

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 ("CSFS"), (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 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 have previously entered into agreements related to such work, including: (1) *Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services Through the Colorado State Forest Service*, dated August 22, 2022; and (2) *Intergovernmental Agreement Regarding Forest Health and Pre-Fire Mitigation Services Through the Colorado State Forest Service*, dated October 16, 2024; and

WHEREAS, the City and the State of Colorado have entered into a grant agreement related to such work ("State Grant Agreement"), a copy of which is attached as Appendix A; and

WHEREAS, the Parties desire to enter into this new 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 on February 1, 2028, unless sooner terminated as provided herein or extended by written agreement of the Parties or extended pursuant to this paragraph. The Parties agree that the term of this Agreement shall be extended automatically if the City obtains an Option Letter per Section 2.A. of the State Grant Agreement, with the extension of the term of this Agreement being the same as the extension provided in the Option Letter.
3. **State Grant Agreement.** The Parties agree that the CSFS shall be deemed a subgrantee under the State Grant Agreement. The CSFS, in its capacity as a subgrantee under the State Grant Agreement, must follow the terms and conditions of the State Grant Agreement, including its Section 8 – Confidential Information – State Records.
4. **Scope of Work.** The CSFS agrees to perform the services (the "Services") described in the Statement of Work attached as Exhibit A of the State Grant Agreement and as may be more specifically set forth in project work orders issued pursuant to this Agreement ("Statement of Work").
5. **Budget and Compensation.**
 - 5.1. As described in the Statement of Work, the work completed by the CSFS will be funded:
 - (a) from the Colorado Department of Natural Resources ("CO DNR") through the Colorado Strategic Wildfire Program (\$1,000,000), which was awarded to the City through the State Grant Agreement; and
 - (b) from the City (\$316,682), which was the City's matching funds under the State Grant Agreement.
 - 5.2. As compensation for the Services rendered under this Agreement, City agrees to reimburse the CSFS for "Allowable Costs," which shall mean those costs that are: (1) necessary and proper for the Services described in the Statement of Work, and (2) in alignment with eligible expenses as described in the Colorado Strategic Wildfire Action Program Landscape Resilience Investment Policies ("Policies"), attached as Appendix B.
 - 5.3. In no event shall the total amount paid by the City through such project work orders exceed the sum of one million three hundred sixteen thousand six hundred and eighty-two dollars (\$1,316,682.00), being the sum of the funds identified in paragraph 5.1.

- 5.4. The CSFS shall notify the City for any proposed adjustment to a line item of the budget presented in the Statement of Work. Any proposed change to the budget shall first be provided to and approved by the CO DNR. An approved change for a line item of the budget will be by written agreement of the Parties, such an email from each Party approving the change.
6. Reimbursement
 - 6.1. The CSFS shall request from the City reimbursement for incurred and paid Allowable Costs for Services rendered under this Agreement each quarter.
 - 6.2. All Allowable Costs for which the CSFS seeks reimbursement from the City shall be supported by documentation that at minimum meets documentation requirements of the Policies.
 - 6.3. The City will not pay the CSFS for any expenses incurred and paid by the CSFS that are not Allowable Costs, including "Ineligible Expenses," which, per the CO DNR, include food and beverages; hardware, software, technology, office supplies, printing; marketing and educational materials; maintenance and equipment repair; equipment purchases; and construction and infrastructure.
7. 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.
8. Reporting Requirements.
 - 8.1. The CSFS shall provide information required by the City for quarterly reporting to the CO DNR. Quarterly reporting includes all required information for Colorado Strategic Wildfire Action Program Landscape Resilience Investment Grants per CO DNR at <https://forms.gle/gWKTBug6Wp1NqQaW8>. The CSFS shall provide this information by third day of month following each fiscal quarter through at least March 2028. The CSFS will work with the City in completing final reporting in accordance with the CO DNR's requirements within 45 days of project completion or expiration of the State Grant Agreement.
 - 8.2. The CSFS agrees that it will make all Project Records as defined in the Statement of Work or project work orders available to City at any reasonable time, subject to the reporting requirements set forth by the CO DNR.
 - 8.3. The 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. The CSFS shall reasonably cooperate with the 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.

9. Confidentiality.

- 9.1. 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 9.4.
- 9.2. 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.
- 9.3. "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 9.3, 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.
- 9.4. With respect to paragraph 9.3, 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.

- 9.5. 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.
10. **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 (the "GIA"). Pursuant to Section 10 – Insurance of the State Grant Agreement, each Party shall ensure that any subcontractors maintain all insurance customary for the completion of the work done by that subcontractor as required by the State of Colorado or the GIA. Nothing in this Agreement shall be construed as a waiver of the protections of the GIA. 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.
11. **Exclusive Warranty; Disclaimer.** CSFS warrants that it will provide all deliverables under this Agreement substantially in accordance with the Statement of Work and as may be more specifically set forth in project work orders issued pursuant to this Agreement. 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 United States Food and Drug Administration regulations, e.g. Good Manufacturing Practice (GMP), Current Good Manufacturing Practice (cGMP), Good Laboratory Practice (GLP), Good Clinical Practice (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.
12. **Termination.** In the event of termination under this paragraph 12, the CSFS will be reimbursed for all Allowable Costs incurred and paid by the CSFS that align with required supporting documentation per paragraph 5. The CSFS shall exert its best efforts to limit or terminate any outstanding financial commitment for which the City is liable.
- 12.1. **Termination for Convenience.** This Agreement may be terminated for convenience with sixty (60) days written notice, given in accordance with the Notice provisions of this Agreement. The written notification must set forth reasons for the termination and the effective date.
- 12.2. **Termination for Withdrawal, Reduction or Limitation of Funding.** In the event the City does not receive the CO DNR funding, or the CO DNR funds are withdrawn, reduced or limited in any way after the effective date of this Agreement, the City may summarily terminate or suspend this Agreement as to the CO DNR funds not received, reduced or limited, notwithstanding any other termination provision of this Agreement. If the level of funding is reduced to such an extent that the City deems that the continuation

of the Services to be provided by CSFS is no longer in the best interest of the public, the City may summarily terminate this Agreement in whole or part notwithstanding any other termination provisions of this Agreement. Termination under this section shall be effective thirty (30) days upon receipt of written notice by the CSFS.

