

TEMPORARY LICENSE AGREEMENT
(Captain Jack Open Space Culvert)

THIS TEMPORARY LICENSE AGREEMENT (“Agreement”) is made and entered into this _____ day of August 2024, by and among the Environmental Protection Agency (“EPA”), the Colorado Department of Public Health and Environment (“CDPHE”), and the COUNTY OF BOULDER, a body corporate and politic (“County”) (collectively, the “Parties”).

RECITALS

- A. County owns that certain real property within the County of Boulder, State of Colorado, consisting of approximately 25 acres, as described in Exhibit A and generally depicted on Exhibits B and C, (the “Property”) all of which are attached hereto and incorporated herein by this reference.
- B. The Parties acknowledge the existence of a culvert serving Lefthand Creek and lying under the private road that crosses through the Property (the “Culvert”), (also identified on Exhibit A), that the former culvert in the same location was damaged in August 2020, that EPA and CDPHE replaced the former culvert with the new Culvert, and that the new Culvert should be enlarged.
- C. The County, EPA, and CDPHE wish to replace the Culvert, and Parties wish to share the costs of such replacement.
- D. County desires to grant a temporary license to the EPA and CDPHE to access and use a portion of the Property solely for purposes of replacing the Culvert.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

- 1. Term. This Agreement will begin on the Effective Date and continue until the earlier of (a) completion of the Culvert Replacement (as defined below) or (b) September 30, 2024.
- 2. License. Subject to the conditions set forth herein, County hereby grants to the EPA and CDPHE a non-revocable, non-exclusive license during the Term to enter into and use, and allow their third-party contractors to enter into and use, that particular portion of the Property identified on Exhibit C as the “Work Area” solely for purposes of replacing the Culvert; provided that County may continue to use the Property for all purposes, including access across and through the Property and Work Area by County staff and/or its tenants, agents, or assigns. The Parties will cooperate in good faith to minimize any interference with one another’s operations.

3. Culvert Replacement. The EPA and CDPHE will cause the existing Culvert to be replaced with a new culvert having a 60" diameter (unless the slope is less than one percent (1%), in which case, the new culvert will have a 72" diameter) to the County's sole satisfaction ("Culvert Replacement"). The EPA and CDPHE will cause the Work to be conducted (a) during daylight hours only, (b) in a manner that strictly minimizes impacts to the Property, and (c) in accordance with all requirements applicable to property located within a Superfund Site (as identified pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act). If County becomes aware of any information that may affect the Culvert Replacement, County will promptly notify the EPA's and CDPHE's contacts designated below.
4. Emergencies. EPA and CDPHE will, or will cause its third-party contractors to, immediately call 911 if any conditions on the Property during the Culvert Replacement constitute a generally accepted emergency requiring immediate or quick responsive action by County to benefit public safety and welfare.
5. Restoration of Property. Following completion of the Culvert Replacement, the EPA and CDPHE will reclaim and restore the Property to its pre-Culvert Replacement condition, as determined by the County in its sole discretion, within 30 days of completing the Culvert Replacement. EPA and CDPHE will reimburse County for all reasonable costs incurred in connection with reclaiming/restoring the Property due to the EPA or CDPHE's failure to comply with this Section.
6. Project Costs. The Parties will split the cost of the Culvert Replacement equally among them. Following completion of the Culvert Replacement, the County will pay its share of the cost promptly after receipt of a detailed invoice. County is free to seek reimbursement from the Left Hand Ditch Company for a portion of County's one-third of the cost.
7. County Maintenance. Following completion of the Culvert Replacement, County will be responsible for any maintenance or repairs of the Culvert and immediate section of road crossing the Culvert that may be required from time to time, or in the alternative to provide a low water crossing if County decides not to replace the Culvert.
8. Governmental Immunity. Each party agrees to be responsible for its own negligent actions or omissions and those of its officers, agents, and employees in the performance or failure to perform work under this Agreement. By entering into this Agreement, County in no way waives or intends to waive the limitations on liability which are provided to it under the Colorado Governmental Immunity Act, C.R.S., §§ 24-10-101, et seq., as currently enacted or subsequently amended.
9. Legal Compliance. EPA and CDPHE will not collect or remove anything from the Property, smoke upon, start a campfire, discharge a weapon, or bring pets or alcohol onto the Property, and will abide by all Boulder County Parks & Open Space regulations (<https://assets.bouldercounty.org/wp-content/uploads/2018/03/rules-and-regulations.pdf>). EPA's and CDPHE's actions (and the actions of its third party contractors)

