ATTACHMENT H

MOU May 2019 and MOU Amendment No. 1 Pending Execution April 2020
Boulder County, Longmont Supply Ditch Company and Chapman and McCaslin Ditch

Memorandum of Understanding
between
Boulder County and
Longmont Supply Ditch Company
5/7/19

I. PARTIES.

This memorandum of understanding (MOU) is entered among the County of Boulder, a body corporate and politic (County), and the Longmont Supply Ditch Company, a Colorado mutual ditch company. The Longmont Supply Ditch Company is hereinafter referred to as "the Ditch." The County and the Ditch are collectively referred to as "the Parties."

II. RECITALS

A. The Ditch owns decreed water rights in St. Vrain Creek with a shared diversion structure in the location shown on Exhibit A.

B. The County owns an interest in the Longmont Supply Ditch and owns land in the vicinity of the Ditch's diversion structure.

C. The Parties want to modify a section of the St. Vrain Creek upstream and downstream of the Ditch's diversion structure. The scope of work for the Project, to be developed by the County and the Ditch with other stakeholders, may include modifications and enhancement of some portion of the stream channel, streambank, and riparian corridor within a 2,900-ft section of the St. Vrain Creek with the following design intent: (1) minimize the likelihood of catastrophic failure of streambank and appurtenant ditch infrastructure during future flooding events; (2) reduce day-to-day direct creek pressure on headgate structures; and (3) provide ecological enhancement through the incorporation of native fish passage and increased diversity and structure of the riparian corridor. This work will be at no cost to the Ditches, and the St. Vrain Creek will continue to deliver the decreed amount of water, with an added benefit of allowing passage of trout and native fishes on the St. Vrain Creek (the Project).

D. Funding is available out of Boulder County's CDBG-DR grant allocation for design, construction, permitting and license fees, and easements for this project. License fees issued by the Ditch to Boulder County would be paid out of this grant allocation, subject to CDBG-DR terms and conditions.

III. AGREEMENT

Now, therefore, in consideration of the foregoing recitals, the Parties agree as follows:

a. PURPOSE. The purpose of this MOU is to set forth the terms upon which the Parties will work collaboratively and in good faith toward developing a mutually supported design for infrastructure protection near the Ditch's diversion structure on St. Vrain Creek in Boulder County, Colorado.

b. *The Parties mutually agree:*

1. The upper bypass structure should be replaced with a resilient and stable structure that meets these two objectives: (1) delivers the decreed water rights to the Ditch at least as well as the current structure; and (2) allows trout and native fish to pass upstream and downstream of the structure. If the existing upper bypass structure is replaced, the Ditch's ability to divert decreed and leased water rights shall not be diminished from that under the existing upper bypass structure.

2. The Parties will work collaboratively toward a mutually agreed-upon design for a new upper bypass structure that meets the Project objectives and satisfies the needs of the Parties.

3. The Ditch has the right to review the plans for the Project and, if constructed, to inspect the construction, and review and approve that the construction was in accordance with the plans. The Ditch's review and approval will not change the requirement that the Project delivers the decreed water rights at least as well as the existing upper bypass structure.

4. If an agreed-upon design is developed, the Parties will move forward with plans to build the structure and other stream and riparian project work as designed and at no cost to the Ditch. The design must be accepted in writing by the Parties before the Project can be constructed. The Parties will work in good faith to come to agreement on the details of construction, access and maintenance if the design is accepted in writing by the Parties.

5. Once the design has been accepted and finalized, the Parties will enter into a separate agreement that will govern the details of construction, temporary and permanent access, and normal operations and maintenance.

6. Upon acceptance of this MOU, the County will be responsible for procuring all temporary legal rights of access with landowners and ditch owners for construction of the Project.