12.3. Continuing Obligations. When this Agreement is terminated the CSFS remains responsible for the responsibilities of the Reporting Requirements provisions of this Agreement.

13. 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. The CSFS shall direct all requests for contract interpretation, change orders, and other clarification or instruction to the City representative.
14. 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 CSFS:

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

15. **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.
16. **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.
17. **Default; Termination; Dispute Resolution.**
 - 17.1. **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.
 - 17.2. **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.
 - 17.3. **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 the 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.
18. **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.
19. **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 the CSFS, its governing board or the State of Colorado unless signed by the Associate Vice-President for Finance or his/her authorized delegate.

20. **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.
21. **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.
22. **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.
23. **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: _____ Jeni Arndt Mayor, City of Fort Collins</p> <p>Date: _____</p> <p>ATTEST:</p> <p>_____ City Clerk</p> <p>APPROVED AS TO FORM</p> <p>_____ Eric Potyondy, Senior 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: <u>Angela Nielsen</u> <small>Angela Nielsen (Apr 2, 2025 16:46 MDT)</small> Angela Nielsen Director, Office of Budgets</p> <p>Date: <u>Apr 2, 2025</u></p> <p>By: <u>Christina Burri</u> <small>Christina Burri (Apr 2, 2025 15:57 MDT)</small> Christina Burri Deputy State Forester</p> <p>*APPROVED AS TO FORM:</p> <p>By: <u>Brian Anderson</u> <small>Brian Anderson (Apr 2, 2025 14:19 MDT)</small> Brian Anderson, Esq Office of the General Counsel</p> <p>*Not required unless legal changes made to this document</p>
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APPENDIX A
Intergovernmental Agreement among State of Colorado and City of Fort Collins

**GRANT AWARD LETTER
SUMMARY OF GRANT AWARD TERMS AND CONDITIONS**

State Agency Colorado Department of Natural Resources Executive Director's Office Colorado Strategic Wildfire Program (COSWAP) 1313 Sherman Street Denver, Colorado 80203	Grant Agreement Number: CORE: CTGG' PAAA 2025*3540 CMS: 196764
Grantee City of Fort Collins	
Grant Issuance Date The Effective Date	
Grant Expiration Date February 1, 2028	Grant Amount Total for all State Fiscal Years: \$1,000,000.00
Grant Authority This grant is authorized by section 24-33-117, C.R.S..	Local Match Amount Total for all State Fiscal Years: \$316,682.00

Grant Purpose COSWAP's Landscape Resilience Grant program facilitates the planning and implementation of landscape scale, cross boundary wildfire mitigation to protect life, property, and infrastructure.
Exhibits and Order of Precedence The following Exhibits and attachments are included with this Grant: <ol style="list-style-type: none"> 1. Exhibit A, Statement of Work. 2. Exhibit B, Budget. 3. Exhibit C, PII Certification 4. Exhibit D, Sample Option Letter <p>In the event of a conflict or inconsistency between this Grant and any Exhibit or attachment, such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:</p> <ol style="list-style-type: none"> 1. Colorado Special Provisions in §17 of the main body of this Grant 2. The provisions of the other sections of the main body of this Grant. 3. Exhibit A, Statement of Work. 4. Exhibit C, PII Certification 5. Exhibit D, Sample Option Letter 6. Exhibit B, Budget.

SIGNATURE PAGE

THE SIGNATORIES LISTED BELOW AUTHORIZE THIS GRANT

<p>STATE OF COLORADO Jared S. Polis, Governor Dan Gibbs, Executive Director</p> <p>By: _____</p> <p>Date: _____</p>	<p>In accordance with §24-30-202 C.R.S., this Grant is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p>By: _____</p> <p>Date: _____</p>
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1. GRANT

As of the Grant Issuance Date, the State Agency shown on the first page of this Grant Award Letter (the “State”) hereby obligates and awards to Grantee shown on the first page of this Grant Award Letter (the “Grantee”) an award of Grant Funds in the amounts shown on the first page of this Grant Award Letter. By accepting the Grant Funds provided under this Grant Award Letter, Grantee agrees to comply with the terms and conditions of this Grant Award Letter and requirements and provisions of all Exhibits to this Grant Award Letter.

2. TERM

A. Initial Grant Term and Extension

The Parties’ respective performances under this Grant Award Letter shall commence on the Grant Issuance Date and shall terminate on the Grant Expiration Date unless sooner terminated or further extended in accordance with the terms of this Grant Award Letter. Upon request of Grantee, the State may, in its sole discretion, extend the term of this Grant Award Letter by providing Grantee with an Option Letter in a form substantially similar to Exhibit D showing the new Grant Expiration Date.

B. Early Termination in the Public Interest

The State is entering into this Grant Award Letter to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Grant Award Letter ceases to further the public interest of the State or if State or other funds used for this Grant Award Letter are not appropriated, or otherwise become unavailable to fund this Grant Award Letter, the State, in its discretion, may terminate this Grant Award Letter in whole or in part by providing written notice to Grantee that includes, to the extent practicable, the public interest justification for the termination. If the State terminates this Grant Award Letter in the public interest, the State shall pay Grantee an amount equal to the percentage of the total reimbursement payable under this Grant Award Letter that corresponds to the percentage of Work satisfactorily completed, as determined by the State, less payments previously made. Additionally, the State, in its discretion, may reimburse Grantee for a portion of actual, out-of-pocket expenses not otherwise reimbursed under this Grant Award Letter that are incurred by Grantee and are directly attributable to the uncompleted portion of Grantee’s obligations, provided that the sum of any and all reimbursements shall not exceed the maximum amount payable to Grantee hereunder. This subsection shall not apply to a termination of this Grant Award Letter by the State for breach by Grantee.

3. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **“Budget”** means the budget for the Work described in Exhibit B.
- B. **“Business Day”** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- C. **“CJI”** means criminal justice information collected by criminal justice agencies needed for the performance of their authorized functions, including, without limitation, all information defined as criminal justice information by the U.S. Department of Justice, Federal Bureau

of Investigation, Criminal Justice Information Services Security Policy, as amended and all Criminal Justice Records as defined under §24-72-302 C.R.S.

