

USE AGREEMENT

This USE AGREEMENT is entered into between the UNITED STATES OF AMERICA (hereinafter referred to as the "Government"), acting through the DEPARTMENT OF ENERGY (hereinafter referred to as "DOE"), and BOULDER COUNTY (hereinafter referred to as the "Grantor"),

WITNESSETH THAT:

WHEREAS, DOE, through its authorized representatives, agents, contractors, and subcontractors desires to perform, pursuant to Public Laws 95-91, Department of Energy Organization Act, and 96-463, Comprehensive Environmental Response, Compensation and Liability Act of 1980 as amended by 99-499, Superfund Amendments and Reauthorization Act of 1986, certain data-gathering, testing, exploration, and other work on the Grantor's portion of property as shown within Parcel "A" on the map attached hereto as Exhibit A in connection with DOE's Interagency Agreement dated January 22, 1991; and

WHEREAS, the Grantor leases and controls the property designated in Exhibit A, subject to a lease/purchase agreement with the City of Boulder for the sampling location referred to as PT 13092;

NOW THEREFORE, it is agreed that:

1. The Grantor leases and controls certain real property (hereinafter referred to as the "Property"), designated in Exhibit A, and hereby grants to DOE, its authorized representatives, agents, contractors, and subcontractors without payment of any land use charge, right of entry in, across, and over the Property to carry out the environmental monitoring activities as described in Exhibit B; PROVIDED, that such right of entry is subject to existing easements for public roads and highways, public utilities, railroads and pipelines; PROVIDED FURTHER, that such grant of right of entry reserves to the Grantor, his heirs, executors, administrators, successors and assigns, all right, title, interest and privilege as may be used and enjoyed without interfering with or

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abridging the rights hereby granted to DOE, its authorized representatives, agents, contractors, and subcontractors. The right of entry in, across, and over the Property, provided in this Agreement, is solely limited to a right of entry by foot. DOE, its authorized representatives, agents contractors, and subcontractors shall not drive onto nor use any motorized vehicles or equipment to access across the Property nor to carry out the environmental monitoring activities on the Property. DOE its authorized representatives, agents, contractors and subcontractors shall not cut, remove or damage any fences to gain access to the Property. DOE shall coordinate a schedule of access with the Grantor.

2. The Government shall be responsible for any injury to its environmental investigation personnel or property caused by its activities as specified in Exhibit B or those of its authorized representatives, agents, contractors and subcontractors, on the property: PROVIDED, that such responsibility for property damage shall be limited to restoration of such real and personal property to a condition comparable to its condition on the effective date of the Use Agreement by techniques of back-filing, seeding, sodding, landscaping, repair or replacement, and such other methods as may be agreed to between the parties.
3. The provisions of this Use Agreement shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, personal representatives, successors, and assigns of the Grantor. The Grantor shall notify the Realty Officer if the Property is, or at any time during the term of the Agreement should become leased, sold, or otherwise transferred to another party. The "Realty Officer" means the person executing this Use Agreement on behalf of the Government, and any other officer or civilian employee who is properly designated Realty Officer; and the term includes, except as otherwise provided in this Use Agreement, the authorized representative of a Realty Officer acting within the limits of his authority. The Grantor shall also give written notice to any purchaser, lessee, or transferee of the applicability of the rights of the Government contained in this Use Agreement when such purchase, lease, or transfer takes place during the term of this Use Agreement. DOE

acknowledges that a portion of the Property is under a lease/purchase agreement to the Grantor.

4. The effective date of this Use Agreement shall be the date of execution by the Government. The term of this Use Agreement shall commence on the effective date hereof and shall continue for 12 months unless sooner terminated by the Government or Grantor by sixty-day prior written notice to the other.
5. Title to all personal property brought to the Property by DOE during the term of this Use Agreement shall remain in the Government, and such title shall not be effected by incorporation or attachment thereof to any property not owned by the Government, nor shall such personal property, or any part thereof, become a fixture or lose its identity as personal property by reason of affixation to any realty. DOE shall remove all such personal property no later than 10 days after the expiration or termination of the Use Agreement.

