

Agreement

DETAILS SUMMARY	
Document Type	New Contract
OFS Number-Version	
County Contact Information	
Boulder County Legal Entity	Boulder County
Department	Choose an item.
Division/Program	
Mailing Address	
Agreement Contact – <i>Name, email</i>	
Invoice Contact – <i>Name, email</i>	
City Contact Information	
	City of Boulder
	Open Space and Mountain Parks Department
	Attn: Director
	P.O. Box 791, Boulder, CO 80306
	OSMPfrontdesk@bouldercolorado.gov
	(303) 441-3440
Lateral Users Information	
Lateral Users Names	
Lateral Users Principal	
Representative Mailing Address	
Contact 1- <i>Name, title</i>	
Contact 1- <i>email</i>	
Contact 2	
Agreement Term	
Start Date	
Expiration Date	
Final End Date	
Agreement Amount	
Agreement Amount	
Fixed Price or Not-to-Exceed?	Choose an item.
Brief Description of Work	
Agreement Documents	
a. Project Details, including project-specific terms and a Scope of Work, attached as Exhibit A (the “Scope of Work”)	
b. Fee Schedule, attached as Exhibit B (the “Fee Schedule”)	
Purchasing Details – <i>County Internal Use Only</i>	
Bid Number	
Award Date	
If no Bid No., bid process used	Choose an item.

Purchasing Notes
(optional)

Agreement Notes

Additional information not included above

THIS AGREEMENT ("Agreement") is entered into by and between the Board of County Commissioners on behalf of the County of Boulder, State of Colorado, a body corporate and politic (the "County"), the City of Boulder, a Colorado home rule municipality (the "City"), and those individuals and entities that hold shares in the Boulder and White Rock Ditch and Reservoir Company and take delivery of water through that irrigation lateral number [REDACTED] (each a "Lateral User" and collectively "Lateral Users"). Said lateral, inclusive of all infrastructure and facilities, ("Lateral") is generally located in Sec. 16 and Sec. 15, Twp. 1 N, Range 70 W of the 6th P.M., Boulder County, Colorado, and as shown on Exhibit A ("Lateral"). The Lateral Users, County, and City (collectively, the "Parties") desire to enter into this Agreement to describe terms and conditions of the construction of the Project (as defined below) and access to, and maintenance of, the Lateral.

The County desires to construct a trail project described as the Longmont-to-Boulder Trail - Jay Road Connection Project (the "Project"), including construction of a trail for public uses ("Trail"). A portion of the Project will require modification of the Lateral. A portion of the Trail is also located on land owned by the City known as the McKenzie Open Space property (Boulder County parcel number 146316000037) ("City Property").

The Project involves construction of the Trail adjacent to or over the location of the Lateral ("Lateral Location"), piping of a portion of the Lateral, and the installation of fencing and reconstruction of Lateral structures as shown in **Exhibit A** ("the Work"). Generally, for purposes of this Agreement, the Work will have two sections: (1) construction of approximately 1,100 linear feet of Trail adjacent to the existing Lateral ("Open Section"); and (2) enclosing and piping approximately 875 linear feet of the Lateral in a 24" reinforced concrete pipe, replacing approximately 375 feet of existing piped Lateral, modifications to or replacement of turnout structures, and construction of the Trail over the enclosed Lateral ("Piped Section").

In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Authorization. To the extent it may be determined necessary, the Lateral Users authorize the County, its assigns, and others deemed necessary by the County to perform the Work, including entry upon the portions of the Lateral for all purposes related to the design, installation, construction, and location of the Trail, pipe, grading, and irrigation structures depicted in the design plans, attached as Exhibit A; and thereafter, to enter upon the Lateral for upkeep, maintenance, repair, and replacement purposes of the Work, including but not limited to as described in paragraph seven (7), below, and for the upkeep, maintenance, repair, and replacement of any Project components to the extent the same are located within the Lateral. The

Project shall be the property of the County except for any portion of the Trail on the City Property, which shall be the property of the City. All irrigation structures, including as modified subject to this Agreement, remain the property of the Lateral Users or individual Lateral Users, as applicable.

2. License Fee. As consideration for the grants herein, the County shall pay to the Lateral Users a license fee of \$---- (--- thousand dollars). The License Fee is due at the time of execution of this Agreement.