while on the Property must also comply with all federal, state, and local laws and regulations, and it is EPA's and CDPHE's responsibility to determine and obtain all permits, permissions, and/or approvals that are necessary for the uses permitted herein. **This Agreement does not exempt EPA and CDPHE from obtaining any permits that may be required by other agencies or other Boulder County departments, such as Public Works and Community Planning & Permitting.**

10. Contacts. The Parties will use the following contact information for all communication related to this Agreement.

For the County:

- Primary Contact: Prashant Kc, Engineer III, pkc@bouldercounty.gov, 720-899-6022
- Additional Contact: Janis Whisman, Real Estate Division Manager, jwhisman@bouldercounty.gov, 303-678-6263 - County's backup contact if the Primary Contact is unavailable.

For CDPHE:

- Jennifer Charles, CDPHE Environmental Protection Specialist, jennifer.charles@state.co.us, 720-507-5889.

For EPA:

- Angela Zachman, EPA Remedial Project Manager, Zachman.angela@epa.gov, 720-614-4842.

11. Entire Agreement/Binding Effect/Amendments: This Agreement represents the complete agreement among 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, among the Parties relating to the subject matter contained herein and may be amended only by a written agreement signed by all Parties.

12. Governing Law/Venue: The laws of the State of Colorado govern the construction, interpretation, performance, and enforcement of this Agreement.

13. Insurance Requirements. The EPA and CDPHE must require its contractors who conduct this work to meet the County's insurance requirements included on Exhibit D.

14. Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, and all of which will constitute one and the same agreement. Electronic signatures will be acceptable to and binding upon all Parties.

[SIGNATURES TO FOLLOW]

In witness whereof, the parties have executed this Agreement as of the date set forth above.

COUNTY OF BOULDER, a body corporate and politic

By: _____
Printed Name: _____
Title: _____
of the Board of County Commissioners

ENVIRONMENTAL PROTECTION AGENCY

By: _____
Printed Name: _____
Title: _____

COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

By: _____
Printed Name: _____
Title: _____

EXHIBIT A
Legal Description

PARCEL 1:

THE GRAY BIRD LODE MINING CLAIM, U.S. MINERAL SURVEY NO. 603A, IN THE WARD MINING DISTRICT, LOCATED IN SECTION 12, TOWNSHIP 1 NORTH, RANGE 73 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, AS SET FORTH IN PATENT RECORDED OCTOBER 30, 1893 IN BOOK 167 AT PAGE 104.

PARCEL 2:

THE SOUTHEASTERLY 300.00 FEET OF THE QUINCY LODE MINING CLAIM, U.S. MINERAL SURVEY NO. 9718A, IN THE WARD MINING DISTRICT, LOCATED IN SECTION 12, TOWNSHIP 1 NORTH, RANGE 73 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, AS SET FORTH IN PATENT RECORDED JANUARY 11, 1898 IN BOOK 167 AT PAGE 173.

PARCEL 3:

THE BURLINGTON, CAPTAIN JACK AND PHILADELPHIA LODE MINING CLAIMS, U.S. MINERAL SURVEY NO. 11231, IN THE WARD MINING DISTRICT, LOCATED IN SECTION 12, TOWNSHIP 1 NORTH, RANGE 73 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, EXCEPTING AND EXCLUDING MINERAL SURVEY NO. 9718A, AS SET FORTH IN PATENT RECORDED JANUARY 15, 1904 IN BOOK 237 AT PAGE 127; AND EXCEPTING THEREFROM THOSE PORTIONS OF SAID BURLINGTON LODE EMBRACED IN THE MONARCH LODE MINING CLAIM, U.S. MINERAL SURVEY NO. 11231, AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED TRACT:

