

INTERGOVERNMENTAL AGREEMENT REGARDING
FOREST HEALTH AND PRE-FIRE MITIGATION SERVICES
THROUGH THE COLORADO STATE FOREST SERVICE

THIS INTERGOVERNMENTAL AGREEMENT FOR FOREST HEALTH AND PRE-FIRE MITIGATION SERVICES (“Agreement”), is made and entered into on the day and year that it is fully executed by all Parties (“Effective Date”), by and between the City of Fort Collins, Colorado, a home rule municipality of the State of Colorado (“City”) and The Board of Governors of The Colorado State University System, acting by and through Colorado State University, an institution of higher education of the State of Colorado, for the use and benefit of the Colorado State Forest Service (“Forest Service”), (collectively, the “Parties”).

WHEREAS, the City owns and operates, through Fort Collins Utilities, the Michigan Ditch and associated infrastructure for the purpose of providing raw water for water supply, including for drinking water treatment; and

WHEREAS, between August and December, 2020, the Cameron Peak Fire significantly impacted federal and state lands abutting the Michigan Ditch; and

WHEREAS, the City has identified a need to develop and execute forest health treatment activities in priority areas at risk of future large scale catastrophic wildfires with regards to pre-fire mitigation thinning, fuel breaks and forest restoration; and

WHEREAS, the Colorado State Forest Service (CSFS) is willing to develop and provide access to environmental information and expertise to provide relevant data analysis and to complete certain forest fuels reduction work to mitigate the risk of future large scale wildfires; and

WHEREAS, the Parties desire to enter into an intergovernmental agreement setting forth the terms for development and access to CSFS resources regarding data analysis, forest fuels treatment and hazards mitigation; and

WHEREAS, the Parties have authority pursuant to Article XIV, Section 18 of the Colorado Constitution and Section 29-1-201, et seq., Colorado Revised Statutes, to enter into intergovernmental agreements for the purpose of providing any service or performing any function which they can perform individually.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the parties hereto agree as follows:

1. Independent Contractors. It is understood and agreed by the parties that the CSFS is an independent contractor with respect to the City and that this Agreement is not intended and shall not be construed to create an employer/employee or a joint venture relationship between the CSFS and the City. The CSFS shall be free from the direction and control of the City in the performance of the CSFS’s obligations under this Agreement, except that the City may

indicate specifications, standards requirements and deliverables for satisfaction of the CSFS's obligations under this Agreement.

2. Term. This Agreement shall be effective on the date of final signature (the "Effective Date") and shall terminate five years thereafter, unless sooner terminated as provided herein or extended by written agreement of the Parties.
3. Scope of Work. The CSFS agrees to perform the services (the "Services") generally described in the Scope of Work attached hereto and made a part hereof as Exhibit A, and as may be more specifically set forth in project work orders issued pursuant to this Agreement, under the direction and supervision of the Principal Investigator identified in Exhibit A.
4. Compensation.
 - 4.1. As described in Appendix A, the Michigan Ditch Pre-Fire Mitigation Phase 1 work will be completed using funding from: a Colorado State Forest Service Forest Restoration and Wildfire Risk Mitigation Grant (\$508,000); Congressional Directed Spending Contribution (\$500,000); and funding from the City (\$500,000). The CSFS will use City funding under this Agreement for Phase I.
 - 4.2. As compensation for the Services rendered under this Agreement, City agrees to pay the CSFS in accordance with the payment terms generally set forth in the Scope of Work and as clarified or modified by project work orders issued pursuant to this Agreement.
 - 4.3. In no event shall the total amount paid by the City through such project work orders exceed the sum of five-hundred thousand dollars (\$500,000.00).
5. Ownership of Information. At all times during and following the term of this Agreement, including any extensions or renewals hereof, all records, information and data provided to the CSFS by the City or developed during the performance of the Services under this Agreement by the CSFS and/or the City ("Project Records") shall be and remain the sole property of the City. The CSFS retains the right to use the Project Records for academic and research purposes; subject to prior written notice to and approval from the City before publication, which the City shall not unreasonably withhold. Except as provided in paragraph 7 of this Agreement, the CSFS shall provide any Project Records or return to the City upon request after termination of this Agreement.
6. Reporting Requirements.
 - 6.1. The CSFS agrees that it will make all Project Records as defined in the Scope of Work or project work orders available to City at any reasonable time, subject to the reporting requirements set forth in the Scope of Work.

