilize native plant species for tree replacements.

COUNTY LINE ROAD BRIDGE AS BUILT SURVEY

7. The Agreement is hereby amended by adding a new a new Paragraph 42, titled “County Line Road Bridge As-Built Survey,” to read as follows:

- 42. The County reconstructed the County Line Road Bridge over the St. Vrain Creek that was destroyed in the 2013 Flood. In order to complete the updated floodplain mapping being undertaken throughout Boulder County, an as-built survey needs to be completed of this bridge. The City is in the process of completing a Letter of Map Revision (LOMR) for this section of the St. Vrain Creek that includes the County Line Road Bridge over the St. Vrain Creek in unincorporated Boulder County. The County agrees to share in half the cost of this survey and reimburse the City in an amount not to exceed \$4,500. The County shall reimburse the City within thirty (30) days of receiving an invoice for the survey.

8. Except as expressly amended herein, all other provisions of the Agreement, exhibits, and appendices are unaffected and shall continue in full force and effect in accordance with its terms.

IN WITNESS WHEREOF, the Parties have executed and entered into this Amendment as of the _____ day of _____, 2020.

COUNTY OF BOULDER

Deb Gardner, Chair
Board of Boulder County Commissioners

Attest:

Clerk to the Board

CITY OF LONGMONT,
a municipal corporation

Mayor

Attest:

City Clerk

Approved as to Form:

Assistant City Attorney

Proofread

Approved as to Form and Substance:

Originating Department

CA File No.: 20-000731