BEGINNING AT A POINT ON LINE 1-2 OF SAID PHILADELPHIA LODE; SAID POINT BEING S05°00'00"W, 46.50 FEET FROM CORNER NO.2 OF SAID PHILADELPHIA LODE;
THENCE S05°00'00"W, 103.50 FEET TO CORNER NO.1 OF SAID PHILADELPHIA LODE;
THENCE N85°00'00"W, 600 FEET TO A POINT ON LINE 1-4 OF SAID PHILADELPHIA LODE;
THENCE N05°00'00"E, 450.00 FEET TO A POINT ON LINE 2-3 OF SAID BURLINGTON LODE;
THENCE S85°00'00"E, 230.96 FEET;
THENCE S61°06'15"E, 32.17 FEET;
THENCE ALONG A CURVE TO THE RIGHT WHOSE RADIUS IS 210.00 FEET AND WHOSE CHORD BEARS S55°39'03"E, 39.92 FEET;
THENCE S50°11'51"E, 116.08 FEET;
THENCE S51°33'18"E, 56.09 FEET;
THENCE ALONG A CURVE TO THE RIGHT WHOSE RADIUS IS 300.00 FEET AND WHOSE CHORD BEARS S38°28'00"E, 135.87 FEET;
THENCE S25°22'42"E, 136.92 FEET TO THE POINT OF BEGINNING.

PARCEL 4:

THE CROSS LODGE MINING CLAIM, U.S. MINERAL SURVEY NO. 10304A, IN THE WARD MINING DISTRICT, LOCATED IN SECTION 12, TOWNSHIP 1 NORTH, RANGE 73 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, EXCEPTING AND EXCLUDING MINERAL SURVEY NOS. 603A, 9718A AND 9718B, AS SET FORTH IN PATENT RECORDED MAY 1, 1911 IN BOOK 339 AT PAGE 87.

PARCEL 5:

THE BLACK JACK LODGE MINING CLAIM, U.S. MINERAL SURVEY NO. 18948, IN THE WARD MINING DISTRICT, LOCATED IN SECTION 12, TOWNSHIP 1 NORTH, RANGE 73 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, EXCEPTING AND EXCLUDING MINERAL SURVEY NOS. 603A, 10304A AND 12485A, AS SET FORTH IN PATENT RECORDED JANUARY 25, 1913 IN BOOK 339 AT PAGE 128.

TOGETHER WITH A SURFACE EASEMENT TO THE CROSS MILLSITE CLAIM, U.S. MINERAL SURVEY NO. 10304B, AS GRANTED BY INSTRUMENT RECORDED DECEMBER 16, 1986 AS RECEPTION NO. 812653.

PARCEL 6:

THE CROSS MILLSITE CLAIM, U.S. MINERAL SURVEY NO. 10304B, IN THE WARD MINING DISTRICT, LOCATED IN SECTION 12, TOWNSHIP 1 NORTH, RANGE 73 WEST OF THE 6TH P.M., COUNTY OF BOULDER, STATE OF COLORADO, AS SET FORTH IN PATENT RECORDED MAY 1, 1911 IN BOOK 339 AT PAGE 87;

TOGETHER WITH SURFACE EASEMENTS AS GRANTED BY INSTRUMENT RECORDED DECEMBER 16, 1986 AS RECEPTION NO. 812650.

TOGETHER WITH ANY REMAINING RIGHTS IN AND RELATING TO THE ABOVE DESCRIBED PROPERTY, INCLUDING ALL EASEMENTS OVER ADJACENT LAND, ALL MINERALS, ANY RIGHTS TO REDEMPTION FOR TAXES, AND ANY RIGHTS TO MINE THE ABOVE DESCRIBED PROPERTY, INCLUDING ANY LODES OR VEINS ACCESSED THROUGH THE ABOVE DESCRIBED PROPERTY.

EXHIBIT B
Property and Culvert Location Map



Captain Jack Property is shown in light turquoise color.