The Grantor shall not be liable for any loss of or damage to Government-owned or Government-furnished property, or for expenses incidental to such loss or damage, except that the Grantor shall be responsible for any such loss or damage (including expenses incidental thereto) which results from the willful misconduct, or gross negligence of the Grantor.

6. The Government shall have unlimited rights in all technical data first produced or specifically used in the performance of the work and experiments in connection with this Use Agreement. Further, technical reports from DOE contractors or subcontractors shall be required for delivery to the Government and shall be made available to the public without restriction. Such data shall be provided to the Grantor when available, at the Grantor's request. For the purposes of this Use Agreement, the terms "technical data" and "unlimited rights" shall have the same meaning as provided in 927.401/Department of Energy Acquisition Regulation (DEAR). DOE shall provide a copy of the Final RFI/RI Report to the Grantor at no charge.

7. DOE shall obtain all necessary permits or licenses and abide by all applicable Government, state, and local laws, regulations, and ordinances.
8. If the Property is subject to any leases, subleases, or assignments of rights, the Grantor shall obtain the consent of the lessors, lessees, subleases, and assignees as appropriate, to enter into this Use Agreement. DOE shall obtain consent of the City of Boulder under a separate Agreement prior to access.
9. DOE agrees to keep the property free and clear from any and all liens for labor, materials, subcontracts, and any and all other services or materials in connection with the surface soil sampling.
10. The sampling contractor shall carry the following minimum amounts of insurance:
  - a. Workers Compensation in statutory limits.
  - b. Comprehensive General and Automotive Liability Policy for amounts not less than:
    - Bodily Injury:
      - \$150,000 each person, including death
      - \$600,000 each occurrence
    - Property Damage:
      - \$50,000 each occurrence
11. This Use Agreement constitutes the entire understanding between the parties and supersedes any prior agreement or understanding related to the subject matter of this Use Agreement.

This Use Agreement may be modified or amended only by a duly authorized written instrument executed by the parties hereto.

In WITNESS WHEREOF, the parties hereto have executed this Use Agreement in several counterparts.

GRANTOR:

*Homer Page*

UNITED STATES OF AMERICA  
DEPARTMENT OF ENERGY

By: \_\_\_\_\_

By: *Steven R. Schiesswohl*

Boulder County  
HOMER PAGE, CHAIR  
BOARD OF COUNTY  
COMMISSIONERS

Steven R. Schiesswohl  
RFO Realty Officer  
Property & Information  
Management Branch  
Rocky Flats Office  
P.O. Box 928  
Golden, Colorado  
80402- 0928

Date: 4-29-93

Date: 9/3/93

Concurred by EG&G Rocky Flats, Inc.  
DOE Contractor, contract number  
DE-AC04-90DP62349

