

JTC msw



STANDARD

OFFICE OF THE CITY ATTORNEY

Contract Routing Cover Sheet

APR 29 2019

Please print and attach to your document

TO: _____

You can view the status of your contract using the [Contract Tracking Status Page](#).

Routing Number	20190426-5361		
Originating Dept	Open Space/Mtn Parks		
Contact Person	Leah Case	Phone Number	303-441-3440
Project Manager / Contract Administrator	Ericka Pilcher	E-mail	pilchere@bouldercolorado.gov
Counter Parties	Rocky Mountain Hang Gliding and Paragliding Association		
Contract Title / Type	Agreement		
Number			
Description	Agreement between City of Boulder and Rocky Mountain Hang Gliding and Paragliding Association.		
Special Instructions	Please send fully executed copy back to Ericka Pilcher.		
Amount		Expense Type	

• Dept. Head Signature Daniel E. Bruce

NOTE; Originating Department: Identify with a check mark all areas document needs to be routed.

- Purchasing _____
- Budget _____
- Sales Tax _____
- X • CAO cm 5-2-19
- Y • City Manager _____
- Y • Central Records _____

RmHPA signature block is correct and sufficient per RmHPA and CAO
- CAO -

ND

2019 MAY -8 AM 11:48
CITY OF BOULDER
CENTRAL RECORDS OFFICE

**AGREEMENT BETWEEN
ROCKY MOUNTAIN HANG GLIDING AND PARAGLIDING ASSOCIATION
AND
THE CITY OF BOULDER**

THIS AGREEMENT ("Agreement") is between the Rocky Mountain Hang Gliding and Paragliding Association ("RMHPA"), a Colorado non-profit corporation, and the City of Boulder, a Colorado home rule municipality ("City"), and is effective as of April 29th, 2019.

RECITALS

A. RMHPA is a Colorado regional, member-controlled, collaborative club organized for the benefit of Free Flight Pilots. A free flight pilot is a person who flies or glides with a non-motorized vehicle, commonly known as a hang glider or paraglider. With over 200-member associations, RMHPA provides governance and insurance for seven flying sites across the state via its parent entity USHPA. USHPA is the United States Hang Gliding and Paragliding Association and is a non-profit organization dedicated to promoting and preserving unpowered free flight.

B. RMHPA was founded in 1975 and since that time, has acted as a steward to the sites where its members fly. RMHPA represents that it has managed relationships with private land owners, government agencies, fish and wild life communities, and large corporations with great success.

C. The City owns real property near Wonderland Hill, part of which is managed by its Open Space and Mountain Parks department ("OSMP"), and part of which is managed by its Parks & Recreation department ("P&R"); the property consists of the Erni, PineBrook Hills No. 6, and Wonderland Development Corporation I and II Open Space Properties, managed by OSMP ("OSMP Property"), and the Foothills Community Park, managed by P&R ("P&R Property") as depicted in Exhibit A (collectively the "Property").

D. RMHPA and the City are interested in establishing a cooperative relationship to support hang gliding and paragliding ("Free Flight Use") on the Property and to provide an opportunity for RMHPA to collaborate with City staff in furtherance of this goal and according to each party's abilities and resources.

E. A cooperative relationship will support the efforts of the RMHPA to provide Free Flight Use venues and educational opportunities to further RMHPA's mission to promote the benefits of the sports.

F. RMHPA uses areas on city property designated by the city manager pursuant to Section 8-3-3, B.R.C. 1981, for gliding and paragliding activities and existing use aligns with allowable uses in the Boulder Revised Code and City of Boulder Charter. The intent of this agreement is to reduce potential user conflicts and promote safety by formalizing the existing uses and use areas and clarifying communication protocols and maintenance expectations. This formalized relationship will also provide guidance and information should additional City properties be considered for future Free Flight Use.

G. The parties share a common interest of disseminating information to the public regarding Free Flight Use and recognize that the exchange of information and technical expertise leads to more effective, efficient, and equitable land management policies and benefits to the parties.