 Culvert approximate location

EXHIBIT C
Work Area Map



-  Culvert approximate location
-  Work area, approximately 100 feet long by 60 feet wide centered on the Culvert



Risk Management

1325 Pearl Street • Boulder, Colorado 80302 • 303.441.3801

Mailing Address: P.O. Box 471 • Boulder, Colorado 80306 • www.bouldercounty.gov

EXHIBIT D Insurance Requirements

Contract Name: Captain Jack Culvert Replacement

Contractor shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this Exhibit A at all times. A subcontractor for purposes of this Exhibit A is defined as any person or legal entity, other than the Contractor or its employees, that provides any service to assist in completing the **Work**.

All insurance policies required by this Contract shall be by insurance companies satisfactory to the County. Contractor is responsible for ensuring any subcontractor that provides any service to complete the **Work** also obtains the insurance required in paragraph h of this Exhibit A.

- a. Proof of Insurance (Certificate of Insurance): Contractor must provide a current and valid Certificate of Insurance to the County for each type of insurance listed in paragraph h, below. Contractor must provide an updated Certificate of Insurance on an annual basis, at or near the time of policy renewal. Contractor shall send Certificates of Insurance directly to the County **Contact Name and Email** listed under “County Information” in the Contract **Summary**.
- b. Boulder County as Additional Insured: Boulder County shall be named as an additional insured for General Liability, Umbrella/Excess Liability, and Pollution Liability, as designated in this Contract. Additional insured shall be endorsed to the policy.

THE ADDITIONAL INSURED WORDING SHOULD BE AS FOLLOWS: *County of Boulder, State of Colorado, a body corporate and politic, is named as Additional Insured.*

- c. Notice of Cancellation: Each insurance coverage required in paragraph H must include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Contractor and Contractor must forward such notice to the County within seven days of Contractor’s receipt of such notice.
- d. Insurance Obligations of County: County is not required to maintain or procure any insurance coverage beyond the coverage maintained by the County in its standard course of business. Any insurance obligations placed on the County by Contractor in any of the **Contract Documents** shall be null and void.

e. Deductible: Any and all deductibles contained in any insurance policy shall be assumed by and at the sole risk of Contractor.

f. Primacy of Coverage: Coverage required of Contractor and each Subcontractor shall be primary and noncontributory over any insurance or self-insurance program carried by the County.

g. Subrogation Waiver: All insurance policies secured or maintained by Contractor or Subcontractors in relation to this Contract shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against the Board of County Commissioners, the Elected Offices of the County, the County itself, and all County officers, agents, employees, and volunteers.

h. Requirements: For the entire duration of this Contract including any extended or renewed terms, Contractor and all subcontractors must procure and maintain at its own expense, and without cost to the County, the following kinds and minimum amounts of insurance:

Commercial General Liability

Coverage should be provided on an Occurrence form, ISO CG0001 or equivalent. The policy shall be endorsed to include Additional Insured Owners, Lessees or Contractors endorsements CG 2038 (or equivalent), Designated Construction Project(s) General Aggregate Endorsement CG2503 (or equivalent) and Additional Insured Completed Operations for Owners, Lessees or Contractors CG 2037 (or equivalent). Minimum limits required of \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate and \$2,000,000 Products/Completed Operations Aggregate. The County requires the Products/Completed Operations coverage to be provided 3 years after completion of construction. An endorsement must be included with the certificate.

Automobile Liability

Bodily Injury and Property Damage for any owned, hired, and non-owned vehicles used in the performance of the Contract. Minimum limits \$1,000,000 Each Accident.

Workers' Compensation and Employer's Liability

Workers' Compensation must be maintained with the statutory limits. Employer's Liability is required for minimum limits of \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease-Each Employee.

Pollution Liability

Coverage pay for those sums the Contractor becomes legally obligated to pay as damages because of Bodily Injury, Property Damage or environmental Damage arising out of a pollution incident caused by the Contractor's work including Completed Operations. Coverage shall include emergency response expenses, pollution liability during transportation (if applicable) and at Non-Owned Waste Disposal Site (if applicable). The Minimum limits required are \$1,000,000 Per Occurrence/Loss and \$1,000,000 Policy Aggregate. If the coverage is written

on a claims-made basis, the Contractor warrants that any retroactive date applicable to coverage under the policy precedes the effective date of this Contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of three (3) years beginning from the time that work under this contract is completed. County shall be named as an additional insured for ongoing operations and completed operations.