7. After acceptance of the Project by the Ditch, the Ditch shall assume ownership of the facilities associated with the Project and the normal and routine maintenance of the Project will continue to be the responsibility of the Ditch. Normal and routine maintenance shall include cleaning and removing debris and sediment from the ditch headgates and making necessary daily water changes. The County will participate with the Longmont Supply Ditch Company in repair of the constructed upper bypass structure, either in the form of in-kind services or monetary assistance. The County will facilitate monitoring of the fish passage function of the structure, and if needed will seek funds to assist with major repairs, maintenance, modifications, and replacement to the Project's facilities related to fish passage. Any repairs or modifications made to the fish passage shall not diminish the Ditch's ability to divert water. The County's participation in repair only applies to the elements of the Ditch's facilities modified by this project and does not apply to any ditch maintenance downstream of the Project. The facilities

associated with the Project shall not be modified in a manner that impairs designed function for fish passage, unless water cannot be diverted into the Ditch and emergency actions are temporarily required on the part of the Ditch to remedy this. If the structure is permanently modified or reconstructed in a manner that impairs its fish passage function, the County will no longer participate in repair beyond what the County contributes to the Ditch as part of normal assessments for the shares owned by the County.

8. The County will cooperate with the Ditch on remedying problems resulting directly from the Project that hinder the Ditch's ability to divert their decreed water rights. If the structure fails or does not perform as designed due to engineering or construction error, the County will be responsible for pursuing the appropriate legal and financial recourse.

9. If the Project is constructed, all work must occur between November 1 and April 1 to avoid interference with irrigation. If construction is not completed before April 1, the County is responsible to provide a temporary solution to ensure the delivery of decreed water rights at the County's expense until the Project can divert the decreed water rights.

IV. MISCELLANEOUS

a. No Fiscal Obligation. This MOU does not create a binding fiscal or funding obligation by any of the Parties, except to the extent that the County, by separate agreement, has agreed to pay a license fee to the Longmont Supply Ditch Company for its review and approval of the project and, once the Project has commenced, will assure that there is no diminution in the Ditch's ability to divert their decreed water rights.

b. Indemnification. Each Party shall, to the extent provided for by state or federal law, as applicable, be responsible for its own acts and the results thereof and shall not be responsible for the acts of another Party and the results thereof. Each Party agrees to assume all risk and liability to the extent provided for under state or federal law, as applicable, but without waiving sovereign immunity: (a) to itself, its agents or employees, for any injury to persons or property resulting in any manner from the conduct of its own operations, and the operation of its agents or employees under this MOU; and (b) for any loss, damage, or expense resulting at any time from any and all causes due to any act or acts, negligence, or the failure to exercise proper precautions, of or by itself or its own agents or its own employees, while occupying or visiting the premises under and pursuant to the MOU. Notwithstanding any provision in this MOU to the contrary, no Party shall be deemed to have waived its rights (if any) to sovereign immunity.

c. Dispute Resolution. Before initiating litigation, the Parties agree to work with each other in good faith to attempt to resolve disputes informally and/or through alternative dispute resolution.