- D. **“CORA”** means the Colorado Open Records Act, §§24-72-200.1 *et seq.*, C.R.S.
- E. **“Grant Award Letter”** means this letter which offers Grant Funds to Grantee, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future updates thereto.
- F. **“Grant Funds”** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Grant Award Letter.
- G. **“Grant Expiration Date”** means the Grant Expiration Date shown on the first page of this Grant Award Letter.
- H. **“Grant Issuance Date”** means the Grant Issuance Date shown on the first page of this Grant Award Letter.
- I. **“Exhibits”** exhibits and attachments included with this Grant as shown on the first page of this Grant
- J. **“Extension Term”** means the period of time by which the Grant Expiration Date is extended by the State through delivery of an updated Grant Award Letter
- K. **“Goods”** means any movable material acquired, produced, or delivered by Grantee as set forth in this Grant Award Letter and shall include any movable material acquired, produced, or delivered by Grantee in connection with the Services.
- L. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- M. **“Initial Term”** means the time period between the Grant Issuance Date and the Grant Expiration Date.
- N. **“Matching Funds”** means the funds provided Grantee as a match required to receive the Grant Funds.
- O. **“Party”** means the State or Grantee, and **“Parties”** means both the State and Grantee.
- P. **“PCI”** means payment card information including any data related to credit card holders’ names, credit card numbers, or the other credit card information as may be protected by state or federal law.
- Q. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §§24-72-501 and 24-73-101 C.R.S. “PII” shall also mean “personal identifying information” as set forth at § 24-74-102, *et. seq.*, C.R.S.
- R. **“PHI”** means any protected health information, including, without limitation any information whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an

individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI includes, but is not limited to, any information defined as Individually Identifiable Health Information by the federal Health Insurance Portability and Accountability Act.

- S. **“Recipient”** means the State Agency shown on the first page of this Grant Award Letter, for the purposes of the Award.
- T. **“Services”** means the services to be performed by Grantee as set forth in this Grant Award Letter, and shall include any services to be rendered by Grantee in connection with the Goods.
- U. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII, PHI, PCI, Tax Information, CJI, and State personnel records not subject to disclosure under CORA. State Confidential Information shall not include information or data concerning individuals that is not deemed confidential but nevertheless belongs to the State, which has been communicated, furnished, or disclosed by the State to Contractor which (i) is subject to disclosure pursuant to CORA; (ii) is already known to Contractor without restrictions at the time of its disclosure to Contractor; (iii) is or subsequently becomes publicly available without breach of any obligation owed by Contractor to the State; (iv) is disclosed to Contractor, without confidentiality obligations, by a third party who has the right to disclose such information; or (v) was independently developed without reliance on any State Confidential Information.
- V. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a) C.R.S.
- W. **“State Fiscal Year”** means a 12 month period beginning on July 1 of each calendar year and ending on June 30 of the following calendar year. If a single calendar year follows the term, then it means the State Fiscal Year ending in that calendar year.
- X. **“State Records”** means any and all State data, information, and records, regardless of physical form, including, but not limited to, information subject to disclosure under CORA.
- Y. **“Subcontractor”** means third-parties, if any, engaged by Grantee to aid in performance of the Work. “Subcontractor” also includes sub-grantees.
- Z. **“Work”** means the delivery of the Goods and performance of the Services described in this Grant Award Letter.
- AA. **“Work Product”** means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Grant Issuance Date that is used, without modification, in the performance of the Work.

Any other term used in this Grant Award Letter that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

4. STATEMENT OF WORK

Grantee shall complete the Work as described in this Grant Award Letter and in accordance with the provisions of Exhibit A. The State shall have no liability to compensate or reimburse Grantee for the delivery of any goods or the performance of any services that are not specifically set forth in this Grant Award Letter.

5. PAYMENTS TO GRANTEE

A. Maximum Amount

Payments to Grantee are limited to the unpaid, obligated balance of the Grant Funds. Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available. The State shall not be liable to pay or reimburse Grantee for any Work performed or expense incurred before the Grant Issuance Date or after the Grant Expiration Date; provided, however, that Work performed and expenses incurred by Grantee before the Grant Issuance Date that are chargeable to an active Federal Award may be submitted for reimbursement as permitted by the terms of the Federal Award.

B. Matching Funds.

Grantee shall provide the Local Match Amount shown on the first page of this Grant Award Letter and described in Exhibit A (the "Local Match Amount"). Grantee's obligation to pay all or part of any matching funds, whether direct or contingent, only extends to funds duly and lawfully appropriated for the purpose of this Agreement by the authorized representatives of Grantee and paid into Grantee's treasury or bank account. Grantee shall appropriate and allocate all Local Match Amounts to the purpose of this Grant Award Letter each fiscal year prior to accepting any Grant Funds for that fiscal year. Grantee does not by accepting this Grant Award Letter irrevocably pledge present cash reserves for payments in future fiscal years, and this Grant Award Letter is not intended to create a multiple-fiscal year debt of Grantee. Grantee shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by Grantee's laws or policies..

D. Reimbursement of Grantee Costs

Upon prior written approval, the State shall reimburse Grantee's allowable costs, not exceeding the maximum total amount described in this Grant Award Letter for all allowable costs described in this Grant Award Letter and shown in the Budget, except that Grantee may adjust the amounts between each line item of the Budget without formal modification to this Agreement as long as the Grantee provides notice to the State of the change, the change does not modify the total maximum amount of this Grant Award Letter or the maximum amount for any state fiscal year, and the change does not modify any requirements of the Work. The State shall only reimburse allowable costs if those costs are: (i) reasonable and necessary to accomplish the Work and for the Goods and Services provided; and (ii) equal to the actual net cost to Grantee (i.e. the price paid minus any items of value received by Grantee that reduce the cost actually incurred).

E. Close-Out.

Grantee shall close out this Grant within 45 days after the Grant Expiration Date. To complete close out, Grantee shall submit to the State all deliverables (including documentation) as defined in this Grant Award Letter and Grantee's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete.

F. Grant Funding Change- State's Option

The State, at its discretion, shall have the option to increase or decrease the funding provided under the same terms specified herein. In order to exercise this option, the State shall provide written notice to Contractor in a form substantially equivalent to the Sample Option Letter attached to this Grant Award Letter.

6. REPORTING - NOTIFICATION

A. Performance and Final Status

Grantee shall submit all financial, performance and other reports to the State no later than the end of the close out described in §5.E, containing an evaluation and review of Grantee's performance and the final status of Grantee's obligations hereunder.