H. Involvement of the free flight community in volunteer activities can help provide a sense of stewardship and an ethic of caretaking for the land that will support Free Flight Use with minimal impacts.

COVENANTS

NOW THEREFORE, in consideration of the foregoing background recitals and the mutual promises of the parties set forth in this Agreement, the parties agree as follows:

I. USE OF PROPERTY

RMHPA and its members are granted a non-exclusive revocable license to use the Property to conduct their Free Flight Use. RMHPA will use only designated trails to access the defined launch areas, as depicted in Exhibit A and Exhibit C within the OSMP Property ("Launch Areas"). Landing will take place only within the P&R Property at Foothills Community Park in the designated areas as depicted in Exhibit A ("Landing Zone") (Launch Areas and Landing Zone known collectively as "Reserved Areas"). Landings will not occur in park areas of the landing zone where and when reserved activities (e.g. soccer games) take place. RMHPA will continue to minimize any impacts to the Property by adhering to City-approved uses and incorporating best practices as outlined in Exhibit D.

II. COLLABORATIVE RELATIONSHIP

1. City Responsibilities. The City agrees to:

- a. Support RMHPA in its community outreach and education efforts by maintaining open communication between City staff and RMHPA to minimize user conflict and impact with other programmatic activities occurring at the Reserved Areas.
- b. P&R will share, via email, property use calendars with RMHPA project manager for scheduled and programmed reservation uses in the beginning of each session/season bi-annually; once in January and once in June.
- c. Assist RMHPA in developing one volunteer project and celebration day each year for RMHPA members at a mutually agreed upon location. City staff will work to provide a City-owned location for celebration if possible.
- d. Notify RMHPA promptly of any issues related to potential conflicts (e.g. commercial use, landing in undesignated areas) between users that are brought to the City's attention due to Free Flight Use to ensure that RMHPA has time to provide corrective action.
- e. Coordinate the permitting processes between OSMP and P&R for Free Flight Use activities that qualify as commercial use according to both OSMP and P&R regulations and policies.

2. RMHPA Responsibilities. RMHPA agrees to:

- a. Comply with all federal, state and local laws and regulations, and provisions of the Charter and Boulder Revised Code of the City of Boulder related to the use of the Property.
- b. Provide its USHPA member pilots with General Site Guidelines and Site-Specific Guidelines as depicted in Exhibit D.
- c. Provide a liaison ("RMHPA Project Manager") who will be responsible for communications to RMHPA members, individual free flight sports participants and instructors, and collaborating with the city to address problems that may arise.
- d. Communicate with RMHPA members, individual free flight sports participants, and instructors regarding Free Flight Use of the Property as well as other activities, including City programmatic use, occurring at the Property to deter Free Flight Use of the Property during times when other activities are operating.
- e. Communicate issues regarding trails, landing concerns and any other matters of concern with the appropriate City staff (identified in Section IV, below).
- f. Coordinate with City staff to recruit RMHPA members, individual free flight sports participants, and instructors as volunteers to assist in land management projects at the Property as directed by the City, including weed management, ecological restoration, undesignated trail restoration, and monitoring.
- g. Keep the City informed of any RMHPA organizational changes that would affect RMHPA's responsibilities to the City regarding Free Flight Use of the Property.
- h. Follow City policies and procedures and obtain prior approval for use of City name or logo for fundraising efforts. RMHPA shall recognize the City in all marketing and fundraising materials in connection with this Agreement. RMHPA will submit, in a timely fashion, all marketing, sponsorship, and fundraising materials that mention the City for prior approval.
- i. Notify the City Project Manager at least ten business days prior to any RMHPA fundraising event or activity on or relating to this Agreement.

