

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

This Intergovernmental Agreement (the "Agreement") is entered into as of the 8th day of October, 2013, 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' critical facilities and infrastructure, including roads and utilities. The damage to these facilities has threatened the public health, safety and welfare and requires extraordinary efforts to repair and remediate.
- C. The Parties desire to collaborate to expeditiously fund and repair the facilities and infrastructure.

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:

COUNTY ROAD 80

- 1. County Road 80/the Longmont Dam Road (the "Road"), which provides access to the City owned Ralph Price Reservoir and Longmont Dam, a critical water source for the City, was destroyed by the flooding. The County owns the eastern portion of the road ("County Road 80") and the City owns the western portion where it becomes a private road on City owned land.
 - a. The City shall be responsible for constructing a temporary emergency access road along the entire length of the Road sufficient to provide access for equipment necessary to service the Reservoir and Dam during the upcoming winter months (2013-2014), in accordance with mutually agreed upon road specifications. The County agrees to review plans and collaborate by providing reasonable engineering and surveying assistance in support of the design and construction of the Road.
 - b. The County shall be the official applicant with the Federal Emergency Management Agency ("FEMA") for County Road 80 and shall be responsible for all unreimbursed costs related to construction of County Road 80, with the City serving as the County's contractor and hiring a subcontractor, as necessary. The

County shall reimburse the City for such costs within 60 days after being invoiced by the City. The City shall be the applicant for the western portion of the Road located on City property and shall be responsible for all unreimbursed costs related to construction of the road located on City property.

- c. The County shall support the City by providing construction oversight and inspection for the reconstruction of County Road 80. The City shall provide construction oversight and inspection for that portion within City jurisdiction.
- d. The County will expedite any required permitting necessary for acquisition of road building material from City property for the limited purpose of repairing flood damage in the Button Rock Preserve area.

- 2. Thereafter the Parties shall cooperate in designing and re-constructing the Road on a permanent basis.

IRRIGATION DITCH AND RESERVOIR REPAIRS

- 3. The County and City both own significant interests in 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 provide support as available.

SAINT VRAIN RIVER FLOODPLAIN EVALUATION AND RECHANNELIZATION ALTERNATIVES ANALYSIS

- 4. The Parties agree there is mutual value and purpose to coordinating and cooperating on the engineering analysis of the Saint Vrain River flood plain from the mouth of the canyon west of Lyons to the eastern boundary of the County. To that end the Parties agree to support a coordinated analysis with a common engineering firm and to promptly consider the findings and recommendations of the analysis for the protection of life and property and work to develop a mutually acceptable implementation plan. The Parties agree to develop a mutually acceptable scope of work and a process to mutually determine the appropriate engineering firm. If a common engineering firm cannot be agreed upon, the Parties agree to have their respective engineers cooperate and coordinate activities with the other Party's engineer. The Parties also agree to jointly coordinate such work with all applicable State and federal agencies and private property owners along and impacted by the Saint Vrain flood plain.

RECHANNELING OF THE SOUTH SAINT VRAIN CREEK

- 5. The City needs to repair its existing South Saint Vrain Diversion Structure and 24" South Saint Vrain Pipeline. To accomplish that, the City will need to restore the South Saint Vrain Creek to its original channel in the Tumbleson Subdivision area south of the Town of Lyons. This pipeline and redirected stream channel cross lots (15-18, 21-24 & 26)

owned by the County in the Tumbleson Subdivision. The County agrees to cooperate with the City in relocation of the stream bed back to its pre-flood stream course and repairs of this pipeline in this area and expedite any required permitting. If major relocation is required, the County shall expeditiously respond to requests to relocate the pipeline to a new location crossing County land.

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

6. The City's North Pipeline has been damaged, destroyed, or otherwise compromised in several locations that are in need of immediate repair to avoid further damage and failure. The County commits to conducting the reviews as expeditiously as possible, to the extent any are required.

MINING

7. A substantial amount of gravel, sand, rock and other similar materials will be required for the activities contemplated in this Agreement. It will be cheaper and more efficient to obtain such materials from mines located within the County. To the extent that such materials are available from mines already permitted by the County, the County shall work to facilitate continuation or commencement of mining activities.

DREDGING OF LONGMONT RESERVOIR

8. The City will be conducting an emergency operation to dredge debris from Longmont Reservoir in order to reestablish the delivery of water from Longmont Reservoir to the City water treatment facilities. The County commits to conducting the reviews as expeditiously as possible, to the extent any are required. The City will apply for all required federal permits for this work.