B. Violations Reporting

Grantee shall disclose, in a timely manner, in writing to the State, all violations of State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. The State Agency may impose any penalties for noncompliance allowed under 2 CFR Part 180 and 31 U.S.C. 3321, which may include, without limitation, suspension or debarment.

7. GRANTEE RECORDS

A. Maintenance and Inspection

Grantee shall make, keep, and maintain, all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to this Grant for a period of three years following the completion of the close out of this Grant. Grantee shall permit the State to audit, inspect, examine, excerpt, copy and transcribe all such records during normal business hours at Grantee's office or place of business, unless the State determines that an audit or inspection is required without notice at a different time to protect the interests of the State.

B. Monitoring

The State will monitor Grantee's performance of its obligations under this Grant Award Letter using procedures as determined by the State. The State shall have the right, in its sole discretion, to change its monitoring procedures and requirements at any time during the term of this Agreement. The State shall monitor Grantee's performance in a manner that does not unduly interfere with Grantee's performance of the Work.

C. Final Audit Report

Grantee shall promptly submit to the State a copy of any final audit report of an audit performed on Grantee's records that relates to or affects this Grant or the Work, whether the audit is conducted by Grantee or a third party.

8. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Grantee shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Grantee for the sole and exclusive benefit of the State, unless those State Records are otherwise publically available at the time of disclosure or are subject to disclosure by Grantee under CORA. Grantee shall not, without prior written approval of the State, use for Grantee's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Grant Award Letter. Grantee shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. If Grantee or any of its Subcontractors will or may receive the following types of data, Grantee or its Subcontractors shall provide for the security of such data according to the following: (i) the most recently promulgated IRS Publication 1075 for all Tax Information and in accordance with the Safeguarding Requirements for Federal Tax Information attached to this Grant as an Exhibit, if applicable, (ii) the most recently updated PCI Data Security Standard from the PCI Security Standards Council for all PCI, (iii) the most recently issued version of the U.S. Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Services Security Policy for all CJI, and (iv) the federal Health Insurance Portability and Accountability Act for all PHI and the HIPAA Business Associate Agreement attached to this Grant, if applicable. Grantee shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Grantee may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Grant Award Letter. Grantee shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Grant, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Grantee shall provide copies of those signed nondisclosure restrictions to the State upon request.

C. Use, Security, and Retention

Grantee shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Grantee shall provide the State with access, subject to Grantee's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Grant, Grantee shall return State Records provided to Grantee or destroy such State Records and certify to the State that it has done so, as directed by the State. If Grantee is prevented by law or regulation from returning or destroying State Confidential Information, Grantee warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Grantee becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law

enforcement, as determined by the State. After an Incident, Grantee shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

E. Safeguarding PII

If Grantee or any of its Subcontractors will or may receive PII under this Agreement, Grantee shall provide for the security of such PII, in a manner and form acceptable to the State, including, without limitation, State non-disclosure requirements, use of appropriate technology, security practices, computer access security, data access security, data storage encryption, data transmission encryption, security inspections, and audits. Grantee shall be a "Third-Party Service Provider" as defined in §24-73-103(1)(i), C.R.S. and shall maintain security procedures and practices consistent with §§24-73-101 *et seq.*, C.R.S. In addition, as set forth in § 24-74-102, *et. seq.*, C.R.S., Contractor, including, but not limited to, Contractor's employees, agents and Subcontractors, agrees not to share any PII with any third parties for the purpose of investigating for, participating in, cooperating with, or assisting with Federal immigration enforcement. If Contractor is given direct access to any State databases containing PII, Contractor shall execute, on behalf of itself and its employees, the certification attached hereto as Exhibit __ on an annual basis Contractor's duty and obligation to certify as set forth in Exhibit __ shall continue as long as Contractor has direct access to any State databases containing PII. If Contractor uses any Subcontractors to perform services requiring direct access to State databases containing PII, the Contractor shall require such Subcontractors to execute and deliver the certification to the State on an annual basis, so long as the Subcontractor has access to State databases containing PII.

9. CONFLICTS OF INTEREST

Grantee shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Grantee under this Grant. Grantee acknowledges that, with respect to this Grant, even the appearance of a conflict of interest shall be harmful to the State's interests and absent the State's prior written approval, Grantee shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Grantee's obligations under this Grant. If a conflict or the appearance of a conflict arises, or if Grantee is uncertain whether a conflict or the appearance of a conflict has arisen, Grantee shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Grantee acknowledges that all State employees are subject to the ethical principles described in §24-18-105, C.R.S. Grantee further acknowledges that State employees may be subject to the requirements of §24-18-105, C.R.S. with regard to this Grant.

10. INSURANCE

Grantee shall maintain at all times during the term of this Grant such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA"). Grantee shall ensure that any Subcontractors maintain all insurance customary for the completion of the Work done by that Subcontractor and as required by the State or the GIA.

11. REMEDIES

In addition to any remedies available under any exhibit to this Grant Award Letter, if Grantee fails to comply with any term or condition of this Grant, the State may terminate some or all of

this Grant and require Grantee to repay any or all Grant funds to the State in the State's sole discretion. The State may also terminate this Grant Award Letter at any time if the State has determined, in its sole discretion, that Grantee has ceased performing the Work without intent to resume performance, prior to the completion of the Work.

12. DISPUTE RESOLUTION

Except as herein specifically provided, disputes concerning the performance of this Grant that cannot be resolved by the designated Party representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager or official designated by Grantee for resolution.

13. NOTICES AND REPRESENTATIVES

Each Party shall identify an individual to be the principal representative of the designating Party and shall provide this information to the other Party. All notices required or permitted to be given under this Grant Award Letter shall be in writing, and shall be delivered either in hard copy or by email to the representative of the other Party. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §13.

14. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

Grantee hereby grants to the State a perpetual, irrevocable, non-exclusive, royalty free license, with the right to sublicense, to make, use, reproduce, distribute, perform, display, create derivatives of and otherwise exploit all intellectual property created by Grantee or any Subcontractors or Subgrantees and paid for with Grant Funds provided by the State pursuant to this Grant.

15. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

16. GENERAL PROVISIONS

A. Assignment

Grantee's rights and obligations under this Grant are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Grantee's rights and obligations approved by the State shall be subject to the provisions of this Grant Award Letter.

B. Captions and References

The captions and headings in this Grant Award Letter are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Grant Award Letter to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Grant Award Letter represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Grant Award Letter.