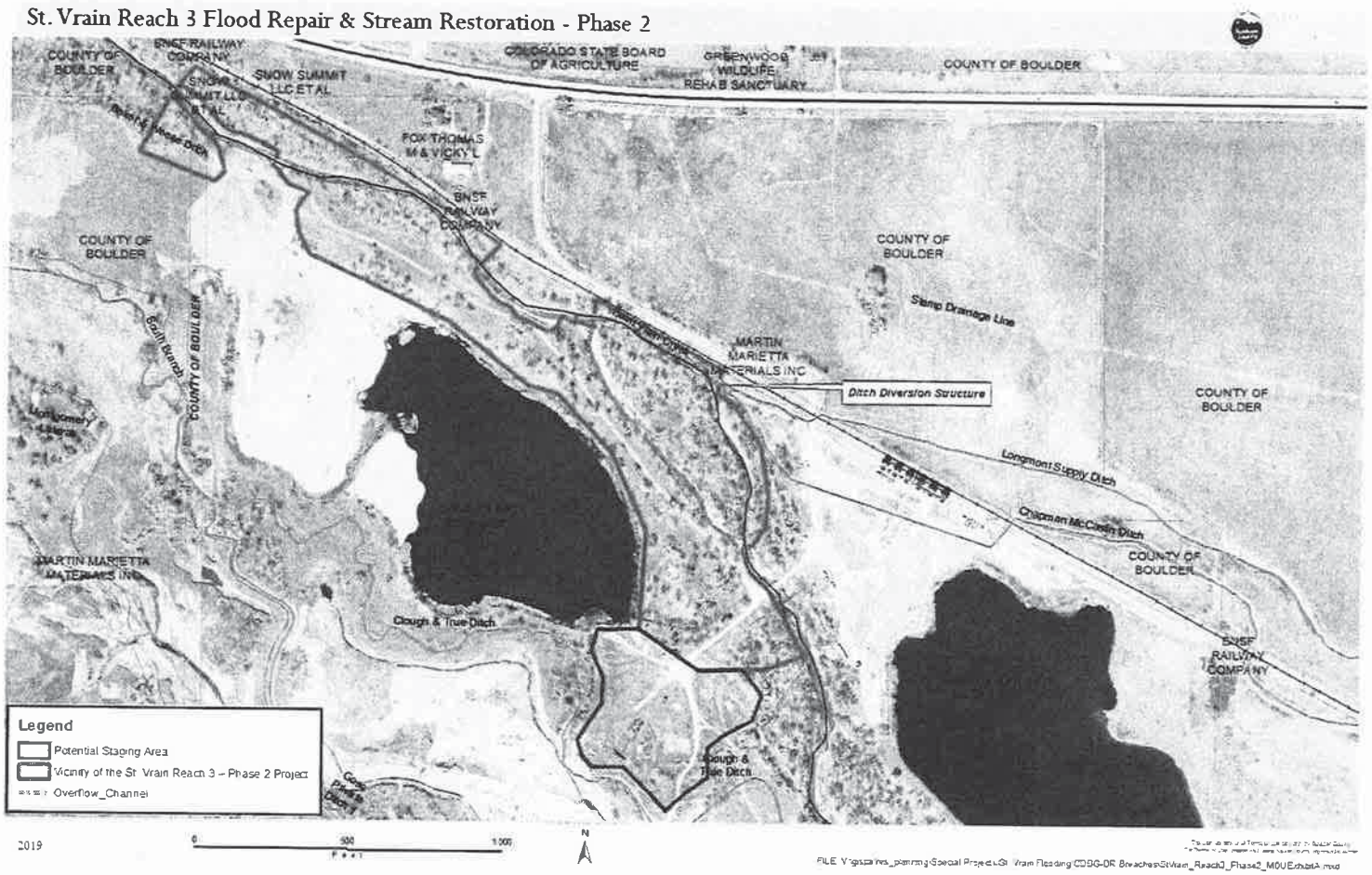
d. Term. The term of this MOU is five years from the date of the last of the Parties

to execute it. This MOU may be terminated at any time by any of the Parties with 90 days' advance written notice to the other Parties. In the event that the MOU is terminated prior to completion of the Project, the County will assure that the Ditches are not left in any worse condition than they were at the time of execution of this MOU in terms of their ability to divert decreed water rights from St. Vrain Creek.

The undersigned Parties hereby agree to the terms and conditions in this MOU:

The County of Boulder, a body corporate and politic
By: Eric Lane
Signature:
Title: Director, BC Parks + Open Space
Date: 5/9/2019

The Longmont Supply Ditch Company, a Colorado mutual ditch company
By: Kevin Dexter
Signature:
Title: President
Date: 5/3/19

EXHIBIT A

Map of the vicinity of the St. Vrain Reach 3 Flood Repair & Stream Restoration – Phase 2 Project