III. INSTALLATION AND MAINTENANCE OF WINDSOCKS:

1. City Responsibilities. The City agrees to:

- a. Brief the Open Space Board of Trustees on alignment of this agreement with existing OSMP plans and policies, and seek a favorable recommendation from the Parks & Recreation Advisory Board for the City Manager to grant RMHPA this non-exclusive revocable license to utilize the Property as depicted on Exhibit A and to install three windsocks subject to the terms and conditions of this Agreement. The windsock installation method is described in Exhibit B. The windsocks must not contain any advertisements or logos.
- b. Communicate directly with the RMHPA Boulder Project Manager, or their designee, if City staff becomes concerned about damage caused by the use of the launch and landing areas.
- c. Grant RMHPA reasonable access to and from the Property for windsock maintenance during times when the Property is open to the public, unless otherwise authorized in writing by the City.

d. At no time will the City be responsible for maintaining the windsock, including, but not limited to securing, repairing, and replacing damaged components of the windsock, wires, or other related attachments.

2. RMHPA Responsibilities. The RMHPA agrees to:

a. Comply with all federal, state and local laws and regulations, and provisions of the Charter and Boulder Revised Code related to the windsock installation and maintenance.

b. Not install permanent structures or fixtures for windsocks and limit installation to bracing with existing rock or easily removable guy lines. No change to the land is permitted to install the windsocks. No guy lines may be installed if they are a trip hazard to any hikers or other user groups.

c. Install windsocks only after City approval. Such approval shall be in writing from the city manager. No structures, signs or other objects may be installed on the Property without prior City approval.

d. Perform and document quarterly inspections of the installed windsocks on the Property and perform any necessary safety repairs immediately, and non-safety repairs within 30 days of inspection. Safety repairs include those needed for the safety of both Free Flight users and the general public using the Property. Quarterly photo documentation of the windsocks will be emailed to OSMP and Parks and Recreation project managers, and RMHPA will ensure the windsocks are in working order. The City reserves the right to direct RMHPA to make any reasonable repairs necessary due to Free Flight Use to the Property within seven days of notice by the City to the RMHPA project manager (or delegate). In case of emergency, the City may choose to perform the repairs itself or contract with another to do so. In this event, the RMHPA will be responsible for all associated costs, with payment due within ten days of completion. The City will not be responsible for any damage or loss to RMHPA's equipment.

e. Work with the City to evaluate the Reserved Areas for needed maintenance, should damage occur (e.g. repair worn areas of the ground).

f. Remove all infrastructure, make repairs and restore the Property to its prior condition at RMHPA's expense at the end of this Agreement term or immediately upon City request.

g. Provide the services identified in this Agreement on a volunteer basis and at no cost to the City.

IV. MISCELLANEOUS:

1. Project Manager. Communication described in this Agreement shall be directed to the Project Managers, defined in Paragraph 15 below, or their designees.

2. Use of Property. The parties agree that the use of the Property is non-exclusive, is subject to the terms of this Agreement, and shall be free and open to the public. RMHPA shall not have the right to exclude any member of the public from using the Property. This Agreement does not authorize RMHPA to engage in any activity or use not expressly authorized under the terms of this Agreement.

3. Term. This Agreement will be effective for a period of three years and shall terminate on April 29th, 2022. At the end of the term, if agreed, the parties will have an option to amend to continue for an additional three years.

4. Termination. This Agreement may be terminated by either party if it has been materially breached by the other party and proper notification is tendered. The City may, at any time, terminate this Agreement, in whole or in part, for its own convenience.

Notification of intent to terminate this Agreement shall be given in writing fourteen (14) days prior to the date of termination. The City shall provide written notice specifying the date upon which such termination is to be effective, and damage caused by the use of the launch and landing areas to be repaired, if any.

On the effective date, RMHPA shall terminate all activities on the Property, remove all equipment solely owned by RMHPA and repair damage to the Property related to the uses authorized by this Agreement, including but not limited to shoreline restoration, repairs or clean up of parking areas or other paved surfaces, and repair to Property amenities or other facilities, all to the satisfaction of the City, within one week of notice of damage as described above.

If RMHPA fails to repair any damage as required above, the City may choose to perform the repairs itself or contract with another to do so. In this event, the RMHPA will be responsible for all associated costs, with payment due within ten days of completion. The City will not be responsible for any damage or loss to RMHPA's equipment.