D. Modification

The State may modify the terms and conditions of this Grant by issuance of an updated Grant Award Letter, which shall be effective if Grantee accepts Grant Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Grant in a formal amendment to this Grant, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority.

Any reference in this Grant Award Letter to a statute, regulation, State Fiscal Rule, fiscal policy or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Grant Issuance Date. Grantee shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this agreement using a digital signature in accordance with the Colorado State Controller Contract, Grant and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Contract by reference.

G. Severability

The invalidity or unenforceability of any provision of this Grant Award Letter shall not affect the validity or enforceability of any other provision of this Grant Award Letter, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Grant in accordance with the intent of the Grant.

H. Survival of Certain Grant Award Letter Terms

Any provision of this Grant Award Letter that imposes an obligation on a Party after termination or expiration of the Grant shall survive the termination or expiration of the Grant and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Grant Award Letter does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Grant are incidental to the Grant, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Grant Award Letter, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Accessibility

- i. Contractor shall comply with and the Work Product provided under this Contract shall be in compliance with all applicable provisions of §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Contractor shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Contractor's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Contractor's Work Product and software is in compliance with §§24-85-101, *et seq.*, C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

17. COLORADO SPECIAL PROVISIONS (Colorado Fiscal Rule 3-3)

A. STATUTORY APPROVAL. §24-30-202(1) C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5) C.R.S.

Financial obligations of the State payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the Parties's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR.

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability, or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its**

agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

**I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST.
§§24-18-201 and 24-50-507 C.R.S.**

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

EXHIBIT A, STATEMENT OF WORK

PROPOSAL

GRANTEE and FISCAL AGENT (if different)

City of Fort Collins

PRIMARY CONTACT

Richard Thorp, Watershed Program Manager

ADDRESS

PO Box 580
Fort Collins, CO 80522

PHONE

970-416-4327

EMAIL

rthorp@fcgov.com

PROJECT NAME

Michigan Ditch Pre-Fire Mitigation Phase 2

GRANT AMOUNT

Amount shall not exceed \$1,000,000

FUND EXPENDITURE

2/1/2028 or upon completion of the project.

INTRODUCTION AND BACKGROUND

The Colorado Strategic Wildfire Action Program (COSWAP) Landscape Resilience Investment grant was created to facilitate the planning and implementation of landscape scale, cross boundary wildfire mitigation to protect life, property and infrastructure. For a special release of the Landscape Resilience Investment program, COSWAP has partnered with the Colorado Water Conservation Board through the Wildfire Ready Watersheds program to support landscape scale wildfire mitigation and forest health projects focused on improving watershed health and/or protecting critical water infrastructure.

TREATMENT OBJECTIVES

1. Reduced risk from future large-scale wildfires to water supply and water supply infrastructure
2. Improvement of forest health and release of advanced regeneration
3. Improvement of recreational opportunities and wildlife habitat

BRIEF DESCRIPTION OF PROJECT

Michigan Ditch is a critical element of the City's drinking water supply infrastructure. The proposed project would reduce risks of damage to this infrastructure from future larger-scale wildfires and help maintain the availability and quality of the City's raw water supply. Funding for this project will be used to continue targeted forest treatments to protect Michigan Ditch and help meet broader landscape

level goals identified within the Poudre Water Supply Infrastructure Wildfire Ready Action Plan (WRAP).

SCOPE OF WORK

The Phase 2 Project area is located within the Colorado State Forest State Park, southwest of Cameron Pass.

Treatment 1 prescription: Focuses on the removal of 15-30 acres of dead trees/surface fuels near the ditch in spruce bark beetle impacted forest with post-harvest target live basal area (BA) of 70-90 ft²/acre. Most standing dead trees will be removed (BA 102ft²/acre), excluding 2 snags/acre for wildlife (spruce & fir >10" diameter breast height). Surface fuels will be reduced to 20-30 tons/acre, which will lower extreme fire behavior potential and post-fire erosion from high soil burn severity. Removal of live overstory fir greater than 30ft in height at risk of blowdown or declining from western balsam bark beetle. Retains all live lodgepole & aspen and favors spruce over fir.

Helicopter treatment will be used with whole trees harvested. Merchantable material will be sold as a "deck sale" and hauled to nearby wood processing facilities with proceeds going to the Colorado State Land Board. Slash piles will be built with any non-merchantable material and Colorado State Forest Service (CSFS) will conduct winter burning operations.

Treatment 2 prescription: Focuses on the creation of a firebreak through thinning and expanding an existing treeless wetland area. The planned firebreak connects to rocky alpine areas to the north and south of Hwy 14 and has the following prescriptions:

1. Forest thinning (80-125 acres) will reduce canopy cover and density by spacing mature and established trees to approximately 10' between tree crowns and up to 30' on steeper slopes. Small, isolated groups of trees may be retained to improve forest aesthetics. In extremely dense pockets of less mature subalpine fir, the retained canopy will consist of small "islands" of trees. Subalpine fir grows in dense clumps and thinning to a 10' crown spacing may cause mortality and decrease overall moisture retention in the stand. On machine operable slopes, merchantable material will be hauled to nearby wood processing facilities. On steeper slopes, and areas with non-merchantable material woody biomass, harvested trees will either be burned or chipped. For any slash piles created, CSFS will conduct winter burning operations.
2. The wetland enhancement (20-25 acres) identifies low lying areas near the Michigan River where trees have "encroached" in the absence of beaver activity. Prescription calls for removal of most trees, and the creation of small islands of trees in higher elevation areas of the wetland. Tree removal will serve to raise the water table, encouraging establishment of wetland vegetation in place of trees which can serve as a natural firebreak. Post-treatment, CSFS will plant willow for wildlife habitat. It is anticipated that additional pre-fire mitigation projects may be identified through development of the Poudre Water Supply Infrastructure WRAP that could further improve the health of this wetland and reduce the risk of future wildfires to this infrastructure and water supply.

Acreage: Total acres treated will be determined by bid prices. Price per acre and total acreage estimates are:

1. helicopter \$15,000-\$25,000/acre (15-30 acres)
2. thinning/wetland enhancement \$4,000-\$6,000/acre (100-150 acres)

Implementation: CSFS will plan, contract and administer work, with the City and CPW providing financial and logistical support.

Measures of success: Reduction of potential surface fuels, hazard trees mitigated, reduced risk of crown fire, acres treated, forest products supplied, defensible space created for fire suppression, increased tree species diversity.