TRANSFER SITE FOR FLOOD DEBRIS REMOVAL

9. For a period of 90 days from the date first set forth above, the County may use the City property located at 130 Martin Street in Longmont (known as the "Dickens Property") as a flood debris removal site under the terms and conditions set forth herein.
10. The County may use the Dickens Property as a transfer station for flood debris removal from throughout Boulder County. The County must transfer the debris from the Dickens Property at least every other day, or as otherwise required by the State of Colorado (the "State") rules and regulations.
11. The County shall comply with all applicable stormwater best management practices to the maximum extent practicable and State requirements for temporary transfer site, including the State's guidance and regulatory relief document entitled 2013 Floods – Guidance: Management and Disposal of Flood Debris.

12. The County shall appoint a Project Manager for the Dickens Property and provide the City with the Project Manager's contact information. The Project Manager shall inspect the Sites for stormwater best management practices and vector control.
13. The County may only use the Sites from Monday-Friday from 7 a.m. to 7 p.m. The Dickens Property may only be used by the County and its authorized contractors. Residential or public access to the Sites shall not be allowed. The gates to the Sites must be closed at the end of each working day.
14. At the end of the 90 day use period, the County shall restore the Dickens Property to their condition existing at the start of the County's use. If necessary, the County shall perform street sweeping on Martin Street at the access point to the Dickens Property.
15. The County shall keep all debris at least 30 feet away from the Los Arcos arches currently stored at the Dickens Property.
16. To the extent that any additional permits are required by the County for this use, the City will work to expedite any such permits.

SUNSET STREET and ST. VRAIN RIVER BRIDGE

17. Sunset Street from Boston Avenue to the Burlington Northern and Santa Fe Railroad ("Sunset Street") serves as a primary transportation connection and is currently owned and maintained by Boulder County. The Sunset Street and St. Vrain River Bridge ("Sunset Street Bridge") also provides access and serves as a pedestrian underpass for the City's St. Vrain Greenway system. The Sunset Street Bridge and portions of Sunset Street were destroyed by the flooding.
 - a. The City shall serve as the lead agency responsible for the design and construction of all improvements necessary to replace the Sunset Street Bridge and Sunset Street. City of Longmont's Design Standards and Construction Specifications will be used as the basis for design of all improvements. Project design work is anticipated to start during the fall months of this year and construction is anticipated to start during the summer months of 2014, depending on the availability of funding. The design of Sunset Street will be based on collector roadway standards and will include roadway widening necessary to facilitate one travel lane in each direction, a center left turn lane, on-street bike lanes, and pedestrian improvements and will be in accordance with City Design Standards. The construction of Sunset Street improvements, anticipated to start during the summer months of 2014, will only include improvements needed to match current roadway function prior to flooding and any improvements approved by the Federal Highway Administration ("FHWA").
 - b. The County shall serve as the lead agency responsible for the acquisition of all additional public right-of-way and easements required to construct the Sunset Street Bridge and Sunset Street improvements where the easements and right of way are within unincorporated Boulder County. The City and County shall be equally

responsible for all costs related to the acquisition of right-of-way and easements required to construct the Sunset Street Bridge and Sunset Street improvements.