5. Insurance. RMHPA, at its sole cost and expense, shall, during the term of this Agreement, procure, pay for and keep in full force and effect a policy of commercial general liability insurance covering in an amount not less than one million dollars (\$1,000,000) combined single limit, two million dollar (\$2,000,000) aggregate covering bodily injury, including death to persons, personal injury and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insured for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the launch, landing, windsock, or any other use as described in this Agreement at the Property (including acts or omissions of the RMHPA).

All policies of insurance carried by RMHPA via its parent USHPA shall name the City of Boulder, its officials and employees as additional insureds. A certificate of such insurance shall be filed with the City prior to signature of this Agreement by the City. The policy or policies shall contain a provision that the policy or policies cannot be cancelled or materially altered either by the insured or the insurance company unless thirty days prior written notice thereof is given to RMHPA and the City. Upon issuance or renewal of any such insurance policy, RMHPA shall furnish a certificate of insurance showing evidence of coverage that names the City of Boulder, its officials and employees as additional insureds. RMHPA shall ensure that its member pilots are licensed and appropriately insured.

6. Indemnification. RMHPA shall release, indemnify, and hold harmless the City, its officers, agents and employees against all losses, claims, demands judgments, costs, and expenses, including attorney's fees, arising out of any accident or occurrence causing injury to

any person or property whomsoever or whatsoever due directly or indirectly to RMHPA's use or maintenance of the Property during the term of this Agreement, unless such accident or occurrence results solely from any negligent act or omission on the part of the City, its agents and employees.

7. Open Records. Information furnished to the City under this Agreement is a public record subject to inspection and copying pursuant to the Colorado Open Records Act, C.R.S. § 24-72-201 *et seq.*

8. Other Partnerships. This Agreement in no way restricts the City or RMHPA from participating in similar activities or arrangements with other public or private agencies, organizations, or individuals.

9. Governmental Immunity. No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, section 24-1-101 *et seq.*, C.R.S., as now or hereafter amended.

10. No Third-Party Beneficiaries. The covenants and agreements contained in this Agreement are for the benefit of RMHPA and the City only, and do not create any obligation or duty to persons not parties hereto.

11. Waiver. No waiver of any right under this Agreement shall operate as, or be construed to be, a waiver of any subsequent breach of the same or any other provision of this Agreement.

12. Cooperation. Each party agrees to perform all other acts and execute and deliver all other documents as may be necessary or appropriate to carry out the intent and purposes of this Agreement.

13. Renewals. The parties may extend this Agreement for an additional three-year term if mutually agreeable by both parties. Contract renewals shall be in writing and signed by both parties.

14. Amendments. This Agreement is intended as the complete integration of all understandings between the parties and may be modified only by an instrument in writing signed by both parties.

15. Notice. Any notice to Project Managers required by this Agreement shall be in writing, made by email, hand-delivery or certified mail, return receipt requested, and addressed to the following:

City of Boulder:
City Manager
1777 Broadway
Boulder, Colorado 80306

With a copy to:

Open Space and Mountain Parks Project Manager: Ericka Pilcher
2520 55th Street

Boulder, CO 80301

PilcherE@bouldercolorado.gov

Please cc Lisa Goncalo and Beau Clark when setting up trail work
volunteer days:

goncalol@bouldercolorado.gov

clarkb@bouldercolorado.gov

With a copy to:

Parks & Recreation Project Managers: Dennis Warrington & Gabriel
Aksamit

5200 Pearl St.

Boulder, CO 80301

warringtond@bouldercolorado.gov

aksamitg@bouldercolorado.gov

Rocky Mountain Hang Gliding and Paragliding Association:

Please email both the President and Vice President of RMHPA

Contact information is always available at <http://rmhpa.org/>

For 2019, Will Stites (whstites3@gmail.com) is President.

Adam Lendi (aalendi@gmail.com) is Vice President.

Dusty Miller (waxwings@gmail.com) is the Site Director of the Boulder
sites for RMHPA.

There is no physical address.

Notice given by hand-delivery and by electronic mail shall be effective
immediately and notice by mail shall be effective three days after it is deposited in the United
States mail depository correctly addressed with sufficient postage for delivery.