BUDGET AND NARRATIVE

Total Proposal Budget	Treatment 1	Treatment 2	In-kind Match	Cash Match	COSWAP Total Ask
Personnel (maximum 20% of COSWAP Share)	\$ -		\$ -	\$ 191,200	\$ -
Project Implementation (minimum 70% of COSWAP Share)	\$ 245,000	\$ 750,000	\$ -		\$ 995,000
Indirect Costs (maximum 10% of COSWAP Share)	\$ 5,000		\$ -	\$ 125,482	\$ 5,000
Total	\$ 250,000	\$ 750,000	\$ -	\$ 316,682	\$ 1,000,000

TOTAL project Costs \$ 1,316,682

TREATMENT 1 Prescription Budget					
Total number of acres to be treated via helicopter	Range \$/acre	Median \$/acre	# of acres to be treated with COSWAP funds	COSWAP \$ amount at Median \$/acre	Future treated \$ amount at high range estimate \$/acre (based on available FY25 CDS funds and/or CSFS FY25/26 grant funds and/or City of Fort Collins funds)
30	\$15k to \$25k	\$ 20,000	12.25	\$ 245,000	\$ 443,750

TREATMENT 2 Prescription Budget					
Total number of acres to be treated	Range \$/acre	Median \$/acre	# of acres to be treated with COSWAP funds	COSWAP \$ amount at Median \$/acre	
150	\$4k to \$6k	\$ 5,000	150	\$ 750,000	

City of Fort Collins Personnel Costs					
Hourly Rate (CSFS service rate)		Estimated TOTAL direct hours for Colorado State Forest Service personnel	Colorado State Forest Service TOTAL Direct	Amount for direct Colorado State Forest Service personnel costs	City of Fort Collins
\$ 93		2056	\$ 191,200	\$ 191,200	

NOTE: Colorado State Forest Service and City of Fort Collins are parties in a Memorandum of Understanding that includes a cost-sharing agreement. The City of Fort Collins is providing 10% in support of indirect costs, which is 10% applied to TOTAL Direct Costs, which accounts for (1) \$93 per hour direct cost and (2) \$93 per hour direct personnel time as Colorado State Forest Service in support of all work and indirect costs are reported and controlled through the City of Fort Collins.

TOTAL Direct costs	11% applied Indirect Cost Rate	Amount for Colorado State Forest Service Indirect Costs	City of Fort Collins	COSWAP Amount of Indirect costs
\$ 1,186,700	11%	\$ 130,537	\$ 175,482	\$ 5,000

Project Implementation:

The City is seeking \$995,000 in support of forest treatment work for Phase 2 of the Michigan Ditch Pre-Fire Mitigation project.

Project Implementation for Phase 2 includes Treatment 1 work that supports removal of dead trees/surface fuels adjacent to Michigan Ditch and corresponding ditch road. Considering the terrain, helicopter treatment is proposed. Based on evaluation work completed to date by CSFS, acres proposed for Treatment 1 are in upwards of 30 acres. Treatment 2 work supports creation of a firebreak combined with removal of trees for proposed wetland enhancement. Proposed acres identified for

Treatment 2 are in upwards of 150 acres. The terrain for Treatment 2 is not steep, providing the opportunity to complete this work using tethered logging.

Treatment layout, including total number of acres to be treated per Treatment 1 and Treatment 2, will be finalized in Q3 2025. Cost estimates per acre of treatment via helicopter and tethered logging are based on estimates provided by CSFS. The per acre treatment estimate is based on current year prices, providing a range based on Phase 2 work not commencing until 2026. Considering that the treatment layout will not be finalized until Q3 2025, the City's estimate for the use of the \$995,000 in COSWAP funds is on the higher range of cost per acre via Treatment. The City anticipates using the higher range of acres to be treated and median cost per acre. Implementation costs for Treatment 1 and Treatment 2 work are estimated to exceed \$995,000 in COSWAP funds. The City anticipates use of FY 2025 Congressionally Directed Spending (CDS) funds and/or CSFS grant funds, provided awarded, to support treatment of additional acres for Phase 2 treatment.

The City is very optimistic that the project will receive continued grant funds, which will support treatment of acres identified for Phase 2 and further treatment of the Michigan Ditch Pre-Fire Mitigation project area. Specifically, considering the Michigan Ditch Pre-Fire Mitigation project being an approved FY 2025 CDS request in the Senate. The City also plans to submit a FY 2025 request for funds under CSFS' Forest Restoration & Wildfire Risk Mitigation Grant Program.

CSFS will manage all aspects of the forest treatments proposed for Treatment 1 and Treatment 2 of Phase 2 work, including procurement, contracting and contract administration for forest treatment work. The City will treat CSFS as a subrecipient under the COSWAP award, completing subrecipient monitoring throughout the life of the grant funded project.

Personnel:

The City's \$191,200 in cash match will be used to cover CSFS direct personnel costs.

CSFS will manage all aspects of planning, treatment layout, contracting, contract administration of treatment, grant administration, communication and coordination with external partners, and monitoring. The City will support CSFS, providing dedicated City staff to collaborate on Phase 2 treatment work and to assist with communications with key stakeholders. City personnel costs will be covered from City budgeted funds and, therefore, not incorporated in Total project costs.

Personnel costs for CSFS direct staff time are based on the total number of estimated hours for both field work and direct administrative time for Phase 2 work.

Indirect:

The City's \$125,482 in cash match will be used to cover CSFS indirect costs.

Considering CSFS' partnership in leading Phase 2 of the Michigan Ditch Pre-Fire Mitigation project, which includes direct field work and administrative work, CSFS has applied an 11% indirect cost rate to total direct costs. CSFS's indirect costs will be covered by (1) City's cash match of \$125,482 and (2) \$5,000 in COSWAP funds. Based on available budget the City does not have the \$5,000 needed to cover 100% of CSFS' indirect costs.

The City, in partnership with CSFS, is seeking to use COSWAP grant funds in support of implementation of forest treatments in support of the Michigan Ditch Pre-Fire Mitigation Project.

Based on the acres proposed for treatment, requiring staff time as well as funds to support implementation, the project will be completed in phases.