- 6.2. City shall have the right to audit the records of the CSFS, to the extent such records are related to the Services performed under this Agreement, during normal business hours and upon reasonable notice to CSFS. Such audit may include the financial records of CSFS relating to the Services. CSFS shall reasonably cooperate with City in satisfying any requirement or order issued by any governmental agency or court, including but not limited to the inspection of CSFS records or facility.
7. Confidentiality.
 - 7.1. Each Party has certain documents, data, information, and methodologies that are confidential and proprietary to that Party (“Confidential Information”). During the term of this Agreement, either Party may, as the “Disclosing Party,” disclose its Confidential Information to the other Party (the “Recipient”), in writing, visually, or orally. Recipient shall receive and use the Confidential Information for the sole purpose of the performance of this Agreement, and for no other purpose (except as may be specifically authorized by the Disclosing Party, in writing). Recipient agrees not to make use of the Confidential Information except for such Services and agrees not to disclose the Confidential Information to any third party or parties without the prior written consent of the Discloser, subject to paragraph 7.4.
 - 7.2. Recipient shall use its reasonable best efforts to preserve the confidentiality of the Confidential Information (using the same or similar protections as it would as if the Confidential Information were Recipient’s own, and in any event, not less than reasonable care). Recipient shall obligate its affiliates with access to any portion of the Confidential Information to protect the proprietary nature of the Confidential Information.
 - 7.3. “Confidential Information” shall not include, and Recipient shall have no obligation to refrain from disclosing or using, information which: (i) is generally available to the public at the time of this Agreement; (ii) becomes part of the public domain or publicly known or available by publication or otherwise, not through any unauthorized act or omission of Recipient; (iii) is lawfully disclosed to the Recipient by third parties without breaching any obligation of non-use or confidentiality; (iv) has been independently developed by persons in Recipient’s employ or otherwise who have no contact with Confidential Information, as proven with written records; or (v) is required to be disclosed by law; provided that, in the event that Recipient is required to disclose Confidential Information under this paragraph 7.3, it will promptly notify the Disclosing Party, and the Disclosing Party may, at its sole discretion and expense, initiate legal action to prevent, limit or condition such disclosure.

- 7.4. With respect to paragraph 7.3, the Parties acknowledge that each is subject to the Colorado Open Records Act, C.R.S. §§ 24-72-200.1, et seq. (“CORA”). If disclosure of any Confidential Information is required pursuant to CORA, the Parties shall reasonably cooperate to review and identify any information not subject to disclosure. However, each Party shall retain the right to proceed in the manner it believes, in its sole discretion and judgment, is required to be compliant with the law with regard to any records request received by that Party.
- 7.5. Notwithstanding any other provision of this Agreement, a Party may retain one copy of the other Party’s Confidential Information in its confidential files, for the sole purpose of establishing compliance with the terms hereof.
8. Equipment. Unless otherwise provided in the Scope of Work or in a writing signed by the parties, all equipment purchased by CSFS with funds provided under this Agreement for use in connection with this Agreement shall be the property of the CSFS and shall be dedicated to providing Services under this Agreement while this Agreement is in effect.
9. Liability; Insurance. Each Party hereto agrees to be responsible for its own wrongful or negligent acts or omissions, or those of its officers, agents, or employees to the full extent allowed by law. Liability of the CSFS, and City is at all times herein strictly limited and controlled by the provisions of the Colorado Government Immunity Act, C.R.S. §§ 24-10-101, et seq. as now or hereafter amended. Nothing in this Agreement shall be construed as a waiver of the protections of said Act. As public entities of the State of Colorado, neither Party is authorized to indemnify any party, public or private, as against the claims and demands of third parties and any such indemnification provision in this Agreement shall be null and void.
10. Exclusive Warranty; Disclaimer. CSFS warrants that it will provide all deliverables under this Agreement substantially in accordance with the Scope of Work and/or written protocol provided by City, including as specified in project work orders. All other warranties, express and implied, are hereby expressly disclaimed INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. CSFS does not perform any Services under this Agreement that may be subject to FDA Regulations, e.g. GMP, cGMP, GLP, GCP work/services. Neither Party is liable for any indirect, special, incidental, consequential or punitive loss or damage of any kind, including but not limited to lost profits (regardless of whether such Party knows or should know of the possibility of such loss or damages). The liability of either Party under this Agreement shall not exceed the amount paid or payable to the CSFS under this Agreement.