16. No Assignment. No provision of this Agreement shall be assigned by either
party without prior written consent of the non-assigning party.

17. Colorado Law and Venue. This Agreement shall be deemed to have been
granted in and shall be governed by and construed in accordance with the laws of the State of
Colorado. Venue for any action to enforce the provisions of this Agreement shall be the District
Court in and for the County of Boulder, Colorado.

18. Severability. Each provision of this Agreement shall be severable. If any
provision is held invalid, contrary to, or in conflict with any law or regulation by a tribunal with
competent jurisdiction, the remainder of this Agreement shall remain in effect.

19. Authority. The parties represent that the individuals signing this Agreement on
their behalf possess full power and authority from their respective governing boards in
compliance with Colorado law.

This Agreement shall be effective as of the date written above.

Rocky Mountain Hang Gliding and Paragliding
Association, a Colorado non-profit corporation

By: Will Stites
Will Stites
RMHPA President

ATTEST: N/A

Secretary

303-522-8996
Legal Officer

City of Boulder,
a Colorado home rule municipality

By: Jane S. Brautigam
Jane Brautigam
City Manager

ATTEST:

Lightfoot
City Clerk

APPROVED AS TO FORM:

Samuel White
City Attorney's Office 3-2-19

List of Exhibits:

- Exhibit A - Map of Properties including Launch Areas and Landing Zones
- Exhibit B - Approved Location of Windsock and installation descriptions
- Exhibit C - Access Trails to Launch Sites at Wonderland Hill Flying Site
- Exhibit D - City of Boulder General and Site-Specific Guidelines