Phase 3:

The Michigan Ditch Pre-Fire Mitigation Project is being completed in multiple phases due to the total cost needed to complete treatments via helicopter and conventional/tethered logging. In addition to funding needs, staff time by CSFS, City and other partnering agencies is needed for both on the ground monitoring and management of forest treatment, combined with data collection, reporting and communication to key stakeholders.

Phase 1 funding is committed in full, with treatment implementation commencing in summer 2025. Funding in support of Phase 2 treatments includes \$1,000,000 in COSWAP funds and the City's \$316,682 in cash match. Phase 3 treatments are proposed for 198 total acres, with 51 acres being completed via tethered logging and 147 acres being treated via helicopter. Per acre treatment costs range between \$4,000 to \$6,000 for tethered logging and \$15,000 to \$25,000 for helicopter logging. This provides projected Phase 3 treatment costs of between \$2,409,000 and \$3,981,000.

If Phase 2 treatment costs are below the estimated \$995,000, the City, in partnership with CSFS, would use such funds to support continued treatment work for Phase 3. Any COSWAP funds would be used in combination with anticipated FY 2025 CDS funds and CSFS grant funds.

PAYMENTS

Grantee shall initiate payment requests by invoice to DNR using the DNR invoice and match template. The Grantee may invoice DNR monthly or quarterly.

EXHIBIT B, BUDGET

Total Proposal Budget	Treatment 1	Treatment 2	In-kind Match	Cash Match	COSWAP Total Ask
Personnel (maximum 20% of COSWAP Share)	\$ -		\$ -	\$ 191,200	\$ -
Project Implementation (minimum 70% of COSWAP Share)	\$ 245,000	\$ 750,000	\$ -		\$ 995,000
Indirect Costs (maximum 10% of COSWAP Share)	\$ 5,000		\$ -	\$ 125,482	\$ 5,000
Total	\$ 250,000	\$ 750,000	\$ -	\$ 316,682	\$ 1,000,000
TOTAL project Costs					\$ 1,316,682

EXHIBIT C - PII CERTIFICATION

STATE OF COLORADO

**THIRD PARTY INDIVIDUAL CERTIFICATION FOR ACCESS TO PII
THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I hereby certify under the penalty of perjury that I have not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

Signature: _____

Printed Name: _____

Date: _____

EXHIBIT C-PII CERTIFICATION

STATE OF COLORADO

**THIRD PARTY ENTITY / ORGANIZATION CERTIFICATION FOR ACCESS TO
PII THROUGH A DATABASE OR AUTOMATED NETWORK**

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of entity / organization) (the "Organization"), hereby certify under the penalty of perjury that the Organization has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Organization.

Signature: _____

Printed Name: _____

Title: _____

Date: _____

EXHIBIT D, SAMPLE OPTION LETTER

State Agency	Option Letter Number
Insert Department's or IHE's Full Legal Name	Insert the Option Number (e.g. "1" for the first option)
Contractor	Original Contract Number
Insert Contractor's Full Legal Name	Insert CMS number or Other Contract Number of the Original Contract
Current Contract Maximum Amount	Option Contract Number
Initial Term	Insert CMS number or Other Contract Number of this Option
State Fiscal Year 20xx	
Extension Terms	Contract Performance Beginning Date
State Fiscal Year 20xx	Month Day, Year
State Fiscal Year 20xx	
State Fiscal Year 20xx	Current Contract Expiration Date
State Fiscal Year 20xx	Month Day, Year
Total for All State Fiscal Years	

1. OPTIONS:

- B. Option to change the Increase/Decrease Funding**

2. REQUIRED PROVISIONS:

- A. **For use with Option 1(A):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option for an additional term, beginning Insert start date and ending on the current contract expiration date shown above, at the rates stated in the Original Contract, as amended.
- B. **For use with Options 1(B):** In accordance with Section(s) Number of the Original Contract referenced above, the State hereby exercises its option to Increase/Decrease the Funding in the Original Contract, as amended.

3. **OPTION EFFECTIVE DATE:**

- A. The effective date of this Option Letter is upon approval of the State Controller or _____, whichever is later.

<p>STATE OF COLORADO</p> <p>Jared S. Polis, Governor</p> <p>INSERT-Name of Agency or IHE</p> <p>INSERT-Name & Title of Head of Agency or IHE</p>	<p>In accordance with §24-30-202, C.R.S., this Option is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p>STATE CONTROLLER</p> <p>Robert Jaros, CPA, MBA, JD</p>
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<p>_____</p> <p>By: Name & Title of Person Signing for Agency or IHE</p> <p>Date: _____</p>	<p>By: _____</p> <p>_____ Name of Agency or IHE Delegate-Please delete if contract will be routed to OSC for approval</p> <p>Option Effective Date: _____</p>
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APPENDIX B
Colorado Strategic Wildfire Action Program Landscape Resilience Investment Policies



COLORADO

Strategic Wildfire Action Program

Department of Natural Resources

Landscape Resilience Investment Policies, Additional Information, and Final Reporting Requirements

Disclaimer: The COSWAP Landscape Resilience Investment policies are subject to review and change.

Media

Please acknowledge the Colorado Strategic Wildfire Action Program and the Department of Natural Resources Executive Director's Office as the funding source for this project in any outreach or media inquiries. Contact Chris Arend, DNR Communications Director, at chris.arend@state.co.us to discuss before sharing this project with the media.

Eligible and ineligible expenses

Eligible expenses for reimbursement and match		
Expense	Category	Description and supporting documentation
Implementation costs	Implementation	<p>Out of pocket expenses must provide receipts or invoices</p> <p>Implementation activities</p> <ul style="list-style-type: none"> • Fuel breaks • Ingress and egress fuels treatments • Mechanical and non-mechanical forest, shrubland and grassland fuels reduction • The removal of slash through piling and burning, chipping, mulching, grinding, hauling offsite, etc. • Community-wide defensible space connected to planned, or completed, landscape scale treatments • Prescribed fire preparation and/or implementation
Rented equipment	Implementation	Rental equipment with receipts
Staff time	Personnel & planning	<p>See <i>reimbursement for personnel time</i> below</p> <p>Eligible personnel capacity includes:</p> <ul style="list-style-type: none"> • Project planning, management, monitoring and reporting directly related to the projects in this proposal • Public outreach and education as it directly relates to the proposed treatments that are deemed necessary for project success • Personnel activities that directly support forest health and wildfire mitigation programming

Meeting room rental	Personnel & planning	Room rentals with receipts
Travel expenses	Personnel & planning	Mileage, per diem for overnight stays and hotel expenses. Mileage and per diem will be reimbursed at the federal mileage rate. See <i>Travel</i> below for more information
Non-recipient labor (Match Only)	Personnel & planning	For work completed by entities or individuals not included in the scope or budget. Valued at volunteer labor rate (at time work occurred) and must be documented using the COSWAP request for reimbursement form. Does not qualify for reimbursement.
Non-recipient cost (Match Only)	Implementation	Equipment or supplies donated by non-recipient, does not qualify for reimbursement.