11. Termination. Either Party may terminate this Agreement, without cause, upon not less than sixty (60) days written notice, given in accordance with the Notice provisions of this Agreement. Termination of this Agreement shall not relieve a Party from its obligations incurred prior to the termination date. Upon early termination of this Agreement by the City, except in the case of a material breach by CSFS, the City shall pay all costs accrued by the CSFS as of the date of termination including non-cancelable obligations for the term of this Agreement, which shall include all appointments of staff incurred prior to the effective date of the termination. The CSFS shall exert its best efforts to limit or terminate any outstanding financial commitments for which the City is liable. The CSFS shall furnish, within ninety (90) days of the effective termination, a final report of all costs incurred, and all funds received and shall reimburse the City for payments which may have been advanced in excess of total costs incurred with no further obligations to the City.

12. City Representative. The City will designate, prior to commencement of work, its project representative who shall make, within the scope of his or her authority, all necessary and proper decisions with reference to the project. CSFS shall direct all requests for contract interpretation, change orders, and other clarification or instruction to the City Representative.

13. Notices. Any notice, request, demand, consent or approval, or other communication required or permitted hereunder will be in writing and will be deemed to have been given when personally delivered or deposited in the United States mail or with an overnight courier, with proper postage and address as follows:

If to State Forest Service: Weston Toll
5060 Campus Delivery
Colorado State University
Fort Collins, CO 80523-5060
Phone: 970-491-8760
weston.toll@colostate.edu

With a Copy to: Office of the General Counsel
0006 Campus Delivery
Colorado State University
Fort Collins, CO 80523-0006
Phone: 970-491-6270
contracts@colostate.edu

If to City: Richard Thorp
City of Fort Collins Utilities
City of Fort Collins
Water Quality Services Division, Watershed

Program
P.O. Box 580
Fort Collins, CO 80522-0580

With a Copy to:

City Attorney's Office
City of Fort Collins
300 LaPorte Avenue
P.O. Box 580
Fort Collins, CO 80522-0580

14. **Binding Effect; Third Party Beneficiaries.** This writing, together with the exhibits hereto, constitutes the entire agreement between the Parties and binding upon the Parties, their officers, employees, successors, and permitted assigns, and shall inure to the benefit of the respective successors, and permitted assigns of the Parties. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. Nothing contained in this contract shall give or allow any claim or right of action whatsoever by any other third person. It is the express intention of the Parties that any such person or entity, other than the Parties, receiving services or benefits under this Agreement shall be deemed an incidental beneficiary only.
15. **Amendment.** No modification or amendment to this Agreement shall be valid unless it is made in a writing signed by the authorized representatives of the Parties.
16. **Default; Termination; Dispute Resolution.**
- 16.1. **Default.** A Party will be considered in default of its obligations under this Agreement if such Party fails to observe, to comply with, or to perform any term, condition, or covenant contained in this Agreement and such failure continues for 10 days after a non-defaulting Party gives the defaulting Party written notice thereof.
- 16.2. **Termination for Cause.** In the event of default, a non-defaulting Party, upon written notice to the defaulting Party, may terminate this Agreement as of the date specified in the notice.
- 16.3. **Dispute Resolution.** Any dispute concerning the performance of this Agreement not resolved by the designated representatives of the Parties shall be referred to superior departmental management staff designated by each Party (which, for CSFS, shall be the Vice President for University Operations, and for the City, shall be the City Manager), whose decisions shall be made within thirty (30) days after notice or such other period as the Parties may agree. Failing resolution at that level, either Party has the right to bring legal action to recover only such damages and remedies as are authorized pursuant to this Agreement, in accordance with Colorado law, and only in a court of competent jurisdiction located within the City of Fort Collins, County of Larimer, Colorado. Notwithstanding any other provision contained herein, neither Party shall be liable to the other for any indirect, consequential, incidental, exemplary (punitive) or special damages. In the event of any default or

dispute, each Party shall be solely responsible for its own attorneys' fees.