EXHIBIT A
Map of Properties including Launch and Landing Zones

Wonderland Hill (North Boulder)
Launch & Landing Zone

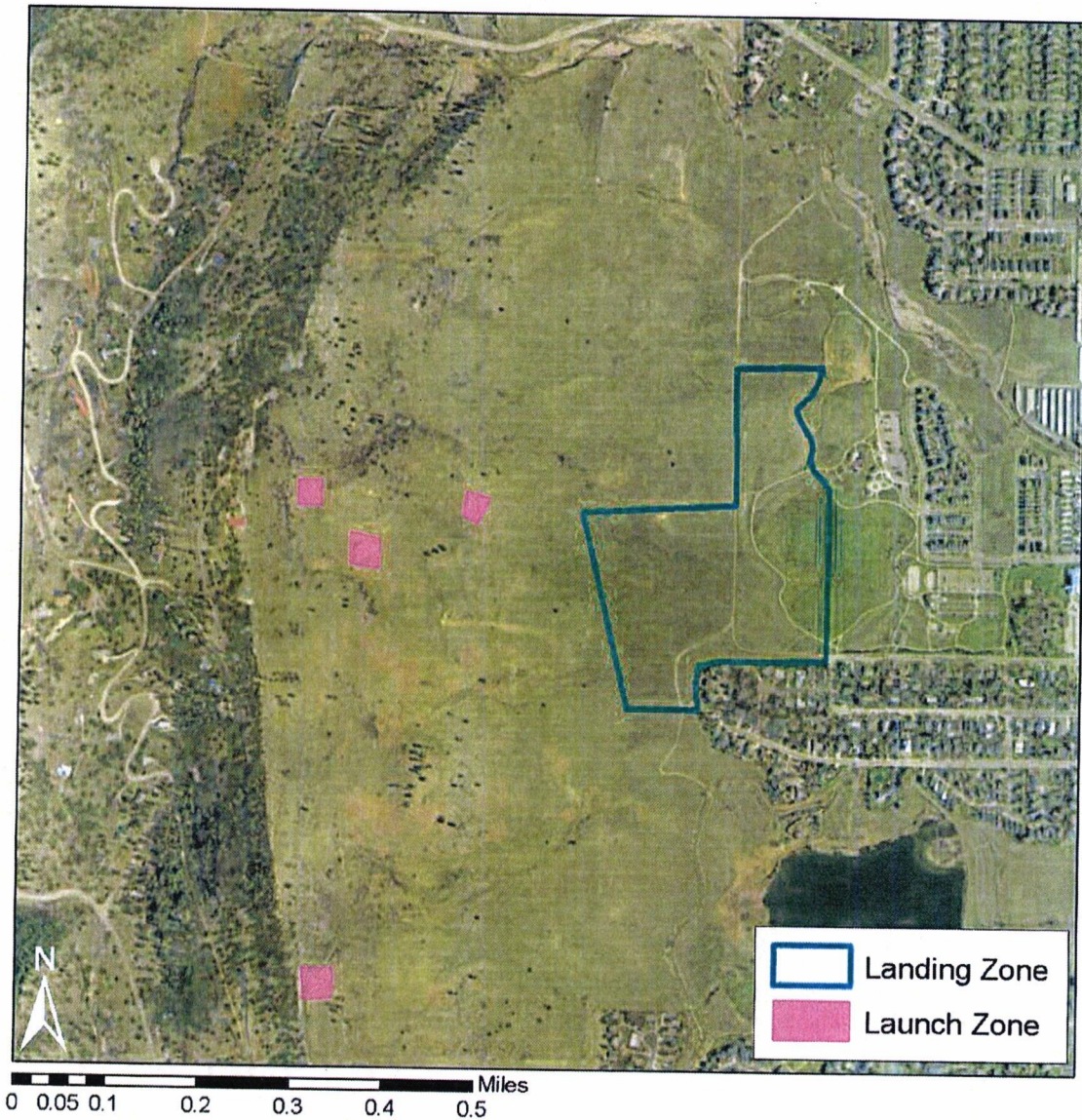


EXHIBIT B

Approved Location of Windsocks and Installation Description



*There is an additional windsock on private property on top of the ridge behind the North Launch

WINDSOCK INSTALLATION

For the landing zone Windsock, RMHPA uses a semi-permanent structure supported with guy lines. These guy lines are secured with pegs. The Windsock is located away from any path such that the guy lines do not pose any tripping hazard. The guy lines are approximately 10 feet in length. The Windsock is approximately 8 feet high. Guy lines are essential in the landing zone because of the high winds in winter.



For the launch zone Windsocks, RMHPA will use a removable system identical in structure to that implemented for road signs and shall not require support by use of guy lines.

EXHIBIT C
Access Trails to Launch Sites at Wonderland Hill Flying Site



EXHIBIT D
GENERAL AND SITE-SPECIFIC GUIDELINES

A. RMHPA GENERAL SITE GUIDELINES PROVIDED TO PILOTS

1. The United States Hang Gliding and Paragliding Association's (USHPA's) site insurance policy requires all pilots, including first-day students and visiting pilots, to be USHPA members at the time of their use of City sites. This provides uniform third-party liability insurance for all pilots. You may call USHPA at 800-616-6888 or visit them on-line at www.ushpa.org. All instructors operating within the City of Boulder must be a currently approved USHPA Instructor. Similarly, all students receiving paragliding lessons must receive those lessons from currently licensed USHPA instructors. All students can and should report any safety-related complaints to USHPA. Local schools can be found in the yellow pages or on the RMHPA's website at www.rmhpa.org. Schools are strongly encouraged to distribute a copy of these guidelines to each student before they receive instruction at any Boulder OSMP site. Copies are distributed free upon request from the RMHPA or can be downloaded from www.rmhpa.org.

2. RMHPA prefers that all pilots to join the club before flying at City of Boulder sites. This is necessary for two reasons. The City of Boulder requires RMHPA to insure the sites on their property. This site insurance provides different coverage than USHPA pilot membership insurance. Your RMHPA membership supports the additional expense incurred when a site is insured. Secondly, your membership is a way for you to ensure you are informed of current site issues, concerns, and events and participate in the local free flying community. Membership information can be found at www.rmhpa.org under "[Join the RMHPA](#)."

3. All pilots are strongly encouraged to wear a suitable helmet while ground handling and required to wear one when flying a USHPA insured site. All pilots are strongly encouraged to use a reserve parachute. Pilots are strongly encouraged to have ratings equal to or greater than those shown for the sites in these guidelines.