2. The Work. The Work shall be performed and located substantially as shown in Exhibit A. If the County seeks to make any material modifications to the plans as provided in Exhibit A, the County must submit the proposed revised plans to the Lateral Users' engineering consultant and the designated Lateral Users' Principal Representative, defined below. The County shall not commence the Work based on any revised plans unless and until the Lateral Users' engineering consultant has accepted said plans in writing, which acceptance may not be unreasonably withheld or delayed.

3. Inspection. Lateral Users' Principal Representative or their designee shall be permitted to visually inspect the Work during construction and upon completion as they deem necessary to the extent said inspection does not interfere with the County performing the Work. The right to inspect the Work creates no rights and obligations upon the Lateral Users and in no way relieves the County, its contractors, agents, and representatives of liability for improper construction and installation, if any. The Lateral Users' Principal Representative shall provide the County with prior written notice of its intention to be on the construction site and shall coordinate its inspection activities with the County for the safety of both Parties' employees, contractors, and representatives.

4. As-Builts. Upon completion of the Work, the County shall coordinate with the Lateral Users' Principal Representative and shall provide the Lateral Users with a set of "as-built" plans and profile of the structure(s) within sixty (60) days of completion.

5. Cost of Work; Insurance. The County agrees to pay all costs and expenses relating to the Project and the Work. The County shall require its contractor(s) to carry adequate general commercial liability insurance.

6. Work Commencement and Completion. The County will notify the designated Lateral Users' Principal Representative at least fourteen (14) calendar days prior to commencement of the Work. Construction within the Lateral and any construction materially affecting the flow of water to any of the Lateral Users shall be performed during the non-irrigation season (November 1st to April 1st), unless expressly approved in writing by the Lateral Users' Principal Representative. If the County cannot complete such construction during the non-irrigation season, the County is responsible for a temporary bypass plan so that the Lateral Users can deliver water to their properties. The County shall not be responsible for the functionality of the Lateral while completing the Work during the non-irrigation season.

7. Maintenance and Access.

- a. The County or its assigns shall be responsible for routine maintenance, repair, and replacement of the Lateral within the Piped Section. If the Lateral Users discover a

blockage (partial or full) and/or a significant amount of sediment accumulation in the pipe impeding water flow, the Lateral Users' Principal Representative shall notify the County, and the County will remove the blockage. The County shall have the amount of time that is reasonably necessary under the circumstances to clean out the pipe, specifically taking into account the Lateral Users' then-current demands for water. The Lateral Users shall not divert water into the Lateral during the time of maintenance work, except to the extent that water would not physically reach the Piped Section.

- b. If County fails or is unavailable to respond to an emergency request within twenty-four (24) hours or if the County authorizes the Lateral Users to perform such work immediately, or if that response fails to resolve the emergency and the threats to the Lateral in the Lateral Location and/or Work persist, then the Lateral Users may make such minimum necessary repairs as are necessary to correct the emergency. If either situation arises, County shall pay Lateral Users for their actual and reasonable costs incurred in correcting the emergency.
- c. Both the County and the Lateral Users agree to cooperate in good faith should such a situation addressed in this Section 7 arise. The County shall not be responsible for any such repair, replacement and/or damage if such was caused by a wrongful or negligent act or omission of the Lateral Users. An emergency is defined as a situation which impacts or could impact the ability of (i) the Lateral Users to conduct its irrigation operations during the irrigation season, or (ii) a situation which becomes known to the Lateral Users or County as presenting an immediate threat to the public health or safety or damage to property.
- d. As shown on **Exhibit A**, the Piped Section will tie into an existing 18" pipe used to convey water in the Lateral under 57th Street. The Work contemplated herein will not modify the existing 18" pipe; however, without modifying the County's obligations under Colorado law, the County will maintain, repair, and replace that pipe as necessary to ensure it is compatible with the Work and allows for the continuous carriage of water through the Lateral. Except as stated herein County is not responsible for repair, replacement, or maintenance of the Lateral within the Open Section. Additionally, the Lateral Users shall be permitted access for maintenance and repair of the Lateral using the Jay Road right-of-way or the Trail where the Trail is located within or adjacent to the Lateral, including on City Property, except that the Lateral Users shall exercise reasonable care to avoid damaging or obstructing the Trail (or other Project components) or leaving debris or spoils on the Trail. Consistent with historical maintenance practices, Lateral Users shall not access or leave debris or spoils on the City Property south of the Trail. Lateral Users shall obtain permission from Boulder County, which permission shall not be unreasonably withheld, prior to performing any ditch maintenance using any heavy motorized or tracked equipment within the Jay Road right-of-way.