By: *N. Hobbs*

Title: *Admng ACM-ERN*

Date: 8/12/93

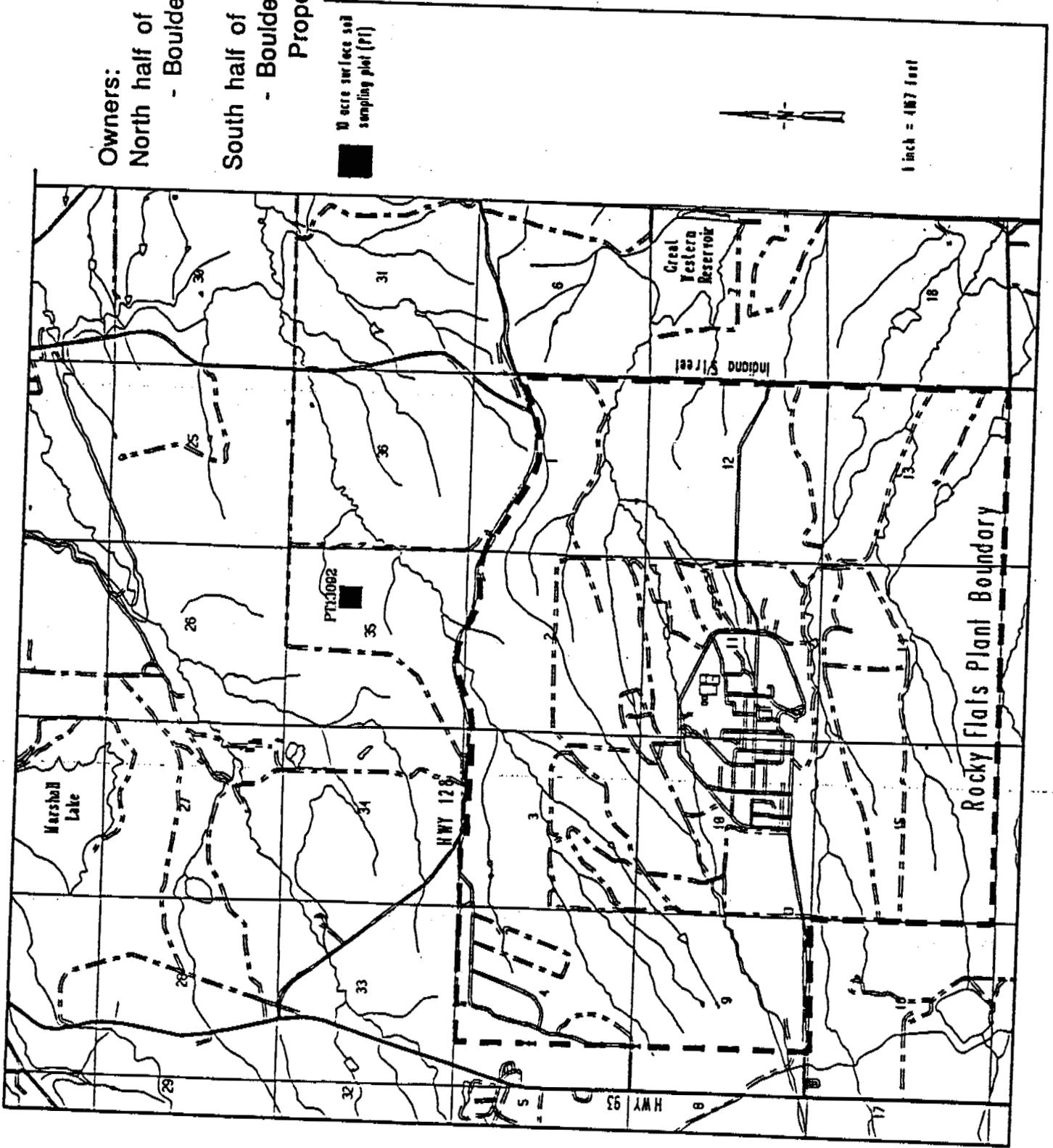
Consented to:

Names

Interest

Signature

Exhibit A: Map

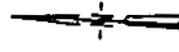


Owners:

North half of PT13092  
- Boulder County

South half of PT13092  
- Boulder Municipal  
Property Authority

10 acre surface soil  
sampling plot (P1)



1 inch = 487 feet

## EXHIBIT B

### OU 3 RFI/RI SAMPLING ACTIVITY DESCRIPTIONS -BOULDER COUNTY PARKS AND OPEN SPACE

The planned OU 3 sampling activities are detailed in the RFI/RI Work Plan. The Work Plan outlines the purpose, objectives, rationale and methods used to evaluate the presence or absence of contamination within OU 3. The Work Plan is based on the requirements of the Interagency Agreement (IAG) between the Department of Energy (DOE), the Environmental Protection Agency (EPA) and the State of Colorado Department of Health (CDH).

OU 3 sampling activities began in April, 1992 and are scheduled for completion by spring of 1993. A Final RFI/RI Report which details the results and conclusions from this study is scheduled for completion in 1994. The Access Agreement period is extended for 12 months to cover any follow up activities that may be required during development of the Final RFI/RI Report.

The map, attached to this correspondence, shows the location of sampling activity. The sample location will be surveyed prior to the sampling event. Field adjustments could be made at the time of sampling to adjust specific sampling locations.

Sampling activities will not adversely effect environmental resources. OU 3 sampling activities on Boulder County property involve collection of soil data. The collection of surface soil samples involves removing one quarter to one half inch of surface soil from a 3 X 3 inch square in 25 locations within a ten acre plot. The ten acre plot location is shown on the Exhibit A map.