4. All pilots are advised that City Regulations prohibit litter, such as flagging, as well as the removal of rocks or plants from their place on City land. Any flagging used must be removed at the end of each flying day.

5. Free Flight Use instructors and guides who charge fees to clients are required to obtain annual permits under the OSMP Commercial Use Permit Program. These permits specify conditions on use that will ensure that the recreational activity does not cause any unacceptable impacts. Commercial instructors will be responsible for communicating and encouraging the use of low-impact techniques by their clients. The requirement for a permit includes operating on both OSMP as well as Parks and Rec supervised land.

6. Any student or potential student cannot ground handle (practice) on City property without supervision from a USHPA instructor. Any pilot flying or ground handling on City of Boulder property must have at least a rating of P2 or H2.

Pilots are strongly encouraged to consider their incremental impact on the erosion of the land. The following **City Site Use Requirements** will help to minimize erosion and protect the Property.

B. City Site Use Requirements

- Free Flight Use and instructional activities are allowed only in the designated Launch Areas, Landing Zone, and ground handling/training zones. The ground handling training zone is an area within the Landing Zone. Every effort should be made to land in the Landing Zone, with the exception of unavoidable emergency landings.
- Do not use the Property for Free Flight Use at all when the ground is very wet or muddy. Use only designated trails to get to/from Launch Areas and Landing Zone, stay on the designated trail as depicted in Exhibit C.
- Diversify your exit from any emergency landing on City Property to the nearest designated trail.
- Do not create social trails by repeatedly using the same unofficial path to a Launch Area.
- No power-assisted paragliders or hang gliders are allowed on OSMP Property.
- Dogs are prohibited in the company of Free Flight Use participants, instructors, and others in support of the activity unless that dog is accompanying the person in flight. This prohibition is designed to prevent dogs from not being under adequate control while participants are preoccupied or flying in the air; and to meet wildlife protection objectives and reduce the potential for spreading weeds related to this off-trail activity.
- Avoid travelling in or through the gullies except on existing designated trails.
- Shake out your gear, including bottoms of shoes and boots, in the Landing Zone before going back up to launch to minimize unwanted weeds, like cheat and jointed goat grass, that hitchhike.
- If a set-up or Launch Area is looking worn, diversify your activity to allow the area time to recover.

C. Site Specific Guidelines

Guidelines for Wonderland Hill Area

Parking in the Locust Avenue area is generally not a problem for small numbers of pilots. However, large groups are encouraged to carpool in from the Foothills Nature Center Trailhead at 4201 North Broadway, Boulder.

The Wonderland Hill upper, three-quarter and half-way, or bench, launches are H2/P2 or Supervised H1/P1.

Follow the City site use requirements listed above.

Guidelines for the South Wonderland Hill Launch

This is a drop-off-only Launch Area. Do not park on Pine Needle Road. Pilots accessing the launch from the west side of the ridge are **required to be dropped off** with their gear before Pine Needle Road, a dirt road, **turns to black in color** (see map), **while the driver returns to the Foothills Nature Center or Locust Avenue parking areas.** Illegal parking on Pine Needle Road is enforced by the Boulder County Sheriff and Open Space and Mountain Parks Rangers.

Review the [Pine Needle Road Access guidelines](#) on the RMHPA website.

Respect the privacy of property owners. Do not drive beyond the pull-out area, as there are no other places to turn around. Do not turn around in private driveways.

This launch area is H2/P2 or Supervised H1/P1. This a rating system used by USHPA. An H2/P2 pilot is a licensed hang glider or paraglider pilot. An H1/P1 is a student pilot. Any student can only fly or ground handle within the City of Boulder if they are supervised by a current USHPA licensed instructor. H2/P2 is the minimum rating a pilot must have to fly without supervision in the City of Boulder.

Follow the City site use requirements listed above.

Pine Needle Road

Launch

Turn around and drop off here
DO NOT PARK
Walk to emergency access road
Return auto to landing area parking

No turnaround
No drop-off

Emergency access road

Trail

Linden Or