17. Appropriation. The City's financial obligations under this Agreement are contingent upon the annual appropriation, budgeting and availability of specific funds to discharge those obligations. Nothing in this Agreement shall create a payment guaranty by either Party or a debt or a multiple-fiscal year financial obligation under the Colorado Constitution or any similar provisions of the City's charter or ordinances.
18. Legal Authority. Each Party to this Agreement warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, bylaws and/or applicable law to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement and to bind it to its terms. The person(s) executing this Agreement on behalf of a Party warrant(s) that such person(s) have full authorization to execute this Agreement. This Agreement is not binding upon Colorado State CSFS, its governing board or the State of Colorado unless signed by the Associate Vice-President for Finance or his/her authorized delegate.
19. Survival of Certain Terms. Notwithstanding anything herein to the contrary, the Parties understand and agree that all terms and conditions of this Agreement and the exhibits and attachments hereto which may require continued performance, compliance or effect beyond the termination date of this Agreement shall survive such termination date.
20. Waiver. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as or construed as a waiver of any subsequent breach of the same or other provision hereof.
21. Severability. In the event that any provision of this Agreement is held unenforceable for any reason, the remaining provisions of this Agreement shall remain in full force and effect.
22. Counterparts and Facsimiles. This Agreement may be executed with any number of counterparts, each of which, when executed and delivered will constitute an original, but all such counterparts will constitute one and the same instrument.

[Signatures appear on following page]

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT THE DAY AND YEAR WRITTEN BELOW

<p>CITY:</p> <p>CITY OF FORT COLLINS, A COLORADO MUNICIPAL CORPORATION</p> <p>By: _____ Kelly Di Martino City Manager</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ Name: Title:</p> <p>APPROVED AS TO FORM</p> <p>_____ Eric Potyondy, Assistant City Attorney</p>	<p>STATE FOREST:</p> <p>BOARD OF GOVERNORS OF THE COLORADO STATE UNIVERSITY SYSTEM, acting by and through Colorado State University</p> <p>By: _____ Angela Nielsen Director, Office of Budgets</p> <p>Date: _____</p> <p>By: _____ Matthew McCombs State Forester and Director</p> <p>*APPROVED AS TO FORM:</p> <p>By: _____ Brian Anderson, Esq <i>Office of the General Counsel</i></p> <p>*Not required unless legal changes made to this document</p>
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EXHIBIT A
Scope of Work
Michigan Ditch Pre-Fire Mitigation Phase-1

Work to be completed/deliverables:

Project Summary

Michigan Ditch (“Ditch”) is critical infrastructure for the City of Fort Collins (“City”) water supply and project work will reduce the risk of future larger-scale wildfires by completing a total of approximately 150 acres of forest fuels reduction work.

The Colorado State Forest Service (“Forest Service”) will bill the City, through Fort Collins Utilities, for \$360,000.00 in calendar year 2024 and \$140,000 in calendar year 2025.

Prescription

Three prescriptions: Unit 1, Unit 2, and small (~4-acre) HIZ treatment within Unit 2 around City historic structures.

- Prescription for Unit 1 has a post-harvest target live Basal Area of 70-90 ft² per acre. Dead standing trees 6” dbh will be removed (BA 159 ft² per acre), excluding four snags per acre for wildlife (spruce & fir >10” dbh). Surface fuels target is 20-30 tons per acre, to maintain soil moisture & provide habitat whilst minimizing potential for high soil burn severity. Prescription calls for removal of live overstory fir greater than 30ft in height at risk of blowdown or declining from western balsam bark beetle.
- Prescription is designation by description, the contractor will conduct treatment based upon the following criteria by tree species.
 - Engelmann Spruce
 - Harvest and remove all dead Engelmann spruce from project area.
 - Retain live Engelmann spruce protected from windthrow, either
 - 30 foot or less total height
 - Or clumped with other live trees in a protected area
 - Sub-Alpine Fir
 - Harvest and remove from project area all merchantable (dead and live) subalpine fir greater than 30 feet in total height to meet basal area targets
 - Retain windfirm, healthy fir where applicable, painted in BLUE
 - Lodgepole Pine
 - Harvest and remove from project area all dead lodgepole pine.
 - Make an effort to retain all live lodgepole pine where operationally feasible.
 - Snags
 - Favor spruce for retaining four snags per acre
 - Exclude areas within 200 feet of the Ditch and associated infrastructure
 - Painted in YELLOW
- Prescriptions for Treatment Unit 2 (Prescription 2&3)
- Prescription 2 has a post-harvest target live Basal Area of 70-90 ft² per acre. All standing dead trees will be removed (BA = 34 ft² per acre), excluding four snags per acre for wildlife (spruce & fir > 10” dbh). Additional removal of live trees will target fir (live BA = 107 ft² per acre) to meet target basal area.