8. Water Conveyance and Quantity. The County will ensure that the Work and all Project upkeep, maintenance, repair, replacement, or removal, including any under paragraph seven (7), above, does not unreasonably interfere with the conveyance of water in the Lateral and/or deliveries to the Lateral Users. The Work and the Project will not result in an unreasonable increase in carriage or transit losses over the losses which occurred historically. The Work and

the Project will not adversely affect the quantity of the Lateral Users' water. Except as expressly set forth in this Agreement, it is the intent of the Parties that the Lateral will continue to operate in substantially the same manner and for the same purposes as it has historically.

9. Project Encroachment. To the extent it may be determined necessary, the Lateral Users consent to the construction and location of the Trail within the Lateral Location; however, the Lateral Users make no warranty, guarantee, or representation that the land is suitable for construction of a Trail.

10. Public Access. Upon completion of the Project, the parties acknowledge that the Trail will be open for public access. The Lateral Users expressly do not assume any responsibility or increased risk associated with the public's use of the Trail. To the extent public access results in increased maintenance and/or repair needs or interferes with the routine operation of the Lateral, the Parties will work cooperatively to develop deterrents, except that the County will be responsible for constructing any agreed upon infrastructure or facilities. For example and not by way of limitation, if public access results in damage to the Lateral's embankment, the Parties may agree to install fencing, which will be constructed at the County's expense. This paragraph shall not be interpreted to obligate or prevent either Party from addressing any trespass, vandalism, or other claims for damages against third parties with the assistance of law enforcement and/or to seek any legal recourse against any such third party.

11. County Existing Obligations. Nothing herein diminishes, limits, or supplants any of the County's previously existing obligations to maintain, replace, and repair the structures and Lateral within the County's right of way to the full extent provided by law. Further, nothing herein limits the Lateral Users' existing rights to use the Lateral, and all appurtenances for all lawful purposes, including the Project and the Work after completion of construction.

12. Effective Date and Term: This Agreement shall not be effective or enforceable until it is approved and signed by the County (the "Effective Date"). The County shall not be liable to pay or reimburse the Lateral Users for any performance, including but not limited to, costs or expenses incurred, or be bound by any provision prior to the Effective Date of this Agreement. This Agreement shall continue in full force and effect until terminated by written agreement of the Parties.

13. Assignment. Subject to obtaining the Lateral Users' prior written consent as set forth herein, and which shall not be unreasonably withheld, the County may assign all or part of its obligations under this Agreement to a governmental agency that is capable of performing the obligations in the same manner as those obligations would be performed by the County. The Lateral Users' rights and obligations under this Agreement will run with each Lateral User's ownership interest in the Lateral for the benefit of the Lateral User and its successors in interest.

14. Notices. Unless otherwise specified herein, all notices provided under this Agreement must be in writing and sent by Certified U.S. Mail (Return Receipt Requested), electronic mail, or hand-delivery to the following addresses. A party may change their designated contact by providing notice to the other parties. For certified mailings, notice periods will begin to run on the day after the postmarked date of mailing. For electronic mail or hand-delivery, notice periods will begin to run on the date of delivery:

Lateral Users' Principal Representative
Patti Vannoy
5576 Jay Road
Boulder, CO 80301
Email: plv1@hotmail.com
Telephone: 402-730-7364

County Contact
Boulder County – Public Works
Attn: Director
P.O. Box 471
Boulder, CO 80306
Email: tdadmin@bouldercounty.gov
Phone: 303-441-3900

City Contact
City of Boulder – OSMP
Attn: Director
P.O. Box 791
Boulder, CO 80306
Email: OSMPfrontdesk@bouldercolorado.gov
Phone: (303) 441-3440

15. Incorporation into Agreement: The **Details Summary** is incorporated into this Agreement. The **Agreement Documents** are incorporated into this Agreement by reference.