Ineligible expenses for COSWAP Awards
<i>Examples of ineligible expenses for reimbursement through the Landscape Resilience Investment program. Indirect can be spent at the grantee's discretion.</i>
Food and beverages
Hardware, software, technology, office supplies, printing, uniforms, etc.
Marketing and educational materials
Maintenance and equipment repair (ex: oil changes, tire rotation, chains, etc.)
Equipment purchases (ex: chainsaws, tools, pruning shears, etc.)
Construction and infrastructure (building remodel, bridges, permanent road construction, water infrastructure development)

Requests for reimbursement:

Requests for reimbursement must be submitted on the COSWAP [request for reimbursement](#) form to coswap@state.co.us and accompanied by all supporting documentation. You can submit requests for reimbursement at a maximum, once a month, and at a minimum, once a year at the end of the state fiscal year- June 30. There are five approvals needed for each reimbursement request, please allow up to 45 days for processing. You will receive an email letting you know when your invoice has been processed by the COSWAP program staff and has moved on to accounting for payment.

Reimbursement for personnel time:

COSWAP is happy to support personnel time for both our direct grantees and subgrantees that receive funding in a pass through mechanism. Any time spent on personnel or planning must be outlined in the COSWAP grant agreement, we are only able to reimburse expenses that are outlined in the agreement.

In order to ease the process of time tracking and reporting COSWAP has outlined two options for reporting personnel time through supporting documentation.

Option A. A spreadsheet (or detailed timesheet) that includes the date, name of the person working, number of hours worked, and a brief explanation of the COSWAP related activity being worked on. If this person is working on the ground at a COSWAP project please include the name of the project.

Option B. If option A is too burdensome or you are not able to track to this specificity on your timesheet, Option B may be preferable. COSWAP will need a timesheet for the person working with the date and number of hours worked on COSWAP clearly defined. You will need to highlight the entries that are relevant. You will also need to include a summary of the work done on the COSWAP project by that person as reflected in the timesheet. ***These summaries must be by week.***

Again, any expenses must align with the contracted budget. If you have any questions about these reporting options please reach out to courtney.young@state.co.us.

Subgrantees:

Subgrantees must follow Grant Award Terms and Conditions, including sections 8 (Confidential Information - State Records) and 10 (Insurance). Below are the standards for Certificate of Insurance (COI) that DNR asks for from non-governmental entities. The state does not need a copy of COI from a subcontractor as part of the day-to-day compliance for your COSWAP project.

- A. Workers' Compensation
 - a. Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Grantee or Subcontractor employees acting within the course and scope of their employment.
- B. General Liability
 - a. Commercial general liability insurance covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:
 - i. \$1,000,000 each occurrence;
 - ii. \$1,000,000 general aggregate;
 - iii. \$1,000,000 products and completed operations aggregate; and
 - iv. \$50,000 any one fire.
- C. Automobile Liability
 - a. Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

Travel:

If travel is included in your COSWAP budget you are eligible for reimbursement. Travel will not be reimbursed if it is not included in your COSWAP grant agreement budget. Mileage will be reimbursed at the federal rate and can only be used for in-state travel. Per diem will be

reimbursed at the federal rate, please use the rates found here:

<https://www.gsa.gov/travel/plan-book/per-diem-rates>. Hotel expenses will require receipts for reimbursement.

To request reimbursement for travel please use form #4 in the COSWAP Request for Reimbursament form.

Expense type	Single day travel	Overnight travel in state
Mileage	✓	✓
Breakfast per diem		✓ if leaving for travel before 5 am. If hotel does not offer free breakfast
Lunch per diem		✓ if leaving for overnight travel before 11 am or arriving home after 1 pm
Dinner per diem		✓ if leaving for overnight travel before 5 pm or arriving home after 8 pm

Extensions:

Grantees can request a grant extension six months before the expiration date of the grant agreement. Extensions for up to one year may be granted at DNR's sole discretion.

Requests for scope of work or budget changes:

Requests for scope modifications or extensions should be made via the [Amendment Request Form](#). Please be prepared to upload any supporting documentation. If you do not hear a response within two weeks, email coswap@state.co.us.

Quarterly reporting requirements:

Quarterly reports are due within five days of the end of each quarter (April 5, July 5, October 5, January 5) will be filled out using this [Google Form](#). If hyperlink does not work copy and paste into browser: <https://forms.gle/gWKTBug6Wp1NqQaW8>

Before and after photos:

Please select areas that represent the forest/fuel type you are impacting, and provide at least five before and after photos throughout the project taken from the same vantage point.

Final reporting requirements:

Each Grantee will report on the following within 45 days of grant completion or agreement expiration date. DNR will provide a Google form for reporting. Grantees must share before and after photos of the projects and upload their spatial data into the [Colorado Forest Tracker](#).

Reporting for mitigation projects:

- Acres treated by treatment type

- Canopy Treatment
 - Broadcast Burn
 - Hand Thin
 - Mechanical Thin
 - Other Thin
 - Patch/Stand Clear-cut
- Surface Treatment
 - Biomass Removal
 - Broadcast Burn
 - Chip/Haul
 - Lop and Scatter
 - Machine Pile
 - Mastication
 - Pile Burn
- Number of piles created
- Number of piles burned
- Miles of evacuation routes protected or improved
- Size of fuel breaks created (in miles)
- Forest products generated (type and volume)
- The change in community or social perception of the project from start to finish
- Number, and names, of communities directly impacted by the project
- Name and location of communities within two miles of the project
- Longevity of treatment
- Before and after photos

Reporting for personnel and planning

- Number, and hours, of personnel supported
- Planning efforts started and completed (Including stewardship agreements and Good Neighbor Authority)
- Impact of planning efforts on mitigation projects and funding opportunities
- Funding opportunities leveraged with COSWAP funds