- c. The County shall be the official applicant with the Federal Highway Administration's Emergency Response (ER) or Permanent Restoration (PR) Programs, whichever is applicable, for the Sunset Street Bridge and Sunset Street improvements, with the City serving as the County's contractor and hiring sub-contractors as necessary. The County shall reimburse the City for the reimbursed costs within 60 days after being invoiced by the City. The City and County shall be equally responsible for all design and construction costs related to the Sunset Street Bridge and Sunset Street improvements for which there is no federal reimbursement, if any.
- d. The City will conduct the Sunset Street Corridor Study from Boston Avenue to the BNSF Railroad Tracks in 2013 or the first half of 2014. The study will include a topographical and right-of-way survey; an alternatives analysis of improvement options; a public process and outreach to property owners along the corridor; a conceptual level cost estimate; and recommendations for project phasing and potential funding opportunities for construction of the roadway improvements along the corridor not included in the reconstruction of the bridge.
- e. The City will complete the study by August 1, 2014 and will invoice the County on a monthly basis for fifty percent of the consultant costs incurred up to \$50,000.
- f. The County will reimburse the City fifty percent of consultant costs incurred for the study, not to exceed \$50,000.
- g. Design concepts will include at a minimum the ability to accommodate motor vehicles, on-street bike lanes, and pedestrian sidewalk connections along the entire corridor with connections to the St. Vrain Greenway Trail. All improvements will be built to City standards. County Transportation Department and City Public Works and Natural Resources Department will both review and approve the design RFP, consultant selection and participate in the consultant-led study and recommendations.
- h. The City and County agree to share costs of design and construction of the portions of the roadway corridor between Boston Avenue and the BNSF Railroad Tracks not included in the reconstruction of the roadway and bridge damaged by the flood, the details of which will be established under a separate future IGA; and to jointly pursue grants and/or developer agreements that would fund improvements within the corridor.
- i. The City of Longmont will initiate annexation proceedings for the unincorporated areas adjacent to Sunset and Boston Streets within 90 days after completion of reconstruction of the entire future Sunset Street Corridor improvements between Boston Avenue and the BNSF Tracks has been completed.
- j. The County will expedite permit(s) deemed necessary for any work required during the design and construction of the Sunset Street Bridge and Sunset Street improvements.

EPA HAZARDOUS MATERIALS REMOVAL PROGRAM

18. Under the Emergency Support Function ("ESF") # 10 program, the EPA, in conjunction with FEMA, is conducting hazardous materials response operations throughout Boulder County, including inside the City, to remove hazardous materials deposited by the flood. The EPA is documenting by use of GPS or similar technology the locations from which hazardous materials are recovered.
 - a. The County is the point of contact for the ESF #10 program. The County will be billed directly for any local share of costs of the ESF #10 program that are not reimbursed by FEMA or the State of Colorado, which will include the costs separately attributable to hazardous materials removal in unincorporated Boulder County, the Town of Lyons, the Town of Jamestown, the City of Boulder, and the City of Longmont.
 - b. The County will invoice the City of Longmont for the costs of the ESF #10 program that are attributable to the removal of hazardous waste within the City's jurisdiction. The City shall reimburse the County for such costs within 60 days after being invoiced by the County.

ROLL-OFF SERVICES RENDERED POST-FLOOD

19. In the days immediately following the flood, the County provided to the City the use of six roll-off dumpsters. The County shall invoice the City for the costs attributable to the City's use of the dumpsters. The City shall reimburse the County for such costs within 60 days after being invoiced by the County.

FUNDING

20. The Parties shall cooperate to secure reimbursement from appropriate agencies, including FEMA, the FHWA and the State for the activities contemplated herein, and the cost sharing allocation for those expenses not otherwise reimbursed, unless otherwise provided herein. The Parties agree to cooperate to ensure FEMA or other agency funding is directed to County for any work the City undertakes on County owned infrastructure or properties that is the responsibility for the County to own and maintain.

ACCESS

21. The Parties shall expeditiously respond to requests for access across their respective properties as needed to facilitate the activities contemplated in this Agreement. Access approval will include requirements for revegetation of lands disturbed.

MISCELLANEOUS

22. 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.

23. 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.
24. 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.
25. 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.
26. 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.
27. No waiver of any breach or default under this Agreement shall be a waiver of any other or subsequent breach or default.
28. Invalidation of any specific provisions of this Agreement shall not affect the validity of any other provision of this Agreement.
29. 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.
30. 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.

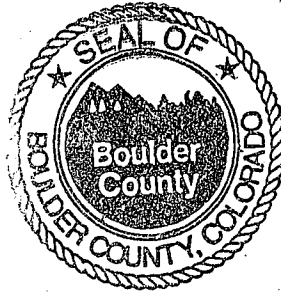
EXECUTED as of the date first set forth above.

BOULDER COUNTY:

Cindy Domenico

Cindy Domenico, Chair
Board of Boulder County Commissioners

Attest: Cecilia G. Lacey
Clerk to the Board



CITY OF LONGMONT:

Dennis L. Counts

Mayor

Attest:

Valeria A. Skito

City Clerk

Approved as to Form and Substance:

Dale F. Ralston

Originating Department

Approved as to Form:

[Signature]

Assistant City Attorney

Approved as to Insurance Provisions:

Michael Carnozzi

Risk Manager

Proofread:

Laura Marone