- Engelmann Spruce
 - Harvest and remove from project area all dead Engelmann spruce.
 - Retain live Engelmann spruce protected from windthrow, either
 - 30 foot or less total height
 - Or clumped with other live trees in a protected area
 - Favor spruce for retaining four snags per acre; exclude areas within 200 feet of the Ditch and associated infrastructure
- Sub-Alpine Fir
 - Harvest and remove from project area all merchantable (dead and live) subalpine fir greater than 30 feet in total height to meet basal area targets
 - Thin live young fir stands to meet additional basal area targets
 - Retain windfirm, healthy fir where applicable, painted in BLUE
- Lodgepole Pine
 - Harvest and remove from project area all dead lodgepole pine.
 - Make an effort to retain all live lodgepole pine where operationally feasible.
- Snags
 - Favor spruce for retaining four snags per acre
 - Exclude areas within 200 feet of the Ditch and associated infrastructure
 - Painted in YELLOW
- Within Unit 2 there is an approximately four-acre area that will follow Prescription 3, which reduces fuels surrounding City structures. Guidance follows standards in the 2021 Forest Service HIZ guide. Contractor will be responsible for product removal in Zone 3. In Zone 3 (30 to \geq 150ft uphill & parallel to structures, 30 to \geq 250 ft on downslope of structures) crowns will be thinned to average spacing of 10ft. Retention will favor lodgepole pine > Engelmann spruce > subalpine fir. All dead trees and mistletoe or broom rust infected trees will be cut. Slash piles will be built where operationally feasible.
- Prescriptions for Slash (All Units)
 - For tethered harvest, lop and scatter slash treatment will be employed. Intermediate and co-dominant fir will be cut to create slash mats for minimizing erosion.
 - Helicopter treatment will employ whole tree harvest. Trees will be flown to landing sites along the American Lakes Road for processing, and slash piles built with non-merchantable material. The Forest Service will conduct winter burning operations at a later date.
- Utilization & Slash Management Plan
 - 30-35 CCF sawtimber per acre is anticipated from the treatment area and will be sold to relevant local mills where applicable. Spruce and fir POL are less desirable, so primary markets will be sawtimber and firewood.

Overall Budget Details

- Award (2024): \$508,000 Forest Health and Wildfire Risk Mitigation Grant
- CSFS Congressionally Directed Spending Contribution (2024): \$500,000
- City of Fort Collins under the *Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services Through the Colorado State First Service* (2024) (up to \$500,000)

- Approved budget items include contractual costs to complete the fuels reductions work, personnel/labor, supplies/materials, and indirect costs.
- Assessment & Further Planning
 - The Forest Service will assess the entire project area throughout the treatment process and will adjust as necessary to maximize impact of funding. At completion of tethered treatment, the State Forest Field Office will provide an in-depth plan for further treatment if funding is available

Any proposed changes during this assessment period will be provided to the Forest Service and City Program Managers.

Milestone dates:

- Treatment of the project area will begin in summer of 2024. Initial treatment will be tethered logging of approximately 100 acres of high priority treatment area. Total acres treated in 2024 will depend on operational limitations of tethered harvest machinery.
- In fall 2024, the CSFS will assess connectivity of treated areas and targeted areas, then prioritize remaining areas to apply treatment.
- In winter/spring of 2025, the CSFS will bid and contract the remaining project funds for treating high priority areas through helicopter logging. The CSFS will administer the project, and ensure that non-commercial material at the landing sites along American Lakes Road are piled w/in contract specifications.
- In Fall of 2025, the CSFS will inspect the treatment area for contract closeout.
- In winter of 2026, the CSFS personnel will burn slash piles from the helicopter treatment.
- In Spring of 2026, the CSFS will seed burned areas with native grass mix.
- In Summer of 2026 the City will prepare a report with: acres treated, a treatment map, merchantable volume removed, non-merchantable volume burned, and before and after aerial drone imagery.

Project Completion deadline: April 1, 2028

Standards or Guidelines: Best Management Practices must be followed for all forest management/fuels mitigation work completed under this award. Refer to the handbook Forestry Best Management Practices to Protect Water Quality in Colorado for more information. Additional helpful resources include:

- The Home Ignition Zone
- CSFS guidelines for Defensible Space and Fuelbreaks
- CSFS guidelines for Pruning Cuts and Pruning Evergreens

All work completed under this award must be certified as meeting minimum CSFS standards prior to any reimbursement being made to the award recipient. CSFS Grant Reimbursement Request Package will be used to both request reimbursement and to certify that work has been completed to minimum standards.