16. Entire Agreement/Binding Effect/Amendments: This Agreement represents the complete agreement between the Parties and is fully binding upon them and their successors, heirs, and assigns, if any. This Agreement terminates any prior agreements, whether written or oral in whole or in part, between the Parties relating to the Work. This Agreement may be amended only by a written agreement signed by the Parties.

17. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Agreement. Any claim relating to this Agreement or breach thereof may only be brought exclusively in the Courts of the 20th Judicial District of the State of Colorado and the applicable Colorado Appellate Courts.

18. Breach: The failure of any Party to exercise any of its rights under this Agreement will not be deemed to be a waiver of such rights or a waiver of any breach of the Agreement. All remedies available to a Party in this Agreement are cumulative and in addition to every other remedy provided by law.

19. Severability: If any provision of this Agreement becomes inoperable for any reason but the fundamental terms and conditions continue to be legal and enforceable, then the remainder of the Agreement will continue to be operative and binding on the Parties.

20. Third-Party Beneficiary: Enforcement of the terms and conditions and all rights and obligations of this Agreement are reserved to the Parties. Any other person receiving services or benefits under this Agreement is an incidental beneficiary only and has no rights under this Agreement. Notwithstanding, where the beneficiary Party is led by an Elected Official, such Elected Official shall be considered a third-party beneficiary.

21. Colorado Open Records Act: The Parties may disclose any records that are subject to public release under the Colorado Open Records Act, C.R.S. § 24-72-101, et seq.

22. Conflict of Provisions: If there is any conflict between the terms of the main body of this Agreement and the terms of any of the **Agreement Documents**, the terms of the main body of the Agreement will control.

23. Governmental Immunity: Nothing in this Agreement shall be construed in any way to be a waiver of the City's or County's immunity protection under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended.

24. Indemnification: The Parties are not required to indemnify the other in connection with this Agreement. However, each party assumes responsibility for its actions and omissions in the performance or failure to perform work under this Agreement, as well as the actions and omissions of its contractors, agents, and employees. The Parties agree to cause contractors performing any work on the City Property and Lateral to indemnify and hold the applicable Party(ies) harmless from and against all losses, claims, demands, liabilities, injuries, damages and expenses, including, without limitation, attorneys' fees and court costs the Party(ies) may suffer or incur which may arise from negligent or wrongful performance of the contractors while working on the City Property or Lateral.

25. Representations and Warranties: The Lateral Users represent and warrant that, as to each individual Lateral User, execution of this Agreement and performance thereof is within the Lateral Users' duly authorized powers. However, the County is solely responsible to determine and obtain any other property rights that may be necessary for the Project.

26. Delegation of Authority: The Parties acknowledge that the Board of County Commissioners has delegated authority to the Department Head or Elected Official that leads Boulder County Public Works and their designees to act on behalf of the County under the terms of this Agreement, including but not limited to the authority to terminate this Agreement.

27. Execution by Counterparts; Electronic Signatures: This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which will constitute one agreement. The Parties approve the use of electronic signatures, governed by the Uniform Electronic Transactions Act, C.R.S. §§ 24 71.3 101 to 121. The Parties will not deny the legal effect or enforceability of this Agreement solely because it is in electronic form or because an electronic record was used in its creation. The Parties will not object to the admissibility of this Agreement in the form of electronic record, or paper copy of an electronic document, or paper copy of a document bearing an electronic signature, because it is not in its original form or is not an original.

28. Non-Appropriation: This Agreement shall not be interpreted to impose a multi-year obligation on the Parties. Financial commitments of the Parties under this Agreement payable after the current fiscal year are contingent upon funds for this Agreement being appropriated, budgeted and otherwise made available by a Party. If funds for this Agreement are not budgeted and appropriated in any year subsequent to the fiscal year of execution of this Agreement, a Party may immediately terminate its participation in this Agreement by giving the other Parties notice of such non-appropriation.

[Signature Page to Follow]

IN WITNESS WHEREOF, the Parties have executed and entered into this Agreement as of the latter day and year indicated below.

SIGNED for and on behalf of Boulder County		SIGNED for and on behalf of Agreement
Signature:		Signature:
Name:		Name:
Title:		Title:
Date:		Date:
↓↓ <i>For Board-signed documents only</i> ↓↓		
Attest:	Initials	
Attestor Name:		
Attestor Title:		